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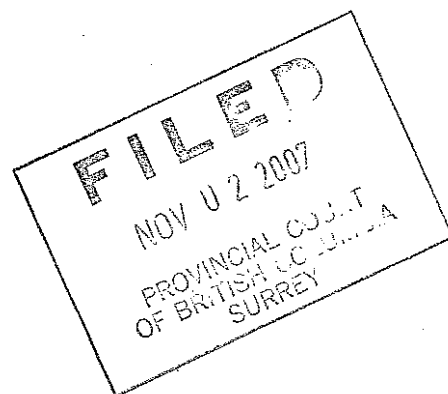
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Registry: Surrey

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**REGINA**

v.

**GARY EDWARD TURPIN**



**REASONS FOR SENTENCE  
OF THE  
HONOURABLE JUDGE J.R. LYTWYN**

Counsel for the Crown:

S. R. Smith

Counsel for the Defendant:

T. Ochitwa

Place of Hearing:

Surrey, B.C.

Date of Hearing:

October 3, 2007

Date of Judgment:

November 2, 2007

[1] Gary Edward Turpin has pleaded guilty to forging a trade-mark and defrauding Roberts School for the Deaf, fraud over \$5,000. In 2000, Turpin was the director and operating manager of Geometric Lighting Services Ltd., GLS. His company manufactured and sold lighting equipment including fixtures that had certain safety characteristics identified – ETL-WH marks. The ETL- WH mark is a North American recognized product safety and performance mark for building products. The WH mark is a certification issued to demonstrate product compliance to safety and/or performance standards. Turpin did not obtain the necessary certification, a process which would have cost \$28,000, but rather chose to forge the ETL-WH marks on the lighting fixtures.

[2] In 2000, Roberts School for the Deaf in Ontario were upgrading their residences. The electrical contractor searched for appropriate fixtures at competitive prices. Relying on the fact that GLS's fixtures had an ETL-WH mark and were, therefore, approved, durable and low energy, the lighting contractor purchased 395 lighting fixtures at a total cost of \$32,000 from GLS. Turpin knew the fixtures were going to a school although he was unaware it was a school for the deaf.

[3] The lighting fixtures were installed but Roberts School began to have problems almost immediately. The lights were constantly blowing out. At times bulbs were exploding, shattering fragments of glass on studying students. After repeated problems, Roberts School had the lighting fixtures tested and discovered the forgery. They, then, needed to replace the fixtures to ensure their equipment met safety standards. The direct costs for Roberts School was \$53,521 including parts and labour. The forgery was discovered because Roberts School was owned and operated by the Provincial

School Branch of the Province of Ontario and had the resources and means to investigate. Few users would have.

### **Circumstances of the Offender**

[4] Turpin is 63 years old, married with three sons and two step-children. He is presently living in Edmonton working with QL Lighting Design selling lighting fixtures and earning approximately \$26,000 per year. His entire working life has been in the distribution of electrical equipment but he is no longer involved in the manufacture of electrical goods. The company he operated at the time of the offence, GLS, is no longer in existence. He has no other criminal record.

[5] Turpin has provided a number of reference letters where his knowledge of electrical equipment, his honesty and reliability, are affirmed. His family and friends stand behind him. It is clear, however, that many of the writers of these letters were not aware of these outstanding charges.

### **Principles of Sentence**

[6] The principles of sentence are contained in ss. 718, 718.1, and 718.2 of the *Criminal Code*. 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 meet a number of stated objectives including denunciation and deterrence. Forgery of trademark is a serious offence that violates the public trust and is particularly egregious when it involves a forgery of trademarks that concern safety and performance. Our commercial world is

predicated upon trust in statements of fact contained in varying certification processes. The potential harm to users and the difficulty in detection and investigation requires that the sentence I impose denounces the conduct and acts as a deterrent to others.

[7] The Crown and Defence seek, by way of a joint submission, a period of imprisonment of one year to be served in the community by way of a conditional sentence order pursuant to s. 742.1 of the *Criminal Code*. While a sentencing judge is not bound by a plea bargain, or the joint submission of counsel, it should be given appropriate weight. Sentencing judges should not often depart from the recommendation. *R. v. Koenders*, 2006 BCCA 378 (B.C.C.A.) This is not a case where I would interfere with the considered joint submission of counsel.

[8] The objectives and deterrence and denunciation require a jail term but it would not endanger the safety of the community, with the appropriate conditions, to allow Turpin to serve his sentence in the community. Nor would it be inconsistent with the fundamental purpose and principles of sentence to allow Turpin to serve his sentence in the community. A conditional sentence can provide significant deterrence if sufficiently punitive conditions are imposed recognizing that the term of the sentence will likely be longer than for a sentence served in jail. *R. v. Proulx*, [2000] 1 S.C.R. 61.

### **Sentence**

[9] I impose a period of imprisonment of one year to be served in the community on a conditional sentence order pursuant to s. 742.1 of the *Criminal Code*. The conditional sentence will contain the statutory conditions and in addition will provide:

Report to a Supervisor within two working days at #100 - 13545 - 64th Avenue, Surrey, B.C. and thereafter when required by the Supervisor, and in the manner directed by the Supervisor. The Conditional Sentence Order may be transferred to Edmonton, Alberta.

Provide an address to the Supervisor and not to change that address without the written permission of the Supervisor.

For the first six months of this order, you are to be in your residence between the hours of 6:00 p.m. and 6:00 a.m. except with the written permission of your Supervisor. The written permission is to be carried with you.

For the first six months of this order, you are prohibited from consuming alcohol or non-prescription drugs.

You are to present yourself to the front door upon the request of a peace officer or Supervisor to ensure compliance with this order.

You must perform 100 hours of Community Work Service on or before June 30, 2008. Such work is to be completed to the satisfaction of your Supervisor or Community Work Service Officer

You are not to <sup>you</sup> possess any lighting equipment that does not meet CSA standards.

You are not to be involved in the manufacture or assembly of any lighting equipment unless with the written permission of the Supervisor.

### Restitution

[10] The Crown seeks restitution pursuant to s. 738(1) of the *Criminal Code* of \$53,521, the sums paid by Robarts School for the replacement parts and labour. The defence suggests that the appropriate sum is \$32,000 – the sum originally paid by Robarts School for the lighting fixtures.

[11] Restitution orders give effect to many principles of sentence including denunciation, specific and general deterrence and rehabilitation. In particular, s. 718(e) and (f), refer to sentencing objectives that are particularly applicable to restitution orders. The first is providing reparations for harm done to victims and the second is

promoting a sense of responsibility in offenders and an acknowledgement of harm done to the victims. *R. v. Yates*, [2002] BCCA 583.

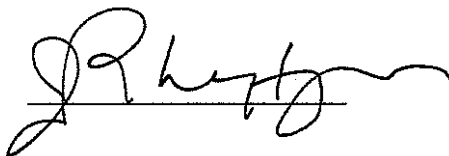
[12] Restitution orders should be made 'with restraint and caution'. *R. v. Zelensky*, [1978] 2 S.C.R. 940. The means of the offender is an important factor and a compensation order that would ruin an offender financially should not be imposed as it would impair chances of rehabilitation. *R. v. Siemens* (1999), 136 C.C.C. (3d) 353 (Man. C.A.). The means of the offender, however, will not always be the controlling factor. In cases involving fraud or breach of trust, the ability to pay may be relegated to a relatively minor consideration in the overall sentencing process. *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005.

[13] Section 738(1)(a) acknowledges that a restitution order in the case of damage to the property of any person as a result of the commission of the offence should not exceed the replacement value of the property. Restitution orders should be for damages that are readily ascertainable. Further, the predecessor to ss. 1(a) limited replacement to the value of the thing and did not include loss of rents or profits from the property. *R. v. Brunner* (1995), 97 C.C.C. (3d) 31. In this case, the Crown's request for restitution of \$53,521 does not exceed the replacement value of the thing (although it does include labour), is readily ascertainable (the sum is not in dispute) and does not include loss of rents, profits or investigative costs.

[14] Turpin's concern is primarily about his ability to pay given his limited income. Given the nature of the forgery and the fraud, the consistent problems that Robarts School had with the lighting fixtures, the cost of replacing the fixtures, including labour

costs, is a more appropriate figure for the restitution than simply the sum originally paid for the lighting equipment. It more aptly provides reparations to the victim, promotes a sense of responsibility in the offender and acknowledges the harm to the victim. It will, no doubt, be difficult to pay but Turpin does have the present and future means to pay the debt. In any event, given that fraud was involved, means to pay should not be the controlling factor.

[15] There will, therefore, be a restitution order pursuant to s. 738(1) of the *Criminal Code* in the sum of \$53,521 to Robarts School for the Deaf, Ministry of Education, Province of Ontario .

A handwritten signature in black ink, appearing to read 'J. Lytwyn', written over a horizontal line.

Lytwyn, J.