SUPREME COURT OF NOVA SCOTIA
Citation: *R v. Dawn Ellis-Abbott*, 2026 NSSC 1

Date: 20260102
Docket Tru No: CRT527404
Registry: Truro

Between:

His Majesty the King

v.

Dawn Marie Ellis-Abbott

Defendant

SENTENCING

Judge:	The Honourable Justice Jeffrey R. Hunt
Oral Submissions:	January 2, 2026, in Truro, Nova Scotia
Decision:	January 2, 2026
Counsel:	Shauna MacDonald, K.C., for the Crown
	Alfred Seaman, for the Defendant

By the Court: (orally):

Background

[1] For sentencing today is Dawn Marie Ellis-Abbott. Ms. Ellis-Abbott pled guilty before trial to a single count of fraud contrary to s. 380 of *the Criminal Code.*

[2] While sentencings for the offence of fraud are not, in and of themselves, rare or unusual, sentencings involving the magnitude of loss experienced here are relatively uncommon.

[3] This was large-scale fraud by any measure. The Defendant was a trusted and senior financial clerk with Millbrook First Nation. She herself is a member of the Millbrook First Nation. Ms. Ellis-Abbott has acknowledged misappropriating, over the course of approximately three years, $4.3 million in funds from the Band, her employer.

[4] These funds were converted to her own selfish use. I am told that nothing has been recovered and, somewhat surprisingly, there are no available assets against which immediate recovery is thought to be possible. This position is shared by both sides.

[5] Crown and defence are agreed that, in all the circumstances, a period of federal incarceration of between 3.5 and 5.5 years is called for. There is agreement as well with respect to a series of ancillary orders, including the imposition of a fine in lieu of restitution.

[6] This decision will explore the circumstances of the offence and the offender, as well as the applicable legal principles and reasoning behind the sentence the Court has seen fit to impose.

Offences

[7] The particular offence for which the Accused is being sentenced is as follows:

> **That she, between the 1st day of January 2016 and the 31st day of December, 2019 at, or near Millbrook First Nation, Nova Scotia, did by deceit, falsehood or other fraudulent means defraud the Millbrook First Nation Band of money of a value exceeding $5,000.00, contrary to Section 380(1)(a) of the *Criminal Code***

Circumstances of the Offence

[8] As to the facts of this matter, the parties have presented an Agreed Statement of Facts. The Court wants to acknowledge the substantial efforts made by the parties to develop and agree on the factual context. This is much appreciated.

[9] Each side has its own particular position with respect to the overall circumstances and how these ought to inform the sentence to be imposed.

[10] In summary, the factual framework as set out in the Agreed Statement of Facts is as follows:

> [1] Dawn Ellis-Abbott was a financial clerk at the Millbrook Band Office from 2003 until her termination in December of 2019. Ms. Ellis-Abbott was assuming additional responsibilities from the Chief Financial Officer, Jim Prodger, to one day take over his position when he retired. Along with preparing financial documents, working with Millbrook Band's auditors, and dealing with Band Councillors, she was the financial clerk, responsible for the everyday accounting of Millbrook's Fisheries and Millbrook Economic Development Corporation bank accounts. These duties included the accounting and printing of cheques for the regular business expenses incurred by these two Band business units.
>
> [2] Ms. Ellis-Abbott's yearly salary was $59,509.00 as of December 2019, paid weekly. In addition, Millbrook Band members received a $1,250.00 payment twice a year (in June and November), usually via an electronic payment.
>
> [3] Ms. Ellis-Abbott owned High Maintenance Hair Salon located at 266 Main Street, Bible Hill. She purchased the property through a rent to own agreement and renovated it. Her sister managed and worked in the salon. Ms. Ellis-Abbott entered into this business after being approached by her sister and her sister's business partner to help with their failing hair salon.
>
> [4] Ms. Ellis-Abbott was associated to expenses from 36 horses, which were owned by her and various other family members.

Method of fraud

Cheques to Ellis-Abbott from Fisheries ($1,068,330.81)

> [5] Between January 1, 2016 and December 31, 2019, Ms. Ellis-Abbott received 227 cheques from the Millbrook Fisheries account totaling $1,068,330.81, Each cheque required two signatures of individuals with signing authority to be processed. Ms. Ellis-Abbott did not have sole signing authority. Signatures were forged on 218 cheques. Ms. Ellis-Abbott had no entitlement to money from the Millbrook Fisheries Account.

Cheques to Ellis-Abbott from MEDC ($261,240.00)

[6] During the same time period, Ms. Ellis-Abbott received the proceeds from 66 cheques made payable to her from the Millbrook Economic Development Corporation (MEDC) totaling **$261.240.00** to which she was not entitled. Signatures were forged on all 66 cheques.

Unauthorized E-Transfers ($121,586.26)

[7] Between March 28, 2019, and November 21, 2019, Ms. Ellis-Abbott conducted 12 e-transfers from Millbrook Fisheries Account and Millbrook Administrative Account to her personal account, her High Maintenance business account, Steve Morton (purchase of horses) and System Fencing Ltd. The total amount of the illicit transfers was $121,586.26.

Payments to Vendors for Personal Work ($2300.00)

[8] On February 5th, 2016, Ms. Ellis-Abbott used a cheque from the Millbrook Fisheries Account to pay an invoice from Will-Kare Paving for High Maintenance parking lot patching.

Use of Millbrook RBC Visa Card ($2,927,529.24)

[9] Between January 1st, 2016, and December 31, 2019, Ms. Ellis- Abbott also had a corporate credit card in her name which was for Millbrook business purposes only. She incurred charges of $2,927,529.24 inclusive of personal purchases, cash advances, service charges and fees. Payments made on the RBC Visa card came directly from the Millbrook Band via RBC banking transfers and 80 cheques from both the Millbrook Fisheries and MEDC accounts. Some of the cheques used for the RBC Visa payments were forged (22.64%). The following chart highlights the nature of some of the personal transactions performed on the Corporate VISA Credit Card:

Nature of the VISA Transaction	Amount
Cash Withdrawals	717,071.25
Kelsey's Plumbing and Heating	339,749.58
Amazon	169,409.46
Maritime Beauty	106,663.00
Home Hardware	106,122.56
Wayfair	102,275.52
Top Villa	83,477.02
Wayne's Saddlery	83,493.10
Charlottetown Vet Clinic	60,127.17
Maritime Fence	58,973.73

Zack's Auto	56,850.00
Suntime Enterprise	48,089.35
NS Provincial Exhibition	60,141.78
Charm Diamond	30,883.66
Fundy Veterinarians	16,311.46
Eastlink	43,107.16
Bell	34,095.34
Rogers	26,902.96
Telus	1,176.65
Greenhawk Equestrian Sport	17,542.74
Central Nova Animal Hospital	10,509.47
Green Diamond Equipment	3,145.96
Full Throttle Power	2,000.00
System Fencing (Visa Transactions only)	14,910.91
Unifund Assurance/Johnson Ins.	824.50
Perma Steele Roofing	11,660.69
Registry of Motor Vehicle	712.65
Well Within Chiropractic	510.00
Miller Waste	8,101.75
Yellow Pages	4,575.23
NS Registry of Joint Stocks	274.20
HMS Financial /AA Munroe Insurance	1,129.00
Cosmetology Association	924.25
UPEI Vet Teaching Hospital/Vet Hospital UPEI	18,555.15
Apple Store	18,179.46
Walt Disney	5,742.89
Stub Hub	531.30
Ticket Pro	432.96
Top Villas	83,477.02
Universal Studio Orlando	31,493.96
Caldwell Roach Insurance	1,345.00
Centaur Fencing	2,502.77
Standardbred Canada	13,444.51
Westjet	262.50
Alamo	2,086.71
CAA Insurance	177.39
Jean's Flowers and Gifts	2,901.86

Hampton Inn	42,586.83
Pseudio	6,249.69
Vibe Salon	6,999.98
Shur Gain Atlantic	6,586.08
2U Like New Auto Details	5,409.66
Chownow	4,816.42
HAF Skate Tattoo	3,847.73
Ed Sheeran	1,067.12
Marshalls	3,212.06
Pond Pro Canada	3,206.78
Take it Outside	3,148.30
Stay and Play Canine	2,463.30
Etsy	2,376.08
Pro Design Cresting	2,016.70
Toys R Us	1,657.43
JYSK Canada	1,607.44
Pet Smart	1,483.95
Barkbox	1,469.24
Bed Bath and Beyond	1,423.77
Pet Valu	1,037.47
Clarence Farm Services	1,211.96
Global Pet Foods	1,048.83
David’s Bridal	919.66
Sirius Satellite	867.89
Tnt Equine	857.35
Scentsy Canada	725.65
Victoria Secret	719.30
Yonies Harness	579.18
Netflix	528.58
Red Shores Racetrack Charlottetown	500.00
Vintage Mouldings	431.50
RHM Equine Supplement	1,743.68
Racetrack Televisions	365.30
Bluenotes	325.87
Pottery Barn	209.23
No Ruffs Colar	204.90
Ren’s Pet Depot	196.73

Wheaton's	160.46
EB Games	109.69
Under Armour	199.01
Chef's Plate	78.00
Cineplex	49.47

Total

[10] The total amount of fraudulently acquired funds by Ms. Ellis-Abbott through various means is **$4,380,986.31**.

[11] In addition, the Band authorized loans to Ms. Ellis-Abbott, $68,827.75 of which was never repaid.

Civil Action

[12] The Millbrook Band filed a civil action against Ms. Ellis-Abbott and were successful in obtaining a partial summary judgment in March 2023 for $3,209,909.27, plus prejudgment interest of $849,584.13.

Position of the Crown

[11] The position of the federal Crown is that a 5.5-year custodial sentence is called for. This is after considering all matters of mitigation including *Gladue* factors and the guilty plea.

Ancillary Orders

[12] Also sought by the Crown, and not opposed by Defence, are the following ancillary orders:

Restitution Order	**s. 738**
Fine in lieu of Forfeiture Order	**s. 462.37(3)**

Time in default	**s. 462.37(4)(vii)**
DNA Order	**s. 487.051(3)(b)[secondary]**
Financial Activities Prohibition Order	**s. 380.2**

Position of the Defendant

[13] The position of the Accused is that while a federal period of incarceration is unavoidable, the custodial term ought to fall at the low end of the range presented by the parties. While she acknowledges the seriousness of the matter before the Court, she argues that a sentence in the range of 3.5 years would satisfy all the applicable purposes and principles of sentencing.

[14] Ms. Ellis-Abbott takes no position in opposition to the requested ancillary orders including the order for fine in lieu of restitution and associated default period.

[15] With respect to this default period, assuming she can meet certain criteria in future, the Accused will be permitted to seek certain relief around time to pay and the serving of default time. These points will be touched on later in these reasons.

PRINCIPLES OF SENTENCING

[16] The purposes and principles of sentencing are the same whether the court is dealing with a full joint submission, an agreed range or a situation with complete disagreement on every component of the sentence.

[17] In sentencing an offender, the court must take into account the circumstances of the offence and the offender, together with codified principles of sentencing.

[18] Section 718 of the *Criminal Code* sets out the fundamental purpose of sentencing, which is to protect society and to contribute to the maintenance of a just, peaceful, and safe society.

[19] These ends are accomplished through the imposition of just sanctions which have one or more of the following objectives: denunciation; general and specific deterrence; separation of the offender from society where necessary; rehabilitation; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[20] In *R. v. Hills*, 2023 SCC 2 at para 54, the Supreme Court stated that proper consideration should be given to all the objectives, with none applied to the exclusion of all others.

[21] Pursuant to section 718.1, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. This means that a sentence ought not be more severe than what is just and appropriate given the seriousness of the offence and the offender's moral blameworthiness. It also requires that the sentence be severe enough to condemn their actions and hold the individual responsible for what they have done: see R. v. *Lacasse,* 2015 SCC 64, at para. 12; and *R. v. Nasogaluak*, 2010 SCC 6, at para. 42.

[22] The proportionality analysis must include an assessment of both the general seriousness of the offence and the accused's individual moral culpability: see *R. v. White,* 2020 NSCA 33, at para. 51.

[23] Proportionality is a cardinal principle of sentencing, therefore, whatever weight a judge gives to the objectives listed above, the ultimate sentence imposed must respect this fundamental consideration: see *R. v. Safarzadeh-Markhali*, 2016 SCC 14.

[24] In *R. v. Parranto*, 2021 SCC 46, the Supreme Court of Canada put the point in these terms:

> [9] This Court has repeatedly expressed that sentencing is "one of the most delicate stages of the criminal justice process in Canada" (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 1). More of an art than a science, sentencing requires judges to consider and balance a multiplicity of factors. While the sentencing process is governed by the clearly defined objectives and principles in Part XXIII of the *Criminal Code*, it remains a

> discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing (*Lacasse*, at para. 1).
>
> [10] The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading "Fundamental principle" (s. 718.1). Accordingly, "[a]ll sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (*R. v. Friesen*, 2020 SCC 9, at para. 30). The principles of parity and individualization, while important, are secondary principles.

[25] While previous sentencing decisions are helpful to consider, a sentencing court must be alive to the reality that every offender and offence will have unique aspects and individual elements to consider. Only in this manner will proportionality be respected.

Further Sentencing Principles

[26] Further sentencing principles that I must consider pursuant to section 718.2 of the *Code* include parity, restraint, totality, and the weighing of aggravating and mitigating factors.

[27] The interplay of these elements is addressed in *R. v. L.R.*, 2023 ONSC 6762 at paras 24-25:

> [24] Proportionality engages two concepts: censure and restraint, see *R. v Ipeelee*, 2012 SCC 13 at para 37. As LeBel J. observed, a sentence must promote justice for victims and enhance public confidence in the administration of justice. At the same time, it should not exceed what is appropriate in light of the moral blameworthiness of the offender. The restraint principle directs the court to impose the least intrusive sentence and the shortest duration necessary to achieve a just, fit and proportionate sentence.

> [25] Inherent in the concept of proportionality is the principle of parity. Imposing sentences proportionate to the gravity of offences and the moral blameworthiness of offenders requires the court, on the one hand, to recognize where there are material differences between different offenders and different offences. On the other hand, any sentence imposed must be similar to those imposed on offenders who have committed similar offences with equivalent moral blameworthiness. Parity, in other words, is an expression of proportionality.

[28] I will turn at this point to a consideration of the circumstances of the offender, together with any relevant aggravating and mitigating circumstances.

Circumstances of the Offender

[29] In terms of the sentencing record before the Court, I have received the following:

1. Agreed Statement of Facts of June 3, 2025;
2. *Gladue* Report of August 19, 2025;
3. It was agreed by both sides that the preparation of a conventional pre-sentence report would be waived due to the availability of a detailed *Gladue* report;
4. Community Impact Statements of Stacey Tabor, Barry Martin and James Stevens;
5. Report of Lynn Toole, BSc, MEd (Counselling), RCT, CCC of October 16, 2025;

6. Letter of Dawn Marie Ellis-Abbott (undated);

7. Sentencing briefs of the parties; and

8. Oral submissions of the parties.

[30] Ms.Ellis-Abbott is 45 years old. The *Gladue* report sets out in substantial detail her family background and early years. She is the oldest of three siblings. Her father was a member of the Millbrook Band who resided off reserve. He met the Defendant's mother at a shared workplace. She was not of indigenous background but acquired membership in the Band upon her marriage to Mr. Ellis. Ms. Ellis-Abbott's extended family was and is very active in the harness racing circuit.

[31] Throughout her schooling the Defendant was a good student who experienced no real behavioral or other issues. After completing high school, she attended Nova Scotia Community College, eventually taking a work placement with Millbrook that developed into coverage for maternity leaves and eventually full-time work with the Band finance department.

[32] The *Gladue* report details Ms. Ellis-Abbott's personal circumstances and family relationships including her marriage and family with Matthew Abbott. She self-reports as having become disconnected from her indigenous background and

heritage. She only later began to recognize the harm that flowed from her loss of cultural and community connection.

[33] The report contains substantial detail on issues of heath and mental heath and some substance abuse issues which were presenting problems for Ms. Abbott-Ellis. She self-reports that beginning around age 34 she developed what she believed was a shopping addiction or compulsive buying disorder. This was used as an escape mechanism, she believes, to address relationship and matrimonial difficulties, work stress as well as personal heath challenges reported by her.

[34] In 2019 the first indication of the issues at Millbrook began to be suspected. Ms. Ellis-Abbott was terminated from the Millbrook Band finance office. For a time, she gained other employment. She held those other positions until charges were eventually laid in 2023.

[35] Following the filing of charges, she experienced a period of significant personal and family upheaval. Her marriage broke up. The family home was lost. The relationship with her child was severely impacted.

[36] Since the filing of charges, and the loss of her post-Millbrook employment, Ms. Ellis-Abbott's income has been derived from social assistance. She relies additionally on financial support from her parents. She reports struggling with

extreme guilt and an awareness that she has caused much pain to her daughter and wider family including, most significantly, her parents.

[37] The report notes that Ms. Ellis-Abbott has no past criminal record. This is not usual for persons convicted of serious fraud offences against employers. This is because a lack of record is effectively a pre-condition for gaining the sort of position of trust necessary to carry out a significant fraud offence against an employer.

Aggravating and Mitigating Factors

[38] Section 718.2 requires that I consider any aggravating and mitigating factors relative to the offence and offender:

Aggravating

1. Under s. 718.2(a)(iii) of the *Code*, a breach of trust is a legislated aggravating factor. Ms. Ellis-Abbott was clearly in a position of trust as a senior employee in the financial department of the Millbrook First Nation.

2. The offence in this case was not spontaneous or a short-lived spree. It was calculated and prolonged as opposed to a one-time or short-time failure of judgment.

3. The scale of the fraud, at over $4 million, is clearly aggravating in and of itself.

Mitigating factors

1. I consider Ms. Ellis-Abbott's voluntary guilty plea to be the most significant mitigating factor. She has to be given real credit for this in terms of impact on sentence. Pre-trial guilty pleas ought to carry the prospect of appropriate impact on eventual sentence: see R. v. Borden, 2025 NSSC 32. If true consideration is not given to the entry of early or relatively early guilty pleas, then we ought not be surprised when an unsustainable percentage of matters go to trial.

2. Ms. Ellis-Abbott has made a number of expressions of remorse.

3. Since the arrest, the Defendant has been released on conditions. There have been no allegations of violation. In law this amounts to the lack of an aggravating factor, but I am nonetheless aware of the point.

4. As noted above, I am aware that the Defendant has no prior criminal record. As a legal matter this represents the absence of an aggravating factor. Additionally, the absence of a record is frequently a feature of large-scale fraud carried out by an individual in a position of trust.

Parity/Range of Sentences

[39] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. We find this principle expressed in section 718.2 of the *Code*.

[40] While respecting the principle, it has to be recognized that each sentence must reflect the unique circumstances of the specific offence and specific offender. However, respect for the principle of parity is encouraged by situating a given case within the range of sentences generally imposed for a given offence. This promotes consistency, fairness and rationality in sentencing.

[41] The theoretical range for these offences is limited only by the maximum penalties in the *Criminal Code*, which in this particular case is a maximum of 14-years incarceration. However, the actual range is narrowed by the context of the

offence and the circumstances of the offender: see *R. v. Cromwell,* 2005 NSCA 137.

[42] The Crown and the Accused have been provided an opportunity to share with the Court any cases which they point to as helpful in identifying the appropriate range of sentence.

[43] However, it is important to remember that the Court cannot take a cookie-cutter approach to sentencing and impose sentences based only on the type of offence committed. Despite the need to consider the principle of parity, the Supreme Court of Canada has "…repeatedly emphasized the value of individualization on sentencing.": see *R v Pham*, 2013 SCC 15.

[44] I have reviewed a substantial amount of case law. I am indebted to the parties for providing what I believe to be a fair accounting of relevant sentencing case law. Attached to these reasons is an appendix setting out a summary of a number of the decisions which have been considered.

[45] For large scale frauds, such as the one we are dealing with here, the range of sentences is wide but for matters similar to the present the range generally could be seen as 4 to 8 years. So the range set out by the parties here is clearly within the appropriate frame.

Principle of Restraint (s. 718.2(e)) – *Gladue* Factors

[46] The Court must consider the principle of restraint contained within section 718.2. Restraint, in general, requires that the punishment should be the least that would be appropriate in the circumstances.

[47] Section 718.2(e) states the following:

> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[48] As noted above, in the present circumstance, no party asserts that a punishment other than imprisonment would be appropriate. The Accused does argue that the principles expressed in *R. v. Gladue*, [1999] 1 SCR 688, ought to impact the calculation of the fit and proper term of incarceration.

[49] The Supreme Court of Canada in *Gladue* crafted a framework within which the sentencing of indigenous offenders must be considered. Our Court of Appeal in *R. v. Cope*, 2024 NSCA 59, commented, at paragraph 88, that sentencing courts must consider:

> (a) The unique systemic or background factors which may have played a part in bring the particular Aboriginal offender before the courts; and

(b) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection.

[50] At paragraph 80 of *Gladue*, the Supreme Court wrote:

> [80] As with all sentencing decisions, the sentencing of aboriginal offenders must proceed on an individual (or a case-by-case) basis: For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the *Criminal Code*? What understanding of criminal sanctions is held by the community? What is the nature of the relationship between the offender and his or her community? What combination of systemic or background factors contributed to this particular offender coming before the courts for this particular offence? How has the offender who is being sentenced been affected by, for example, substance abuse in the community, or poverty, or overt racism, or family or community breakdown? Would imprisonment effectively serve to deter or denounce crime in a sense that would be significant to the offender and community, or are crime prevention and other goals better achieved through healing? What sentencing options present themselves in these circumstances? (Underlining in original).

[51] While there is no burden on an Indigenous offender to establish a causal link between their background and the commission of the offence, I do find that the Defendant's life has been impacted by the systematic and background factors discussed in *Gladue*.

[52] I earlier reviewed a number of findings contained in the *Gladue* report. The Defendant's family history and upbringing is notable for the aspects of separation and dislocation of her family from its traditional community and practices. It has been identified that this has resulted in a loss of culture and connection.

[53] Her paternal grandmother attended what was called the Indian Day School in her early years and later struggled with alcoholism. The family experienced a loss of connection to the Millbrook community as well as a loss of language and traditional cultural practices.

[54] I refer to the entirety of the *Gladue* factors set out on page 30 of the report and referenced to some extent elsewhere in these reasons. It is of course part of the reality of this case that the community the Accused went on to victimize was a First Nations community. She selfishly deprived the community of significant resources which otherwise would have been available to better the lives of many individuals.

[55] The Supreme Court in *Gladue,* at para 78*,* further recognizes there are some offences and some offenders, for whom separation, denunciation and deterrence are fundamentally relevant. I agree with both sides in this matter that, in this case, a sanction other than imprisonment is not reasonable in the circumstances in that it would not properly address the fundamental principle of proportionality.

[56] A denunciatory sentence which speaks to general deterrence of others is warranted. The weighing of the appropriate term, however, has been impacted by the application of the principles discussed above. In reference to s. 718.2(e) of the

Code, it is the case that the Defendant's personal experience, as well as the systematic experience of the Indigenous community, is relevant to the weighing of moral blameworthiness within the context of proportionality.

Addressing Ancillary Orders

Restitution Order

[57] The parties are agreed that pursuant to s. 738 of the *Criminal Code* there ought to be a Restitution Order in favour of Millbrook First Nation in the amount of $4,380,986.31. This does not represent any sort of double recovery with any civil judgment. A dollar collected under any of the repayment tools is a dollar deducted from all existing judgments or orders.

Fine in Lieu of Forfeiture

[58] As was noted by the Ontario Court of Appeal *R. v. Angelis*, 2016 ONCA 675:

> 33 Parliament also recognized that the forfeiture of proceeds of crime is not always practicable. Sometimes, proceeds can't be found. They may be outside Canada. Or in the hands of a third party. What was taken may have been substantially diminished in value, rendered worthless or commingled with other property that cannot be divided without difficulty: *Lavigne*, at para. 18. And so, Parliament enacted a provision, s. 462.37(3), to permit judges to impose a fine in lieu of forfeiture.

[59] Accordingly, when in all the circumstances, the proceeds or assets cannot be subject to an order of forfeiture, and a circumstance outlined in s. 462.37(3) applies, the Court may order a fine in lieu of forfeiture.

[60] The *Angelis* decision outlines a summary of principles to be applied:

- The power to impose a fine in lieu of forfeiture derives from the proceeds of crime provisions of the *Code* and is separate and apart from the punishment imposed upon an offender pursuant to the sentencing provisions in Part XXIII: see para. 50;

- The fine in lieu of forfeiture is not to be consolidated with sentencing on a totality approach: see para. 51;

- The fact that incarceration has been calibrated to satisfy the applicable sentencing objectives and principles cannot justify refusal to order payment of a fine in lieu: see para. 53;

- Once the conditions for the imposition of a fine in lieu of forfeiture are met, a sentencing judge has limited discretion to refuse to make the order: see para. 72;

- The existence of a possible civil remedy does not on its own justify a refusal to impose a fine in lieu of forfeiture: see para. 74;

- Ability to pay is not a factor to consider in deciding to impose a fine in lieu of forfeiture nor in determining the amount of the fine: see para. 81; and

- While ability to pay is not a factor in determining whether to impose the fine in lieu, it is a factor which may be considered by the court in determining the time in which the fine may be paid: see para. 81.

[61] Provision has been made to ensure that fines in lieu of restitution do not result in double compensation where a separate restitution order or civil judgment may be in place: see for e.g. discussion of Chipman J. in *R. v. Blumenthal*, 2019 NSSC 35 at para. 43 and Derrick, PCJ (as she then was) in *R. v. Sponagle*, 2017 NSPC 23 at para. 43.

[62] The Court in this case has been asked to impose an order for restitution. There is a civil judgment in place, as discussed above. As discussed by counsel in submissions I am satisfied there are appropriate safeguards in place to prevent double recovery.

[63] In this case, I am satisfied that the monies obtained by fraud cannot be made subject to an order of forfeiture given the circumstances, including those outlined in section 462.37(3) of the *Criminal Code*. Accordingly, a fine in lieu of forfeiture in the amount of $4,380,986.31 is imposed pursuant to s. 462.37(3) of the *Criminal Code*.

[64] The Court has discretion with respect to the amount of time to be given to Ms. Ellis-Abbott to pay the fine. Further, the Court has discretion to set the amount of default time to be served between a minimum of five years and a maximum of ten years of imprisonment, pursuant to s. 462.37(4)(a)(vii).

[65] I order that payment be made by the Defendant within fifteen years of today's date, as agreed between counsel.

[66] Further, in the event of default of payment, she shall be subject to a period of five years incarceration in default.

[67] As discussed by the Supreme Court of Canada in *R. v. Lavigne,* 2006 SCC 10, at paras. 45 to 48, when the time allowed for payment of the fine in lieu of forfeiture has expired, a warrant of committal may not be issued unless the court is satisfied that the offender has, without reasonable excuse, refused to pay the

fine. Additional time can be sought in appropriate circumstances. Failure to pay based in a *bona fide* lack of means does not equate to a wilful refusal to pay.

DNA Order

[68] The parties have agreed that the imposition of a DNA order is appropriate.

[69] This is a secondary designated offence as defined in s. 487.04 of the *Criminal Code*. The imposition of this order is sought by Crown and not opposed by defence. I have considered the statutorily mandated factors in subsection (3). There is no indication of any greater than normal impact on the Accused's privacy and security. The DNA sampling and data retention regime has mechanisms in place to safeguard privacy appropriately.

[70] Accordingly, I accept the recommendation of the parties and find that it is in the best interest of the administration of justice to impose the order. Ms. Ellis-Abbott will be subject to an order to provide a DNA sample pursuant to s. 487.051(3)(b) of the *Criminal Code*.

Financial Activities Prohibition Order

[71] There will be a Financial Activities Prohibition Order pursuant to s. 380.2 of the *Code*.

[72] Pursuant to this section the Defendant is prohibited for a period of 25 years from seeking, obtaining or continuing any employment or becoming a volunteer in any capacity that involves having authority over the real property, money or valuable security of another person.

Custodial Component of Sentence

[73] This brings me to consideration of the custodial component of the sentence.

[74] Ms. Ellis-Abbott, please stand. I have weighed the entirety of the record and submissions. Obviously, a significant custodial sentence is required in the circumstances.

[75] It is the order of the Court that you will serve a period of custody of four and one-half years. In my view this sentence is required to reflect the gravity of the offence and your moral blameworthiness, in all the circumstances. I should add that but for your change of plea and acceptance of responsibility you were at risk that this sentence would have been a different one.

Recommendations to be Attached to Warrant of Committal

[76] In keeping with the contents of the *Gladue* report, the Warrant of Committal will include an endorsed recommendation that Ms. Ellis-Abbott have available to

her culturally sensitive resources and programming facilitated through the Office of Indigenous Liaison at the Nova Institution for Women. This is the facility where she will undergo reception into the federal correctional system for women. This will presumably include referral to the Indigenous Women Offender Self-Management Program within the Institution.

Victim Fine Surcharge

[77] As now permitted by law, the imposition of the Victim Fine Surcharge is waived in view of the substantial federal sentence. The standard for waiver is met in these circumstances.

[78] This is the sentence of the Court.

[79] Counsel – are there any immediate questions with respect to any of these points?

Hunt J.

Appendix

Citation	Context	Guilty Plea or Trial	Sentence
R. v. Lysyk, 2004 ABQB 654	The accused was employed by the Bank	Pled Guilty 1 x fraud	Joint recommendation 7

	of Montreal as either a Branch Manager or Financial Services Manager. Using his position at the bank the accused created sixty-four fraudulent demand loans. The net proceeds of the fraud totaled $14,018, 952. Ultimate unrecovered loss was in excess of $10 million. Money was used to fund lavish lifestyle		years and 4 months (not including 6 weeks of pre-trial custody)
R. v. DiGiuseppe, 2008 ONCJ 127	Accused owned two adult entertainment nightclubs and failed to report all income and remit related GST. Documentation that recorded actual income was systematically destroyed and false revenue reported to corporate controller. During police raid related to bawdy-house investigation, financial documents were seized. The tax authority was deprived of approximately $2.8 million in income tax and $600,000 in GST.	Found Guilty 1 x fraud	6 years plus 2 million dollar fine, one year consecutive in default of payment
R. v. Taylor, 2008 BCPC 120	The accused looked after the bookkeeping payroll and tax obligations of a	Guilty plea 1 x fraud over $5000	42 months, jointly recommended.

	concrete forming business she owned with her husband. Over a 5-year period she failed to remit the company's source deductions for employment insurance and GST defrauding CRA of $3,197,796.		
R. v. Papakyriakou, 2009 ONCJ 397	Accused stole 7.4 million from her employer over an 11 year period, while acting as Manager of Financial Analysis. The money funded gambling losses and paid for personal expense.	Pled guilty 1 x theft	5 years
R v. Waxman, 2014 ONCA 256	The accused was an officer and director of a prominent public corporation. The accused wrongly profited nearly $18 million US at the expense of his employer for undisclosed involvement in copper trading. Most of the funds went to purchase luxuries.	Found guilty 4 x fraud	8 years
R v. Clarke, 2016 NSSC 101	The accused was involved in a conspiracy to maintain the stock price of a	Guilty plea 1 x conspiracy to commit fraud	3 years, joint recommendation on sentence (not

	company. In addition to buying stock, the group also supressed stock sales. The losses were in the millions of dollars but were difficult to quantify.	1 x fraud	before guilty plea entered)
R. v. Atwal, 2016 ONSC 3668	The accused was an external bookkeeper/accountant for a large corporation. Over an 8 week period she forged signatures on 97 corporate cheques which totalled $1,015,731. The payees of the cheques had direct connections to the accused, including her own business.	Found guilty	3 years for fraud, nine months concurrent for forgery. Restitution $35,000
R. v. Palmer, 2019 BCSC 342	Accused was a bookkeeper and office administrator for small manufacturing company. Over the course of twelve years the accused stole $2.2 million from her employer.	Guilty plea 1 x fraud	4 and ½ years
R. v. Potter; R. v. Colpitts, 2022 NSCA 9; affirming 2018 NSSC 180	Acting as lawyer and CEO co-accused engaged in variety of manipulative techniques to	Found guilty 1 x conspiracy to commit fraud	5 years (Potter) 4.5 years (Colpitts) upheld on appeal

	artificially prop up price of company shares.	1 x fraud in relation to stocks	Court agreed that upper end of 3-6 year range suggested by trial judge was too compressed.
R. v. Thow, 2010 BCPC 378 aff'd 2010 BCCA 538	Mr. Thow engaged in two main fraudulent schemes involving luring victims to invest in nonexistent investments. The accused defrauded the complainants collectively of approximately $10,195,000. The total losses suffered amount to just under $8,000,000.	Pled guilty 20 x fraud	Total of 9 years, upheld on appeal. Joint recommendation for 7 years was rejected.
R. v. Samnugam, [2012] O. J. No. 5647	Accused misrepresented himself as a highly educated individual, licensed and educated market commentator and venture capitalist. He became involved with an elderly retired couple, elderly widow and single female doctor, offering investment advice, promising significant returns, obtaining large sums form parties for investment and subsequently depleted	Pled guilty 3 x fraud	5 years less 26 months pre-trial credit.

	their investment accounts. Total amount over 1 millions dollars.		
R. v. Thomas, 2014 ABPC 280	While working in the payroll departments of six separate employers in a six-year period, the accused defrauded the companies of a cumulative 1.8 million dollars.	Pled guilty 6 x fraud	6 years
R. v. Donszelmann, [2014] A.J. No. 734 (Alta. Q.B.)	The accused sold RV's that he did not own to complainants and arranged to rent them out on behalf of the complainants that rentals would cover the cost of repayment. Total involved amount $2,367,365.22.	Found guilty Multiple fraud counts	7 years
R. v. Adams, 2015 ONCJ 161	The accused dishonestly enticed shareholders to invest in Majestic company. Total amount of the fraud was difficult to ascertain, but total of $5.3 million was invested by the shareholders and one of these funds were recovered.	Found guilty 4 x fraud	5 and ½ years

R . v. Sponagle, 2017 NSPC 23	The accused defrauded 201 investors in a company he controlled of $1,100,000. Major impact on multiple victims. No restitution made despite significant passage of time.	Pled guilty 1 x fraud	Joint recommendation for time served of 19.5 months (credited 3 years 4 months and 6 days) for time spent awaiting extradition in Panama prison.
R. v. Scribnock, 2017 ONSC 1716	Accused financial advisor defrauded 2.8 million from 19 victims over a four year period.	Pled guilty 19 x fraud	7 years minus pre-trial credit
R. v. Dawson; R. v. Ross, 2021 NSCA 29; 2019 NSSC 275	Co-accused defrauded federal government by failing to follow proper bidding arrangements by directing contracts to companies owned by one of the co-accused. The magnitude of this fraud was the value of the fraudulent contracts: $1,984,807.83	Found guilty 1 x fraud 1 x conferring an advantage to government employee	Conditional sentence overturned. Dawson – 42 months Ross – 36 months
R. v. Thiel, 2021 ABPC 286	Accused was office manager for a family-owned business. She defrauded $1,587,275.13 through 200 transactions over 6 years. She used the money to pay bank loans, credit card debt and for personal shopping.	Plea of guilty 2 x fraud over $5000	4 years Restitution orders for $1,494,483.58 and $91,791.50 Order under 380.2

R. v. Jacobs, 2022 BCPC 230	Accused defrauded the Squamish Nation, of which she was a member and while employed by them as head of the Communication and Band Manager Services Department, and while serving as an elected co-chair of the Squamish Nation's Council, of over $855,000 of monies earmarked for Nations's most needy members. There were *Gladue* factors as well as sincere remorse.	Found guilty 1 x fraud 1 x possession of proceeds	4 years
R. v. Young, 2022 NSSC 185	Three accused family members participated in fraudulent scheme to obtain GST rebates to which they were not entitled. The claimed refunds amounted to $3,628,805.06. They profited (actual loss) $357,359.	Found guilty 10 x fraud over 10 x s. 32791(d) Excise Tax Act	24, 36 and 48 month periods of incarceration.
R. v. Sherri Lemarche, unreported October 6, 2022, NSPC Driscoll, J.	Accused was employed as a bookkeeper for BANC Group of companies. Between 2017 and 2021 she defrauded her employer of $7,650,799.45. Money stolen was used to fund home	Pled guilty 2 x fraud 2 x uttering forged documents	8 years Joint recommendation

	renovations, travel, vehicles and providing money to family.		
R. v. Earl, 2024 BCSC 971	Accused bookkeeper defrauded employer of $1,350,234 over seven year period. There was significant impact on the victim.	Found guilty 1 x fraud	6 years