

Court of King's Bench of Alberta

Citation: His Majesty the King v. Del Bianco, 2023 ABKB 723



Date:
Docket: 18047367Q1
Registry: Calgary

Between:

His Majesty the King

Crown

- and -

David Del Bianco

Accused

Sentencing Judgment of the Honourable Justice N.E. Devlin

Overview

[1] Mr. Del Bianco systemically stole from simple, honest, hardworking Albertans through a cruel and persistent securities fraud ironically, though not coincidentally, marketed under the name “Equal Rights”. Despite repeated ineffectual efforts of regulators and the courts to stop him, he appears to have been operating iterations of this scheme for close to a quarter of a century. The present fraud, which ran from 2010 to 2014 (the “relevant period”), resulted in confirmed losses of \$523,832.50 to several dozen investors. The evidence suggested greater losses and victim count, but this is the scope of the fraud proven beyond a reasonable doubt.

[2] In reasons found at *R v Del Bianco*, 2023 ABKB 430, I convicted Mr. Del Bianco of fraud over \$5,000 contrary to s 380(1)(a) of the *Criminal Code* and laundering the proceeds of crime contrary to s 462.31 of the *Criminal Code*. These are my reasons for sentence.

The Scheme

[3] Mr. Del Bianco promoted an investment purporting to be a startup-up legal services insurance company operating under variations of the name “Equal Rights”. I use that name to refer to all of the various entities he used. Mr. Del Bianco’s core pitch was that members would pay a monthly premium and, if they ever faced legal trouble, Equal Rights would pay for their defense. Investors would not only receive the benefits of membership, but prodigious profits as well.

[4] At various points, Mr. Del Bianco created and distributed information pamphlets and other promotional materials explaining the nature of the purported business. He also held information meetings in various rural localities in the 2000s. Many of the present victims began their investments during that time. Mr. Del Bianco himself provided evidence that he has been working on/marketing Equal Rights since the late 1990s.

[5] Equal Rights was never close to being a viable business during the relevant period. I have no difficulty concluding it never was. Mr. Del Bianco’s assertions that more than 1,000 people had signed up, and that the RCMP was interested in purchasing a bespoke membership, were lies. There is no evidence that Equal Rights ever sold a single policy or subscription, had capitalization sufficient to sell insurance, or had any physical infrastructure sufficient to do so.

[6] Its board had straw-man directors who knew nothing of their purported directorships. Its shares were sold on a basis that bore no connection to any valuation. There was no evidence that Mr. Del Bianco set up any corporate structure or bookkeeping system. Equal Rights amounted to little more than a stack of promotional materials, a URL, and bank accounts from which Mr. Del Bianco drew a living.

[7] Despite this, Mr. Del Bianco aggressively promoted Equal Rights as an investment opportunity. Because of their lack of financial sophistication and their trusting natures, his investors believed that their investments in Equal Rights would make them rich, despite the relatively modest sums they invested. For this reason, Mr. Del Bianco often went back to previous investors, or used previous investors to recruit others into the scheme unwittingly. His choice of venue and victims was anything but accidental.

[8] The excitement felt by Mr. Del Bianco’s investors was built on the steady stream of lies he told them. He repeatedly told prospective investors that Equal Rights was on the cusp of becoming a profitable venture and just needed a little more capital. He listed two established and credible members of the local business community as directors of Equal Rights without their knowledge or consent, in order to make Equal Rights appear legitimate. When investors put their money into Equal Rights, Mr. Del Bianco, or his dupe, issued them “Share Receipts”—valueless slips of paper—rather than share certificates. Mr. Del Bianco personally signed many of these Share Receipts and was aware that his investors falsely believed the Share Receipts to be placeholders for real share certificates. The real reason he did not issue actual certificates was likely that he was still under a prohibition from doing so dating from his previous dalliances with quasi-criminal prosecution.

[9] Mr. Del Bianco directed, or redirected, the money his investors put into Equal Rights to his own benefit, treating the company as a bank to fund his lifestyle. Corporate and banking records entered at trial showed that Mr. Del Bianco was the sole director of Equal Rights and the

sole signing authority on all of the germane corporate bank accounts throughout the relevant period.

[10] The exhaustive forensic accounting introduced at trial showed unequivocally that Mr. Del Bianco used investor funds for groceries, clothing, travel, and to pay his personal residential mortgage. He repeatedly withdrew large quantities of cash from the corporate account for reasons unconnected to any legitimate business purpose. While some funds were expended on ostensibly corporate purposes, no actual business existed and, based on the evidence at trial, none ever would have.

[11] The forensic accounting suggested a larger pool of victims and almost certainly a larger taking. I have, however, convicted Mr. Del Bianco only of the investments the forensic auditor was able confirm most specifically, and he will be sentenced only for that.

[12] Mr. Del Bianco's deceptions have had a devastating financial impact on those who put their trust in him. He targeted blue-collar, financially unsophisticated people, predominantly from rural areas in northwest Alberta, none of whom had the wealth to justify investing in highly speculative private placements. As but one example, a married couple, who spoke English as a second language and did not know what a prospectus was, sank \$39,000 into the scheme despite never having purchased shares before. Another victim lost the money she and her husband had been saving to move their family out of a trailer infested with mold and into a small house.

[13] One of the victims who himself was used to sell others on the scheme aptly summarized the emotional and psychological impact in his Victim Impact Statement:

... this fraud has impacted my lifestyle as I could have had a very different quality of life. I can't tell you the roller coaster of emotions over the years. Expecting quality of life change that never came. The weekly phone calls piquing my emotions with the promise of a better life. The badgering for more funds as we were always so very close to getting the deal done. The anticipation made me sick. Always expecting, never getting.... For years afterwards I had so much apprehension about investing. I didn't. It took years to be able to even put money aside in RRSP or TFSA accounts with my financial institution. I felt that everyone was just out to relieve me of my money as you did.

You've also hurt many relationships in my life. I trusted and believed in you so much that I spent time involving a vast number of friends "invest" in your company as well. You've no idea how much this hurts me, knowing that some of my friends could've had a better life if I would never have met you.

...

I never took a vacation, bought a new vehicle or paid down my mortgage because I was always trying to help YOU, David. My life revolved around helping you get the deal done.... I let my property deteriorate because you needed every red cent to get the company off the ground. Heck, I never even put a coat of paint on my walls because you made me feel it was more important to get the deal done. I can't count the times you told me to forget about doing anything because the big paycheck was coming soon and things right now it didn't matter.

Interest paid on bank loans to feed your needs. The guitars for my childhood that I sold. The inheritance money from my parents passing the went to. The list goes on and on.

[14] The losses in this case may seem minor in the usual milieu of securities frauds, but their impacts are much magnified by the modesty of the financial means of the people who suffered them. In terms of moral culpability, I find that this crime mirrors the human impact and calculated cruelty of a multi-million-dollar fraud committed against richer and more sophisticated investors.

[15] In addition to their financial losses, Mr. Del Bianco's victims have suffered considerable psychological harm. Mr. Del Bianco bullied and badgered his targets to put more money into the scheme. In one case, when a victim started to ask probing questions about Equal Rights, Mr. Del Bianco screamed at and threatened her over the phone, implying he had mafia connections and making a none-too-subtle death threat.

[16] Many of his victims described their shame and embarrassment at having been taken advantage of. They described how Mr. Del Bianco's fraud has made them less open and slower to trust, especially those victims that Mr. Del Bianco convinced to promote the scam to their own friends and family.

The Trial

[17] Mr. Del Bianco elected to represent himself at trial. He made tireless attempts to delay the process. His ultimate defence consisted of a series of bizarre and nonsensical denials, even in the face of obviously objective documentary evidence. He alleged a variety of conspiracies against him, ranging from a broad "vendetta" by the Alberta Securities Commission to attempts by various individuals to frame and "sabotage" him. His theory of the case shifted repeatedly. First, Equal Rights closed in 2012. Then, Equal Rights did business until 2014. At another point, he claimed that Equal Rights was still a going concern and that he is considering approaching Canada's Minister of Finance to roll out a government-backed version of the idea.

[18] When questioned on his various denials and excuses, Mr. Del Bianco responded with a torrent of non-responsive verbiage. He either could not or would not answer even the simplest questions. Mr. Del Bianco's cross-examination of the Crown's witnesses was often aggressive and frequently disrespectful.

[19] While Mr. Del Bianco's conduct of the trial is not an aggravating factor on sentence, it illuminates his mindset and personality, both of which are relevant to remorse, potential for rehabilitation, and the risk of re-offence.

The Offender

[20] Mr. Del Bianco is currently 76 years old. He was born in Italy and immigrated to Canada with his parents when he was 10. In his Pre-Sentence Report, he describes a happy childhood in which he worked in his family's restaurant. He left high school in Grade 12 before graduating, a decision he says he made because he wanted to start earning money. At age 21, he moved away from home to work in real estate for a mentor. Mr. Del Bianco claims to have grown closer to his immediate family over time. His mother passed away in the 2010s at age 93. He is now the sole caregiver for his father, who is a centenarian.

[21] Mr. Del Bianco has never been married but has had several past relationships. He recently rekindled a relationship with a former partner, although it appears from his Pre-Sentence Report that he believes the relationship to be more intimate than she does, and he attempted to use her as a witness in the trial despite her having no meaningful evidence to give. She described him as “driven” and “lonely” and noted that he has few social supports other than her and his father.

[22] Mr. Del Bianco’s Pre-Sentence Report also confirms his blustering, narcissistic view of himself. He told the Report author that he owns a business he referred to as “the legal plan”, the specifics of which are uncannily similar to Equal Rights. Unsurprisingly, the Report author was not able to independently confirm this supposed employment. Mr. Del Bianco’s friend/partner said that he is not currently working but is focusing on a “spiritual concept” called “DNA Wealth”, which she identified as some sort of online program. Mr. Del Bianco described himself as a “wheeler and dealer”, “an inventor”, great at promotion, and driven to succeed in business. He lists among his greatest strengths “making deals” and “picking winners”. When asked by the Pre-Sentence Report writer what negative qualities he has, or the areas where he could grow or improve, Mr. Del Bianco was unable to answer.

[23] Mr. Del Bianco manifests, at a minimum, narcissism, a lack of empathy, and a reflex to lie pathologically. He is fawningly complimentary to those who support him or buy into his lies, and attacks with savage ferocity those who question them. I find that he is capable of casual cruelty and great harm. Detailed, formal psychological testing would be of benefit to any correctional process.

[24] The Pre-Sentence Report also demonstrates Mr. Del Bianco’s lack of remorse. He takes no responsibility for his crimes and did not show any understanding of the impact he has had on the community. Throughout the pre-sentence interview, he told the Report author that the justice system was “against him”.

Prior Offences and Misconduct

[25] No criminal record is alleged against Mr. Del Bianco, but he does have an extensive enforcement history in respect of the Equal Rights scheme, dating back several decades. In May 2002, the Alberta Securities Commission found Mr. Del Bianco guilty of two offences under the *Securities Act* relating to Equal Rights activities. The Commission banned him from trading securities or holding corporate office for four years, and fined him \$10,000. The Court of Appeal upheld this decision and sanction, holding somewhat prophetically that:

Del Bianco ignored the Commission's findings of securities violations and continued to flog Equal Rights shares to investors. The Commission properly concluded this conduct demonstrated Del Bianco's failure to appreciate the seriousness of his earlier actions: *Del Bianco v Alberta Securities Commission*, 2004 ABCA 344 at para 16.

[26] In September 2008, Mr. Del Bianco was convicted of 10 breaches of the *Securities Act* stemming from failures to follow the previous orders of the Securities Commission in 2003: *R v Del Bianco*, 2008 ABPC 248. These counts included conduct related to Equal Rights. His subsequent appeal from conviction was dismissed, but the lifetime trading ban imposed at trial was reduced to 8 years: *R v Del Bianco*, 2010 ABQB 129.

[27] All of the offending conduct in this case was committed in contravention of that ban.

Submissions on Sentence

[28] The Crown's position is that a fit sentence for Mr. Del Bianco is five years' incarceration. It also seeks a DNA order and an order under s 380.2 prohibiting Mr. Del Bianco from occupying a position of authority over others' money or property. The Crown relies on a number of aggravating factors, including Mr. Del Bianco's status as a recidivist in promoting this unlawful securities scheme, the significant financial and personal impact of Mr. Del Bianco's crimes on his victims, and the fact that Mr. Del Bianco conducted the fraudulent investment-selling scheme without being licensed to sell securities in Alberta. The Crown submits there are no mitigating factors.

[29] To situate this crime within the sentencing jurisprudence, the Crown submitted the following comparator cases:

- ***R v Johnston***, 2010 ABCA 392: the offender used his position as a respected member of his church to run a Ponzi scheme that defrauded more than 50 people of a total of \$2.43 million over the course of a year and a half. He was convicted after trial. The offender had no criminal record but had previously been sanctioned by the Investment Dealers Association of Canada. The sentencing judge imposed 13 years' incarceration, which the Court of Appeal reduced to 10 years.
- ***R v Reeve***, 2020 ONCA 381: the offender operated a financial investment company as a Ponzi scheme, defrauding 41 victims of \$10 million. He was convicted after trial and sentenced to 14 years' incarceration. The Ontario Court of Appeal found the sentencing judge erred by finding the offender's lack of remorse to be an aggravating factor and reduced the sentence to 10 years.
- ***R v Neilson***, 2020 ABQB 556: the offender, an accountant, defrauded and/or stole \$2.3 million from nine investors. He was convicted at trial. He had no criminal record. The fact the offender occupied a position of trust was found to be aggravating. He was sentenced to 5.5 years' incarceration. I find that case to be slightly more serious than the present one.
- ***R v Macleod***, 2017 ABQB 722: the offender, who operated a private investment fund, fraudulently risked more than \$1.68 million of investors' funds, of which he lost more than \$1 million. He was convicted at trial. The fact the offender occupied a position of trust was found to be aggravating. He was sentenced to 4.5 years' incarceration.

[30] The Crown also submitted, but did not rely on, a case that predates the amendments to the *Criminal Code* that increased the maximum sentence for fraud to 14 years and introduced a mandatory minimum of 2 years for frauds greater than \$1 million:

- ***R v Iyer***, 2016 ABQB 680: the offender operated a scheme involving fraudulent land sales that defrauded 54 victims of approximately \$5 million. The offender was convicted at trial. He had no prior criminal history. He was sentenced to 7 years' incarceration. (This case predates amendments to the *Criminal Code* that increased the maximum sentence and introduced a mandatory minimum for frauds greater than \$1 million).

Defense Submission

[31] Mr. Del Bianco was convicted in July 2023. Because he is self-represented, he was granted a long adjournment to retain counsel or prepare his own sentencing submissions. He did neither. When denied a further adjournment, he made submissions that amounted to a repeated denial of the fraud. He also relied on his father's advanced age and his own role as the caregiver to endorse a non-custodial sentence. Given the jeopardy he faces, I adjourned further, until December 18, to permit Mr. Del Bianco one last chance to get a lawyer.

[32] Mr. Del Bianco once again appeared without a lawyer, but again named well-known counsel as someone ready to act for him, this time retained through Legal Aid. He told me that that Legal Aid had advised him of this a week earlier. The matter was held down for that lawyer, Mr. Iovanelli, to be contacted. Counsel appeared shortly thereafter as a courtesy to the Court. He advised that he was not retained, his office had not received an offer of retainer from Legal Aid, and would not accept it in any event.

[33] Mr. Del Bianco's story then changed once more. I conclude that he lied to the Court at least three times in the brief appearance in which he asked for a further adjournment. This is a repetition of a pattern manifested over and over in this proceeding. This matter was adjourned, exceptionally, from the sentencing date over a month ago to permit a further 'last chance' for Mr. Del Bianco to retain counsel, this time with presumptive eligibility for Legal Aid assistance. Given the events of this morning, the age and circumstances of the case, the presence of numerous members of the impacted public, and Mr. Del Bianco's indication that his intention was to brief any lawyer on his ongoing innocence, and not in relation to sentence, the interests of justice require that this matter proceed to sentencing presently.

[34] I have, as mentioned elsewhere in these reasons, given extensive consideration to whether a conditional sentence could possibly be available in this case, as that is the best outcome someone faced with the findings in this case could hope for.

The Law

Principles of sentencing for major frauds

[35] The fundamental principle of sentencing is that the sentence must be proportionate to the gravity of the offense and the degree of responsibility of the offender: *Criminal Code* s 718.1; **R v Friesen**, 2020 SCC 9, at para. 30. This principle governs irrespective of the severity of the crime.

[36] The objectives of sentencing always include denunciation of the crime; specific and general deterrence; separation of offenders from society; rehabilitation of offenders; reparations to victims or the community; and promoting a sense of responsibility in offenders: *Criminal Code* s 718.

[37] While all of these aims apply in cases of serious, large-scale fraud, "the paramount concern must be denunciation and deterrence" when sentencing such offences: **R v Davis**, 2014 ABCA 115 at para 27; **R v Johnson** 2010 ABCA 392 at para 15 [**Johnson**]; **R v Steward**, 2014 ABCA 125 at paras 29-30; **R v Fulcher**, 2014 ABCA 381 at paras 27-30; **R v Watkinson**, 2001 ABCA 83 at para 31; **R v Davatgar-Jafarpour**, 2019 ONCA 353 at paras 34-35; **R v Kodimiyala**, 2020 BCCA 275 at para 42.

[38] In *R v Reeve*, 2020 ONCA 381 at para 44, Fairbairn JA aptly articulated the nexus between the harm wrought by major frauds and the punitive edge that proportionate sentences for such crimes will usually carry:

While serious frauds may not involve physical violence, it is a mistake of serious proportion to think that they do not leave just as many seriously wounded behind, often with financial and mental scars that will never heal.

[39] The statutory framework of sentencing for fraud begins with s 380(1)(a), which provides that the maximum sentence for fraud over \$5,000 is 14 years imprisonment. The increase of this ceiling in 2004 reflects Parliament's views on the potential severity of major frauds: *Johnson* at para 39. Where the total value defrauded is greater than \$1 million, the minimum sentence is two years imprisonment: *Criminal Code* s 380(1.1). There is otherwise no minimum sentence.

[40] Section 380.1 also now codifies certain aggravating factors in fraud:

Sentencing — aggravating circumstances

380.1 (1) Without limiting the generality of section 718.2, where a court imposes a sentence for an offence referred to in section 380, 382, 382.1 or 400, it shall consider the following as aggravating circumstances:

- (a) the magnitude, complexity, duration or degree of planning of the fraud committed was significant;
- (b) the offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;
- (c) the offence involved a large number of victims;
- (c.1) the offence had a significant impact on the victims given their personal circumstances including their age, health and financial situation;
- (d) in committing the offence, the offender took advantage of the high regard in which the offender was held in the community;
- (e) the offender did not comply with a licensing requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject-matter of the offence; and
- (f) the offender concealed or destroyed records related to the fraud or to the disbursement of the proceeds of the fraud.

[emphasis added]

[41] A number of these aggravating factors are present in this case. The fraud was large, long running and in some ways quite elaborate, relying on the glossy promotional materials, strawman directors of good standing in the community, and the prior issuance of share certificates to appear credible. It had numerous victims and the offender actively sought more through his agents. Mr. Del Bianco took advantage of the trust many of the victims reposed in a man named Ted Wiley, who was his principal sales-agent. As detailed in the reasons for conviction, Mr.

Wiley was both the scheme's largest victim and its main promoter. While Mr. Del Bianco did not personally leverage the sort of trust referred to in s. 380.1(1)(d), he effectively did so to some degree with Mr. Wiley, who was broadly trusted by the other victims. Finally, Mr. Del Bianco was contemptuously in breach of securities regulations and the trading ban imposed on him in 2008.

Establishing the applicable range

[42] The upper end of the range for large commercial frauds is found in cases such as *Johnston*, discussed above, *R v Reeve*, 2020 ONCA 381, where the offender received 10 years on appeal for operating a financial investment company as a Ponzi scheme, defrauding 41 victims of \$10 million, and *R v Breitzkreutz*, 2022 ABQB 559, where Feasby J sentenced the operator of a multi-million dollar fraud to 10-years imprisonment. These crimes significantly exceed the quantitative and qualitative severity of the present offence.

[43] In contrast, the following case defines the lower end for this general class of offence.

- *R v Stergiou*, 2015 ABCA 35: the offender was a certified management accountant who embezzled \$547,840 as financial officer of a company. The offender plead guilty, cooperated with police, and made substantial voluntary restitution, including by selling his home. The offender had no criminal record. The sentencing judge imposed 12 months' incarceration. The Court of Appeal found the sentence to be unfit and increased it to 18 months' incarceration. This case is punctuated by exceptional mitigation and the sentence imposed on appeal was informed by the extreme leniency shown at trial.

[44] After an extensive consideration of case law from across the country, conducted in lieu of meaningful submissions on Mr. Del Bianco's behalf, I find the following cases to provide helpful points of comparison in various respects:

- *R v Rootenberg*, 2020 ONSC 5928: the offender began a romantic relationship with the victim and used the position of trust to convince her to invest \$595,000 into a fake app and a second mortgage scheme. The victim was caring for her dying mother and financially devastated by the fraud. The offender had multiple prior convictions for fraud and related offenses. The offender expressed no remorse and was convicted after trial. The offender was sentenced to 6 years' incarceration and ordered to pay full restitution. Rootenberg's fraud was of a smaller scale in terms of victims, but his profile, the callousness of the offence, and the total loss are quite similar to the case before me.
- *R v Schoer*, 2016 ONSC 1127: the offender, a financial advisor, sold \$413,500 in fake investments to at least 14 friends and clients. The victims trusted the offender as their financial advisor. The offender had no priors. The offender was convicted at trial and expressed no remorse—instead, he “sets himself up as the victim”. The offender was sentenced to 4 years' incarceration and ordered to pay \$109,150 in restitution. Schoer's breach of trust is offset by his lack of antecedents, the loss is close in size, and the offender's attitude is very similar to that of Mr. Del Bianco.
- *R v Downey*, [2003] OJ No 4997 (ON SC): the offender used an elaborate scheme to pass herself off as widow to defraud vulnerable men of \$315,000. The offender had at least three prior fraud-related convictions. The offender targeted her victims because of their vulnerabilities, including mental handicaps, lack of education, and poverty. The offender was convicted at trial and offered “no indication whatsoever” of remorse. The offender's

severe personality disorder was found not to be mitigating. The offender was sentenced to 6 years' incarceration and ordered to pay \$309,000 in restitution. This offender is similar in history and mindset to Mr. Del Bianco and also targeted vulnerable individuals.

- ***R v Knight***, 2014 ONSC 6601: the offender was the director of finance at a charity that provided housing and education to developmentally delayed adults, from which she embezzled at least \$550,000 over eight years. The offender plead guilty and expressed remorse, but had also taken significant steps to avoid detection before she was caught. The offender had no priors. The offender was sentenced to 4 years' incarceration and ordered to pay \$200,000 in restitution (the other \$350,000 was awarded in a civil judgment). The scale of theft is comparable to the present case, though aggravated by a breach of trust. This offender pled guilty and expressed remorse, providing significant mitigation compared to Mr. Del Bianco.

[45] Because Mr. Del Bianco is self-represented, I have also surveyed fraud sentencing cases to determine whether a Conditional Sentence Order could be appropriate in this case, as I have no doubt that competent defense counsel would have advocated for one on his behalf. Unfortunately for Mr. Del Bianco, the following jurisprudence precludes a community-based sentence, even if I were inclined to impose one, as the Alberta Court of Appeal has repeatedly rejected the use of CSOs in fraud cases that were far less severe than this one:

- ***R v Miles***, 2011 ABCA 133: the offender worked as a bookkeeper for a small business and embezzled \$203,000. The offender confessed, plead guilty, and voluntarily made partial restitution. The offender had no priors. The sentencing judge imposed a CSO for two years less a day. The Court of Appeal found the sentence unfit and imposed two years' incarceration.
- ***R v Fulcher***, 2007 ABCA 381: the offender worked for an insurer and defrauded clients of \$268,948. The offender plead guilty and cooperated with police. The offender had no priors. The sentencing judge imposed a CSO for two years less a day. The Court of Appeal found the sentence unfit and imposed two years' incarceration.
- ***R v McTighe***, 2005 ABCA 30: the offender worked for an accounting firm and redirected \$247,162 to herself over seven years. The offender plead guilty and cooperated with police. The offender had no priors. The sentencing judge imposed a CSO for two years less a day. The Court of Appeal found the sentence unfit and imposed two years' incarceration.
- ***R v Bracegirdle***, 2004 ABCA 252: the offender worked for a cystic fibrosis charity and embezzled \$150,000. The offender plead guilty, acknowledged responsibility, and apologized to the victims. The offender had no priors. The charity was seriously disrupted by the loss, which was found to be an aggravating factor. The sentencing judge imposed a CSO for two years less a day. The Court of Appeal found the sentence unfit and imposed two years' incarceration.
- ***R v Stirling***, 2010 ABCA 338: the offender was the office manager of a non-profit community association and embezzled \$150,000 over four years. The offender plead guilty and paid full restitution as the result of a civil lawsuit. The offender had no priors. The sentencing judge imposed a CSO for two years less a day. The Court of Appeal found the sentence unfit and imposed 12 months' incarceration.

[46] I am satisfied that, in the absence of truly exceptional individual mitigating factors, which do not appear in this case, a CSO would be outside the range of fit and proportional sentences for this offence. Based on my survey of the caselaw, I conclude that the fit range of sentence for this crime, prior to considering individuating factors, is 3 to 6 years.

Application to this Case

Specific Findings

[47] This sentence is informed by the following findings of fact I make upon the trial record, and on sentencing:

- Equal Rights was a fraud throughout the relevant period.
- This was a continuation of an illegal investment scheme the offender has operated for a quarter of a century.
- Mr. Del Bianco knew Equal Rights was not a real business and had no real prospect of generating a profit.
- Mr. Del Bianco knew what he was doing was illegal and structured his fraudulent activity to reduce the chances of detection (by not issuing further share certificates as he had done before).
- Mr. Del Bianco is an intransigent recidivist. He was in breach of a trading ban, itself imposed for breaches of a previous trading and directorship ban, during all of the offending conduct in this case.
- Mr. Del Bianco is profoundly verbally manipulative and lied in virtually every conversation he had about Equal Rights. He lied about the scope of the business, the likelihood of profit, the composition of the Board, how investor money would be used, and more.
- Mr. Del Bianco has a keen eye for the vulnerable. He targeted honest, unsophisticated people and sold them on a dream. Mr. Del Bianco also used his victims to exploit one another.
- Mr. Del Bianco treated the money his victims invested in Equal Rights as his own personal income stream, using the funds to finance his living expenses and travel.
- Mr. Del Bianco's fraud has had an oversized impact on his victims relative to its overall value. Mr. Del Bianco's victims were of modest means. None should have been anywhere near speculative private investments. The moral severity of his fraud is equivalent to high-dollar frauds against wealthier and more sophisticated people.
- Mr. Del Bianco took efforts to avoid detection, most notably by threatening at least one victim when she started asking difficult questions.
- Mr. Del Bianco does not have an iota of remorse for his crimes. His behavior before, during, and after trial indicate that he takes no responsibility for his actions and does not believe he has done anything wrong. I have no doubt that he would perpetrate another similar fraud if he was confident of evading detection or punishment.

[48] Mr. Del Bianco's scheme was a continuation of a scheme he had been running for decades and had been repeatedly told by authorities to stop. As Justice McFadyen stated in *R. v. Haneveld* 2009 ABCA 249 at para. 8: "[p]rotection of the public ultimately becomes paramount where the offender's past reveals a history of continually re-offending after several years of trouble-free periods."

[49] As can be seen from this summation of the crime, as well as the previous consideration of statutory aggravating factors under s. 380.1(1), this crime is at the upper end of moral severity within its class.

Mitigating Factors

[50] True mitigating factors are sparse in this case. Mr. Del Bianco's age, coupled with the lack of a criminal record (outside of prior findings about this scheme) do, however, provide a reason to temper the sentence. Similarly, the fact that he is the caregiver for his very elderly father, who will now become a collateral victim of his scheme, is also a relevant consideration that may mitigate sentence: *R v Adams*, 2015 ONCJ 161 at pars 36-39; *R v Holub*, 2002 CanLII 44911 (ON CA) at para. 39.

[51] Age is not a traditional mitigating factor, but it is a human reality: *R v Premji*, 2021 ONCA 721; *R v M (C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 74. A proportional sentence is likely to be somewhat shorter in this case than if Mr. Del Bianco were a younger man. That said, given the absolute improbability of reform, and the material risk of re-offence, continued protection of the public remains a higher priority in this case than in most involving a man of this age.

[52] Analogous reasoning applies in respect to the lack of a broader set of antecedents. Having no criminal record, particularly in more advanced stages of one's life, normally suggests that the offending behaviour was out of character and unlikely to recur. This operates to mitigate sentence by reducing the need for specific deterrence and protection of the public, while increasing the potential for rehabilitation and acknowledging a life otherwise well-lived as a gateway to restoration. That algorithm does not run in this case. The Equal Rights scheme is not an aberration. It effectively defines who Mr. Del Bianco has been for decades. As I have found, there is no prospect of rehabilitation, and therefore specific deterrence and protection of the public remain the most pressing purposes of this sentence.

[53] Mr. Del Bianco's caregiver status is the sole important mitigating factor. It has given me pause at a number of junctures in this case and weighed prominently in granting Mr. Del Bianco further release after he failed to appear to present his defence in June of 2022, and permitting him a lengthy period of time out of custody to seek assistance in preparing for sentencing. On the other hand, to the extent Mr. Del Bianco may have failed to make appropriate arrangements for his father's ongoing care, this would reflect very poorly on how he balances his personal interests against his responsibilities. He has had ample warning that incarceration was not just likely but imminent in this case.

[54] In any event, this factor persuades me to depart downwards from the Crown's submission, despite it otherwise being wholly appropriate.

Neutral Factors

[55] Mr. Del Bianco's manner at trial, in particular the abusive way in which he sought to obstruct and avoid justice, and his aggressive and disrespectful treatment of certain witnesses, is

not an aggravating factor. His trial behavior provided a window into his character but does not aggravate the severity of his crimes.

The Sentence

[56] An utterly remorseless fraudster continued with a scheme he had repeatedly been told was unlawful, causing profound harm to a highly vulnerable set of victims. This offence lies in the second tranche of severity, below the mega-frauds for which sentences in the double-digit range are imposed, despite its moral culpability being at least comparable. Considering the scale, scope, and nature of the fraud, the applicable authorities, the statutory and other aggravating factors, and the mitigation discussed above, Mr. Del Bianco's sentence is 4.5 years imprisonment.

[57] He is credited for two periods of custody amounting to 106 days, at a rate of 1.5 to reflect that these periods are not subject to sentence remission, totalling a pre-sentence detention credit for time served of 159 days. The sentence is reduced by that amount. A sentence of 1 year, to be served concurrently, is imposed on the money laundering conviction.

Restitution

[58] The Crown seeks orders of restitution for a number of victims. In *R v Nanos*, 2013 BCCA 339 at paras 14-17, Justice Bennett reviewed the guiding principles underlying the imposition of restitution orders:

As a restitution order is part of the sentence, it should not be a “mechanical afterthought” imposed after the sentence is fixed, as it may result in a sentence that is excessive (*R. v. Castro*, 2010 ONCA 718 at para. 23; *R. v. Eizenga*, 2011 ONCA 113 at para. 93, citing *R. v. Siemans* (1999), 136 C.C.C. (3d) at para. 10 (Man. C.A.)).

In *Castro*, at paras. 24-25, the Ontario Court of Appeal recently affirmed the non-exhaustive list of considerations derived by Mr. Justice Labrosse in *R. v. Devgan* (1999), 1999 CanLII 2412 (ON CA), 136 C.C.C. (3d) 238 at para. 26 (Ont. C.A.):

In [*R. v. Zelensky*, 1978 CanLII 8 (SCC), [1978] 2 S.C.R. 940,] Laskin C.J. identified certain objectives and factors that relate to the application of s. 725(1) [now s. 738.1]. These considerations have been expanded upon in subsequent cases. Below, I have consolidated these objectives and factors, all of which are relevant to the issue of what constitutes a proper exercise of discretion for the purpose of [s. 738.1].

1. An order for compensation should be made with restraint and caution;
2. The concept of compensation is essential to the sentencing process:
 - (i) it emphasizes the sanction imposed upon the offender;
 - (ii) it makes the accused responsible for making restitution to the victim;

(iii) it prevents the accused from profiting from crime; and

(iv) it provides a convenient, rapid and inexpensive means of recovery for the victim;

3. A sentencing judge should consider:

(i) the purpose of the aggrieved person in invoking s. 725(1);

(ii) whether civil proceedings have been initiated and are being pursued; and

(iii) the means of the offender.

4. A compensation order should not be used as a substitute for civil proceedings. Parliament did not intend that compensation orders would displace the civil remedies necessary to ensure full compensation to victims.

5. A compensation order is not the appropriate mechanism to unravel involved commercial transactions;

6. A compensation order should not be granted when it would require the criminal court to interpret written documents to determine the amount of money sought through the order. The loss should be capable of ready calculation.

7. A compensation order should not be granted if the effect of provincial legislation would have to be considered in order to determine what order should be made;

8. Any serious contest on legal or factual issues should signal a denial of recourse to an order;

9. Double recovery can be prevented by the jurisdiction of the civil courts to require proper accounting of all sums recovered; and

10. A compensation order may be appropriate where a related civil judgment has been rendered unenforceable as a result of bankruptcy.

...

The case law is uniform on the consideration of restitution orders when the offences involve a breach of trust or other theft-related cases when the stolen money is unaccounted for or not accounted for adequately. In such a case, the fact that an offender has little or even no ability to pay the restitution order will be given little weight, as one of the principles behind the legislation is that an accused should be deprived of “the fruits of his crime”. The Law Reform Commission of Canada Working Paper 5, *Restitution and Compensation* (Ottawa: Information Canada, 1974), cited with approval in *Zelensky* at 952-953; *Castro* at para. 34; see also *R. v. Fitzgibbon*, 1990 CanLII 102 (SCC), [1990] 1 S.C.R. 1005 at 1014; *Yates*.

[59] Applying these principles, restitution orders are granted in the following amounts for those whose loss was proven at trial, either through their own evidence and/or that of the forensic audit.

- Tracie Craig in the amount of \$26,250
- Randy Dupuis, in the amount of \$31,000
- Tom Renner, in the amount of \$25,000
- Ted Wylie, in the amount of \$104,388
- Byrin Wiley in the amount of \$2,500
- Douglas and Nancy Hogbin in the amount of \$40,000

[60] There is no question that Mr. Del Bianco received their funds, and he has made no submission that he is unable to pay. The evidence revealed that he has a home, the mortgage of which was paid out of fraud proceeds for at least several years. I am thus satisfied that, to the extent it is a consideration, he has the ability to satisfy these orders.

[61] I am further satisfied that these do not make the overall sentence oppressive or disproportional. Fraudsters should expect that they will be required to pay back what they have stolen. This case is no exception.

DNA Order

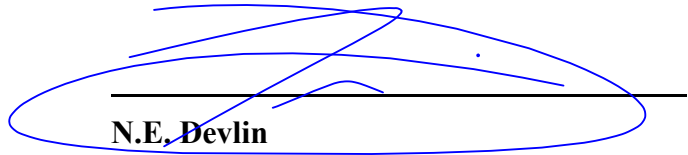
[62] Fraud over \$5,000 is a secondary designated offence for collection of DNA samples. Given the violent threats made by Mr. Del Bianco against at least one victim, and his level of demonstrated aggression against those who see through or question his scheme, I exercise my discretion in favour of making this order. Mr. Del Bianco will provide a sample of his DNA as required.

Section 380.2 Order

[63] An Order barring Mr. Del Bianco from seeking or holding position that involves authority over the property, money or valuable security of any other person is made for 10 years.

Heard on the 14th day of November, 2023.

Dated at the City of Calgary, Alberta this 18th day of December, 2023.



N.E. Devlin
J.C.K.B.A.

Appearances:

Steven Johnston
for the Crown

David Del Bianco
for the Self-Represented Litigant