

**IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND
LABRADOR**

JUDICIAL CENTRE OF ST. JOHN'S

Date: 2009/04/17

Case Numbers: 0107A02131-001
0107A02629-001

HER MAJESTY THE QUEEN

V.

EDWARD BYRNE

Before: The Honourable Associate Chief Judge D. Mark Pike

Place of hearing: St. John's, NL

Time of hearing: April 7, 2009

Appearances:

Frances Knickle
Vikas Khaladkar

for Her Majesty the Queen

Robert E. Simmonds, Q.C.
Erin Breen

for Edward Byrne

REASONS FOR SENTENCE

PIKE, ACJ.:

INTRODUCTION

[1] Edward Byrne pleaded guilty and is convicted of two counts as follows:

1. 0107A02131 COUNT NO. 1

Between the 1st day of April, A.D., 1998, and the 31st day of May, A.D., 2004, at or near St. John's, in the Province of Newfoundland and Labrador, did by deceit, falsehood or other fraudulent means, unlawfully defraud the Government of Newfoundland and Labrador, St. John's, Newfoundland and Labrador, of monies and/or goods in an amount exceeding \$5000.00, thereby committing an indictable offence, contrary to Section 380(1)(a) of the *Criminal Code of Canada*.

2. 0107A02629 COUNT NO. 1

Between the 1st day of April, A.D., 1998, and the 31st day of May, A.D., 2004, at or near St. John's, in the Province of Newfoundland and Labrador, did give rewards to an official as consideration for assistance in connection with the transaction of business relating to the Government of Newfoundland and Labrador, thereby committing an indictable offence, contrary to Section 121(1)(a)-121(3) of the *Criminal Code of Canada*.

[2] The parties proceeded by way of an agreed statement of facts which is reproduced as Appendix A.

[3] At the hearing before me, counsel for the parties were in substantial agreement that the appropriate range of sentence was from 18 - 24 months incarceration, in total for both offences and that a penitentiary term was not necessary to satisfy the principles of sentencing. It was also agreed that restitution in the amount of \$117,812.00 should be ordered. Both counsel also asked that no order of forfeiture be made under s. 462.37 in respect of the excess constituency allowances, as proceeds of crime.

[4] At issue is whether the principles of sentencing in this case can be met by the imposition of a conditional sentence or if a custodial term is required.

RELEVANT CRIMINAL CODE PROVISIONS

718. Purpose - The fundamental purpose of sentencing is to 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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 Fundamental principle - A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 Other sentencing principles - A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - ...
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - ...shall be deemed to be aggravating circumstances;
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (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.

738.(1) Restitution to victims of offences - Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;

...

742.1 Imposing a conditional sentence - Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purposes of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

[5] When considering the appropriateness of a conditional sentence, regard should be had to the decision of the Supreme Court of Canada in **R. v. Proulx**, [2000] 1 S.C.R. 61, 140 C.C.C. (3d) 449. Chief Justice Lamer considered the purpose of s. 742.1 and the manner in which the provisions should be applied in the course of crafting a fit and proper sentence. He provided a convenient summary as follows:

127 At this point, a short summary of what has been said in these reasons might be useful:

1. Bill C-41 in general and the conditional sentence in particular were enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing.
2. A conditional sentence should be distinguished from probationary measures. Probation is primarily a rehabilitative sentencing tool. By contrast, Parliament intended conditional sentences to include both punitive and rehabilitative aspects. Therefore, conditional sentences should generally include punitive conditions that are restrictive of the offender's liberty. Conditions such as house arrest should be the norm, not the exception.
3. No offences are excluded from the conditional sentencing regime except those with a minimum term of imprisonment, nor should there be presumptions in favour of or against a conditional sentence for specific offences.
4. The requirement in s. 742.1(a) that the judge impose a sentence of imprisonment of less than two years does not require the judge to first impose a sentence of imprisonment of a fixed duration before considering whether that sentence can be served in the community. Although this approach is suggested by the text of s. 742.1(a), it is unrealistic and could lead to unfit sentences in some cases. Instead, a purposive interpretation of s. 742.1(a) should be adopted. In a preliminary determination, the sentencing judge should reject a penitentiary term and probationary measures as inappropriate. Having determined that the appropriate range of sentence is a term of imprisonment of less than two years, the judge should then consider whether it is appropriate for the offender to serve his or her sentence in the community.
5. As a corollary of the purposive interpretation of s. 742.1(a), a conditional sentence need not be of equivalent duration to the sentence of incarceration that would otherwise have been imposed. The sole requirement is that the duration and conditions of a conditional sentence make for a just and appropriate sentence.
6. The requirement in s. 742.1(b) that the judge be satisfied that the safety of the community would not be endangered by the offender serving his or her sentence in the community is a condition precedent to the imposition of a conditional sentence, and not the primary consideration in determining whether a conditional sentence is appropriate. In making this determination, the judge should consider the risk posed by the specific offender, not the broader risk of whether the imposition of a conditional sentence would endanger the safety of the community by providing insufficient general deterrence or

undermining general respect for the law. Two factors should be taken into account: (1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence. A consideration of the risk posed by the offender should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals.

7. Once the prerequisites of s. 742.1 are satisfied, the judge should give serious consideration to the possibility of a conditional sentence in all cases by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. This follows from Parliament's clear message to the judiciary to reduce the use of incarceration as a sanction.
8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.
9. Generally, a conditional sentence will be better than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and the community, and promotion of a sense of responsibility in the offender and acknowledgment of the harm done to the victim and the community.
10. Where a combination of both punitive and restorative objectives may be achieved, a conditional sentence will likely be more appropriate than incarceration. Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved. However, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of lesser importance, depending on the nature of the conditions imposed, the duration of the sentence, and the circumstances of both the offender and the community in which the conditional sentence is to be served.
11. A conditional sentence may be imposed even where there are aggravating circumstances, although the need for denunciation and deterrence will increase in these circumstances.
12. No party is under a burden of proof to establish that a conditional sentence is either appropriate or inappropriate in the circumstances.

The judge should consider all relevant evidence, no matter by whom it is adduced. However, it would be in the offender's best interests to establish elements militating in favour of a conditional sentence.

13. Sentencing judges have a wide discretion in the choice of the appropriate sentence. They are entitled to considerable deference from appellate courts. As explained in *M. (C.A.)*, *supra*, at para. 90: "Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit".

CIRCUMSTANCES OF THE OFFENCE

[6] The crimes of which Edward Byrne ("Byrne") has been convicted are very serious. They involve numerous acts of fraud and deception over a period of many years with hundreds of separate transactions. The benefits which accrued to him totaled \$117,812.00 and also resulted in the diversion of public funds in the form of excess constituency allowances exceeding \$400,000.00. Byrne accomplished this diversion of funds by bribing a public official through payments of \$18,125.00.

[7] In his positions of high executive office, elected member of the Legislature and leader of Her Majesty's Loyal Opposition, he abused his authority and the trust placed in him by the House of Assembly, the Government and the electorate.

[8] Byrne used relatives, co-workers, political party employees, friends, associates, local businesses, his lawyers, a Roman Catholic Parish and a number of local charities as instruments of his fraud. He abused the trust which they placed in him as well.

THE OFFENDER

[9] Robert J. Alyward was a witness at the sentencing hearing before me. He is a longtime friend and colleague of Byrne and was the member of the House of Assembly for the same district for which Byrne was later elected.

[10] He testified as to Byrne's strong leadership and organizational skills. Byrne was, and still is, in some quarters, highly respected and was known as

an extremely hard worker through all of his ministerial positions and other responsibilities. Mr. Alyward spoke of Byrne's love for his children and the guilt he felt for the shame and ignominy which he brought upon himself and his family.

[11] It is also apparent from the documents placed before me and the submissions of counsel, that the stress and trauma of being charged with these offences was likely a factor in the recent breakdown in Byrne's marriage of 18 years.

[12] I am satisfied by the guilty pleas to the charges and the efforts on Byrne's part through his counsel to resolve all issues with the prosecution from the outset, that he is genuinely remorseful.

ANALYSIS

[13] Given the circumstances of the offences and the offender and the submissions of counsel, I have come to the conclusion that the safety of the community would not be endangered by the offender serving his sentence in the community. The public nature of the offences and exposure brought about by the report of the Auditor General combined with Byrne's antecedents, make it unlikely that he will re-offend. It is unlikely that he would ever be placed in such a high position of trust again. Any recurrence in the commission of a similar offence would likely be of a significantly less serious nature. The precondition created by s. 742.1(b) is therefore satisfied.

[14] In accordance with the process prescribed in **Proulx** (*supra*), it now remains to be determined whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in s. 718 to 718.2 of the *Criminal Code*. This mandates an examination of the aggravating and mitigating factors along with any unusual or exceptional features of the offence or offender.

AGGRAVATING FACTORS

[15] The most aggravating factor to be considered is that this fraud and bribery was committed by someone who was in a high position of public trust. When officials enrich themselves or others in circumstances such as

this, there is an undermining of the confidence in the democratic system. Elected officials charged with the responsibility of protecting the public interest and public funds carry a high degree of trust. They are endowed with law making powers and exercise executive prerogative. Byrne used his position to carry out these fraudulent and corrupt activities.

[16] The maximum punishment for fraud under s. 380(1)(a) is fourteen years imprisonment. For s. 121(1)(a)-121(3) the maximum punishment is five years imprisonment. The maximum punishment is, of course, reserved for the worst offenders in the most serious cases, but it is an indication of the gravity with which Parliament regards the offence.

[17] The fraud and abuse of the constituency allowance system continued over a substantial period of time, from 1998 to 2004. Hundreds of transactions were carried out by Byrne himself or under his direction. The impugned conduct did not come about as a result of a momentary lapse in judgment or uncharacteristic aberration in behaviour. A degree of planning and deliberation was required. Bribery was used to avoid detection and allow its continuation. Thirty-three cheques drawn on Byrne's personal account were used to pay \$18,125.00 in bribes.

[18] A substantial amount of money was improperly paid to Byrne (\$117,812.00) and directed to a use for which the funds were not intended (\$401,000.00).

[19] Byrne did not come forward of his own volition. His defalcations were detected by auditors.

MITIGATING FACTORS

[20] As mentioned earlier, Byrne, once charged, took steps to plead guilty, resolve all issues with the prosecution and bring the case before the court for resolution at the earliest opportunity.

[21] The effect that the charges have had upon Byrne and his family has been dramatic. His marriage has broken down. His career as a popular and respected political leader has ended. Prospects for future employment in the public sector will be effectively ended by the operation of s. 750(3) of the *Criminal Code* which states as follows:

750. (3) No person who is convicted of

(a) an offence under section 121, 124 or 418,

(b) an offence under section 380 committed against Her Majesty

...

has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

[22] Byrne has, through his counsel, tendered a cheque in the amount of \$70,036.50 which represents a partial payment of the restitution order sought by the Crown. A direction to pay the balance from any monies owed to him by the Government of Newfoundland and Labrador on account of the severance of his employment has been delivered. I would note, however, that this amount has been made the subject of a counterclaim by civil action at the instance of the Government to recover the excess constituency allowance paid. Nevertheless, his efforts in this regard are commendable.

[23] In an effort to restart his career, Byrne has sought and obtained employment with a private communications company. Genuine remorse for his wrongdoings were displayed by Byrne as outlined above.

[24] While Byrne had a conviction for impaired driving almost 20 years ago, he has no criminal record for offences of this sort.

POSITIONS OF THE PARTIES

[25] Crown counsel seeks a term of custody in the range of 20 - 24 months but something less than a penitentiary term. She emphasizes that the principles of general deterrence and denunciation make a conditional sentence allowing Byrne to serve the sentence in the community inappropriate.

[26] Counsel for Byrne emphasizes that considerations regarding deterrence and denunciation can be met through the imposition of a conditional sentence. He points out that the impact on Byrne's career and personal life along with the public humiliation have resulted in suffering for which no sentence imposed by a court could replicate and make a custodial

sentence unnecessary. If a custodial sentence must be imposed, counsel for Byrne argues that 18 months should be its duration.

DECIDED CASES

[27] Counsel have provided to me a number of helpful cases where courts have considered the appropriate punishment for offences of this sort. No two cases are alike. The circumstances of the offences and the offenders vary considerably.

[28] In addition to the case of **Proulx** (*supra*), I have reviewed the cases cited by counsel and listed them in Appredix B under two headings:

Part I - Where a custodial sentence was imposed.

Part II -Where conditional or (non-custodial) sentences were imposed.

[29] There can be no doubt that a conditional sentence can provide significant denunciation and deterrence. As pointed out by Lamer, C.J. in **Proulx** (*supra*):

102 Denunciation is the communication of society's condemnation of the offender's conduct. In M. (C.A.), *supra*, at para. 81, I wrote:

In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in R. v. Sargeant (1974), 60 Cr. App. R. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass".

Incarceration will usually provide more denunciation than a conditional sentence, as a conditional sentence is generally a more lenient sentence than a jail term of equivalent duration. That said, a conditional sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances. I will discuss each point in turn.

[30] He went on to say at paras. 105, 106 and 107:

105 The stigma of a conditional sentence with house arrest should not be underestimated. Living in the community under strict conditions where fellow residents are well aware of the offender's criminal misconduct can provide ample denunciation in many cases. In certain circumstances, the shame of encountering members of the community may make it even more difficult for the offender to serve his or her sentence in the community than in prison.

106 The amount of denunciation provided by a conditional sentence will be heavily dependent on the circumstances of the offender, the nature of the conditions imposed, and the community in which the sentence is to be served. As a general matter, the more serious the offence and the greater the need for denunciation, the longer and more onerous the conditional sentence should be. However, there may be certain circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct.

107 Incarceration, which is ordinarily a harsher sanction, may provide more deterrence than a conditional sentence. Judges should be wary, however, of placing too much weight on deterrence when choosing between a conditional sentence and incarceration: see Wismayer, *supra*, at p. 36. The empirical evidence suggests that the deterrent effect of incarceration is uncertain: see generally *Sentencing Reform: A Canadian Approach*, *supra*, at pp. 136-37. Moreover, a conditional sentence can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences. There is also the possibility of deterrence through the use of community service orders, including those in which the offender may be obliged to speak to members of the community about the evils of the particular criminal conduct in which he or she engaged, assuming the offender were amenable to such a condition. Nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed.

[31] In **R. v. Bradbury** (2004), 243 Nfld. & P.E.I.R. 1, 2004 CarswellNfld 382 (C.A.), the court overturned the trial judge's sentences of nine months and three months in custody for a fraud by an employee who defrauded a bingo charity of \$66,070.00 because of an over reliance of the sentencing judge upon the offender's reluctance to pay restitution. A conditional sentence was substituted.

[32] A conditional sentence of 16 months was left in place by the Court of Appeal in **R. v. Basha** (1999), 181 Nfld. & P.E.I.R. 168, 1999 CarswellNfld 279 (C.A.), since a substantial portion of the sentence had been served. In that case, the offender had defrauded a government agency of \$56,826.00 by making false applications. The court left open the question of whether a breach of the requirement of utmost good faith on the applicant's part would have affected the disposition as being an aggravating factor.

[33] A review of the cases of **R. v. Berntson** (2000), 145 C.C.C. (3d) 1, 2000 Carswell 270 (C.A.), **R. v. Bogart** (2002), 167 C.C.C. (3d) 390, 2002 CarswellOnt 2537(C.A.), **R. v. Filion** (2005) CarswellQue 6072, **R. v. Fulcher** (2007), 228 C.C.C. (3d) 105, 2007 CarswellAlta 1630 (C.A.), **R. v. Gopher** (2006), 205 C.C.C. (3d) 1, 2006 CarswellSask 14 (Sask.C.A.), and in particular **R. v. Coffin** (2006), 210 C.C.C. (3d) 227 (Que.C.A.), leads me to the conclusion that the offences committed by persons holding positions of high trust who reap personal gain generally attract custodial sentences. The review of cases by the court in **Coffin** (*supra*) is particularly helpful.

[34] In **Coffin** (*supra*), the offender pleaded guilty to fifteen counts of fraud. Between April 1997 and May 2002, through his advertising company, the accused submitted 373 fraudulent invoices to the Government of Canada, the total amount misappropriated being \$1,556,625. The accused was 62 years old and had no criminal record. The sentencing judge took into account several mitigating factors: the accused had paid back about \$1,000,000; he had agreed to give lectures on ethics at universities in Montreal to encourage students to respect the rules of honesty; he had cooperated with a commission of inquiry into a scandal of which his fraud was a part; he was remorseful; and he had pleaded guilty. The sentencing judge found that the appropriate sentence was less than two years imprisonment and that the objectives of deterrence and denunciation could be met if the accused served his sentence in the community. Accordingly, he imposed a conditional sentence of two years less a day.

[35] After a thorough review of the cases, the Court of Appeal concluded as follows:

66 This should not be seen to imply that conditional sentences may not be imposed in cases of fraud; indeed, the decisions cited by the respondent illustrate that they may. It should be noted however that, generally speaking, conditional sentences have been granted by appellate courts in response to particular circumstances.

67 In *R. v. Bunn*, a decision of the Supreme Court, the amount of money defrauded was only \$86,000.

68 As the attached table shows, counsel for the respondent have also cited one decision of the Court of Appeal of Alberta, two of the Court of Appeal for Ontario, four of this Court and one of the Court of Appeal of Saskatchewan, all of which granted conditional sentences in cases of fraud.

69 Of all the judgments relied upon by the respondent, only *Moulton* involved the misappropriation of public funds (approximately \$274,000). In other cases of fraud against the government or one of its agencies, appellate courts have imposed custodial sentences. See *R. v. Kerntopf* (5 years), *R. v. Dudek* (4 years), *R. v. Bouchard* (1 year), *R. v. Poirier* (3 years), *R. v. Oliynyk* (1 year) and *R. v. Bernston* (1 year).

70 A reading of the Canadian appellate decisions leads to the conclusion that custodial sentences are appropriate "in principle" in cases of large-scale fraud; this does not mean, however, that the sentence may not be served in the community in specific cases. In addition, the other decisions of this Court that the respondent cites may be distinguished from the present case. In *R. v. Toman*, the Court noted that, "in the present case, the respondent did not set up a system with the aim of defrauding the public...". In *R. v. Cantin*, Justice Beauregard took into account the fact that Cantin was acting in good faith because "he believed that his business practices were shrewd, but not really fraudulent". The same cannot be said of the respondent. In *R. v. Alain*, Justice Gendreau concluded that Alain's fraud "cannot be compared to one in which personal benefit is the sole objective and greed the only motive". Finally, in *R. v. Verville*, Justice Thibault pointed out that Verville had used a rather unsophisticated method to commit the crime and that, because he had contributed to the ruin of his own business, he was "the first victim of his dishonest actions". Again, we are far from such a situation in the present case. To paraphrase *a contrario* the words of Justice Gendreau, one sees that, in the case of the fraud committed by the respondent, personal benefit was the sole objective and greed the only motive.

[36] The court in **Coffin** (*supra*) went on to find that the "prime objectives" of general deterrence and denunciation were not given proper consideration by the sentencing judge. The conditional sentence was set aside and a period of 18 months in custody substituted.

CONCLUSION

[37] In many aspects the circumstances of the offences committed by Byrne are more egregious than those in Coffin (*supra*) and the other cases cited above in paragraph 33 in which custodial sentences were held to be appropriate. There is a higher degree of moral blameworthiness.

[38] In this case, it is the gravity of the offences which call for a sentence which denounces the offender's conduct and deters others in a position of public trust. Most who serve in high public office have and continue to serve their communities, provinces, and country well. Often, they do so at considerable personal and family sacrifice.

[39] Public service makes exacting demands upon those who occupy political office and enjoy the confidence of the electorate. An exacting standard is that public service means serving the public and nobody else. All those who take the oath of office, as Byrne did, must be held to this integrity. It is crucial to the proper and efficient functioning of government. The criminal justice system must serve to maintain this standard.

[40] Byrne illegitimately took advantage of his privileged position of high political office to misappropriate public funds for his own gain. He bribed another public officer to grant him excessive constituency allowances. Governments do not have resources in themselves. Instead, by taxation they redistribute and allocate the resources of the people for the greater public good. When Byrne took these monies, he was taking them from his fellow citizens who had granted him the privilege of office and charged him with the necessarily corresponding duties. He abused the privilege and failed in his duties.

[41] Despite the many mitigating factors and the offender's tragic personal circumstances, I cannot lose sight of the fact that Byrne not only abused his position of trust for personal gain, he also bribed another public official to divert public monies improperly. Edward Byrne was placed in a position to rectify any shortcomings in a system of payment of constituency allowances from public funds which so obviously lacked the proper safeguards. Instead he exploited it.

[42] In circumstances such as these, the need for denunciation is so pressing that incarceration in custody is the only suitable way to express

society's condemnation of the offender's conduct. A message must be sent by the sentence imposed by this court that will help the public understand that this conduct was highly reprehensible and that it carries with it serious criminal consequences.

DISPOSITIONS

[43] The punishment imposed by the court is as follows.

0107A02131 COUNT NO. 1

A sentence of two years less one day imprisonment.

0107A02629 COUNT NO. 1

A sentence of 18 months imprisonment to be served concurrently to count #1.

[44] In addition, Edward Byrne will be ordered to pay restitution to the Government of Newfoundland and Labrador under the provisions of s. 738 of the *Criminal Code of Canada* in the amount of \$117,812.00.

[45] The victim fine surcharge tax is calculated automatically at \$100 per count.

D. Mark Pike
Associate Chief Judge
Provincial Court of Newfoundland
and Labrador