

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DALLAS CHAMBAUD

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Transcript of the Reasons for Sentence by The Honourable  
Justice S. H. Smallwood, sitting in Hay River, in the  
Northwest Territories, on the 15th day of June, 2015.

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APPEARANCES:

Mr. S. Lafrance: Counsel for the Crown

Mr. M. Hansen: Counsel for the Defence

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

Official Court Reporters

1 THE COURT: Dallas Chambaud has entered  
2 a guilty plea to one count of fraud contrary  
3 to Section 380(1)(a) of the Criminal Code.

4 The facts as read into the record this  
5 morning reveal that Mr. Chambaud was employed  
6 by Tri R Recycling, and while he was employed  
7 there he had unauthorized access to company  
8 cheques and that he wrote cheques as if they  
9 were made out to customers, paying them for  
10 the recycling materials that they had submitted,  
11 and that was reflected on the stubs of the  
12 cheques, but the cheques were actually made  
13 out to himself and in one case to his girlfriend,  
14 and the amounts for which they were made out were  
15 larger than what were recorded on the stubs.

16 In total 21 cheques were written for a  
17 total of \$6,013.35. When this was discovered  
18 the company was able to stop payment on the  
19 last two cheques, so they were not out that  
20 money. The two cheques, however, were cashed  
21 by the Rooster Convenience Store, which were  
22 subsequently out the money for those two cheques,  
23 which totalled \$661.45. None of the money that  
24 Mr. Chambaud has taken has been repaid, and the  
25 total loss for Tri R Recycling is \$5,560.25,  
26 and for the Rooster Convenience Store \$661.45.

27 A pre-sentence report was prepared

1 for this sentencing. It outlines some of  
2 Mr. Chambaud's circumstances, as well as his  
3 views with respect to the offence. In it I note  
4 that he stated that he felt bad about taking the  
5 cheques and only wanted the money to purchase  
6 clothing. He was asked about why he did it  
7 and his response was "I don't know, my mind  
8 just went to it, I guess." It was also noted  
9 by the author of the pre-sentence report that  
10 the accused showed little to no remorse for  
11 his actions and that he did not really want  
12 to participate in the pre-sentence report  
13 process, that he just wanted to go to jail  
14 to get the matter over with.

15 The report also reflects his personal  
16 circumstances. The accused is 24 years old,  
17 is a Dene man. He lives with his girlfriend  
18 and her parents, and is currently estranged  
19 from his parents who also live in the area.  
20 The report also refers to his lifestyle, his  
21 childhood, and the traditional lifestyle that  
22 he has led and that he has a background in,  
23 that he participated in hunting and trapping  
24 and learned this from his grandfather, and  
25 that he still occasionally goes on the land  
26 with his father.

27 He revealed that his parents consumed

1 alcohol to excess during his childhood, which  
2 caused some problems in that sometimes they were  
3 without food. To his credit he has indicated  
4 that he only drinks occasionally now, he has  
5 not followed that same path that his parents  
6 were on.

7 His education is that he attended up to  
8 grade 10 here on the Reserve, but his counsel  
9 indicates that he does have problems reading,  
10 so that perhaps his education level is not as  
11 high as a grade 10 level. He has been employed  
12 part time since he left his employment at Tri  
13 R Recycling and works part time as a mechanic's  
14 helper. He makes \$300 or \$400 a month, so his  
15 income is minimal.

16 Section 718.2(e) of the Criminal Code  
17 requires me to consider all available sanctions  
18 other than imprisonment and to pay particular  
19 attention to the circumstances of aboriginal  
20 offenders. As I stated, the accused is a  
21 Dene person. In addition to the personal  
22 circumstances that I have related already there  
23 is also the issue with respect to residential  
24 school. The report indicates that neither  
25 of the accused's parents attended residential  
26 school, although I am advised that his  
27 grandfather did attend residential school.

1 But beyond that information there is very  
2 little with respect to what effects that  
3 might have had upon Mr. Chambaud himself,  
4 what residual effects may have been passed  
5 down.

6 The Crown has filed a number of cases that  
7 demonstrate a range of sentence in some similar  
8 cases. The cases emphasize that deterrence  
9 and denunciation are the primary sentencing  
10 principles, and I will just go briefly through  
11 the cases that the Crown has filed.

12 I was provided the case of R. v. Davey, 2013  
13 SKPC 218, where the accused entered a guilty plea  
14 to one count of fraud. The amount involved was  
15 \$42,000, so it is larger than the amount in this  
16 case. The accused in that case was 31 years old  
17 and took the money to support a gambling problem.  
18 There was a prior criminal record, which was  
19 related but dated. In that case the Court noted  
20 that deterrence and denunciation were the primary  
21 sentencing principles. There were a number  
22 of transactions in that case and it was over  
23 a lengthy period of time, a two-year period,  
24 and the accused in that case had repaid some  
25 of the money. A conditional sentence was  
26 imposed in that case of two years less a  
27 day, to be followed by probation.

1           The case of Dhaliwahl, 2011 ONCJ 560,  
2           again involved a guilty plea to a count of  
3           fraud. In that case there was a number of  
4           transactions over a period of four years, so  
5           a lengthy period of time, and a significant  
6           amount of money, \$430,000 approximately, was  
7           taken from the employer. All of these cases  
8           for the most part involve fraud committed  
9           against employers. In that case the accused  
10          had no criminal record, it was a breach of trust  
11          situation, as well the funds that were involved  
12          were public funds, there was a large amount and  
13          a large number of transactions, and the reasoning  
14          with respect to that was for the personal benefit  
15          of the accused, and some of the money in that  
16          case was also repaid. The sentence that was  
17          imposed was nine months imprisonment followed  
18          by 36 months of probation.

19          The third case that was provided was a case  
20          from this jurisdiction, the case of Harbin, 2006  
21          NWTSC 28, a decision of Justice Vertes formerly  
22          of this Court. That case is different in the  
23          sense that Ms. Harbin was found guilty after  
24          trial. The amount that the employer was out  
25          was \$12,836 of which \$7,200 approximately had  
26          been recovered through deductions from her pay.  
27          The accused in that case was 30 years old and

1 had no criminal record and received an 18-month  
2 conditional sentence of imprisonment.

3 The case of Hogg, 2007 ABPC 287, involved  
4 a guilty plea to four counts of break enter and  
5 commit theft. So the offences themselves were  
6 somewhat different, but they were thefts by a  
7 security guard who was responsible for guarding  
8 businesses and who instead entered the premises  
9 and took a number of items, mainly computer  
10 equipment. The accused in that case was 21  
11 years old and had no criminal record. There  
12 was a pre-sentence report prepared in that case,  
13 and there were a number of aggravating factors  
14 that were noted by the Court, including a breach  
15 of trust because, while it was not his employer,  
16 he abused his position with respect that he was  
17 supposed to have been guarding these businesses.  
18 The sentence that was imposed in that case was  
19 six months imprisonment.

20 The case of Ibrahim, 2013 QCCQ 6644, also  
21 involved a guilty plea to a fraud. The amount  
22 involved in that case was \$9,290. This was part  
23 of an overall scheme which was a much larger  
24 fraud of 2.1 million dollars. In that case  
25 there were two accused that the Court was dealing  
26 with, one was 29 years old and one was 31 years  
27 old, and neither had a criminal record. The

1 sentence that was imposed with respect to that  
2 was a period of imprisonment of four months in  
3 jail followed by a year of probation. The Court  
4 also referred to a number of factors that the  
5 Court should consider in sentencing individuals  
6 for fraud in those circumstances.

7 The decision of Kanayok, 2014 NWTSC 75,  
8 is a decision from this Court where there was  
9 a guilty plea entered to a count of fraud. The  
10 amount involved was over \$60,000 of which \$3,000  
11 had been repaid. The accused in that case had  
12 no criminal record and had used the money to  
13 support her gambling habit. The offence had  
14 occurred over a period of 15 months and there  
15 was a large number of transactions. In that  
16 case a conditional sentence of imprisonment  
17 was imposed of two years less a day.

18 There is also the Moccasin case, 2006  
19 SKCA 5. This was an appeal by the Crown  
20 from the imposition of a two-year-less-a-day  
21 conditional sentence of imprisonment, and it  
22 involved criminal breach of trust and fraud  
23 convictions where the accused were responsible  
24 for taking over a million dollars. In that case  
25 there were two accused whose sentences were being  
26 appealed. The accused were 40 years old and 60  
27 years old. One of them had no criminal record



1 and the other one had a dated criminal record.  
2 Both individuals were in a position of trust and  
3 were responsible for taking \$263,000 and \$324,000  
4 and there were a large number of transactions.  
5 The appeal was allowed and a sentence was imposed  
6 of three years jail less five months credit for  
7 the time that they had been on a conditional  
8 sentence awaiting appeal.

9 As well, there is the case of Siganski,  
10 2015 SKQB 63, a very recent case. In that  
11 case the accused was found guilty after trial  
12 of several offences, including fraud, forgery.  
13 The accused in that case had no criminal record,  
14 and there was approximately \$16,000 involved  
15 in that case which had not been recovered.  
16 The sentence that was imposed there was 90  
17 days imprisonment to be served intermittently.

18 There is also the case from the Alberta  
19 Provincial Court of Toews, 2007 ABPC 235. In  
20 that case the accused entered a guilty plea to  
21 a count of fraud, and over a 13-month period had  
22 taken \$63,000. The accused in that case was 39  
23 years old and had no criminal record and there  
24 had been no repayment in that circumstance.  
25 The Court in that case noted that denunciation  
26 and deterrence were the primary sentencing  
27 principles. The sentence that was imposed

1 was one year of imprisonment.

2 As well, there is the case of Upton, 2008  
3 NSSC 360. This is a case where the sentence  
4 that was imposed was after trial. The accused  
5 was 35 years old and had a prior criminal record.  
6 He was one of several accused who were involved  
7 in a loan scheme which had a large number of  
8 victims. So the amounts in each transaction  
9 were relatively small, but given the number of  
10 victims that were involved the amount involved  
11 was significant, and the Court noted that there  
12 were no mitigating factors and imposed a sentence  
13 of three years.

14 The last case that has been provided by the  
15 Crown is that of Zentner, 2012 ABPC 94. In that  
16 case the accused was 48 years old and had no  
17 criminal record. The loss, which was a fraud  
18 committed against the government with respect  
19 to claims that had been submitted for services  
20 provided, was \$4,999. There were a number of  
21 transactions, and again the Court noted that  
22 deterrence and denunciation were the primary  
23 sentencing principles. In that case a discharge  
24 was granted and followed by probation as well.

25 So the cases, as I have noted, emphasize  
26 that deterrence and denunciation are the primary  
27 sentencing principles, and also, many of the

1 cases pre-date the amendments to the Criminal  
2 Code where Section 742.1 was amended and removed  
3 the availability of a conditional sentence for  
4 fraud and other offences which are prosecuted  
5 by indictment, where the maximum term of  
6 imprisonment is 14 years or life. So while  
7 a conditional sentence of imprisonment was a  
8 common sentence handed down in fraud cases of  
9 this type, it is no longer available.

10 The Crown is seeking a sentence of six  
11 months imprisonment to be followed by 12 months  
12 of probation, and suggests conditions of keep the  
13 peace and be of good behavior, that restitution  
14 be ordered, and that the accused be required to  
15 take counselling.

16 The defence position is that a fine should  
17 be imposed, that a fine in the range of \$1,000  
18 to \$1,250 plus the victim of crime surcharge and  
19 a restitution order be imposed. Alternatively,  
20 defence position is that if I feel that  
21 imprisonment is necessary that I should impose  
22 one of 45 to 90 days and allow the accused to  
23 serve that intermittently.

24 This is a breach of trust situation, and  
25 as I stated in the Kanayok case at page 10:

26  
27 Offences where an individual steals

1 from their employer are referred  
2 to as "breach of trust offences"  
3 because they involve an employee  
4 who has been trusted by their  
5 employer to treat their money  
6 or goods that they are responsible  
7 for in an appropriate manner and  
8 not use them or appropriate them  
9 for their own benefit.

10

11 As well, Justice Vertes, in the Harbin  
12 case at page 2, noted that:

13

14 Thefts from employers are regarded  
15 very seriously, and the principle  
16 to be emphasized is deterrence.

17

18 So those are the sentencing principles that  
19 are applicable. As always, rehabilitation is an  
20 important factor as well to be considered, but  
21 the primary sentencing principles are deterrence  
22 and denunciation.

23

24 There are a number of other factors at play  
25 here as well, mitigating and aggravating factors.  
26 In mitigation, Mr. Chambaud has entered an early  
27 guilty plea; he should receive full credit. It  
has been entered at an early opportunity and it

1 has saved the necessity of having a trial on this  
2 matter. As well, he does have a criminal record,  
3 but it is limited. It has got one conviction on  
4 it from 2010, so it is dated and it is unrelated.

5 There are aggravating factors as well. As  
6 I referred to, this is a theft from an employer,  
7 so it is a breach of trust situation. Also,  
8 in considering the circumstances of the offence  
9 the accused wrote 21 cheques over a period of  
10 two months for a total of \$6,013.35. It is not  
11 a small amount, but it is also not a large-scale  
12 fraud. The number of transactions indicate  
13 planning and persistence on the accused's  
14 part, but as well I note that it was not  
15 sophisticated. There were some attempts to  
16 cover up what he was doing, but it was not an  
17 elaborated, sophisticated scheme. The motivation  
18 behind it was done for personal profit to buy  
19 clothes according to Mr. Chambaud himself.

20 When looking at the circumstances of  
21 the offence and of the offender I am of the  
22 view that a fine does not adequately reflect  
23 the sentencing principles of deterrence and  
24 denunciation. Breach of trust thefts, thefts  
25 from employers or frauds, need to be treated  
26 seriously and sentences imposed must adequately  
27 reflect society's denunciation of this conduct

1 and also look to deterring Mr. Chambaud and  
2 others from committing this type of offence  
3 in the future. So in my view a jail sentence  
4 is appropriate in the circumstances. Stand  
5 up, Mr. Chambaud, please.

6 For the offence of fraud, Count 1 of  
7 the indictment, I sentence you to a period  
8 of imprisonment of six months. This will  
9 be followed by two years of probation. The  
10 conditions will be that you keep the peace and  
11 be of good behavior, you are to report to your  
12 probation officer within two days of your release  
13 from custody and thereafter as directed, and you  
14 are to make restitution at a minimum of \$100 per  
15 month. You can pay more, but at a minimum you  
16 have to pay \$100 a month. That will be payable  
17 to the Clerk of the Court to the benefit of Tri  
18 R Recycling for \$5,560.25 and to the Rooster  
19 Convenience Store for \$661.45. The balance will  
20 be subject to a restitution order, which will  
21 also be to the benefit of Tri R Recycling and  
22 the Rooster Convenience Store. The restitution  
23 order will be stayed until the expiry of the  
24 probation order. So the amount which it will  
25 be will be \$5,560.25 for Tri R Recycling and  
26 \$661.45 for the Rooster Convenience Store,  
27 and any payments that you may have made will

1           be deducted from that.

2           As well, there will be a victim of crime

3           surcharge that will be imposed. You can sit

4           down now. The Crown has not sought any other

5           ancillary orders, so those will be the orders

6           that are imposed. Is there anything else?

7   MR. HANSEN:           Yes, Ma'am. I believe

8           your math may be off.

9   THE COURT:            Okay.

10   MR. HANSEN:           The numbers I came up with

11           for Tri R Recycling was \$5,351.90.

12   THE COURT:            I am sorry, I was going by

13           what was on Exhibit S-3.

14   MR. HANSEN:           Yes, sorry.

15   THE COURT:            So looking at that exhibit

16           which numbers are the appropriate numbers?

17   MR. HANSEN:           Well, if you take the total

18           of 6,013.35 and minus 661.45 from it then you

19           would get \$5,351.90.

20   THE COURT:            Can you give me the numbers

21           again?

22   MR. HANSEN:           6,013.35 minus 661.45.

23           It should equal 5,351.90, and I did that both

24           adding it and subtracting it, so it's just

25           a double check on my own.

26   THE COURT:            Is the Crown in agreement

27           that those are the accurate numbers?

1 MR. LAFRANCE: The Crown is, yes.  
2 THE COURT: So the amount then for Tri  
3 R Recycling will be \$5,351.90, and the Rooster  
4 Convenience Store will remain the same at  
5 \$661.45. Is there anything else, counsel?  
6 MR. HANSEN: No, thank you.  
7 MR. LAFRANCE: No, thank you, Your Honour.  
8 THE CLERK: The victim of crime surcharge  
9 time to pay?  
10 THE COURT: Time to pay on the victim  
11 of crime surcharge?  
12 MR. HANSEN: That's statutorily required.  
13 I think in indictable circumstances it's 60 days  
14 after release or 30.  
15 THE COURT: I do not have the regulations  
16 here.  
17 MR. LAFRANCE: I can advise that it's 60  
18 days.  
19 MR. HANSEN: 60 days.  
20 THE COURT: Thank you, counsel, for your  
21 submissions and for the authorities that you have  
22 provided. We will adjourn.  
23 THE CLERK: Thank you, Your Honour.  
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Certified to be a true and accurate transcript, pursuant to Rules 723 and 724 of the Supreme Court Rules.

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Joel Bowker  
Court Reporter