

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LILLIAN KANAYOK

Transcript of the Reasons for Sentence delivered by The Honourable Justice S. H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 5th day of November, 2014.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown

Mr. M. Martin: Counsel for the Accused

(Charge under s. 380(1)(a) of the Criminal Code of Canada)

1 THE COURT: Lillian Kanayok has entered a
2 guilty plea to one count of fraud over \$5,000
3 contrary to Section 380(1)(a) of the Criminal
4 Code. The victim is her former employer, the
5 Olokhaktomiut Hunters and Trappers Committee.
6 The facts are contained in the Agreed Statement
7 of Facts, Exhibit S1, which were filed on Monday.

8 Ms. Kanayok was the resource person for the
9 Hunters and Trappers Committee and was
10 responsible for running the committee's office
11 and the financial operations of the committee.

12 The committee is composed of Inuvialuit
13 hunters in Ulukhaktok and provides assistance,
14 including financial assistance, to local hunters
15 and trappers with respect to hunting, trapping,
16 and fishing in the area. The committee is funded
17 by grants from government organizations and each
18 year the committee receives approximately
19 \$176,000.

20 Ms. Kanayok was employed by the committee
21 from about 2006 to June 2013.

22 Between April 1st, 2012 and June 2013, she
23 misappropriated \$60,399.04 from the committee for
24 her personal use. She did so by a variety of
25 methods, including issuing herself duplicate pay
26 cheques, transferring committee funds to her
27 personal bank account, using a Link Card at the

1 Northern Store to spend committee funds and
2 advance herself money from the committee bank
3 account. She also made out cheques to herself
4 which were intended to be paid to other
5 organizations. An audit ultimately revealed the
6 misappropriation and identified the methods used
7 by the accused and the amount misappropriated.

8 Ms. Kanayok ultimately admitted taking the
9 money to the police and explained she had an
10 on-line gambling problem.

11 In late August 2013, she made a payment of
12 \$3,000 in restitution to the committee. In
13 total, the committee is still owed \$57,399.04.

14 Ms. Kanayok's explanation for why these
15 offences occurred, offered through counsel, is
16 that she attended residential school and suffered
17 sexual abuse while there. After attending the
18 Truth and Reconciliation hearings in Inuvik, she
19 began to gamble on-line to escape her emotions,
20 which led her to defraud the committee. She says
21 that since the misappropriation was discovered,
22 she has stopped gambling.

23 The impact of Ms. Kanayok's actions have
24 been serious. The Hunters and Trappers Committee
25 provided a Victim Impact Statement which was
26 signed by three former board members who were on
27 the executive committee when she misappropriated

1 the funds.

2 It is clear that Ms. Kanayok's actions have
3 had a significant impact on the committee and
4 their ability to operate. She was fired by the
5 committee, which was justified, but it was
6 difficult because Ulukhaktok is a small community
7 and, as they stated, everyone is either a friend
8 or related. So her actions put the executive in
9 a difficult situation of having to fire someone
10 who they considered a friend and who may have
11 also been a relative.

12 The committee has also had financial
13 troubles as a result of her actions. They were
14 unable to pay local research assistants because
15 there was not enough money in the bank account.
16 They could not initially pay the replacement
17 resource person they hired. They had to stop
18 providing funding to local members to assist them
19 with the cost of harvesting. They could not pay
20 bills or purchase anything, and people in the
21 community understandably became upset and
22 threatened to quit projects. They had to go to
23 the government for an advance of their funding
24 and were only partly successful. They also had
25 to pay for an audit to determine how much money
26 Ms. Kanayok had taken. All of this was
27 embarrassing for the committee, and they had to

1 face the Annual General Meeting, and because of
2 outstanding charges, they could only offer a
3 vague explanation. They also noted that
4 Ms. Kanayok apologized, which they accepted.

5 Counsel for Ms. Kanayok advised that she
6 moved to Yellowknife in August 2013 to attend
7 school. It is unfortunate that Ms. Kanayok did
8 not see firsthand all of the effects, the lasting
9 effects, that her actions have had on the
10 community and the committee. I can imagine the
11 impact that her actions have had on a close-knit
12 community and on the ability of the committee to
13 assist hunters and trappers to continue with
14 their traditional livelihood. Her actions have
15 probably affected most families in Ulukhaktok in
16 some way.

17 There is also a pre-sentence report which
18 was prepared. Unfortunately, while the report
19 was requested by her counsel and would have been
20 prepared to assist the Court in understanding
21 Ms. Kanayok's personal circumstances, she chose
22 not to participate in the making of the report.
23 Despite repeated efforts of the author of the
24 report to contact her, Ms. Kanayok was difficult
25 to contact and did not attend for the three
26 appointments which had been set up with the
27 writer of the report. Her explanation provided

1 through counsel is that she was ashamed and that
2 it was difficult for her to talk about the
3 offence, and I imagine that she is ashamed as she
4 and her counsel referred to on Monday; however,
5 it is extremely unfortunate that Ms. Kanayok
6 chose not to participate in the preparation of
7 the pre-sentence report. These reports provide
8 valuable information to the Court and allow an
9 offender to express their views and talk about
10 their personal circumstances.

11 In addition, I am required, pursuant to
12 Section 718.2(e) of the Criminal Code, to
13 consider all available sanctions other than
14 imprisonment and to pay particular attention to
15 the circumstances of aboriginal offenders, which
16 Ms. Kanayok is. These are often called the
17 "Gladue factors" after the Supreme Court of
18 Canada decision. And these pre-sentence reports
19 also often provide information into the Gladue
20 factors.

21 So the information that I have on
22 Ms. Kanayok is limited, and counsel has been able
23 to provide some additional information, but it is
24 certainly not the extensive information that we
25 sometimes see provided to the Court.

26 Ms. Kanayok is from Ulukhaktok and lived a
27 traditional lifestyle prior to moving to

1 Yellowknife last year to attend school. She
2 attended residential schools while younger in
3 Yellowknife and in Inuvik. Her experience in
4 Yellowknife was unremarkable; however, her
5 experience in Inuvik was traumatic and she
6 suffered abuse while attending there. This has
7 had a significant impact on her, and her
8 experience attending the Truth and Reconciliation
9 Commission hearings appears to have brought those
10 emotions back to the fore. As a result, she
11 began on-line gambling and then committed the
12 offence to allow her to continuing her on-line
13 gambling problem.

14 Ms. Kanayok moved to Yellowknife to further
15 her education, attending a nursing program. She
16 recently left the program and has begun to work
17 but hopes to return and continue with her
18 education.

19 On sentence, counsel have proposed a joint
20 submission of a conditional sentence order of
21 eighteen months to two years less a day to be
22 followed by one year of probation. Counsel have
23 also suggested various conditions to be included
24 and also requested a restitution order.

25 The Crown has filed three cases which are
26 similar in that they are breach of trust cases
27 involving either theft and/or fraud from an

1 employer. The cases establish that the sentence
2 proposed by counsel does fall within the range of
3 sentences previously imposed for similar offences
4 by this court.

5 The first case is that of R. v. Tologanak, a
6 decision from 1999 of this court. In that case,
7 the accused entered a guilty plea to theft over
8 \$5,000. He was the executive director of the
9 Kitikmeot Hunters and Trappers Association, and
10 over a period of approximately 18 months, he
11 stole over \$40,000 from the association. He did
12 so by charging personal expenses, overpaying
13 himself, and using the association credit card
14 for personal expenses. He was 35 years old and
15 had an exemplary work record. He did have a
16 prior criminal record which was unrelated except
17 for a dated theft. In that case, Crown proposed
18 a joint submission of two years less a day of a
19 conditional sentence to be followed by probation,
20 which the Court went along with. It was
21 aggravating in that case, the Court noted, that
22 it was a breach of trust theft and it was a
23 substantial amount of money which had been taken.
24 In mitigation, the accused had waived his
25 preliminary inquiry early on and pled guilty. He
26 also had made some attempt to pay restitution and
27 had not attempted to cover up or conceal his

1 activities.

2 The second case is that of R. v. Harbin, a
3 decision of 2006 of this court. In that case,
4 there was no guilty plea. It was a conviction
5 after trial of fraud where the accused engaged in
6 a series of thefts from her employer. She used
7 blank cheques which she cashed for her own
8 benefit after falsifying purchases. The amount
9 in that case was much lower; it was \$12,800, and
10 all but 7,200 had been recovered from payroll
11 deductions. In that case, the accused was a
12 30-year-old single mother of two with no prior
13 criminal record, and the sentence imposed was an
14 18-month conditional sentence order as well as a
15 restitution order.

16 The third case provided is that of R. v.
17 Cleary, in 2002, of this court. In that case,
18 Ms. Cleary was convicted after a jury trial of
19 theft over \$5,000 and fraud over \$5,000. She was
20 the manager of the Public Housing Association in
21 Dettah and N'dilo and she took \$20,000 from rent
22 and other payments received by the Housing
23 Association and repaid 220. The fraud related to
24 the billing of building supplies to Housing for
25 her home for approximately 10,000, and she also
26 overpaid vehicle expenses. Her vehicle
27 allowance, gas, vehicle repairs, vacation travel

1 allowances, and housing allowances were all areas
2 which she had been found to have committed fraud
3 for a total of \$55,000, and she had paid \$1,720,
4 and this had occurred over a lengthy period of
5 time, much longer than in this case; a period of
6 six years. She was a 41-year-old woman who was
7 married with four children and she received a
8 two-year-less-a-day conditional sentence order
9 and restitution order.

10 Turning to the factors in this case, there
11 are mitigating factors. Ms. Kanayok has entered
12 a guilty plea. She waived her preliminary
13 inquiry, and counsel advised that it was her
14 intention from the outset to plead guilty in this
15 court. She indicated her intention prior to the
16 police completing their investigation and they
17 were still in the process of drafting production
18 orders. So Ms. Kanayok should receive the full
19 benefit of an early guilty plea. As well, she
20 has paid back \$3,000 of the money she took. She
21 did so in August 2013. So she has made some
22 attempt to repay the committee. Ms. Kanayok does
23 not have a prior criminal record. She is 41
24 years old and this will be her first criminal
25 conviction.

26 There are aggravating factors as well. The
27 amount involved is significant: \$60,000. The

1 length of time that this occurred was not a short
2 period of time; it was over a period of 15
3 months. As well, this was not a one-time event.
4 Ms. Kanayok used a variety of methods to take
5 money from the committee over the lengthy period
6 of time. So there was a degree of planning
7 involved.

8 As well, this is a breach of trust
9 situation. Offences where an individual steals
10 from their employer are referred to as "breach of
11 trust offences" because they involve an employee
12 who has been trusted by their employer to treat
13 their money or goods that they are responsible
14 for in an appropriate manner and not use them or
15 appropriate them for their own benefit.

16 As referred to in the Tologanak case,
17 employees are hired because they have a good work
18 record and the organization trusts them because
19 they seem to be good people. They did not expect
20 the employees to steal and they put them in a
21 position where they have access to money or bank
22 accounts precisely because they do trust them,
23 and they cannot really protect themselves because
24 the actions of the employee are unexpected.

25 In small communities like Ulukhaktok, the
26 Hunters and Trappers Committee also plays a role
27 in assisting hunters and trappers, providing

1 advice and financial assistance. They do this to
2 help the people of their community. And the
3 money they receive comes from the government. It
4 is not a business or a for-profit organization.
5 So when someone like Ms. Kanayok steals from the
6 Hunters and Trappers Committee, she is taking not
7 only from the committee but from individuals in
8 the community, individuals who rely on the
9 assistance of the committee to live a traditional
10 lifestyle, to make ends meet, to put food on
11 their family's table. Violations of that trust
12 are taken seriously. So when sentencing
13 individuals guilty of fraud or theft in a breach
14 of trust situation, the cases demonstrate that
15 deterrence and denunciation are often the primary
16 considerations.

17 As well, rehabilitation is something that
18 cannot be lost sight of as often the individuals
19 who come before the Court do not have a prior
20 criminal record or their criminal record is
21 limited.

22 In looking at the requirements of Section
23 742.1 of the Criminal Code as it was prior to the
24 amendments which came into force in November
25 2012, there are four elements of which the Court
26 must be satisfied before imposing a conditional
27 sentence. The first is the person is convicted

1 of an offence prosecuted by way of indictment for
2 which the maximum term of punishment is ten years
3 or more and not punishable by a minimum term of
4 imprisonment. The second is the Court will
5 impose a period of imprisonment of less than two
6 years. The third is the service of the sentence
7 in the community would not endanger the safety of
8 the community, and, fourth, it has to be
9 consistent with the fundamental purpose and
10 principles of sentencing as set out in the
11 Criminal Code. I am satisfied that all of these
12 conditions have been met. This is not a
13 situation where the Court would impose a sentence
14 of more than two years; the accused's personal
15 circumstances and the circumstances of the
16 offence satisfy me that the safety of the
17 community would not be endangered by serving a
18 sentence in the community.

19 A conditional sentence also has to be
20 consistent with the fundamental purpose and
21 principles of sentencing. Breach of trust thefts
22 or frauds, as the cases show, require the
23 sentencing principles of deterrence and
24 denunciation to be emphasized. A conditional
25 sentence can meet those sentencing objectives and
26 that has been established in similar cases. So
27 the conditional sentence can meet the

1 requirements of deterrence and denunciation.

2 I am required pursuant to Section 742.2 of
3 the Criminal Code to consider whether an order
4 under Section 109 or 110, a firearms prohibition
5 order, should be ordered. The Crown has not
6 sought this order, and based upon the
7 circumstances of the offence, I am satisfied that
8 one is not required.

9 Can you stand up, please, Ms. Kanayok. I am
10 sentencing you to a period of imprisonment of two
11 years less a day to be served in the community.

12 The order will have a number of conditions.
13 There are compulsory conditions which are
14 required by the Criminal Code and they are: To
15 keep the peace and be of good behaviour (that
16 just means to stay out of trouble); to appear
17 before the Court when required to do so by the
18 Court; to report to your conditional sentence
19 supervisor within two working days of today and
20 thereafter when required by the supervisor; to
21 remain within the Northwest Territories unless
22 you have the written permission to go outside the
23 Northwest Territories (you have to get that from
24 the Court or your supervisor). You have to
25 notify the Court or your supervisor in advance of
26 any change of name or address and promptly notify
27 the Court or your supervisor of any change in

1 employment or occupation.

2 In addition, I am imposing the following
3 additional conditions: You are to reside at 5413
4 - 52nd Street, in Yellowknife, or any other
5 address for which you have the prior written
6 approval of your conditional sentence supervisor.
7 For the first 15 months of this order, you will
8 remain within your residence at all times with
9 the following exceptions: If you have the
10 written consent of your conditional sentence
11 supervisor; to attend meetings with your
12 conditional sentence supervisor; if there is a
13 medical emergency involving you, your spouse, or
14 your children; for the purposes of your
15 employment (you are to go directly to your
16 employment and directly home following your
17 employment); to attend counselling or treatment
18 programs with the consent of your conditional
19 sentence supervisor; to take your children to and
20 from school (you are to go directly to school and
21 then directly to home or your place of employment
22 if you are going to work); to complete your
23 community service work; to attend to personal
24 matters like grocery shopping or banking, things
25 like that, from 3 to 4 p.m. on Tuesdays and
26 Thursdays. You will be further permitted one
27 period per week to participate or attend your

1 children's recreation activities for a two-hour
2 period. So on Sundays from 1 to 3 p.m. or as
3 otherwise approved by your conditional sentence
4 supervisor. So if your children have a special
5 event on a different day that you wish to attend,
6 you need to get the approval of your conditional
7 sentence supervisor to change that period for
8 that week. As well, you will attend actively and
9 participate in any counselling and treatment
10 programs as directed by your conditional sentence
11 supervisor and provide satisfactory proof of
12 attendance or completion of the program. You
13 shall perform 150 hours of community service work
14 as directed by your conditional sentence
15 supervisor and to the satisfaction of your
16 conditional sentence supervisor and complete the
17 work within the first 18 months of this
18 conditional sentence order and provide
19 satisfactory written confirmation to your
20 conditional sentence supervisor of the completion
21 of those hours.

22 Now, I have not given you an exemption for
23 the work that you do at the food bank. It may be
24 that your conditional sentence supervisor may
25 consider that satisfactory community service work
26 and you may be able to continue with volunteering
27 at the food bank, but that will be up to your

1 conditional sentence supervisor, and that is
2 something you can talk to her or him about and it
3 may be that you may still be able to do that, but
4 it has to be work that they consider satisfactory
5 for community service.

6 You shall also seek or maintain employment,
7 education, or training and provide your
8 conditional sentence supervisor with proof of
9 attendance, including providing your work or
10 training schedule in writing in advance, and you
11 shall advise your conditional sentence supervisor
12 in writing of the name, address, and telephone
13 number of your employer or the educational or
14 training facility.

15 If you are not working or you are unable to
16 obtain work, you shall advise your conditional
17 sentence supervisor in writing of your efforts to
18 obtain work and shall do so when your conditional
19 sentence supervisor directs.

20 You will cooperate fully with random checks
21 by telephone and in person by your supervisor or
22 the police to verify your compliance with this
23 order. That means that you will present yourself
24 at the door of your residence when requested by
25 your supervisor or the police and you will speak
26 to your supervisor or the police on the telephone
27 when they call the telephone number that you will

1 provide them.

2 You shall also pay restitution to the Clerk
3 of the Court for the benefit of the Olokhaktomiut
4 Hunters and Trappers Committee of the following
5 amounts: By May 31st, 2015, a sum not less than
6 \$2,000. So the amounts that I am going to read,
7 you can make monthly payments or you can pay them
8 all at once, but by those dates, you have to have
9 made at least that payment to the Clerk of the
10 Court. By November 30th, 2015, a sum not less
11 than \$2,500; by May 31st, 2016, a sum not less
12 than \$2,500; and by the end of the conditional
13 sentence order, a further sum not less than
14 \$2,500. As well, a copy of the order will be
15 given to you and explained to you by the clerk.
16 You can sit down now, Ms. Kanayok.

17 So if you have difficulties with the
18 conditions, you or your supervisor can apply to
19 the Court to change the conditions. This is
20 something that you should discuss with your
21 supervisor if you have problems that arise and
22 then you can decide whether that is something
23 that you want to apply to the Court to change a
24 condition. If you breach the order, you can be
25 arrested and a breach hearing held. Because this
26 is a conditional sentence of imprisonment, if you
27 breach the order and are found to have committed

1 the breach -- if the Court finds you have
2 committed it, the Court can and more often than
3 not does order the offender serve some or all of
4 the remainder of the sentence in jail.

5 There will also be a probation order which
6 will be for the period of one year following the
7 conditional sentence. It has some statutory
8 conditions as well which are similar to the ones
9 on the conditional sentence order and they are:

10 To keep the peace and be of good behaviour; to
11 appear before the Court when required to do so by
12 the Court; to notify the Court or the probation
13 officer in advance of any change of name or
14 address and promptly notify the Court or the
15 probation officer of any change of employment or
16 occupation. And there will be some additional
17 conditions: You will report to your probation
18 officer within three working days of the end of
19 your conditional sentence and thereafter as
20 directed by your probation officer; you will
21 attend actively and participate in any
22 counselling and treatment programs as directed by
23 your conditional sentence -- or your probation
24 officer; you will also seek or maintain
25 employment, education, or training and provide
26 your probation officer with proof of attendance,
27 including your -- providing your work or training

1 schedule in writing in advance, and you shall
2 advise your probation officer in writing of the
3 name, address, and telephone number of your
4 employer, educational or training facility. And
5 again, if you are not working or unable to work,
6 you shall advise your probation officer in
7 writing of your efforts to obtain work and shall
8 do so when the probation officer requests it.

9 For the probation order, you will pay
10 restitution to the Clerk of the Court for the
11 benefit of the Olokhaktomiut Hunters and Trappers
12 Committee at a rate of not less than \$200 per
13 month.

14 There will also be a restitution order to
15 the benefit of Olokhaktomiut Hunters and Trappers
16 Committee. Because you will be making payments
17 under the conditional sentence and the probation
18 order, it will be stayed until the expiry of the
19 conditional sentence order and the probation
20 order. So the amount of the restitution order
21 will be \$57,399.04 less any payments that are
22 received by the Clerk of the Court under the
23 conditional sentence order and the probation
24 order.

25 In addition, there will be a victim of crime
26 surcharge. It is the amount set out in the
27 Criminal Code. It is \$200, and I am going to

1 require that you pay that within four months
2 unless counsel is requesting additional time.
3 Mr. Martin?

4 MR. MARTIN: No, Your Honour.

5 THE COURT: Okay. All right, counsel, is
6 there anything that I have missed or is there
7 anything else we need to deal with?

8 MS. MILLER: Your Honour, as part of the
9 conditional sentence, is there an abstention from
10 alcohol clause?

11 THE COURT: I had not included that.
12 There is no indication that the offence involved
13 alcohol, so I did not see the need to include
14 that. As well, the pre-sentence report that was
15 provided indicated that based on the information
16 that was previously from the sons that there was
17 previously an alcohol problem but that is no
18 longer the case. So, in the circumstances, I did
19 not feel that it was necessary.

20 MS. MILLER: Thank you.

21 THE COURT: Is there anything else,
22 counsel?

23 MR. MARTIN: No thank you, Your Honour.

24 THE COURT: I imagine Madam Clerk will
25 need some time. There are quite a number of
26 conditions.

27 THE COURT CLERK: Thank you, Your Honour.

1 THE COURT: How long do you think you will
2 need, Madam Clerk?

3 THE COURT CLERK: If she can come back at
4 1 o'clock. I don't want to hold her up. But as
5 I say, 1 o'clock, I should have everything ready
6 for her then.

7 THE COURT: On the third floor?

8 THE COURT CLERK: Yes.

9 THE COURT: So Ms. Kanayok, I am going to
10 direct you to return at 1 o'clock to the clerk's
11 office on the third floor, and then you can sign
12 your paperwork - the conditional sentence order,
13 the probation order - and the clerk will explain
14 those conditions to you at that time. All right?
15 Okay.

16 Thank you then, counsel, and we will adjourn
17 court.

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21 Certified Pursuant to Rule 723
22 of the Rules of Court

23

24

25 Jane Romanowich, CSR(A)
26 Court Reporter

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