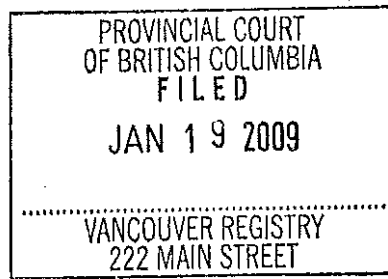


Citation:



Date:  
File No: 163480-1-D  
Registry: Vancouver

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**  
(Criminal Division)

**REGINA**

v.

**MICHAEL W. ONESMUS**

**REASONS FOR SENTENCE  
OF THE  
HONOURABLE JUDGE J. WATCHUK**

Counsel for the Crown:	K. Gillett; J. Bird
Counsel for the Defendant M.W. Onesmus:	A. Bonfield
Place of Hearing:	Vancouver, B.C.
Dates of Hearing:	Apr. 2-17, 19-20; Apr. 24-May 1, 3, 9; June 4-5; June 27, 2007; Jan. 2-4; Apr. 14-17; Apr. 22-May 6; May 13-14; May 16, 20, 22, 26-28; June 16; Aug. 20; Dec. 16, 2008
Date of Sentencing:	January 5, 2009

[1] This is the sentencing of Michael Onesmus who I have found guilty on 22 counts of fraud, attempt fraud and forgery arising from 14 frauds.

### **THE OFFENCES**

[2] Mr. Onesmus was involved in setting up a business called "Smart Bizz" in a building in Burnaby, BC. Six of the frauds were committed to obtain business equipment and eight were frauds against individuals resident in the United States who were targeted in a counterfeit cheque driven lottery scam.

[3] I will not repeat the evidence and findings from my Reasons. The following is a summary.

[4] This was a lengthy trial. Seventy witnesses, some by video link, were heard over 46 days of trial. Thousands of documents were filed. Evidence of 19 days of surveillance was heard. The court heard expert witnesses regarding shredded documents, forensic accounting with regard to transactions in Latvian banks, and computer hardware and software.

[5] Mr. Onesmus was charged with two co-accuseds. Anthony Ayivon was found not guilty at the trial. Iddi Yussuf absconded prior to the commencement of the trial. A bench warrant remains outstanding.

[6] In October 2002, Mr. Ayivon became the sole officer of Smart Bizz Services Ltd. and signed the lease of the building on behalf of that company. Ayivon, Onesmus and Yussuf then worked together to set up the premises for business use.

[7] Many of the items of equipment installed in the office including the computers were obtained by fraud – either by way of forged cheques or by way of fraudulent credit card transactions. Those items include a cash register, Dell computer systems, a weigh scale, IBM computer systems, and a safe and two cash drawers. There was also evidence of a related attempt to obtain computer equipment for the office from Hewlett Packard/Compaq by way of a forged cheque.

[8] Once the business at Smart Bizz had been set up, it became the central hub of a fraudulent lottery and counterfeit cheque scam. The scam varied from one victim to the next, but with each, there were key common elements.

[9] The victims of the scam who were elderly Americans were notified by mail or telephone that they had won a large lottery. Before the money could be released, they were told that a problem had to be sorted out, which required a payment by the lottery winner. In some cases, the victims made a payment. This would frequently be followed by further requests to them for more money. When victims were reluctant to send money, they would be offered assistance in the form of cheques, which would be sent to them for cashing. The victims would be instructed to deposit the cheques into their own bank accounts, immediately take out the cash (or write their own cheque) and then send the funds back to the lottery administrators as payment for whatever taxes, fees, or other charges were supposedly owing. The funds from the victims were sent in various ways - by mail or courier to Smart Bizz or to an associated mail box in the Vancouver area, or wired by Western Union. The victims would later find out that the cheques they had received and deposited were counterfeit. Whether or not the victims had already

sent funds to the suspects, they would be liable to the bank for the amount of the counterfeit cheques they had deposited.

[10] The police shut down the operation at Smart Bizz on February 11, 2003, after it had been running for approximately three months. The evidence seized from the premises shows a relatively large and sophisticated operation involving:

- large numbers of computer generated "bait letters" for the lottery scam;
- lengthy "sucker lists" (often multiple copies) with the contact information of potential victims including the named victims and "scripts" for telephone calls to or from them;
- a large number of fraudulently obtained cell phones, some of which were used to contact or be contacted by victims;
- documents relating to the various mail box addresses given to potential victims;
- lists containing personal information of "plastic people", some of whom had their identities used for credit card or cell phone fraud;
- cheques, both whole and shredded, demonstrating attempts to create counterfeit cheques by copying legitimate ones;
- notes and other references to the named victims and the amounts of the counterfeit cheques sent to them; and
- a forged passport and other forged identification used for opening various Latvian bank accounts, along with banking documents relating to payment instructions and the flow of money through those Latvian bank accounts.

[11] The total money taken was as follows:

Zelda Walker:	\$ 400 US lost (\$4,000 attempted)
Pearl Melandish:	\$ 3,634.38 US
Bruce Love:	\$18,438 US
Leo Noorgaard:	\$ 3,500 US (\$2,500 was returned)
Father Wittenbrink:	\$ 2,295.31 Cdn (attempted \$8,560)

Mogens Olesen:	\$ 2,200 US (the \$5,500 cheque was determined counterfeit)
Peter Veal:	No loss. \$3,900 US recovered from office of Onesmus
Cash register Store:	\$ 2,121.58 Cdn (lost and not reimbursed by Visa, Cash register still held by police).
Hewlett-Packard:	No loss. \$9,090.75 Cdn attempted with fraudulent cheque
Dell Computers:	\$19,448.97 Cdn. Computers held by police
IBM:	\$ 9,819.52 Cdn lost by IBM \$ 1,099.00 Cdn lost by VISA Computers and monitors held by police
Davco Scale:	\$ 1,033.94 Cdn lost by Davco not VISA (April \$13,2007, page 39)
CBM:	\$ 790.50 Cdn

The total loss equals \$28,172.38 US plus \$36,608.82 Canadian

[12] With regard to the involvement of Mr. Onesmus in the frauds and forgeries I made two findings: Mr. Onesmus did not act alone but was part of a larger scheme; and Mr. Onesmus had extensive involvement.

[13] Defence counsel submits that Iddi Yusef, a co-accused, was the instigator of the scheme. He appeared to be the source of the information for many of the identity thefts. Other individuals continued to operate the Latvian bank accounts after Mr. Onesmus' arrest. Surveillance photographs indicate that other individuals frequented the Smart Bizz premises.

[14] Mr. Onesmus' involvement included stuffing bait letters into envelopes with Mr. Yusef on the day of the police raid. Both were wearing rubber gloves. \$3900 US cash was found under the flower pot in his office on the day of the raid. The money had been sent by Peter Veal, one of the victims. In addition to these links to the beginning of a

fraud (the bait letters) and the conclusion of a fraud (the receipt of cash from a victim), I found that Mr. Onesmus was surrounded by extensive evidence: in his office, on his desk, on his computer, in his briefcase, in his wallet and on a phone he used.

[15] I conclude that while Mr. Onesmus was extensively involved with the frauds and the scheme as a whole, he was not the primary person responsible. There is no direct evidence that he had telephone contact with the American victims.

### **CIRCUMSTANCES OF THE OFFENDER**

[16] Mr. Onesmus is 38 years old. He emigrated from Namibia at age 16 to join his mother in Canada. They remain close.

[17] He is married and has three children ages 12, 9 and 2. His wife of 14 years struggles with mental illness and substance abuse. She relies on him for support and for transportation as she no longer has a driver's licence. She receives \$800 per month for child benefits and is eligible for Social Assistance.

[18] His work history includes telemarketing through his company, Fantasy Five Marketing Inc., and creating and managing an internet service provider, BC Comm.net. Recently he worked in construction earning approximately \$2500 per month net. Since a back injury in November 2008, he receives Worker's Compensation of \$449 per week.

[19] Mr. Onesmus owes approximately \$60,000 for back taxes. He makes small monthly payments to the Canada Customs and Revenue Agency.

[20] Defence counsel submits that there is no proof that Mr. Onesmus profited from the frauds. Banking records were provided in support of that submission. However,

with the evidence of cash withdrawals from Latvian banks being part of the scheme, it is not possible to make a finding of fact that Mr. Onesmus realized no profit personally.

[21] Mr. Onesmus has no Criminal Record.

[22] Nine letters of reference were provided. His mother, his wife, family and friends who all know of the charges attest to the good character of Mr. Onesmus.

[23] The most concerning of his circumstances is the involvement of the Ministry of Children and Families with his family. With Mr. Onesmus present in the home, the Ministry has no current concerns. Without him, it is not known if his wife will be able to parent their three children on her own.

[24] Mr. Onesmus testified on his own behalf at the trial and continues to maintain his innocence. At the sentencing hearing he stated that he was sorry for the suffering of the victims.

#### **POSITIONS OF CROWN AND DEFENCE**

[25] The Crown submits that a jail sentence of three to four years is the fit sentence. Restitution should be imposed.

[26] Defence counsel submits that a Conditional Sentence of two years less a day should be imposed. Restitution may be difficult to pay.

#### **THE LAW**

[27] There is a broad range of case law with regard to fraud. I agree with Defence counsel that this is not a breach of trust case which would invoke the statutory aggravating factor in s. 718.2(a)(iii). The cases most relevant involve the factors of

fraud on the elderly or vulnerable individuals, and international telemarketing fraud as the most serious of the offences here are the fraud and attempted fraud.

[28] The following cases are therefore of assistance.

[29] *R. v. Nichols*, [1999] OJ No. 3955 (Ont.S.C.J.). Sentence altered *R. v. Nichols*, [2001] OJ No. 3220 (Ont. C.A.). The offender was a telemarketing salesperson in Toronto who "cold-called" the complainant, who was an 84 year-old woman in Chicago. There were a number of calls which followed, and a number of tickets were sold. After seven weeks, the offender told her she had won a lottery of some \$13 million. Over the course of nine months the complainant sent a total of over US \$1 million or all of her wealth, ostensibly to collect her winnings. Eventually, US \$772,000 was recovered; the net capital loss was \$209,500.

[30] The trial court sentenced Nichols to five years and three months. The Ontario Court of Appeal reduced the sentence to four years "taking into account that Nichols had no previous criminal record, that he returned the bulk of the money," and also considering the sentences imposed in other cases.

[31] There are three most relevant passages in *Nichols* at the Ontario Superior Court of Justice. At paragraph 19 there is described the difficulties in prosecuting cross-border frauds:

There is another factor present in this case which marks it as most serious. The facts illustrate a cross-border fraud industry that bedevils the authorities of both U.S.A. and Canada. The cost of international investigations, the overlapping local and international jurisdictions, and the obscurities which borders provide creates a huge thicket from which unscrupulous people pursue their criminal trade. No week passes without

some story about someone who thought they had a sure thing but lost their money in a similar scam. Courts, by their sentences, must recognize the difficulty of apprehending and prosecuting such persons as the man before this court. It is another factor to be weighed.

In paragraph 10 Mr. Justice Whealy describes the vulnerability of elderly victims:

...increasing fragility of mind that comes with age; the loneliness of a single older person that can be manipulated by the crafty and the devious; and the persuasive, practiced tones of the professional, both male and female, who markets by voice alone.

Further at paragraph 13 the principles of denunciation and general deterrence are stated to be primary:

... Predators who target the weak, the sick, the elderly and the disadvantaged attract the most public opprobrium simply because such cowardly conduct strikes at the core values of our society: fairness and decency. Where large sums of money are involved and there is no recovery, the principles of public denunciation of the conduct and deterrence to others are the dominant considerations.

[32] **R. v. Thompson** (2003), Alberta Provincial Court 081620643P1. The facts of this case are very similar to the present case. The offender plead guilty, and the facts as set out at page 1 are:

The fraud was one whereby he phoned U.S. residents and told them that they had won lottery monies ... The victims were told to access the monies, however, they had to send certain fees to Mr. Thompson or his associates... There were 94 victims in the United States in various locations in the United States; all of whom were elderly \$368,162 was obtained by this scheme... the names were obtained because Mr. Thompson was able to obtain lists to subscribers to lottery schemes, which gave some credence to his original calls.

[33] The amount of money was greater than the present case. The court considered **R. v. Nichols**, and the "need to deter and denounce those who prey on the elderly and vulnerable."

[34] At pages 5 and 6, the court considers the mitigating and aggravating circumstances. At page 5, the court considered that an early guilty plea was a mitigating circumstance which meant the Crown did "not have to call elderly witnesses from the United States [and that] must be given great consideration." The aggravating circumstances are set out at page 6 and included:

1. This was a cross-border fraud. These are difficult frauds to prosecute, to obtain evidence about and are easily overlooked by the authorities for the reasons indicated in the Nichols case.
2. The accused chose elderly victims who were vulnerable to his requests.
3. Mr. Thompson was callous as to their personal circumstances and was simply extracting money from them to the point where they would eventually give up. His ruthlessness is something that really cannot be sympathized with.

[35] The court imposed a sentence of four years, but gave one year credit for time served, resulting in a net sentence of three years (see page 6, line 2). The court concluded at page 6:

There is a joint submission in this case. I barely find that the joint submission is a fit sentence. In my view, the sentence that would have been more appropriate would have been a sentence of five years, but I cannot say that sentence of three years is unfit.

[36] **R. v. Crause** (1999), BCSC Victoria, Hutchison J. July 26 1999. At paragraph 3, the BC Supreme Court states "Mr. Crause has engaged over a lengthy period of time at bilking the aged and elderly citizens of Sidney", defrauding people of \$402,000. The offender was ostensibly providing financial advice and assistance to the elderly victims, assisting them in maintaining and keeping safe their life savings. He was able to gain control of certain funds and transfer them to himself. The Court held:

[4] I am satisfied, because of the type of crime that fraud is, that it is the one area where general deterrence is not but a faint hope ...

[6] While I recognise what [defence counsel] Mr. Considine has said about conditional sentencing and the importance of using that technique against certain types of individuals, it seems to me that it should not become but a mere business tax for those who would bilk the elderly. Deterrence, I think, is the primary responsibility of the court in a case such as this.

[7] ... I cannot conceive of a more despicable crime than Mr. Crause's because of the age and vulnerability of the victims in this case ... it would ill behoove the court to impose a conditional sentence which would do no more than be a slap on the wrist.

[37] The offender had served two and half months prior to sentencing and received a sentence of three years. Thus the sentence was effectively three years and five months with an order for restitution of \$402,000. Restitution was unlikely to be paid.

[38] The B.C. Supreme Court held at paragraph 8, "Mr. Crause must pay for his wrong doing. I say I recognize that this would be a grave consequence to his young family, however, I think it is my responsibility to incarcerate him."

[39] *R. v. Hoy* (1998), 113 B.C.A.C. 155, [1998] BCJ No. 1649, (BCCA). Mr. Hoy was an insurance and mutual funds salesman who defrauded six clients of \$370,000 over 18 months. Prior to that, he was an "exemplary citizen" and "successful businessman" with no criminal record.

[40] In paragraph 4 it is noted that "... what he did was done deliberately and knowingly and with full understanding of the wrong that he was doing and, therefore, of the consequences. In addition, at the trial he attempted to justify what he had done by blaming his associates ..."

[41] The Chief Justice of British Columbia stated at paragraph 6:

I cannot help but comment that this is an offence where there may be more value or more usefulness in the principle of general deterrence than in many other types of offences. The people in the local financial community, at least, those who know about this matter, and no doubt there will be a considerable number, will recognize that it is simply not acceptable, although they probably already know that, to steal from clients, at least, they will now understand that there are serious legal consequences as the law now stands when that happens and when it is discovered.

[42] The B.C. Court of Appeal upheld a sentence of three years on 6 counts of fraud.

[43] *R. v. McNaughton* (2001), New West No. X054912 (B.C.S.C.). In *McNaughton*, the accused advised the complainants that he could arrange certain loans, but he needed a five percent deposit. There were two complainants who requested loans, and paid deposits to the accused totalling \$74,300 (one was \$64,300 and the other was \$10,000). The accused spent the money on personal purposes and none was recovered.

[44] The accused had no record. There was a six day trial in the case. At paragraph 18 the B.C. Supreme Court held:

Here the offences were serious. Mr. McNaughton took advantage of unsophisticated and gullible persons and effectively stripped them of their life savings for his own advantage. He planned these offences and he committed them deliberately and knowingly. During the trial he attempted to portray his conduct as legitimate business activity to the extent he concocted a story about an agreement with Mr. Bonyai, who, of course, was deceased and could not contradict him, to attempt to exculpate himself.

[45] At paragraph 19, the court held that the primary sentencing objectives in this case were denunciation and general deterrence. At paragraph 22 the court considers a conditional sentence, and declined to impose it. The court imposed a global sentence of 30 months, not conditional.

[46] *R. v. McClintock* (2001), Manitoba Queen's Bench CR 01 21967. Mr.

McClintock took part in an elaborate scheme over the course of three months in 1999.

The court held that he took advantage of largely elderly victims, even when he was told of their precarious financial situation. At page 1, line 7, the court in *McClintock* held:

This was an elaborate sophisticated scheme that involved others picking up the money that was wired to him, disguising his identity and using lead lists to make contact with victims. He was, by all accounts, smooth and persuasive in his contacts with victims.

[47] At page 1, line 19:

Mr. McClintock no doubt counted on the international aspect of the scam, mitigating against successful prosecution. As it was, it took the cooperation of the FBI and videolink technology to bring evidence before the Court.

[48] The court sentenced McClintock to two years, stating at page 2, line 34:

Denunciation is the primary sentencing principle in this case and in my view, an exemplary sentence is necessary to send a very clear message to like-minded individuals.

[49] The amount of money lost proven by the Crown was \$20,000.

[50] *R. v. Major* (1966), 48 CR 296 (Ont. CA). This is a dated case included by the Crown for the principal enunciated at paragraph 4, which the Crown submits is valid today. The offender operated a fraudulent home repair scheme, taking advantage of old people. The Ontario Court of Appeal equated this kind of activity with armed robbery, since it was based on inequality with the victims. The three principals were given sentences of 5 years, 5 years, and 2 years. At paragraph 4 the Ontario Court of Appeal held:

The conspiracy was planned and carried out over a long period. In its nature it was most despicable. Society has a special responsibility for those who are unable fully to look after themselves: children, infirm, aged and the blind, and those who take advantage of persons unable to protect themselves are particularly vicious. This type of crime might well be equated to armed robbery. A man who goes out to engage in an armed robbery destroys the balance of equality between himself and his victim by putting in his own hands a weapon which the victim cannot resist. Those who deliberately go out to prey upon elderly people who cannot look after themselves do similarly proceed on the basis of an inequality of their victims.

[51] A more recent case involving similar facts is *R. v. Kralik*, [2006] B.C.J. No. 1979, a decision of Madam Justice Wedge. Mr. Kralik defrauded the elderly victim, Francis Loftus over a three year period of approximately \$200,000. He was a general contractor who purported to perform repairs and improvements on her home. At paragraph 21, it states:

From the time she was 78 until she was almost 82 years of age, Ms. Loftus was preyed upon by Mr. Kralik. At 87 years of age she weathered seven days of testimony at the preliminary inquiry. She was extremely frail, but amazingly perseverant. This was not a fraud committed on a bank or a corporation. This was a fraud on one of the most vulnerable, isolated and fragile persons in our society. Ms. Loftus' last independent years of life were spent dealing with Mr. Kralik and the aftermath of his conduct towards her.

Paragraph 24 comments on fraud against vulnerable elderly persons:

I must also bear in mind, as I am directed by s. 718.2 of the *Criminal Code*, that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. Certain factors are deemed to be aggravating factors, but the factors listed in s. 718.2 are only examples of aggravating factors. In my view, abuse of a frail, isolated elderly person, particularly an elderly person who was "not as sharp as she once was," can be considered an aggravating factor. I will not go so far as to say that Mr. Kralik was in a position of trust. It is enough, in my view, that he deliberately took

advantage of Ms. Loftus' vulnerability, isolation and reduced mental capacity.

[52] In imposing a 4½ year sentence, Madam Justice Wedge cites with approval the case of *R. v. Nichols*.

[53] The accused in *R. v. Mitran* and *Mitran* and Pacific RV Sales Centre Inc., [2006] B.C.J. No 3436 pled guilty to theft and fraud in circumstances involving many elderly victims defrauded of approximately \$500,000 through the individual accused RV Dealership in Langley.

[54] In lengthy reasons Madam Justice Arnold Bailey at paragraph 94 states:

In terms of deterrence, general deterrence, it is accepted that the principle of general deterrence is a major factor in sentencing offenders who have committed serious offences of theft and fraud involving large sums of money. Others so inclined must see that such conduct is dealt with by the courts by serious sentences, often involving lengthy jail terms.

[55] The court had the report of a psychologist and a Pre-Sentence Report. There were extreme personal or special mitigating circumstances: the guilty pleas, and a commitment of full restitution being paid to the victims as soon as possible.

[56] In order to give the accuseds the opportunity to pay the restitution, a Conditional Sentence Order of two years less a day was imposed. The court in paragraph 79 cites as one of the other realistic sentencing options a federal sentence in the range of three to four years imprisonment for both accused.

[57] Finally, the case of *R. v. Kirk*, [2004] O.J. No. 3442 is a decision of the Ontario Court of Appeal in a fraud described as a commercial fraud wherein a general

contractor was convicted of six counts of fraud in relation to contract with homeowners over a four month period. At trial he was sentenced to nine months imprisonment and ordered to pay \$42,000 restitution. On appeal a 12 month conditional sentence was substituted and the restitution order was ordered to be fulfilled within six months. The Court of Appeal commented that the trial judge erred in overemphasizing the need for general deterrence and denunciation on the basis that there had been a breach of trust. They found that Mr. Kirk was not in a position of trust but in a relationship which was strictly commercial.

### **VICTIM IMPACT**

[58] Formal Victim Impact Statements were not filed. However, I heard the testimony by video link of the American victims: Zelda Walker, Pearl Melandish, Bruce Love, Leo Norgaard, Richard Oleson, on behalf of his father, Mogens Oleson, and Father Wittenbrink. Each individual described with great dignity the humiliation and devastating financial effects of being defrauded by persons they had come to trust.

[59] The passages from *Nichols* and *Kralik* cited above are relevant here. These were honest hard-working individuals who were manipulated ruthlessly.

[60] Representatives of the corporate victims testified regarding the difficulty of dealing with the identity frauds and the forgeries. The losses suffered and time incurred in pursuing them were significant.

### **AGGRAVATING FACTORS**

1. The financial loss was substantial;

2. The potential for further loss was extremely high, given the evidence that Smart Bizz was producing mass mailings of bait letters;
3. It appeared the operation of Smart Bizz would have continued but for the intervention of the police;
4. This was a sophisticated scheme;
5. There was a high level of pre-meditation;
6. The scheme involved identity theft of numerous people;
7. Numerous victims were elderly and vulnerable;
8. Numerous victims were located in the United States, which makes prosecuting such cases more difficult;
9. Numerous victims were put in difficult financial circumstances;
10. There has been no recovery of money from Mr. Onesmus, only from the police; and
11. The writer is not known but the notes on the "script sheets" located on Onesmus cabinet, at A-6-B, page 14: "I need to find out which insurance company is holding funds ... Received. *Had a stroke, can hardly reach*, will deposit today Nov 14. Going to send ... Was told not to send the money. Go for cutting edge."

#### **MITIGATING FACTORS**

1. Mr. Onesmus has no criminal record;
2. Mr. Onesmus has numerous ties to the community;
3. Mr. Onesmus has numerous employable skills;
4. Mr. Onesmus abided by his bail conditions; and
5. Mr. Onesmus never failed to attend court or appointments with his bail supervisor.

[61] As Mr. Onesmus maintains his innocence, there are not the mitigating factors of remorse or a guilty plea.

#### **GENERAL DETERRENCE**

[62] The principle of general deterrence is the primary sentencing principle (see for example *Nichols; Mitran*). Denunciation is also important (see *McLintock*).

[63] In addition to the case law regarding general deterrence, Crown submits that I may take judicial notice of the prevalence of the problem of cross-border telemarketing schemes. I agree and do take notice.

[64] Pursuant to s. 723(5) of the *Criminal Code* I may also admit hearsay evidence. Of the articles and news reports from various print and internet media submitted, I find that the release of Public Safety Canada May 2003 is of the most assistance to the court being reliable, timely and relevant.

#### **MASS – MARKETING FRAUD**

##### **A Report to the Attorney General of the United States and the Solicitor General of Canada May 2003**

##### **Binational Working Group on Cross-Border Mass-Marketing Fraud**

- Mass-marketing fraud today
  - Telemarketing fraud
  - Internet fraud
  - Identity theft
  - Africa-related fraud schemes
- The response to mass-marketing fraud, 1998-2003
- Current challenges in cross-border fraud: Towards a binational action plan

##### **Mass-marketing fraud today ...**

##### **Telemarketing fraud**

Cross-border telemarketing fraud remains one of the most pervasive forms of white-collar crime in Canada and the United States. The PhoneBusters National Call Centre estimates that on any given day, there are 500 to 1,000 criminal telemarketing boiler rooms, grossing about \$1 billion a year, operating in Canada.

...

**Current challenges in cross-border fraud: Towards a binational action plan**

Canadian and American law enforcement have reached "the end of the beginning" in combating cross-border mass-marketing fraud, Law enforcers, prosecutors, and regulators in both countries should now decide what new steps can and should be taken to become even more effective in combating cross-boarder fraud schemes.

This Report presents a twelve-point Action Plan to provide a coherent framework for those steps. ...

[65] I also have the trial evidence of RCMP Officer Barry Baxter who has managed major fraud investigations including this investigation. He described the schemes, the victims of which are primarily American or in some cases British.

[66] The prevalence and sophistication of such international telemarketing schemes makes the application of the principle of general deterrence not only particularly relevant in this case but also particularly important. Others contemplating such activity must know that the crime is taken seriously in Canada.

**OTHER SENTENCING PRINCIPLES**

[67] The principle of rehabilitation therefore plays a lesser role here. It would appear that Mr. Onesmus is an otherwise law-abiding citizen. I do not have the benefit of a Pre-Sentence Report or a Psychological Report such as in the *Mitran* case.

[68] I conclude on the facts provided that he will continue to be a loving father and husband and continue to seek employment when medically able.

[69] Specific deterrence as well plays a lesser role as Mr. Onesmus has performed well on bail and has no other charges.

**SENTENCE**

[70] Defence counsel submits that a Conditional Sentence Order is the fit and appropriate sentence. Two of the pre-conditions are that the sentence not exceed two years less a day, and that a Conditional Sentence Order be consistent with the principles of sentencing.

[71] I cannot find that either of those requirements is met.

[72] On the case law the range exceeds two years. For the reasons discussed above, the weight and importance of general deterrence is inconsistent with a jail sentence to be served in the community.

**PLEASE STAND**

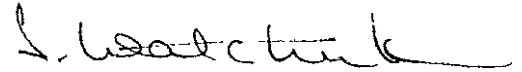
[73] Mr. Onesmus, having considered the circumstances of the offences, your circumstances and the case law and principles of sentencing, I sentence you to 3½ years in prison.

[74] There will be Restitution Orders pursuant to s. 738(1)(a) as follows:

Zelda Walker:	\$ 400 US
Pearl Melandish:	\$ 3,634.38 US
Bruce Love:	\$18,438 US
Leo Noorgaard:	\$ 3,500 US
Father Wittenbrink:	\$ 2,295.31 Cdn
Mogens Olesen:	\$ 2,200 US
Cash Register Store:	\$ 2,121.58 Cdn
Dell Computers:	\$19,448.97Cdn
IBM:	\$ 9,819.52 Cdn lost by IBM
	\$ 1,099.00 Cdn lost by VISA
Davco Scale:	\$ 1,033.94 Cdn
CBM:	\$ 790.50 Cdn

The total restitution equals \$28,172.38 US and \$36,608.82 Canadian.

[75] The Victim Fine Surcharge is waived for financial reasons.

A handwritten signature in black ink, appearing to read "J. Watchuk". The signature is fluid and cursive, with a long horizontal stroke at the end.

The Honourable Judge J. Watchuk  
Provincial Court of British Columbia