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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

PAULETTE ANNE BROEKAERT

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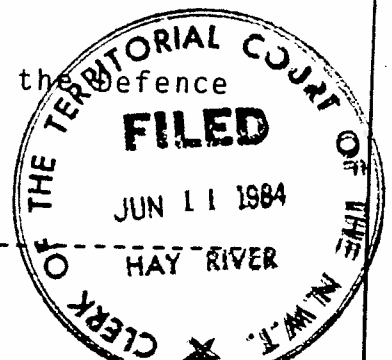
Transcript of Proceedings of an Oral Judgment given  
by His Honour Judge R. W. HALIFAX, sitting at Hay  
River in the Northwest Territories on Wednesday,  
April 11, A.D. 1984.

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APPEARANCES:

MR. W. CORBETT Counsel for the Crown

MR. G. BOYD Counsel for the Defence





1 THE COURT:

2 We are dealing with a matter under Section  
3 294(a) this morning for sentencing of one Paulette Anne  
4 Broekaert. Sentencing is one of the most difficult areas in  
5 dealing with the criminal justice system. One must balance  
6 the various aims of sentencing, namely, the protection of the  
7 public and general deterrence to the public as a whole,  
8 specific deterrence to this accused to deter her from commit-  
9 ting a similar type of offence in the future, punishment,  
10 which must be a part of any sentence, and the rehabilitation  
11 of the accused. In many cases, these three aims are diffi-  
12 cult to balance in order to reach what is considered a fit  
13 and proper sentence. Various factors must be considered,  
14 namely, the age of the accused, any prior criminal record,  
15 the attitude of the accused, the character of the accused,  
16 the circumstances surrounding the commission of the offence,  
17 the conduct of the accused both prior and after the commission  
18 of the offence, the education and intelligence of the accused,  
19 the family obligations of the accused, her financial means,  
20 and the fact that there has been a guilty plea, which has  
21 saved the courts and the taxpayers a substantial expense from  
22 not requiring a trial. It must be considered whether or not  
23 there was any premeditation involved in the commission of the  
24 offence. The work record of the accused is another considera-  
25 tion, the gravity of the offence and, finally, but not, in my  
26 view, of least importance, whether or not there has been a  
27 breach of trust involved in the commission of the offence.

We have before the Court this morning a



1 40-year old woman who is a single parent with a teen-aged  
2 daughter. She has had a good work record and has been  
3 involved in numerous volunteer activities in the community  
4 over a number of years. She has a Grade 12 education and has  
5 self taught herself some typing and office procedure skills  
6 and is presently employed by the Government of the Northwest  
7 Territories in the Public Library at Hay River. The accused  
8 and her daughter have no doubt suffered embarrassment as a  
9 result of this matter, but that it must be remembered is a result  
10 of the accused's own conduct; and it must be expected when  
11 such occurs in a small community like Hay River.

12 The amount involved in the theft is over  
13 \$3,000 which was taken from the funds of the Hay River Figure  
14 Skating Club. The accused was responsible for the funds and  
15 responsible for accounting for them. She was entrusted to do  
16 so by the Executive of the Club. By appropriating some of  
17 the funds under her control to her own use, she committed not  
18 only a theft but a breach of trust. Now, breach of trust in  
19 criminal law is treated very seriously, and a deterrent  
20 sentence is normally imposed.

21 The amount involved is the sum of \$3,201.52  
22 of which \$955.80 has been repaid, and there are five post-  
23 dated cheques for \$75 each received by the R.C.M.P. during  
24 the course of their investigation.

25 The accused advised the President of the  
26 Club what she had done in April of 1983, and the accused was  
27 elected again to the Executive of the Club on May 4, 1983, at



1 the annual general meeting. However, it seems that the  
2 members of the Club were not aware of the situation involving  
3 the missing funds; nor did members of the Executive who were  
4 aware of the situation feel obligated to advise the general  
5 meeting. Under these circumstances, I do not feel that the  
6 accused's reelection to the Executive is a mitigating factor  
7 when the persons involved were not aware of the theft.

8 The figure of \$3,201.52 as the amount taken  
9 by the accused is at the best a guesstimate as the books of  
10 the Club were in such a condition that a proper audit could  
11 not be carried out. This figure was arrived at by the Presi-  
12 dent and first Vice-President of the Club in conjunction with  
13 the accused; and under these circumstances, it must be suspect  
14 as to whether it really represents the amount appropriated by  
15 the accused. Be that as it may, the figure is one agreed on  
16 by Counsel as to the amount taken.

17 The accused's attitude was that the appropri-  
18 ation of the funds was in the nature of a loan which she would  
19 pay back. It seems after the situation came to the attention of  
20 several members of the Executive of the Club that they were  
21 prepared to treat it as such as well. Firstly, the accused's  
22 view that the money was in the nature of a loan is, in my view,  
23 not only naive but self serving. To be anything of a nature  
24 of a loan would have to require agreement that the accused  
25 could use the funds, and no such agreement existed in this  
26 matter. The taking of the funds by the accused was a theft  
27 under the law in this country. Of this, there can be no doubt.



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The accused's ability to repay the funds within a reasonable time is limited. Her financial situation over the last year has been difficult, but she has been able to repay \$955.80 which, to a degree, should be considered a mitigating factor. Representations indicated she could pay \$75 per month for the next six months and \$125 per month thereafter until the total amount was repaid. Now, the Figure Skating Club has been without the use of these funds for approximately one year at this point. It seems to me to be expecting a little too much for the Club to continue without the use of the funds for a substantially longer period so that the accused can continue her lifestyle and repay the amount at her convenience. There is no reason why the Club should, in effect, be put in a the position of a bank, being forced to accept repayment over a lengthy period of time. The accused should be in a position in the near future to make alternate arrangements so that the Club can be repaid in full.

It seems to me to be appropriate to make some comment on the conduct of the Executive of the Figure Skating Club. When the situation came to their attention, it was decided by a majority vote to deal with the matter internally. This was not a unanimous vote as some members of the Executive abstained from voting. Thereafter, a member of the Executive complained to the R.C.M.P. which resulted in an investigation which culminated in the present charge before the Court. In my view, the Executive members were, to a degree, in a position of trust to see that the funds raised on behalf



1 of the Club were properly accounted for and put to use for the  
2 uses and objects of the Club and the benefit of the members  
3 and the children involved in the figure skating program. It  
4 seems to me the Executive fell short of this obligation in  
5 the manner that this situation was handled. The Executive  
6 or, at least, the majority that voted, in effect, were prepared  
7 to cover up or perhaps a better word "condone" a criminal  
8 offence, an offence of a value exceeding \$200 which carries  
9 a maximum penalty of ten-years imprisonment under our criminal  
10 law. Further, I get the impression from submissions made and  
11 evidence put before the Court on sentencing that some of the  
12 members were less than cooperative with the investigating  
13 authorities. If people want the protection of the law, they  
14 also have an obligation as a citizen to cooperate with the  
15 investigation and the investigating authorities.

16 I hope my comments in this regard assist not  
17 only the Figure Skating Club but other similar organizations  
18 to realize their obligations and responsibilities and their  
19 positions as Executive members of those organizations. I am  
20 sure the actions of the Executive in this case were conducive  
21 to and supportive to the accused's improper view that the  
22 theft of the funds was in the nature of a loan.

23 Moving on to what is a fit and proper sentence  
24 in the circumstances, as I said earlier, normally, a breach  
25 of trust results in a deterrent sentence which, in most cases,  
26 attaches a term of imprisonment.

27 I would refer to the case of R. versus Johnson



1 and R. versus Wynnes, both judgments of the Supreme Court of  
2 the Northwest Territories. The first case involved a woman  
3 misappropriating approximately \$10,000 from the Coordinated  
4 Home Care Program in Yellowknife; and if my memory serves me  
5 correctly, I believe the sentence was one-year imprisonment  
6 followed by probation and an order that restitution be paid.  
7 The second case involved an employee of the Government mis-  
8 appropriating approximately \$6,000 from the weigh scales at  
9 Enterprise, Northwest Territories. It should be pointed out  
10 the maximum penalty for the offence charged in that case was  
11 one of five years, not one of ten. In that case, the accused  
12 was sentenced to eight-months imprisonment followed by a term  
13 of probation providing for restitution.

14 Then, there is the Ketchison case from Fort  
15 Smith which Mr. Boyd raised which involved the sum of \$500.  
16 No jail term was imposed. However, there was a fine and  
17 probation.

18 Now, the accused has only one previous con-  
19 viction for an unrelated matter, namely, a drinking and driv-  
20 ing offence. Although not a young offender, she is not a  
21 person who requires, in my view, a substantial jail term.  
22 She has made part restitution. She has pleaded guilty at the  
23 first opportunity and otherwise seems to be of good character.  
24 The Crown has indicated that a jail term is not being requested  
25 in the circumstances. The accused seems to be repentant and  
26 has the support of her family.

27 I must say that I have some difficulty in



1 coming to what I think is a fit and proper sentence in this  
2 case. The demand for protection of the public and punishment  
3 balanced against the rehabilitation of the accused is not an  
4 easy matter. The accused must accept responsibility for her  
5 actions, but the penalty should not be so onerous as to crush  
6 the accused or the possibility of rehabilitation. It seems  
7 to me the rehabilitation process has already commenced, and  
8 I doubt that the accused will be involved in further offences  
9 of this nature.

10 In my view, the conditional discharge requested  
11 by the Defence is not a sufficient penalty. The repayment of  
12 the funds would result in no penalty at all other than the  
13 embarrassment that the accused and her family suffer. However,  
14 it is my view that something more than mere repayment of the  
15 money taken is required in the interests of protection of the  
16 public and punishment together with deterrence of this  
17 accused or other persons of like mind in the future.

18 Would you stand up, please, Ms. Broekaert.

19 Ms. Broekaert, you have heard what I have  
20 had to say this morning, and I trust you realize now the  
21 seriousness of this matter. I have taken into consideration  
22 your circumstances, what occurred; and I am satisfied what  
23 can be expected from you in the future as to your behavior  
24 and hope that you will not be caused any further embarrassment;  
25 but you must accept the responsibility for that as a direct  
26 result of your own actions.

27 I feel that probably a jail term is the





1 proper sentence, but you are employed; and I do not wish to  
2 see you lose your employment. Presently, the facilities in  
3 Hay River do not provide properly for holding women on  
4 intermittent sentences. Because the Government cannot provide  
5 the facilities, however, in my view, should not result in any  
6 harsher punishment to you.

7 As a result, there will be a fine in the sum  
8 of \$750, in default of payment of the fine, three-months  
9 imprisonment.

10 Do you understand that?

11 MS. BROEKAERT: Yes, sir.

12 THE COURT: As well, there will be a Probation Order for  
13 a period of one year. The terms of that Probation Order will  
14 be that you keep the peace and be of good behavior; you appear  
15 before the Court when you are required to do so; you make  
16 restitution in the sum of \$1,870.72 to the Clerk of the Court  
17 for distribution to the Hay River Figure Skating Club no  
18 later than September 1, 1984.

19 Do you understand?

20 MS. BROEKAERT: Yes, sir.

21 THE COURT: With regard to time to pay the fine, Mr. Boyd.

22 MR. BOYD: 30 days, sir.

23 THE COURT: Very well, one month. Anything further with  
24 regard to this matter?

25 MR. BOYD: No, sir.

26 MR. CORBETT: No, Your Honour.

27 THE COURT: That will be all, Ms. Broekaert. I trust



1 you realize what has been said this morning and that you won't  
2 get involved in this kind of thing again. If you have the  
3 responsibility for handling funds for any organization, the  
4 responsibility is to handle them properly and keep them  
5 properly accounted for. It is also the responsibility of the  
6 other Directors of your Club to ensure that the money is  
7 used for the proper objects of the Club. I can say that I  
8 am very surprised that the Club would even consider covering  
9 it up.

10 You will remain in the courtroom until you  
11 sign your Probation Order, and then you will be free to go.

12 Adjourn until 10.

13 THE CLERK OF THE COURT: All rise. This Court stands adjourned  
14 until 10 a.m.

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Certified a Correct Transcript:

*Margaret Andruniak*

Margaret Andruniak  
Court Reporter