SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Ross and Dawson*, 2019 NSSC 275

Date: 20190916
Docket: CRH No. 476294
Registry: Halifax

Between:

Her Majesty the Queen

v.

Bry'n Ross and Harold Dawson

D E C I S I O N

Judge:	The Honourable Justice James L. Chipman
Heard:	May 13, 14, 15, 16, 21, 22, 27, 28, 29, 30 and 31, June 4, 5, 6, 7, 10, 11, 12, 13, 17, 18 and 24, 2019
Written Decision:	September 16, 2019
Counsel:	Mark R. Donohue and Constantin Draghici-Vasilescu, on behalf of the Federal Crown Peter W. Kidston, on behalf of Bry'n Ross David J. Bright, Q.C., on behalf of Harold Dawson

By the Court:

OVERVIEW

[1] In late 2011, file reviews conducted by the procurement office at the Shearwater military base raised concerns about certain contracts awarded respecting the heating plant. Following an investigation known as Operation Aftermath, it emerged that two civilian employees, Wayne Langille and the accused, Bry'n Ross, directed contracts to four companies connected to the co-accused, Harold Dawson. In 2016, the three men were charged with fraud, along with Kimberley Dawson. Mr. Langille pleaded guilty to a s. 121(1)(c) count in relation to this matter in Provincial Court. The charge against Ms. Dawson was eventually dropped.

[2] During the six week trial, 37 witnesses were called and 47 exhibits were introduced. The exhibits were predominantly electronic, given the vast array of contracts and accompanying documents referable to the matters in issue.

THE CHARGES

[3] The original Indictment included the four initial accused and reads as follows:

> Bry'n Ross, Harold Dawson, Wayne Langille, and Kim Dawson, all of Dartmouth, in the Regional Municipality of Halifax, Province of Nova Scotia, stand charged:
>
> 1. THAT between the 1st day of April, 2008, and the 9th day of May, 2012, inclusive, at or near 12 Wing Shearwater, Dartmouth, in the Halifax Regional Municipality, Province of Nova Scotia, they did by deceit, falsehood or other fraudulent means defraud Her Majesty the Queen as represented by the Department of National Defence and the public of money over five thousand dollars, contrary to Section 380(1) of the *Criminal Code*;
> 2. AND FURTHER that HAROLD DAWSON at the same time and place aforesaid, having dealings of any kind with the Government of Canada, directly or indirectly paid a commission or reward to or conferred an advantage or benefit of any kind on Wayne Langille, an employee of the government with which the dealings took place, or to any member of the family of Wayne Langille, or to anyone for the benefit of Wayne Langille, with respect to those dealings, without the consent in writing of the head

of the branch of government with which the dealings took place, contrary to section 121(1)(b) of the *Criminal Code*.

POSITIONS OF THE PARTIES

Crown

[4] The Crown relies on *R. v. Théroux*, [1993] 2 SCR 5 in asserting that the two accused defrauded the federal government of approximately two million dollars ($2,000,000.00) between the 1st day of April, 2008, and the 9th day of May, 2012.

[5] The Crown alleges that Mr. Ross and Mr. Dawson conspired to funnel contracts for expensive parts for the heating plant at CFB Shearwater to four companies connected to Mr. Dawson. Rather than following the rules and polices which ensure competition among various unrelated businesses, the Crown says, both Mr. Ross and Mr. Langille – who were friends of Mr. Dawson – "colluded to manipulate the contract process by awarding 640 contracts to Mr. Dawson's companies". During the relevant time period, the Crown says, hardly any other companies were awarded contracts in relation to the Shearwater heating plant. The prosecution adds that several of the parts sold by Mr. Dawson's companies were significantly marked-up in price.

[6] The Crown says the evidence demonstrates that the accuseds made missteps in an attempt to cover their dishonest acts. They say the totality of the evidence proves that Mr. Ross and Mr. Dawson are guilty beyond a reasonable doubt of the charged offences.

Defence

<u>Bry'n Ross</u>

[7] The two accused adamantly deny being involved in any illegal activity. Mr. Ross emphasizes that the systems in place changed over the years. He asserts that he followed the processes in place at the relevant time and that they were not as rigid as suggested by the Crown. For example, he says that having periodic lunches with Mr. Dawson, where they agreed not to discuss business, cannot be regarded as a breach of the rules.

[8] Mr. Ross makes the point that the 12 Wing Shearwater heating plant, as it was often known, was old and required lots of parts. Equipment was often needed on an emergency basis, leading to piecemeal requests. Bundling these requests would have been impractical.

[9] While acknowledging that his contracts register was found in Mr. Dawson's home, Mr. Ross says that no proprietary information was compromised because the register pertained to one of Mr. Dawson's companies.

[10] In conclusion, Mr. Ross says the Crown has failed to prove beyond a reasonable doubt that he carried out a dishonest act. He adds that there cannot have been a deprivation because all of the ordered parts were delivered. In the result, Mr. Ross asserts that an acquittal is the proper determination.

Harold Dawson

Mr. Dawson acknowledges that the offence of fraud requires the Crown to prove the following elements:

1. That he deprived the Department of National Defence (DND) of something of value;
2. That his deceit, falsehood or other fraudulent means caused the deprivation;
3. That he intended to defraud DND; and
4. That the value of the property exceeded $5,000.00.

[11] Mr. Dawson notes that the first element of the offence of fraud requires a deprivation; however, this term is not defined in the *Criminal Code*. In any event, he asserts that to prove the offence, it must be shown that the Crown's economic interest was at risk. Mr. Dawson says the Crown has failed to prove this critical element of fraud because the evidence demonstrates that each item ordered from his companies was delivered at the agreed-upon price.

[12] Mr. Dawson emphasizes *R. v. Villaroman*, 2016 SCC 33, and stresses that there are other reasonable explanations for his behaviour which do not establish guilt.

[13] With respect to the second element, Mr. Dawson says there is no evidence that he made any untrue statement. Mr. Dawson made no secret of the fact that he operated several companies and he openly acknowledged that this was designed to get more exposure for government business.

[14] As for the third element, Mr. Dawson says it cannot be proved beyond a reasonable doubt that he intentionally defrauded DND. As to the final element,

Mr. Dawson asserts there is no evidence that would take any alleged amounts above the $5,000.00 threshold. Relatively, he says the lunches and his airport pick-up of Mr. and Mrs. Ross amount to inconsequential activities which, in any event, were arguably permissible under DND's rules and regulations.

[15] With respect to the second count, Mr. Dawson says that it is akin to an allegation of influence peddling and not a strict liability offence. He says that his help to Mr. Langille came in the form of loans – which were always paid back – and that this is not prohibited by s. 121(1)(b). Further, even if the loans were characterized as benefits, he asserts there must be a *quid pro quo*, and that is not present. Mr. Dawson denies receiving any benefit in exchange for the loans.

[16] In all of the circumstances, Mr. Dawson says the charges against him must be dismissed.

THE PROCUREMENT PROCESS

Mary Ellen Doucet

[17] Ms. Doucet worked for DND in various capacities, including as a contracts officer or buyer, acting supervisor of buyers, and, finally, as a supervisor until her retirement about a year before trial. Her time as supervisor corresponded with her move from the Halifax dockyard to Shearwater in February 2011. When she transferred to Shearwater, there were seven employees in the contracting cell, including herself and Mr. Ross.

[18] Mr. Ross was responsible for ordering in relation to the Shearwater heating plant. She agreed that the plant is older and "went through a lot of stuff". Ms. Doucet agreed that it was not uncommon to have items directly delivered to the heating plant.

[19] During her years with DND, Ms. Doucet received ongoing training in contracts and government rules and regulations surrounding the procurement process. Based on her training and experience, Ms. Doucet described the objective of purchasing on behalf of the government as "obtaining goods and services in a fair and transparent manner… the best value for the Crown". Under the proper approach, Ms. Doucet stated, all vendors are given equal opportunity for government business. She said that provided all criteria were met, contracts were awarded to the lowest bidder.

[20] On cross-examination, Ms. Doucet agreed that while the best price governs which vendor is selected, timing and availability are considerations. She also agreed that certain competing products have warranties that set them apart. She acknowledged that a contracts officer may be aware that some products last longer than others. On re-direct she said that warranties should be reviewed with the quality control team. She added that any "warranty situation" has to be noted on the file.

[21] Ms. Doucet stated that contracts officers are not to associate with vendors or accept gifts of any monetary value. She said it was not appropriate for buyers to have lunch with vendors.

[22] As supervisor, Ms. Doucet periodically reviewed contracts. This involved randomly pulling a sample of files to ensure that they were in compliance with government statutes and policies. Asked about the policy in place between April 1, 2008, and May 9, 2012, she explained that a contracts officer was required to obtain one quote for purchases up to $1,000.00, two quotes for amounts between $1,000.00 and $2,500.00, and three quotes for those between $2,500.00 and $5,000.00. For amounts in excess of $5,000.00, the file would be sent to the Department of Public Works and Government Services Canada (PWGSC) for review.

[23] On cross-examination she agreed that if a bid is sent out to three companies and only one replies, that it is a valid bid. She agreed that there might be a need for a part at 9:00 a.m. and then a similar part hours later on the same day. She admitted that this could result in two purchase orders, but said the proper approach would be to amend the first contract. Ms. Doucet agreed that there is no policy stating that all contracts have to be compiled and prepared at the end of the day.

[24] Ms. Doucet said the rules were strictly enforced and that regular meetings and training sessions were held to reinforce purchasing policies. With examples, Ms. Doucet explained how purchase requisitions were prepared, noting the requirement for a "section 32" signature from a manager which provided the authority for the funds. She also referred to a "section 34" authority which was needed to confirm receipt of the goods at the government facility. Both of the referenced sections are within the *Financial Administration Act*, R.S.C., 1985, c. F-11 (*FAA*). On cross-examination, Ms. Doucet said that there were times when photocopies of signatures were acceptable. She allowed that they would later try to get the original signed document for the file.

[25] Ms. Doucet said she had a good working relationship with Mr. Ross. They got along and, until conducting a review in late 2011, her only issues with his files related to minor "housekeeping" issues. During the Christmas season she reviewed several of Mr. Ross' files from the July 2011 to September 2011 period. This revealed a number of "repetitive buys" that were near the $5,000.00 threshold. Ms. Doucet thought that a number of these purchases were related and should have been combined. Based on her review she concluded that there "appeared to be contract splitting". Further, she noticed that the suppliers were predominantly one of four companies: Atlantic Measuring Technologies, (Atlantic), Colonial Industrial Supply (Colonial), Harbourside Controls (Harbourside) and M.E. Robar Industries (Robar). She conducted an internet search and determined that three of the companies were controlled by Harold Dawson. [It was ultimately established that Atlantic, Colonial, Harbourside and Robar were all controlled by Mr. Dawson; accordingly, I have at times referred to these companies collectively as the Dawson Companies]. She also determined that some of the contracts were based on phone orders, which was not permissible. Ms. Doucet described a number of Mr. Ross' files as "sloppy looking" with numbers scratched off and written in by hand. Although different companies were involved, she suspected that the handwriting on several of the orders belonged to the same vendor.

[26] Ms. Doucet spoke to Mr. Ross and told him that the violations "had to stop". She said he told her not to worry as he was now combining the orders and sending them to PWGSC. Ms. Doucet also spoke with her supervisor, Anne McGuinness, telling her that she suspected "something may be going on". The two then reviewed the files and Ms. Doucet was present when Ms. McGuinness contacted her supervisor, Lyla Zwicker, and then met with the military police. Ms. Doucet met with Cpl. Chase a number of times and then provided a videotaped statement on February 3, 2012.

Anne McGuinness

[27] Ms. McGuinness has been employed with DND for 30 years. Since 2006, she has been senior contracts officer with base logistics, managing the procurement division. Her previous roles included technical advisor, buyer (contracts officer) and trainer. Ms. McGuinness worked as a trainer for five years, developing courses and training various employees including contracts officers. Contracts officers are required to take ongoing, mandatory courses. These courses include contracting-level one and an acquisition (credit) card course.

[28] Ms. McGuinness's duties include overseeing the supervisors of contracts officers. The supervisors monitor the buyers for compliance. Ms. McGuinness described the *FAA* as the "overarching Act for all government transactions" with respect to procurement. She cited sections 32, 33 and 34 as the significant parts of the statute. In terms of other relevant legislation, she referred to the *Department of Public Works and Government Services Act*, S.C. 1996, c. 16; *National Defence Act*, R.S.C., 1985, c. N-5; *Sale of Goods Act*, RSNS 1989, c 408; and, the *Criminal Code*, RSC 1985, c. C-46. Overall, she described "very strict policies on procurement…there's a lot of policy around spending public funds." According to Ms. McGuinness, the objectives are to "enhance access, promote fairness, competition…to obtain the best value for the customer, the Crown, the Canadian people".

[29] On cross-examination she agreed that a contracts officer might handle 700 contracts in a year. She said that over time a buyer gets to know his customers' needs. She acknowledged that he would become familiar with parts requirements and the vendors who supplied the parts. A contracts officer would know which suppliers were reliable.

[30] Ms. McGuinness agreed that the Shearwater heating plant was old and has been subsequently replaced. On cross-examination, Ms. McGuinness agreed that the plant is an integral part of the Shearwater base and that parts would be required on an emergency basis.

[31] Ms. McGuinness denied that Shearwater had a different procedure with regard to s. 32 requirements. She said it was "incorrect" that Mr. Ross' supervisor told him he did not have authority to sign s. 32 forms. Ms. McGuinness said that by 2010 and later, Mr. Ross was signing s. 32 forms. She emphasized that "whoever signs that they have s. 32 authority is accountable for that authority". She said Mr. Langille did not have s. 32 authority. Ms. McGuinness did not know who had the responsibility for ordering heating plant parts.

[32] Mr. Ross' main customer was the Formation Contract Engineering Dartmouth (FCED) group which oversaw the Canadian Forces Base (CFB) Shearwater or 12 Wing heating plant. FCED had their own budget. Ms. McGuinness thought Mr. Ross previously worked on the tool crib at FCED so he was familiar with the unit. On cross-examination she agreed that his territory as a contracts officer extended to various sites; she believed that he looked after about 10 customer accounts and that he had "a pretty busy job".

[33] Ms. McGuinness spent considerable time going over exhibit 5, the Treasury Board documentation referable to the dates in issue. Ms. McGuinness stepped through the materials, providing explanations for the following key documents:

- Treasury Board policy objectives and policy statement;
- DND training materials inclusive of "Introduction to Contract", the 236-page manual for the course taught to buyers; and
- slides from the power point presentation included at the back of the manual.

[34] Ms. McGuiness reviewed the process to obtain a request for quotation (RFQ), invitation to tender (ITT) and request for proposal (RFP). The RFQ pertains to the matters in issue and Ms. McGuinness' evidence, although more detailed, was consistent with Ms. Doucet's. She stepped through the process whereby a buyer obtains bids, noting that the process is designed "so all suppliers are given equal opportunity". Ms. McGuinness reiterated that contracts officers are made aware of the policy objectives through their training. She said one of the "basic tenets" is to rotate their requests among the suppliers, which "helps the socio-economic health of the country".

[35] The standard process used is the "competitive contract". She explained that non-competitive contracts were only permitted for a "pressing emergency or security matter". Further, a buyer like Mr. Ross cannot authorize a non-competitive contract as the exemption criteria must be authorized "much higher up the chain", in writing from an Admiral or Base Commander.

[36] Asked about situations where there may be an exclusive product distributor, Ms. McGuinness said a "justification was required as to why a sole source". She elaborated that a sole source form would be required on the file.

[37] With the aid of exhibit 6, Ms. McGuinness went through the required steps for routine contracts prepared by contracts officers. She explained that purchases required:

- a generic, detailed description of the item;
- financial coding;
- s. 32 original signature;

- the location where the item is to be delivered; and
- the date when the item is to be delivered.

[38] The process should involve "a lot of back and forth between the buyer and the customer". Lack of communication could lead to vague descriptions; if customers receive the wrong item, it results in increased costs.

[39] The vendor who meets the criteria at the lowest price should receive the bid. Once a bid closes, requirements (such as a longer warranty) cannot be added without amending the entire bid process. She emphasized that contracts officers are not permitted to pick the better warrantied but more expensive item.

[40] Once the contract is awarded, the vendor and customer should receive a copy of the purchase order or contract. A s. 34 signature must be obtained to close out the system. Payment must be made and a s. 33 financial officer reviews the order and a cheque is issued or the charge is posted to an acquisition card. Ms. McGuinness said that it is unacceptable for vendors to have government acquisition card numbers on hand.

[41] Buyers are instructed to bundle their customers' requests. Conversely, splitting requests is counter to policy. In this regard, all like items are supposed to be placed together on one order. If they exceed $5,000.00, they must be sent to PWGSC.

[42] Prior to Ms. Doucet becoming the supervisor of the Shearwater cell in early 2011, contracts officers took turns in the position for a period of nine or 10 months. Earlier on in 2007, there was a compliance review of the Shearwater supply group. This resulted in all unit members, including Mr. Ross, being required to re-take contracting-level one.

[43] On cross-examination Ms. McGuinness said there was a meeting with Mr. Ross in 2008 and he was told about items which required correction. She agreed that the entire unit needed re-training.

[44] The contracting-level one course includes a conflict of interest component. To Ms. McGuinness' understanding, new hires sign a conflict of interest agreement. Contracts officers are not supposed to associate with vendors with whom they do business. In this regard, buyers must not benefit from transactions, nor should there be any such perception. Associating with suppliers is "absolutely forbidden". Ms. McGuinness said lunches should not occur unless in the case of a

business meeting and "okayed by chain of command". She added that "when our contracts officers are friends with our vendors we ask them to recuse themselves".

[45] On cross-examination Mr. McGuinness said she is not familiar with the Queen's Regulations and Orders (QR&Os) surrounding lunches. Further she was directed to the following paragraph in the section on conflict of interest:

> Another key area of concern regarding conflict of interest is the practice of accepting gifts or hospitality from vendors. This practice is restricted. Employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee.

[46] She said she interpreted "restricted" as having the same meaning as "forbidden". When shown the accompanying Defence Administrative Order and Directive (DAOD) it was pointed out that s. 5.3(b) is an example which reads:

> 5.3 The following are examples of items of a minimal value that may be accepted by a DND employee or a CAF member without written approval:
>
> …
>
> b. an occasional dinner or lunch at the expense of a contractor or foreign representative to discuss business or defence affairs, as long as the associated costs are reasonable;

[47] In response, Ms. McGuinness referred to the same document and the earlier referenced 5.2, which states:

> 5.2 In all other cases, a DND employee or CAF member, who is offered, individually or in a small group, a gift, hospitality or other benefit, may only accept it, without the written approval of an approving authority, if the gift, hospitality or other benefit meets all the following conditions:
>
> a. it is a minimal value;
>
> b. it arises out of an activity or event related to the official duties of the DND employee or the CAF member;
>
> c. it is within the normal standards of courtesy, hospitality or protocol;
>
> d. it does not compromise or appear to compromise in any way the integrity of the DND employee or the CAF member concerned or the integrity of the DND or the CAF; and
>
> e. the offer is infrequent in nature.

[*emphasis - Ms. McGuinness*]

[48] During the 2011 Christmas break Ms. McGuinness received a call at home from Ms. Doucet regarding "irregularities" . She went to the Shearwater location and examined the files with Ms. Doucet. Ms. McGuinness noted that "a lot of contracts with four specific companies all grouped in the same time lines and with the same customer". She added that there were "the same bid responses for these companies". A Registry of Joint Stock Companies check revealed that "the same person was involved in all four companies". In the result, she took her concerns to her manager, the military police were contacted and the investigation began. Ms. McGuinness gathered all of the files for the military police and prepared a report.

[49] Ms. McGuinness reviewed approximately 500 of Mr. Ross' files and "saw a lot of non-compliance over the span of the review". She said problems included a lack of required documentation within the files such as:

- s. 32 forms;
- customer requests; and
- quotes initiated by Mr. Ross.

[50] She said that with the majority of the files there was "non-rotation" of vendors. Ms. McGuiness recalled that many of the files revealed contract splitting and not the required bundling of goods into one contract. On cross-examination, she agreed that with contract splitting there has to be actual intent to bypass the authority level.

[51] Colonial, Robar, Harbourside and Atlantic were the repeat vendors with very few other companies referenced in Mr. Ross' files.

[52] Ms. McGuinness was asked about a procurement register and she said all contracts officers had to keep this "manual register" which recorded:

- the contract number;
- date;
- name of vendor;
- a brief description of the item;
- monetary value showing paid;

- the type of contract; and
- whether paid by acquisition card or invoice.

[53] She described the register as a "management tool" not to be shared with vendors, as it contained proprietary information that could provide competitive advantages to a vendor. Similarly, she said, vendors were not to be provided with government acquisition card statements.

[54] Later, exhibit 7 – "items seized at 31 Guysborough Road" – was introduced through Ms. McGuinness. This thumb drive contains Mr. Ross' contracts register, "a mandatory requirement that he keep records of all contracts he's done over time".

[55] On cross-examination Ms. McGuinness agreed that the contracts register is a printout of how much a company has sold to DND. She agreed that it shows what is ordered and the dollar values but does not reveal proprietary information, as the competitors are not listed.

[56] Through exhibit 3 (the thumb drive containing Mr. Ross' files), Ms. McGuinness provided a detailed review of the contracting process with reference to a standard purchase order. She pointed out problems with a purchase order prepared by Mr. Ross referable to a "120 v chemical tank agitator" which presented "a minimal description". Moving on to the transmission verification report (fax confirmation sheet), she explained how one could see it came from Shearwater because of the "SSG" code.

[57] Ms. McGuinness was taken through a significant sampling of Mr. Ross' files as contained within exhibit 3. She methodically reviewed the electronically exhibited paperwork, identifying a host of problems, including:

- missing s. 32 forms;
- unsigned s. 32 forms;
- customer requests replaced by forms completed by the Dawson Companies;
- vague or minimal product descriptions lacking sufficient details for a vendor to provide an informed quote;
- missing requests for quotations;

- government acquisition card authorizations (MasterCard authorization # 92634) repeated "over and over" on standard forms submitted by each of the Dawson Companies;
- numerous examples where an insufficient number of quotes were obtained, making the purchase "invalid";
- missing s. 34 forms from the point of delivery;
- facsimile transmissions with the annotations (identifying business code and fax number) "zeroed out";
- facsimile transmissions with missing pages (from what is indicated in the top right hand corner);
- customer request forms incompletely filled out or replaced by brief handwritten notes;
- various forms with photocopied signatures (when original signatures required);
- a lack of bid solicitations prepared "until far into the review … by 2011 we started seeing bid solicitation by Mr. Ross";
- no notification of receipt of quotes (i.e., absent fax annotations with date and time stamps)
- numerous instances of splitting orders to keep them under the $5,000.00 limit. Ms. McGuinness reviewed numerous separate contracts, issued at the same time or within minutes, involving "very closely related heating plant products"; she said these contracts "should have been combined and sent to PWGSC";
- examples of vendors returning their quotes after the bid closing time and having those bids accepted. Ms. McGuinness said they should have been considered "non-responsive as you are not allowed to consider that…a new process should have been initiated";
- bid solicitations which do not indicate the required availability date (as in the date by which the item is required);
- suppliers other than the Dawson Companies "rarely" seen;
- numerous examples of specific brands being requested. The standard approach is to use generic descriptions and if there is a deviation, a justification must be noted in the file. The files disclosed no justifications;

- a situation where one of Mr. Ross' amendments took an order up to $8,091.00 ("it's way over") when "he should have done a proper amendment and submitted to Public Works".

- forms which appear to have been "whited out". Ms. McGuinness said, "We've seen several with that appearance";

- situations where Mr. Ross awarded the contract to the highest bidder rather than the lowest bidder;

- quotes involving the Dawson Companies where the typed phone and fax numbers are scratched out and handwritten numbers appear in their place;

- examples where bids came in piecemeal on the same day and were awarded separately the next day when they "should have been bundled as one…they definitely should have been combined and submitted to Public Works";

- a situation involving quotes just under $1,000.00 being separately issued on one day when "they should have been combined to get the proper three quotes";

- a contract lacking the proper standard terms and conditions language; "it is somehow out of the PWGSC manual instead of Treasury Board…its truncated, not all there";

- documents received from Robar showing their fax number to be 902-461-9443 when the same file disclosed their actual fax number (on the fax transmission sheet) to be 902-461-5150, the Atlantic fax number (as per Atlantic's source documents and fax transmission sheets);

- numerous documents received from the Dawson Companies filled out in what appears to be the same handwriting, including the signatures purported to be of Mr. Dawson, K. MacDonald and M.E. Robar.

[58] While Ms. McGuinness acknowledged that she had not previously conducted such a "full extent" review of contracts officers' files, she said that, in past reviews, she had "never seen this before".

[59] Ms. McGuinness noted that the losing bidder is entitled to see the successful company's overall bid, but not the unit pricing. She said there is a "proprietary"

reason for the government's policy of "definitely not" sending out the losing companies' quotes to the successful bidder.

[60] Through her review, Ms. McGuinness determined that a large volume of Mr. Ross' contracts should have been sent to PWGSC for review. Conversely, there were "very few" situations where Mr. Ross sent files to PWGSC "as he should have". She went over one such example where Mr. Ross sent a contract of nearly $15,000.00 to the attention of a PWGSC contracts officer and included the proper 9200 form with the file. Contained within the file was a handwritten note (which she believed to be from Mr. Ross) stating "suggested source Atlantic Mechanical Technologies as per attached lowest quote". Ms. McGuinness said it is permissible for a contracts officer to suggest a vendor in this manner. She added that PWGSC would obtain one quote of their own in any event as per their policy for low-dollar value (under $25,000.00) contracts.

[61] On cross-examination she said that the PWGSC process for a contract of less than $25,000.00 proceeds "quite quickly". Ms. McGuinness said that it was her understanding that PWGSC would take a contract officer's recommendation (if any) and "verify" the suggested supplier and order.

[62] During Mr. Kidston's cross-examination, Ms. McGuinness was provided with three contracts (BX1 D4P, BX1 DDM and BX1 DGV) contained within exhibit 3. All three are in the $10,000.00 range and were sent by Mr. Ross to PWGSC. On the first example it was demonstrated that a competitor company, Omnitech, quoted, but that PWGSC awarded the contract to Atlantic, which had the best quote. On re-direct examination it was pointed out that Omnitech is the supply representative for the manufacturer of the part in question and that Omnitech's packing slip actually shows Atlantic's billing address.

[63] The second example demonstrated that PWGSC went with Mr. Ross' suggested source, Colonial. In any event, Ms. McGuinness went through the file noting problems with Mr. Ross' paperwork. She said PWGSC still had the authority to award the contract "because they are responsible to do their own bid solicitations…they're responsible for their own rules and procedures".

[64] The third example similarly showed a situation whereby PWGSC went with Mr. Ross' recommendation and Atlantic was the successful bidder. When it was pointed out that "every time Mr. Ross suggested a supplier, PWGSC awarded the contract to his suggested source", Ms. McGuinness refused to acknowledge that PWGSC would have been happy with the quotes. She maintained that "they

[PWGSC] would have contacted the customer to do their own quote as they are required to do."

[65] Ms. McGuinness was also shown Mr. Ross' acquisition card statements for May 2008, 2009, 2010 and 2011, along with his acquisition card statement from April 2012. These revealed a small percentage of purchases from the Dawson Companies. It was pointed out through re-direct examination, however, that the statements do not reveal whether the line items are purchases for the heating plant.

[66] On cross-examination Ms. McGuinness agreed that the cell where Mr. Ross worked was a busy unit on account of the dated heating system. She conceded that the heating plant required repairs on a regular basis, and that it was "not in the best of shape". On re-direct she stated that the Halifax plant was similarly dated.

[67] She agreed that parts were difficult to obtain as the equipment was no longer being manufactured. It was suggested that the customers would use "shorthand" when ordering parts and that everyone would know what was meant. She responded, "I've seen customers submit, but that's not where it would have stopped", suggesting the buyer should add descriptors. She agreed that a customer might advise the contracts officer that they had checked directly with a particular vendor about a part; however, she said the contracts officer should require a formal request.

[68] On cross-examination she acknowledged that each company is given a separate supplier identification number and regardless of where the fax came from, the supplier number is indicated.

[69] Within one file was an email that Mr. Ross sent to Atlantic, Colonial and M.E. Robar asking for price availability of parts. Ms. McGuinness addressed this by stating, "He's telling the companies to go to Mr. Naugle (Wayne Naugle, a s. 34 customer at the Shearwater heating plant) when that's not correct". She added that it was "not okay" to send out such a "mass email, they're supposed to be sent out individually…they shouldn't see what other values are being solicited".

[70] On cross-examination Ms. McGuinness said she was familiar with the term "March madness" as referring to spending of budgets by the end of the fiscal year. She agreed that this could be a hectic time with contracts officers receiving a large number of requests.

THE DND HEATING PLANT EMPLOYEES

James Rumley

[71] Mr. Rumley retired in late 2013 after 33 years with DND. During the 2008 to 2012 period he was maintenance supervisor of the entire Dartmouth operation heating plants, including Shearwater. His direct supervisor was Wayne Langille. Mr. Rumley had s. 32 authorization; he said, "If I needed a part I could submit a request for the part". He added that he would first check with Mr. Langille to see if there were available funds for the purchase. Later during his direct examination, when shown specific s. 32 forms, Mr. Rumley qualified his earlier testimony by stating that he did not have authority to sign for s. 32.

[72] Mr. Rumley described the heating plant during the time leading up to his retirement as "on its last legs". He gave detailed evidence regarding the sizes and types of boilers at the Shearwater heating plant and satellite locations. Mr. Rumley described a "very busy" routine involving the completion of safety reports and log entries. He spoke of how major repairs would require immediate attention, while regular maintenance could be scheduled on a non-urgent basis. He would appraise the situation and run it by the shift engineer.

[73] On cross-examination Mr. Rumley agreed that the heating plant had a relatively high PSI, as it "had to be capable of handling 250 pounds of pressure". He went over the layout of the Shearwater base, recalling the numerous facilities requiring heat. Mr. Rumley explained that the pipes run through underground tunnels. He acknowledged that "a large number of satellite boilers needing constant care and attention, requiring repair on a regular basis".

[74] Mr. Rumley described the process for ordering parts. He would note the part number and call for a quote. At the time he would obtain one quote by calling "Mr. Dawson's company … I had Harold's telephone number, I just called his company number I should say". He thought the company was called "Atlantic Measuring Tech". He said Mr. Dawson owned another company, "Harbourside or Harbourview". When asked about other vendors, he recalled Doug Doyle and Kevin Brennan but said he did not see them often. He said other companies were Schooner and Acklands-Grainger, but said they supplied clean-up supplies rather than parts. He did not deal with Kim MacDonald or Melanie Robar, nor did he know of these individuals.

[75] Mr. Rumley elaborated that he played on a hockey team with Mr. Dawson in the mid-nineties. Mr. Dawson was then a DND employee working at the Shearwater heating plant. In any event, Mr. Rumley reiterated that he would

(only) call Mr. Dawson and "it could have been suggested to me by my boss, Mr. Langille". He said Mr. Dawson was for a time frequently around the plant but then for a period of time – perhaps 2008 to 2010 – "I don't know why, we hardly saw him."

[76] Mr. Rumley said that when he called Mr. Dawson, he would provide a telephone response. Mr. Rumley would then "make the request to Mr. Ross, we'd get a quote, he'd request it, not me".

[77] Mr. Rumley recalled signing packing slips "usually when I went to Mr. Ross' office … all different companies, all mixed together and I'd just sign". He did not have s. 34 authority and did not have a s. 34 stamp. At this point Mr. Rumley was taken through a number of contracts within exhibit 3 (BX1 FRA, BX1 FVH, BX1 A28, BX1 BHS, BX1 B2C and BX1 BTA) and testified:

- that he "probably" signed the packing slips in Mr. Ross' office;
- that various of the order forms (s. 32) had his signature but that it looked as though his signature had been photocopied over and over;
- that much of the other writing on the FCED Maintenance Order Sheets or notes (above his signature) was not in his handwriting;
- that the note that should be attached to his request describing details about the part was not present;
- that while several of the contracts involved Colonial, he had no recollection of dealings with K. MacDonald, the person who signed for Colonial; and
- that parts that could only be required for the main heating plant appeared on orders for other locations.

[78] On cross-examination Mr. Rumley said he signed s. 34 slips on "a lot of occasions". He agreed he would look through the slips before signing. He agreed that if he could not recall a part having been ordered, he would check at the heating plant to see that the part was there and then sign.

[79] Mr. Rumley never signed blank documents or authorized anyone to order parts under his name. When shown specific contracts, he denied ordering parts where his signature appears; e.g., "I've ordered turbine pumps but not like that, no, I don't recognize any of that stuff". He said he had never asked Mr. Ross not to go

through PWGSC. On cross-examination Mr. Rumley said he sometimes observed Mr. Langille on his computer ordering parts for the heating plant.

[80] Mr. Rumley stated that parts were usually delivered to the logistics warehouse (building 130) and it would take three to four days for the parts to be trucked from there to the requested location. Smaller items could be picked up once the paperwork was processed.

[81] It was Mr. Rumley's recollection that outside contractors like Darr Welding & Fabricating Ltd. (Darr) or Advanced Energy Management Ltd. (AEM) would either supply their own parts or draw from DND's inventory.

[82] Mr. Rumley was taken through a number of specific heating plant products (and shown pictures of many of them) in order to determine how many would likely have been required during the relevant years. His answers generally demonstrated the plant's ongoing requirement for voluminous parts to keep the aging system up and running. With three exceptions, Mr. Rumley explained that the high parts demand was likely warranted. The first exception was with respect to three Palmer Wahl thermal imaging cameras purchased in February 2011. He did not order or receive one and the only one he could recall was under lock and key in a cabinet located in Mr. Langille's office. The second exception concerned 11 Fisher pilot control valves ordered between 2009 and 2011. Mr. Rumley thought that he replaced "all four of them" between 2008 and 2012. He felt that 11 was too many, as "they don't go that quick". Finally, with Mercoid temperature oil switches, Mr. Rumley explained that eight are required for the four heating plant boilers but that 35 such switches purchased over four years "seems like a real high number".

[83] On cross-examination, Mr. Rumley said the heating plant had over 500 different sizes and types of valves and more than 115 gauges. He said they were "constantly" under repair. He said there were times when they could not wait days for a part. He said there could be up to 500 valves kept in storage. He described several storage areas and said that the heating plant storage area was "wide open", such that parts could be accessed without his knowledge.

[84] At the conclusion of Mr. Bright's cross-examination of Mr. Rumley he introduced exhibit 15, a voluntary statement Mr. Rumley provided to (then) MCpl. Springstead on August 10, 2016. The statement was given by Mr. Rumley at his home between 11:15 a.m. and 1:30 p.m. After listening to his statement (and following along with a transcript), Mr. Rumley adopted it as accurate.

[85] During his questioning, MCpl. Springstead read a list of approximately 53 separate items ordered for the heating plant between April 1, 2008, and May 9, 2012. One after the other he asked Mr. Rumley if he had "seen, received or installed" the given item. Mr. Rumley replied to several of the parts identified by saying that he could not be sure and that the question should be put to one of the heating plant stationary engineers. For the parts that he felt that he could speak to, Mr. Rumley generally answered to the effect that the amount ordered over the four period did not seem out of line. The only exceptions were as follows:

- 29 Asco solenoid valves – "29, I don't know, I had to replace five";
- 24 Neptune piston pumps – "no, I might have replaced one or two";
- 15 positive displacement oil transfer pumps – "I replaced four".

[86] When giving his statement, Mr. Rumley was also provided with a list of items to review and provide comment. However, he did not respond with anything of consequence, suggesting that "…some of this stuff, you'll have to go to the steamfitters with".

[87] On re-direct examination, Mr. Rumley said steam and oil valves are interchangeable. He said that if something in the plant was broken he required the steam engineer's permission to order a part. He added that he did not write in the logs at 12 Wing Shearwater and the satellite locations; this was done by the shift operator.

Mark Shears

[88] Mr. Shears works as DND Windsor Park heating plant manager. He started his career as a shift engineer at the Shearwater heating plant in September 2011. Accordingly, his testimony focussed on the period from September 2011 until May 2012.

[89] As shift engineer Mr. Shears worked day and night shifts, one week on and the next off. His direct supervisor was Mr. Langille and he said they had "a work relationship…he was always pleasant". He observed that over the approximately eight-month period he did not see Mr. Langille very often but that he was available by phone. Mr. Shears worked with other shift engineers and Mr. Rumley. He did not have contact with the contracts officers and only knew Mr. Ross by name.

[90] As shift engineer Mr. Shears "monitored the boilers, kept the bunker oil at the correct temperature, watched the steam flow and was mindful of the power bumps". He did regular rounds throughout a shift until the "summer shutdown" which took place from mid May until October.

[91] Mr. Shears described the heating system to have been in "fairly poor shape", and "pretty much on its last legs". He said the boilers were dirty but that they did not blow soot to clean them. Overall, he described "breakdown maintenance" – when equipment breaks, it is replaced – as opposed to "preventative maintenance". Mr. Shears did not carry out repairs; they were left to Mr. Rumley or outside contractors. He recalled AEM looked after instrumentation and combustion controls. Darr was hired to do bigger projects such as water pump pressure maintenance. He was present at times when the contractors came on site and recalled that they mainly used their own parts for repairs.

[92] Mr. Shears said there was a stock supply at the heating plant and on cross-examination recalled a main room (perhaps 25' x 50') and approximately four other storage areas. Mr. Rumley was in charge of the stock. To Mr. Shears' understanding, an inventory was not kept.

[93] Mr. Shears said that vendors would fairly regularly attend at the heating plant. He recalled representatives from State Chemical, Mega-Lab Manufacturing Co. Ltd., Brody Chemical and Process & Controls Industries Ltd. (P&C). When he encountered vendors on the floor they would typically be looking for Mr. Rumley or Mr. Langille. Mr. Shears did not carry out purchases. He occasionally signed for daytime stock deliveries to building 30. He does not know of any of the Dawson Companies.

[94] Ms. Shears was shown approximately 15 photographs of equipment within the heating plant, as well as a diagram of the soot blowing process and an article about a Palmer Wahl thermal imaging camera. With respect to the latter, he said he had never used such a device. As for the soot blowing process, he reiterated that this was not done at the Shearwater heating plant. He added that the soot blower valve assemblies were not replaced and when he was referred to one having been ordered in November 2011 and two in December 2011, he said he never saw the devices delivered and would not have expected them.

[95] On cross-examination he said he was familiar with the plant standing orders which would have included blowing soot. He agreed it was not abnormal to blow soot and that the bunker oil they received was "miserable". He acknowledged the

poor quality fuel clogs pipes and generally causes wear and tear. He said the lower grade bunker oil was hard on control valves.

[96] With respect to the photographs of the various parts, Mr. Shears could not offer much as he was generally unsure about parts durability and when items may have been replaced.

[97] On cross-examination, Mr. Shears said he did not keep track of the deliveries to the heating plant. He recalled Darr was contracted to do repairs, including valve replacement, but that he did not observe them during all of their time at the plant.

Gary Hanrahan

[98] Mr. Hanrahan is retired from his job as chief engineer of the Bedford Magazine heating plant. Although the Shearwater and Bedford plants were separate, Wayne Langille was Mr. Hanrahan's Manager. In October 2012 Mr. Hanrahan filled in for the better part of a heating season when Mr. Langille left his position at the Shearwater heating plant. He confirmed that the Shearwater plant has a much larger steam capacity than the Bedford Magazine.

[99] Mr. Hanrahan knows Mr. Rumley as they regularly discussed issues and Mr. Rumley occasionally carried out repairs at the Bedford Magazine. As with Shearwater, the Bedford Magazine heating plant ran on bunker C heavy crude oil.

[100] Mr. Hanrahan relied on Darr or AEM to do larger repairs at the facility. For smaller jobs they did their own maintenance.

[101] When he worked at Shearwater, Mr. Hanrahan saw the Palmer Wahl device in Mr. Langille's office. He did not use heat seeking imagers at Shearwater or Bedford. While at Bedford, he never received a Fisher Control pilot valve from Shearwater. If he needed burner nozzle assemblies or ABB bunker oil meters, he ordered them from Doug Doyle at P&C. AEM had the contract to supply Mercoid temperature switches at the Bedford Magazine. Mr. Hanrahan never ordered AMT differential gauges for Shearwater or Bedford.

[102] Mr. Hanrahan had a DND credit card and a limit of $5,000.00 per month to purchase required parts. He kept a ledger, and turned in receipts and a month-end statement to Mr. Langille. If Mr. Hanrahan required a part exceeding $1,000.00, he would contact Mr. Langille and put in a work order requiring his approval.

[103] On cross-examination Mr. Hanrahan was referred to his November 7, 2016 statement. He agreed that he said there would have been a number of times when he would have engaged in trading with other plant engineers. In this regard, he admitted that on one occasion when he needed to buy paint and his monthly acquisition card was maxed out, he asked another plant chief to put it on his card and he would owe him. Although he admitted to doing this a number of times in his statement, Mr. Hanrahan was adamant that this only happened "at one point…no sir, I never made a practice of that".

[104] On cross-examination Mr. Hanrahan said it was normal to blow soot and that the process was generally done at night. He described the bunker C oil as a heavy fuel, hard on seals, pumps and burner tips.

Gary Allen

[105] Mr. Allen is a civilian employee of the Halifax base. Between the summer of 2010 and spring of 2011 he was in charge of the plumbing for the Halifax and Dartmouth bases.

[106] In July 2010 there was a problem with water pressure at the Bedford Magazine. Mr. Allen determined that the pressure reducing valves needed attention and a decision was made to obtain quotes. The valves in question were manufactured by Singer and Mr. Allen knew that Omnitech was the only local supplier who carried the Singer line. He determined that a sole source justification was required and received two quotes from Omnitech dated August 30, 2010. Mr. Allen was shown the quotes – both with respect to Singer parts – and his handwritten note stating, "One quote. Omnitech are the supply reps for Singer". He said the contracts officer who "bought the items" was Bry'n Ross.

[107] Mr. Allen noted that the order was not promptly received so he went to Omnitech in Burnside Industrial Park to find out what was going on. Omnitech had an order but it had not been paid for. In any event, he examined the parts and determined that they were not all there. He said the parts were received by Omnitech "but came through a different wholesaler out of Ontario". Some time later, Mr. Allen received a call from "someone in Shearwater" advising that the parts were in. He examined the box and everything was there, but there was no packing slip.

[108] On cross-examination Mr. Allen said he was familiar with "March madness"; it meant that "…anything bought and paid for has to be by March 31st". He did not know if a lot was spent during this time of year.

Michael Myatt

[109] Mr. Myatt is a shift engineer at the Shearwater heating plant where he has worked for 30 years. Between 2008 and 2012 he worked 12 hour shifts such that he worked only four days a month at the plant. His job mainly involved working in the control room monitoring the boilers. He described the heating plant during the material time as being in "pretty bad shape". Mr. Myatt did small repairs but noted that most repairs were left to Mr. Rumley or the outside contractors, Darr or AEM.

[110] Mr. Myatt reported to his supervisor, Wayne Langille. He said Mr. Langille was a "good boss". Mr. Myatt did not have any interaction with any of the buyers including Mr. Ross.

[111] He described Mr. Dawson as a friend. He said they had worked together for a few years at Shearwater. Mr. Dawson was an assistant shift engineer who left DND to start his own company. Mr. Myatt knew the company was called Atlantic. He had never heard of the other Dawson Companies.

[112] Mr. Myatt said both Darr and AEM "as far as he knew" provided their own parts when they carried out repairs. He said there were heating plant parts kept in storage and Messrs. Rumley and Langille were in charge of the stock. Mr. Myatt occasionally saw vendors on the plant floor who were invariably put in touch with Mr. Rumley or Mr. Langille.

[113] Mr. Myatt was shown the same materials reviewed by Mr. Shears. Through questioning, Mr. Myatt was provided with more specificity about the amounts of equipment (from exhibit 3) supplied to Shearwater by the Dawson Companies between 2008 and 2012. Mr. Myatt's responses may be distilled as follows:

1. 44 burner tips – "It seems high";
2. 30 burner nozzle assemblies – "Some, not that many, a dozen at least";
3. Six ABB bunker oil meters – "I know they've been replaced but I can't give you the date, I assume AEM installed them, we couldn't install ourselves…there was one for each boiler";
4. Five Kent oil meters – "It looks like a thermal coupling and not a meter. We would have used four. One for spare, maybe";

5. 11 Fisher control valves – ¾" connection – "Several, half a dozen oat least…I really don't know…not that many, no";
6. 35 Mercoid temperature oil switches – "Not that many, no, they weren't changed very often, that's something that could last a couple of years, I couldn't see that many;"
7. 13 soot blower lances – "No use for those…no maintenance done to those parts between 2008 and 2012;"
8. 11 AMT Fisher Differential precision gauges – "There would have been one on each boiler for the feed water…I haven't replaced or serviced over the years…I've never seen that many"; and
9. Palmer Wahl HS1300 thermal imaging camera – "We didn't use them, I didn't see them in the plant".

[114] On cross-examination Mr. Myatt acknowledged that other shift engineers may discard burner tips more often than he does.

[115] Mr. Myatt agreed that he did not do much repair work. He was occasionally present over the years when deliveries were made to the plant. Mr. Myatt agreed that equipment was delivered in crates and he did not examine the contents or what was kept in storage. He said the plant received "bad oil" and that it was hard on the equipment.

Colin Smith

[116] Mr. Smith is a DND shift engineer at the Halifax dockyard. Between October 2008 and May 2013 he worked in the same position at Shearwater. He described his job as monitoring the operation of the boilers. His shifts translated into seven days per week.

[117] Unless there was an emergency, Mr. Smith did not order parts. That task was left to Mr. Rumley. Major repairs were carried out by Darr or AEM and they supplied the parts. Mr. Smith knows Mr. Dawson, as Mr. Dawson would come to the plant on occasion. He does not know the names of Mr. Dawson's businesses.

[118] Mr. Smith was taken through the photographs and materials shown to Messrs. Myatt and Shears. He responded to the nine items as follows:

1. 44 burner tips – "I didn't see that many going to Shearwater…maybe about a dozen";

2. 30 burner nozzle assemblies – "I don't recall seeing that many, I would say maybe half a dozen";
3. Six ABB bunker oil meters – "Never replaced one when I was there. I think one [was replaced] just before";
4. Five Kent oil meters – "I don't recall any being replaced or new. I believe it would be AEM" [who would do the install];
5. 11 Fisher control valves – ¾" connection – "I recall one replaced, specifically, but there could have been 2 or 3 but not [referring to the 11] that many";
6. 35 Mercoid temperature oil switches – "For the Shearwater heating plant those numbers seem high;"
7. 13 soot blower lances – "No soot blowing at Shearwater;"
8. 11 AMT Fisher Differential precision gauges – "I don't recall any during that time frame"; and
9. Palmer Wahl HS1300 thermal imaging camera – "I don't recall using it myself but I know we had one in the plant…it was kept in the Chief's office but I don't recall where it was purchased or anyone using it".

[119] On cross-examination Mr. Smith agreed that the parts could have been used at the several other satellite locations where boilers were present. He acknowledged that he could not speak to the requirements of the other plants.

[120] Mr. Smith said that from time to time the plants borrowed parts from one another. Stock was not inventoried and there was no formal stock monitoring.

[121] Mr. Smith recalled Shearwater got "bad oil" on multiple occasions. He said crud in the oil affected strainers and burner tips.

Paul Negus

[122] Mr. Negus is chief operating engineer at the Naval Assessment Depot (NAD) in Dartmouth and satellite locations. He has been in this position since early 2013. Prior to this he worked at the Halifax dockyard for six years and at Shearwater from 2002 until 2007. His first position with DND heating plants was in Windsor Park, where he worked from 1991 until he moved to Shearwater. From

the time he started until 2013, Mr. Negus' supervisor was Wayne Langille. They were on good terms and often hunted together, along with a mutual friend.

[123] Mr. Negus knows Mr. Dawson dating back to the time when Mr. Dawson worked for DND in the Shearwater heating plant. He recalled that Mr. Dawson later started a company and sometimes came into the plant to meet with Mr. Langille. Although he did not have a business relationship with Dawson, he knew Mr. Dawson's business supplied valves and other products to Mr. Langille.

[124] Mr. Negus said he did not obtain purchasing authority at NAD until May 2013 after he took the required *FAA* courses. He said he recently purchased a thermal imaging camera but previously there was no requirement for the device.

THE DAWSON COMPANIES COMPETITORS AND/OR SUPPLIERS

James Quigley

[125] Mr. Quigley is the owner/operator of Omnitech located on Akerley Blvd. in Dartmouth. Since 1990, Omnitech has been a manufacturer's representative in Atlantic Canada for the makers of valves, controls and instrumentation. Mr. Quigley named five parts manufacturers that they exclusively supply in Atlantic Canada, including Singer Valve, a British Columbia-based company. DND is included within Omnitech's client base. Mr. Quigley knows Mr. Langille and Mr. Ross through doing business over the years. On cross-examination Mr. Quigley said that although he did not attend at the Shearwater heating plant, "I would hope they [outside sales representatives] would visit but I can't confirm".

[126] Asked about price mark-up, Mr. Quigley preferred the term "margin". He said that Omnitech generally applied a price between 1.4 and two times their cost. For parts for which Omnitech was the exclusive supplier, they tended to charge more. He said Omnitech's pricing was the same for government and the private sector.

[127] Mr. Quigley was shown two August 30, 2010, quotes that Omnitech prepared for DND in relation to various Singer valves. These were the same quotes touched upon by Gary Allen during his testimony and Mr. Quigley confirmed that they pertained to pressure reducing valves at the Bedford Magazine. He said that after he issued the quotes to Mr. Allen, another distributor (Syntec, the Singer valves manufacturer representative based in Ontario) notified Omnitech that they had received an order for the same parts. Mr. Quigley elaborated, "Out of

good faith they went to us…the project was in our area". After Mr. Quigley determined that Atlantic had ordered from Omnitech's Ontario counterpart, Omnitech contacted Atlantic and agreed to supply them with the parts at the same price originally quoted by Syntec. Omnitech then ordered some of the parts from Singer and supplied the rest from their inventory.

[128] Mr. Quigley reviewed further documents in exhibit 3, and Omnitech's complete file in relation to the matter was introduced as exhibit 30. Although Omnitech initiated the conversation with Atlantic, Mr. Quigley noted that it was not from Atlantic that Omnitech subsequently received a request for quotation. Rather, on October 8, 2010, Mr. Ross requested the quote and Omnitech responded on October 12th. Mr. Quigley said they received the parts from Singer in early January 2011, and that they "had all kinds of issues with that order, some had to be returned…there was confusion on parts and numbers ordered…the files are very thick…most of ours aren't…a lot of notes, a lot of challenges, back and forth". On cross-examination he said it was his understanding that the order from DND was "to clean up whatever went on with Atlantic".

[129] He referred to a February 15, 2011, packing slip to Atlantic and a credit for return of the goods to Atlantic, along with a 40 percent re-stocking charge. Mr. Quigley noted that there were cheques in the file payable to Omnitech from Atlantic (January 12, 2011, for $6,408.00) and DND (November 3, 2011, for $6,327.30).

[130] Mr. Quigley said there was a July 19, 2011, PWGSC order with the regular conditions attached for the parts. The order was delivered and it included the parts originally ordered by Atlantic.

Patrick Gates

[131] Mr. Gates is 85 years old and five years retired from CTH Instruments. Mr. Gates was part-owner and vice-president of CTH, a competitor company to the Dawson Companies. CTH supplies steam heating parts and one of their main clients is DND.

[132] Mr. Gates explained that during his time with CTH they would bid on required parts for steam heating plants. DND would request parts by phone or in writing. He recalled supplying Shearwater perhaps eight to 10 years ago. He said that after receiving "ongoing business" from Shearwater he noticed that things changed "around 2010-2011, I can't specifically remember". After that, there was

a lack of business from Shearwater. Mr. Gates did not know why this occurred and was not sure if anyone within CTH approached DND as to the reason for the decline.

[133] On cross-examination he clarified that CTH did not sell to Shearwater between 2008 and 2012. He has not met Mr. Ross and did not know if any of the eight CTH employees had met him. He agreed that over the years he visited customers and introduced himself.

[134] In the spring of 2012, Mr. Gates was contacted by Sgt. Thompson and asked if he would provide quotes on seven items. With the aid of exhibit 4, Mr. Gates reviewed the quotes he provided. He explained that the quotes were based on the (then) current (March 1, 2012) prices and he "penciled in a price for earlier", referring to his price estimates for the seven items dating back to 2008. He said that steam plant parts generally increased by three to five percent per year, which was reflected in his numbers.

[135] On cross-examination Mr. Gates said he did not seek clarification regarding specifics when quoting on the contracts. He thought the quotes he provided on a control valve had a 20 percent mark-up; he could not recall Sgt. Thompson saying anything about mark-ups. He acknowledged that some of what he quoted on may not have been in stock and that customers sometimes regarded delivery time as being more important than price.

[136] Mr. Gates stated that another item he quoted on, a solenoid valve, is made by several manufacturers and that there are various types. On cross-examination he agreed that he was not asked for anything specific as Sgt. Thompson "was only interested in price".

[137] Mr. Gates said that when CTH bid, they had no idea of their competitors' bids. Asked about mark-ups, he said they depended on the product line. He elaborated that they would calculate their cost and add a percentage; with the government, this "could be 20 to 25 percent".

[138] On cross-examination Mr. Gates agreed that he provided the police with a videotaped statement on May 29, 2018. He said CTH was the exclusive dealer for different lines within Atlantic Canada, the Maritimes, Nova Scotia or Halifax. Over time the cost of products varied on account of various factors including exchange rates. Mr. Gates agreed, however, that "prices don't go down". Mr. Gates added that CTH sold products "for the price we wanted, within reason". He

said mark-ups were entirely within his discretion and he believed this to be the case with competitor companies.

[139] During cross-examination, Mr. Gates said that when dealing with the government, delivery time was sometimes important. He agreed that it was expensive to keep items in stock and that CTH "doesn't like to keep a whole bunch on hand". He agreed that there are a variety of steam traps on the market and that the ones sold by CTH "normally" had a one year warranty. Mr. Gates explained that steam traps varied in terms of the boiler pressure under which they can function.

[140] On re-direct examination he said he did not call on Shearwater but that another CTH employee would have. He stated that pricing was at the discretion of the supplier when participating in the bidding process.

Doug Doyle

[141] For 30 years Mr. Doyle has been the owner/operator of P&C. A "father and son" business, P&C primarily sells industrial valves to various sectors within the Maritimes. He said the company represents about five manufacturers but that they sell in the order of 100 manufacturers' products.

[142] Mr. Doyle described DND as "a very big customer of mine over the years". Between 2008 and 2012 he did business with numerous DND heating plants, including Shearwater. He dealt with Shearwater's Wayne Langille, the Dartmouth Annex's Walter Regan and Stuart Andrews at the Bedford Magazine. In addition, the Bedford Magazine's engineer Gary Hanrahan often called Mr. Doyle to obtain quotes. Mr. Doyle said he had a "fantastic" relationship with Mr. Regan. On cross-examination he could recall over the years only having one lunch with Mr. Regan. He added, however, that at Christmastime, "I always made a habit to provide a gift to DND's chief engineer at the Dockyard and Annex, Walter always got a gift from me". He added that the Dockyard represented his "biggest piece of business".

[143] Mr. Doyle knew buyers at Shearwater including Mr. Ross, whom he mostly dealt with over the phone. He often saw Mr. Langille in person to quote on equipment. Mr. Doyle described "consistent" business with DND over the 2008 to 2012 period. He added that business with Shearwater during this time period was "normal".

[144] Mr. Doyle knew of Mr. Dawson. He said, "Harold ran Atlantic, the odd occasion I'd sell or buy from him, I had one or two dealings with him, he represented Bestobell".

[145] Mr. Doyle was asked about profit margin and he replied, "We aim for 25 percent mark-up. If we're forced due to competition…I won't go below 20 percent". He elaborated that today he generally gets 25 to 28 percent mark-up.

[146] Mr. Doyle said between 2008 and 2012 he spoke with Mr. Ross two to three times a week over the phone. He said Mr. Ross would ask for his best price and he would respond with a faxed or occasionally hand-delivered quote. He added, "There was a time Bry'n asked me for a price and I told him, I'm not the agent. He said that's fine, give me the price". On further questioning Mr. Doyle made several remarks about these situations: he said, variously, "I knew I was not getting the order"; that he "vaguely" thought Mr. Ross was telling him how to price the product,"; "I seem to think a Bestobell product, I'm almost positive"; and "I'm helping the man out, I know I wasn't getting the order…he's calling me two to three times a week and buying, he's a customer buying from me all the time". Mr. Doyle said that through his dealings with DND he "always knew that if over $1,000.00, the government needed three prices unless a sole source purchase".

[147] He said he had one experience being a sole source with DND during Operation Desert Storm where they required a large number of expansion joints. He thought that he "possibly" dealt with Mr. Ross on this occasion. There were other occasions when a particular manufacturer's part was needed on a government purchase over $1,000.00; he was required to submit a letter stating P&C was the only representative of the manufacturer in Nova Scotia.

[148] Mr. Doyle was referred to a July 14, 2008, P&C quote for Fisher pressure reducing valves to DND which he hand-delivered. He said that he did not provide the quote to Mr. Dawson and it should not have been found at a competitor's residence. He said the same thing about a May 25, 2009, P&C quote to the attention of Bry'n Ross.

Nikola Hribar

[149] Mr. Hribar gave evidence via videolink. Based in Montreal, he has been President of Bestobell Aquatronix since 2014. From 1999 until 2014, he was sales manager. Bestobell is a distribution company for industrial controls and instrumentation.

[150] Between 2008 and 2012 Bestobell's representative in Atlantic Canada was Atlantic. Mr. Hribar knows Harold Dawson, Darren Mossman and "Melanie", a woman who he said worked in Atlantic's office. He did not deal with Colonial, Harbourside or Robar.

[151] Bestobell applied a 20 to 40 percent profit margin to its products, with the "typical" margin being 30 to 35 percent. The company sold to their representative companies at a 20 to 30 percent discount; i.e., they would get 20 to 30 percent off the 35 percent mark-up. Bestobell would ship goods to Atlantic and invoice them. Atlantic would have 30 days to pay and generally paid by cheque, never cash.

[152] Mr. Hribar was asked about a Sterlco pump and motor assembly that Bestobell supplied to Atlantic and confirmed the condensate motor could be a single or three-phase. He said the single phase motors were less expensive than the large three-phase condensate motors.

THE SHEARWATER HEATING PLANT OUTSIDE CONTRACTORS

Wayne Ross

[153] Mr. Ross is the owner/operator of Darr. Darr provides welding and mechanical services to various clients including DND. Between 2000 and 2012 Darr had "standing agreements" with DND. Exhibit 31 – Supply and Services Canada Call Up Against a Standing Offer between Darr and FCED – was introduced through Mr. Ross.

[154] When providing parts, Darr applies a mark-up of up to 10 percent. Darr sources parts from different companies, but mostly from P&C. Mr. Ross is familiar with Atlantic and said he used the company as a supplier "a little". He knows Mr. Dawson but said he had not dealt with him since 2008.

[155] Mr. Ross reviewed exhibit 31, noting that the five-page document included an August 5, 2008, quote from Atlantic to Darr for six chemical pumps. He also touched on Atlantic's October 1, 2008, invoice to Darr. He noted that there was a posted cheque confirming Darr paid Atlantic. Mr. Ross said he contacted Atlantic for the pumps because he "knew they had a history of doing work there and supplying product, they had a relationship. They were already in there. It seems with DND they had a group in there…I knew he supplied product to DND. I talked to Jim Rumley. He probably mentioned the name, its probably how I found out".

[156] Mr. Ross said that between 2008 and 2012 his company did not install or replace soot blowing lances at Shearwater.

Scott LeBlanc

[157] Mr. LeBlanc is project manager of AEM. The company employs approximately 80 people and part of their work involves servicing DND boilers. Beginning in 2009, Mr. LeBlanc coordinated services at Shearwater, DND and the Bedford Magazine. The process involved receiving a call, investigating, providing an estimate and performing the repair work. Mr. LeBlanc did not personally do repairs; he went over the technical requirements with the service technician and provided an estimate to the DND contracts officer.

[158] From time to time Mr. LeBlanc went to Shearwater with the technician to examine a situation. He periodically met with the chief engineer to discuss preventative maintenance. AEM almost always supplied the repair parts. He was not aware of the heating plant maintaining any stock for AEM to draw from. He reviewed an AEM-generated Excel spreadsheet for the 2008 to 2012 period at Shearwater (exhibit 39) demonstrating that for the approximately 50 work orders, roughly five percent involved installing parts supplied by DND. AEM purchased parts from various suppliers and applied a 10 percent mark-up. On cross-examination he agreed that AEM's standing offers with DND limited the mark-up to 10 percent. For plants not owned by DND, AEM applies a different mark-up.

[159] Mr. LeBlanc said that during the 2008 to 2012 period it was known that a new heating plant would be built at Shearwater. On cross-examination he agreed that it was an old plant coming to the end of its life and required more repairs than a modern plant. He noted there were "sometimes" emergencies at the Shearwater heating plant but that this was not the norm.

GATHERING THE EVIDENCE

Master Corporal Bassel Sabalbal

[160] In the spring of 2012 MCpl. Sabalbal was with the military police. He was part of the search warrant execution team that searched the residence of Wayne Langille at 16 Glenwood Avenue in Dartmouth on May 9, 2012. He was the exhibit officer and set up at the dining room table of the residence. Several exhibits were introduced through MCpl. Sabalbal, including the search warrant and thumb-drive containing all of the documentation seized at 16 Glenwood.

[161] MCpl. Sabalbal went through the exhibit log he kept that listed all of the items seized by Lieutenant Bolduc. A $1,240.00 cheque written on Atlantic's HSBC Bank of Canada account was highlighted. The cheque, payable to Wayne Langille and signed by Mr. Dawson, was dated March 9, 2011. On cross-examination MCpl. Sabalbal agreed that there is no stamp on the cheque and it does not appear to have been cashed. He agreed that the seizure date was well after the six-month stale date period.

[162] MCpl. Sabalbal was referred to an Atlantic cheque for $2,400.00 where the payee is left blank, as well as a HSBC credit card in the name of Harbourside. On cross-examination he agreed that the '10' and '8' on the lower right hand side of the credit card might be an expiry date and that the credit card is unsigned on the back.

Claudine Bolduc

[163] Lieutenant Bolduc is a military police officer and was posted in Halifax in 2012. She was involved with Operation Aftermath as file coordinator. She "took care of all collected evidence", detailing her efforts to organize the material and ensure continuity. With reference to Exhibit 21, Lieutenant Bolduc reviewed some of the evidence seized at 16 Glenwood Avenue and Atlantic's office at 26 Pleasant Street in Dartmouth. She demonstrated that what was taken was recorded in an evidence collection log.

[164] On cross-examination, Lieutenant Bolduc stated that she has never met Mr. Dawson and did not personally search his home. She does not know what rooms in Mr. Dawson's home correspond with the assigned numbers on the evidence collection log.

[165] On cross-examination she agreed that she met with a Mr. McGuire and that he offered information about Mr. Ross. She was given the impression that Mr. Ross wanted to satisfy his clients.

Master Corporal Robert Canning

[166] MCpl. Canning is with the Canadian Armed Forces (CAF) National Counter Intelligence (NCI) unit in Halifax. He was involved in the May 9, 2012, search of 26 Pleasant Street, Dartmouth. MCpl. Canning took photographs and a video of Atlantic's premises. His video of just over three minutes was played in Court and

he reviewed the office layout and explained how the evidence was tagged with numbers and photographed.

[167] MCpl. Canning described the number of documents as "pretty daunting". He touched on the photographs showing, among other items, a filing cabinet and boxes of material. The name Bry'n Ross appeared on the outside of various file folders. Among the numerous tagged items shown in the photographs were documents related to the Dawson Companies, a Wayne Langille acquisition card statement and FCED Maintenance Order sheets.

Master Corporal Thomas Clark

[168] MCpl. Clark is a CAF military police member based in Ottawa with NIS. On May 9, 2012, he was posted in Gagetown and assisted Operation Aftermath by serving as note-taker during the search of 26 Pleasant Street. With the aid of his notebook (past recollection recorded), MCpl. Clark confirmed that he "followed along with the searchers" and took notes of what was found, who found it, and its exact location within the premises.

Corporal Audrey Jacques

[169] Cpl. Jacques is a CAF military police member based in Goose Bay. On May 9, 2012, she assisted with the search of 26 Pleasant Street by recording notes in an evidence collection log (exhibit 34). Given the volume of material, she was assisted with this task and ultimately entered the log information in the military police's computerized information system.

Petty Officer John Dingwall

[170] P.O. Dingwall is an Ottawa based CAF member with NIS. In 2012 he served this role in the Atlantic region and assisted with Operation Aftermath.

[171] On May 9, P.O. Dingwall led the search of Mr. Dawson's home at 31 Guysborough Avenue, Dartmouth. On cross-examination the search warrant (exhibit 37) was reviewed and P.O. Dingwall agreed that the original search date had been changed on the bottom; he said that this was not in his handwriting. In any event, he said the April 26, 2012, warrant authorized the search for May 9, 2012.

[172] P.O. Dingwall went through exhibit 35, the photographs and videos taken during the search of Mr. Dawson's residence on May 9, 2012. The video was played in Court and, at the outset, shows Mr. Dawson in his driveway retrieving items from his yellow Ford Ranger. On cross-examination, P.O. Dingwall said the warrant did not authorize the officers to enter the vehicle. Upon persistent questioning, he acknowledged that there was a military police officer in proximity to Mr. Dawson when he entered his pick-up truck. He said he did not know if the officer had asked Mr. Dawson to retrieve items from the vehicle.

[173] Exhibit 36 – the evidence collection log for 31 Guysborough – was introduced through P.O. Dingwall. He touched on a number of the seized items depicted in the photographs, including handwritten notes (identical to the notes within exhibit 7).

[174] P.O. Dingwall said that he also participated in the May 9, 2012, search of Mr. Dawson's storage locker at Cole Harbour Self Storage. The video of this search was played in Court and it shows one of the officers using a padlock cutter to enter door C. Inside the locker are a number of parts on shelves, which were photographed but not seized.

Sergeant Jeffrey Eastabrook

[175] Sgt. Eastabrook gave evidence via videolink. He is posted with the Embassy of Canada in Kiev, Ukraine. In 2012 he was with NIS Atlantic, based in Halifax. He was one of the first investigators to work on Operation Aftermath and was the search team leader for the search of 26 Pleasant Street, Dartmouth on May 9, 2012. Prior to the search he reviewed the warrant parameters with his team and they seized the Annex A items within the date range of April 1, 2008 to April 23, 2012. He believes the team conducted a thorough search but that there was "a lot of stuff" and it is possible that they missed some items.

THE RESULTS OF THE PRODUCTION ORDERS

Sgt. Tyson Springstead

[176] Sgt. Springstead is with the CAF presently working with forensic identification based in Ottawa. During the material time he was a Corporal and served as the Operation Aftermath file affiant, then file co-ordinator and finally, lead investigator. He reviewed all of the documentary evidence seized through

production orders. Sgt. Springstead scanned the documents and placed them in numerous data bases.

[177] Through exhibit 16 – the Registry of Joint Stock Companies material – Sgt. Springstead stepped through the Dawson Companies, confirming Harold Dawson's controlling interest in each of Atlantic, Colonial, Harbourside and Robar between April 1, 2008, and May 9, 2012.

[178] Land Registry documents – introduced as exhibit 17 – showed that Wayne Langille and Gayle MacLean were the owners of the property at 16 Glenwood Avenue, Dartmouth at the relevant time. The property at 26 Pleasant Street, Dartmouth, was demonstrated as being owned by Harold Dawson and Kim MacDonald, both of 31 Guysborough Avenue, Dartmouth, the sometime business address of the Dawson Companies.

[179] The HSBC banking records for the Dawson Companies were introduced through Sgt. Springstead as exhibit 18. Sgt. Springstead noted that a Harbourside HSBC debit card was located at Mr. Langille's residence. There were a host of instant teller withdrawals, as well as purchases with the Harbourside debit card at Wonder Auto, Ballam Insurance, Blue Wave Energy and Eastlink. Production orders were obtained for these businesses, and it was demonstrated that the card was used to pay for a number of Mr. Langille's expenses, including:

- Ballam / A.A. Munro insurance premiums of $981.00 (February 27, 2009), $981.00 (March 8, 2010) and $693.00 (November 30, 2011);
- Eastlink account of $218.23 (January 31, 2011);
- Blue Wave bills of $566.38 (December 1, 2008), $543.34 (February 4, 2010), $503.34 (March 18, 2010), $514.31 (July 2, 2010), $518.76 (January 18, 2011) and $735.48 (July 14, 2011);
- Wonder Auto invoices of $975.43 (July 5, 2010), $1,224.70 (July 15, 2011), $207.09 (September 24, 2011) and $79.90 (December 17, 2011).

[180] On cross-examination Sgt. Springstead said he was aware of a number of ATM withdrawals by Mr. Langille at the Mic Mac Tavern and he attributed this to Mr. Langille regularly gambling on VLTs.

[181] Sgt. Springstead reviewed a Matheson Windows & Doors quotation for new windows and doors to be installed at Mr. Langille's residence. The quotation is

dated April 28, 2011. The total cost for the windows and doors, including installation and taxes, is listed as $8011.00. At the bottom of the quotation is a note indicating "Deposit Required $2,000". The approximate delivery date is stated to be "2-3 weeks". Atlantic's HSBC bank account had cheques drawn for $2,000.00 on each of May 17, 2011, and June 2, 2011, to pay for the newly installed windows and doors. Sgt. Springstead also touched on a $1,990.00 cheque (February 21, 2012) payable to Gayle MacLean (Mr. Langille's wife) and signed by Mr. Dawson with the notation "clean Nov./Dec./Jan.".

[182] Later the Crown introduced exhibit 41 – CIBC's response to a Production Order. Contained within the production is Harold Dawson's May 25-June 24, 2011 statement for the Visa credit card ending in 1286. The statement includes a line item dated June 7/8, 2011, for Matheson Windows & Doors in the amount of $4,011.00, representing the third and final payment for the windows and doors.

[183] Sgt. Springstead spent considerable time going over documents showing commonalities between the Dawson Companies including their shared Eastlink account (four telephone lines) and the co-mingling of phone and fax numbers as demonstrated through the Dawson Companies' quotes and packing slips. An Atlantic Telus bill showed cell numbers for Harold Dawson, Heidi Dawson, Jack Dawson and Darren Mossman, all on the same Atlantic account.

[184] Within exhibit 3 there is a contract (BX1 HCL) dated February 9, 2012, which contains three quotes from Atlantic, Colonial and Robar. The quotes from these Dawson Companies are all dated January 9, 2012, and have the identical content (with one minor exception) to the rough handwritten notes found at 31 Guysborough Road. Further, the handwritten notes contain another section with the same content as the January 24, 2012, contract – BX1 H4M—awarded to Colonial.

[185] Sgt. Springstead showed that the items seized from 26 Pleasant Street included invoices from competitor companies Woodside Industries, Process Steam Specialities and Purity Stainless Ltd. Additionally, he touched on a Chamber of Commerce Corporate Insurance document demonstrating that Atlantic paid the premiums for Mr. Dawson, Mr. Mossman and Ms. Robar/Harrisson.

[186] Sgt. Springstead went through a host of invoices which showed that the Dawson Companies sold various products to 12 Wing Shearwater at significant mark-ups. For example, a ¼" ball valve quoted by Westland to Atlantic had a unit price of $8.50; Colonial sold the same product to DND for $124.50 (15 at this price

for a total of $1,867.50). Another example was a Dwyer temperature switch purchased from Atlantic for $466.95 over a competing bid from Colonial for $488.00 when there was also a quote of $163.00 from P&C.

[187] Sgt. Springstead was referred to an Amazon receipt demonstrating that Mr. Dawson paid for two audio CDs ($31.55) shipped to Mr. Ross.

[188] The documents seized from Mr. Dawson's residence at 31 Guysborough included Amex bills in the name of Harbourside. There were a host of quotations not only from the Dawson Companies but from competitors such as P&C. Further, there was a PWGSC standing order in relation to AEM.

[189] Sgt. Springstead touched on a December 29, 2011, email from Mr. Ross to Mr. Langille (exhibit 23) which reads:

> Wayne:
>
> Please address any further requests for material to the e mail address below:
>
> +Flog Shearwater Contracts@CFB Halifax Flog CSO@Shearwater
>
> We have found that sending it there prevents it getting lost and if I'm not available to process your order another purchaser can see it and do it on my and your behalf. With your request please include your fin code: example: your fund centre: 0100GY L119
>
> your IO: 11016130
>
> your SCA: 2G0100
>
> your WO# 80098
>
> And your GL: 7210
>
> I'm sure that you will find this, for us both, a better way of doing business together. I have recently been bundling your requests together and putting them through PWGSC instead of doing them separate as it is more convenient and does not stray into the area of contract splitting. You can, if you want, copy and paste the above information with a list of your items requested perhaps on a weekly basis, or as always as any urgent requests arise, you can send them direct. Please include the date requested and the date required remembering that items sent through PWGSC may take a little more time to process. I realize that this is a change in the methods we have been using but this has been proven to work for the benefit of both customer and purchaser alike as it keeps track of what has been processed. I look forward to serving you in the future.

[190] On cross-examination, Sgt. Springstead agreed that outside contractors such as AEM and Darr would have utilized both equipment they supplied and obtained

from the stores at Shearwater. He agreed that the investigation did not reveal any purchased products having not been delivered.

[191] On cross-examination Sgt. Springstead agreed that he could seek guidance regarding the *FAA* and Treasury Board policies from various sources. He acknowledged the concept of overhead and agreed that there is nothing stating that vendors can only charge a certain mark-up. Sgt. Springstead said he formed the opinion that Mr. Langille, Mr. Ross and Mr. Dawson were friends.

THE EXPERT EVIDENCE

Lori Shea

[192] Ms. Shea was qualified, by consent, as follows:

> Forensic Accountant
>
> The witness will tender forensic accounting opinion/expert evidence based on the auditing, analysis, interpretation and summarization of financial data and opine on complex financial and business-related issues, including the tracing of monetary funds and their use.

[193] Her resume was introduced providing her education, training and experience, which includes 12 prior attendances in Court as an expert. Ms. Shea retired approximately four years ago from her position as managing forensic accountant with PWGSC's forensic accounting management group. Before retiring she provided her November 9, 2015, report and schedules in relation to this matter. Roughly a year later she was contracted to update her original schedules and these are appended to her four letters with attached revised schedules dated January 30, 2017.

[194] The Crown later introduced exhibit 43 – the HSBC cheques Ms. Shea advised had initially been missing but, when later supplied, were factored into her final opinion. The cheques included an Atlantic cheque for $5,586.20 signed by Harold Dawson and dated June 10, 2011, payable to M.E. Robar. The contract for which this relates to – BX1 F2X dated June 2, 2011 – is actually issued to Harbourside.

[195] With reference to "documents and sources of information" in her first report, Ms. Shea confirmed that she reviewed the following in advance of preparing her opinion:

- Bank statements and related supporting documentation, provided by banks for the four subject companies,
- MasterCard statements in the name of Bry'n Ross for the acquisition of goods for the benefit of DND, and
- Contract spreadsheets that included details of the contracts awarded to the four subject companies that were determined to be of interest. These spreadsheets were prepared by Sgt. Peter Thompson[1] and Cpl Tyson Springstead of CFNIS in Halifax.

[1] I have not tested or otherwise verified the accuracy of the information on the spreadsheets.

[196] On cross-examination she said she examined other material but described the items she referenced as "what I needed". She did not examine any regulations.

[197] She explained that the review period spanned April 1, 2008, to May 9, 2012. After going over the specifics of the reviewed material and her methodology, Ms. Shea detailed how the voluminous schedules accompanying her report are organized. Taking into account the additional information received in the fall of 2016, she provided her opinion that for the relevant period, as the result of DND contracts, the Dawson Companies received the following:

Company	Amount Per Contract		Amount Charged to DND Acquisition Card		Amount /Deposited in Company Bank Account
Atlantic Measuring Technologies Ltd. *Schedule 1.1*	$ 806,766.30		$ 749,520.00		$ 682,878.94
Harbourside Controls *Schedule 1.2*	$ 327,508.12		$ 323,595.50		$ 324,626.19
Colonial Industrial Supplies *Schedule 1.3*	$ 565,667.29		$ 544,045.37		$ 483,079.41
M.E. Robar Industries Ltd. *Schedule 1.4*	$ 284,866.12		$ 281,488.78		$ 281,104.33
	$ 1,984,807.83		$ 1,898,649.65		$ 1,771,688.87

[198] Ms. Shea explained that several of her conclusions from her initial report remained valid, including the final two paras:

> Based on the analysis of the bank accounts of the four subject companies, the only company that appears to have other customers is Atlantic Measuring Technologies Ltd. None of the other companies appeared to sell products to anyone other than DND, assuming none of the cash withdrawals were used to pay suppliers.
>
> 3,246 cash withdrawals totalling $1,010,859.90 were withdrawn from the four subject companies during the Period.

[199] On cross-examination Ms. Shea acknowledged that she tried to clarify her statement that only Atlantic had customers other than DND with HSBC; however, the bank did not provide further information.

[200] With respect to the more than $1,000,000 in cash withdrawals over approximately four years, Ms. Shea said, "It's unusual for a company to withdraw so much cash".

[201] Ms. Shea touched on the information obtained from HSBC concerning the seized Harbourside debit card. Based on her review, she determined that transactions totalling $192,071.00 were completed using bank card 561066-15165-61206. She added that there were cash withdrawals of $338,213.45 using this card, with about half of them made using the "white label machines" at the Mic Mac tavern.

[202] On cross-examination Ms. Shea agreed that in addition to being paid by acquisition card, the Dawson Companies likely received government cheques. She said that she did not receive all of the relevant acquisition card statement pages, so she used a "plug" or corresponding balancing number to account for these omissions. She said she was unaware of the requirement for Mr. Ross to have his acquisition card statement reconciled by a supervisor.

[203] She agreed that her analysis confirmed the Dawson Companies paid amounts of money to various suppliers. She acknowledged that it would not be unusual for companies to make money and that "this is a reasonable way to do business". Ms. Shea said that the difference between what the Dawson Companies received from DND and paid out to the suppliers would be akin to "gross profit" and would not account for other expenses such gas, insurance and the like.

[204] On cross-examination Ms. Shea said she understood that Mr. Dawson had an interest in these companies and that there would be nothing improper about him taking money out of the Dawson Companies.

Samiah Ibrahim

[205] Ms. Ibrahim was qualified (per exhibit 13, by agreement) as follows:

> Qualification:
>
> The witness will tender forensic document examination opinion/expert evidence with respect to the comparison of reliable/known signatures and writing samples of Harold Dawson, Melanie Robar (Harrisson), and Kim MacDonald, with the handwriting and signatures on the questioned documents.

[206] Ms. Ibrahim was stepped through her seven-page *curriculum vitae*. For the past 10 years she has worked as a manager in the Canadian Border Services Agency (CBSA) laboratory and scientific services directorate forensic document examination section. This involves the questioning of documents for authorship and authenticity. Accordingly, she has extensive training and experience in writing and signature comparison. Ms. Ibrahim has given previous expert testimony in various courts across Canada.

[207] On July 21, 2017 (then) MCpl. Tyson Springstead retained Ms. Ibrahim in this matter. She was initially provided with email copies of documents and received some of the material via Canada Post on August 31, 2017.

[208] Ms. Ibrahim prepared a 23-page forensic laboratory report dated March 26, 2018, together with four appendices comprising 19 pages. The report was peer reviewed. The purpose of the report is stated at p. 2:

> PURPOSE
>
> 1.0 To determine whether or not any of the writers of the specimen material attributed to:
>
> (a) Kim MacDonald
>
> (b) Harold Dawson
>
> (c) Melanie Robar/Harrisson
>
> Wrote the questioned handwritten/signature material appearing on the questioned documents.

[209] Ms. Ibrahim provided detailed evidence on the process used for handwriting/signature examination and comparison. She referred to the specimen material of the three writers in a document (Attachment 1: Specimen Material) containing material from the Dawson Companies. Ms. Ibrahim explained that her yellow highlighting over various of the samples shows that, based on her analysis, she excluded this writing as not being the product of the signatory. For example, she showed that while Kim MacDonald (the first specimen writer) signed a given document, the other writing on the form was not within Ms. MacDonald's "range of variation". She elaborated with regard to "significant differences in letter construction, form, spacing and relative size".

[210] The second specimens considered by Ms. Ibrahim were attributed to Harold Dawson. With examples, Ms. Ibrahim demonstrated how numerous documents signed by Mr. Dawson were filled out by other writers. She also touched on examples where she did not believe the signature purported to be Mr. Dawson's was his, noting that "…there is a stark pictorial difference … a significant difference in construction… signature does not vary to this degree".

[211] The third specimens considered by Ms. Ibrahim were attributed to Melanie Evette Robar or Melanie Evette Harrisson (this Robar employee goes by either surname). She described this individual's writing as "very, very good" with "extremely good pen control and penmanship". Commenting on the writing attributable to Ms. Robar/Harrison, Ms. Ibrahim enthused, "This person enjoys having pleasing writing, it matters to the way they write". She elaborated as to what makes the third writing specimen distinctive including "fluid features of writing and very good spacing".

[212] Ms. Ibrahim went over her methodology which began with spreading out all of the documents on large tables. She placed any original documents under a microscope and examined copied material with a hand loop magnifier. She ultimately arrived at opinions on authorship of the documents based on considerations outlined at p. 4 of her report:

> Consideration is given to various propositions that may serve to explain the features observed. The overall level of support for a particular proposition ultimately leads to a determination of the appropriate conclusion. When insufficient support for any particular proposition exists, the result is an inconclusive opinion regarding authorship. As a minimum, the following propositions are considered:
>
> - The samples of writing are the natural product of one writer

- The samples of writing are the natural product of different writers with coincidentally similar and/or indistinguishable writing habits
- One or more samples of writing are disguised (unnatural writing)
- One or more samples of writing are simulated (unnatural writing)
- One or more samples of writing are distorted by external factors (natural or unnatural writing)

[213] Ms. Ibrahim spent considerable time explaining that her conclusions are within "a list of conclusions used by document examiners in the CBSA forensic document examination section". She said her training makes her cautious with respect to absolute determinations.

[214] Ms. Ibrahim elaborated with respect to appendix 3 of her report, a three-page "explanation of conclusions used for handwriting and signature examinations". If she arrives at an identification or elimination, "these opinions are the strongest that an examiner can give after conducting a forensic comparison" (p. 34, Ibrahim report). If her opinion is expressed as a strong probability of identification or elimination, "these opinions are provided when there is an overwhelming preponderance of evidence supporting (or refuting) common authorship, which falls slightly short of an identification (or elimination), but is well above the level of chance or coincidence of being by a different (or same) writer" (p. 35, Ibrahim report). In the event of an indication of identification or elimination, "an indication of identification is used to express a confidence level below that required for a conclusive opinion but well above the level of chance or coincidence with a different writer. An indication of elimination is used to express a confidence level below that required for a conclusive opinion but where the differences observed are assessed as being from a different writer" (p. 36, Ibrahim report). Finally, an inconclusive opinion is explained as, "This opinion reflects significant uncertainty relative to the identification or elimination of the writer of a questioned document. There are a number of reasons that can lead to this kind of opinion, such as insufficient or incompatible specimen material, poor reproduction quality of originals (as in the case of photocopy or fax materials), etc. (p. 36, Ibrahim report).

[215] Given the above backdrop, Ms. Ibrahim expressed the following opinions with respect to the documents she reviewed:

> Atlantic Measuring Tech Inc.
>
> Based on similarities in arrangement of words, abbreviation choice, letterform and construction, in my opinion there is some evidence to suggest all handwritten

entries are the product of one writer (A1 to A32, A35 to A55, A65 to A68, A70 and A71) with some exceptions as shown in Figures 2 and 3.

…

Based upon an evaluation of the similarities in letter design and overall construction, and taking into consideration the limitations of copy quality and specimen material available, it is my opinion that there is a strong probability that the H. Dawson signatures appearing on documents A57, A59 and A62 are written by the specimen writer.

Colonial Industrial Supply

Based on similarities in arrangement of words, abbreviation choice, relative size, letter design and construction, in my opinion there is some evidence to suggest all handwritten entries on documents C1 through C54, C62, C63, C65, C66, and C68 are the product of one writer.

…

There is a very wide range of variation exhibited in the signatures appearing on the documents for this company such that it is not probable that they are representative of the normal, natural signature for a single writer. Certain documents bear a K. MacDonald signature while others show "K. Moore." Further, in my opinion it is not probable that the K. MacDonald signatures were executed by a single writer.

Harbourside Controls

Based on similarities in letter design, rhythm and line fluency, relative size and construction, in my opinion there is a strong probability that the handwritten entries on documents H44, H46, H48, H49 and H55 are written by the writer of the specimen H. Dawson material.

…

The "K. Moore" signatures appearing on this set of documents exhibit such a wide range of variation that it is extremely unlikely they represent the normal, natural product of a single writer. There are also two other essentially illegible names represented in the signatures: "H. D-----" (H34, H52 and H57), "K. MacD----" (H51).

M.E. Robar Industries Ltd.

In my opinion there is some evidence to suggest that the handwriting appearing on questioned documents R1 through R31 is the product of one writer, based on similarities such as the arrangement of words, abbreviation choice, relative size and construction.

…

A significant limitation to this examination is that there is only one specimen signature in the name "M. Robar." Although these questioned signatures exhibit a

> wide range of variation in the initial stroke and in the finish that is not expected in normal, genuine signatures, they bear resemblance in the movement and design to each other and to letter design and construction with elements of the writer of the specimen M. Robar/Harrisson material such that in my opinion there is some evidence to suggest these signatures are the product of that writer.

[216] During Mr. Kidston's brief cross-examination, he suggested that a layperson may not be able to discern signature differences when the signatures are purportedly from the same person. Ms. Ibrahim responded that the individual may not even look at the signature. She added, referring to different signatures, "we have had business persons locate" [fraudulent signatures] but continued, "If you're not looking, I doubt it would stand out".

[217] During Mr. Bright's cross-examination he spent considerable time having the witness go over several entries from her 35 pages of working notes. She acknowledged at the outset that it is always preferable to have original documents but that in this case she had a number of lesser image quality email copies. Ms. Ibrahim admitted that the lack of original documents resulted in "certain portions" of her examination being significantly limited. She agreed that when it came to Mr. Dawson she had "little specimen material".

[218] Ms. Ibrahim reviewed the dates of the documents she examined and agreed they were confined to 2011. Challenged as to whether the "D" written by Mr. Dawson on two specimens (59 and 61) did not have a backwards slope, she said she believed the backward slope is indeed present. She added that the "crossbar" he sometimes places on his number 7 is a "variation… not particularly uncommon".

[219] Ms. Ibrahim was referred to her "explanation of conclusions" in appendix 3 and said the five point opinion scale involves using a strong or weak probability. With reference to the scale, she expressed her view that a number of Kim MacDonald signatures were executed by more than one writer. She stated that when describing something as "extremely unlikely", "I'm qualifying it to show how unlikely it is". Ms. Ibrahim refused to attach percentages to her qualifiers, explaining that in her field, "there are no numbers for expressions of conclusions".

[220] With respect to the Colonial documents, Ms. Ibrahim said "many of the signatures in this batch are problematic". She questioned some as being disguised or simulated signatures but said that the poor copy quality posed a limitation on her analysis. On further cross-examination questioning, she said this limitation was

"across the entire case … I was working with what I had." She agreed that since she did not have originals, she could not examine Mr. Dawson's signature under the microscope.

THE SURVEILLANCE

Petty Officer John Dingwall

[221] P.O. Dingwall is an Ottawa based CAF member with National Investigation Service. In 2012 he served in the Atlantic region and assisted with Operation Aftermath.

[222] On February 21, 2012 he and MCpl. Quessy followed Harold Dawson as he picked up Bry'n Ross at Shearwater building 30 and drove to the Pilot's Pub. P.O. Dingwall attempted to hear their conversation but could not hear anything at the pub. He observed Mr. Dawson pay for both meals and drive Mr. Ross back to Shearwater.

[223] On March 5, 2012 P.O. Dingwall observed Mr. Dawson driving to the Halifax airport in his black Volkswagen Golf. He watched Mr. Dawson walk into the terminal and subsequently come back out, this time with Mr. Ross and Mr. Ross' spouse.

[224] On the afternoon of March 6, 2012 P.O. Dingwall observed Mr. Dawson meeting an individual at a Tim Hortons. During the evening he saw Mr. Dawson as he drove around Dartmouth and then on the Lawrencetown Road.

[225] On the morning of April 18, P.O. Dingwall observed Wayne Langille at the Mic Mac tavern playing the VLTs. After Mr. Langille cashed out and left, P.O. Dingwall watched him have a 10-minute conversation with Mr. Dawson in the parking lot at the rear of 26 Pleasant Street. Mr. Langille then left and returned to the Mic Mac tavern where he stayed from 11:30 a.m. until 5:45 p.m.

[226] On April 20, P.O. Dingwall observed Messrs. Dawson and Langille meet for about half an hour at the Mic Mac tavern.

Stephan Quessy

[227] Mr. Quessy was a military police officer in 2012 when he was tasked to perform surveillance. He took photographs of Mr. Ross and Mr. Dawson on their way to have lunch together at Pilot's Pub in Dartmouth on February 21, 2012. He

observed them eating for about a half hour and then Mr. Dawson driving Mr. Ross back to his Shearwater office. Exhibit 24 was introduced, consisting of approximately 95 photographs of the men together around noontime on February 21, 2012.

[228] Mr. Quessy also obtained Mr. Ross' training records and certificates, along with Mr. Langille's employment records. These were introduced as exhibits 25, 26 and 27, respectively.

Andrew Allen

[229] Three years ago Mr. Allen retired as a military police officer. In March 2012 he was based in Ottawa, working as a military police intelligence officer. He was tasked to come to Halifax to provide support with Operation Aftermath. After receiving a briefing he carried out surveillance. On March 5, 2012 at around 6:00 or 7:00 a.m. he "set up" in a vehicle outside Mr. Dawson's home. In the afternoon he followed Mr. Dawson as he drove to the airport. He followed him inside and watched as he greeted a couple (who he learned was Bry'n Ross and his wife) as they came into the arrivals area. Mr. Allen did not overhear any conversation. He observed as Mr. Dawson drove them away to their residence near the Shearwater base.

[230] On the evening of March 6, Mr. Allen was with MCpl. Francuz when they observed Mr. Dawson drive from his residence to 16 Glenwood Avenue in Dartmouth. After entering 16 Glenwood he exited with "a yellow envelope or folder". Mr. Dawson next drove to 26 Pleasant Street and then to a banking machine in Dartmouth, before returning to 16 Glenwood. Mr. Allen then observed Mr. Dawson leave, stop at the liquor store and then go to a Dartmouth tavern.

[231] On March 7, Mr. Allen followed Mr. Dawson as he drove from his home to 12 Wing, Shearwater. He picked up Mr. Ross and they drove to Boondocks in Eastern Passage. Mr. Allen and a colleague sat near Messrs. Dawson and Ross and overheard Mr. Ross talking about his recent Florida trip, but nothing about business. He observed as the two men departed and "Mr. Dawson took the bill, he paid".

Warrant Officer Tomasz Francuz

[232] W.O. Francuz gave his evidence via videolink. As a military police officer, he was tasked to conduct surveillance of target Harold Dawson in early March

2012. On March 5, at 3:55 p.m., he followed Mr. Dawson as he drove to the airport in Halifax. W.O. Francuz observed as Mr. Dawson parked his black Volkswagen Golf in the arrivals area. Shortly thereafter, two people matching the description of Bry'n Ross and his wife came out with their suitcases and loaded them into the Golf. Mr. Ross got in the front passenger seat while his wife got in the rear seat behind him and Mr. Dawson drove them away. W.O. Francuz did not overhear any conversation or see anything exchanged between the parties.

[233] W.O. Francuz next located Mr. Dawson during the evening of March 6, 2012. At approximately 7 p.m. he observed Mr. Dawson driving his yellow Ford Ranger to what he knew to be the residence of Mr. Langille. After spending some time inside the house Mr. Dawson exited holding a yellow, 8.5" x 11" envelope. W.O. Francuz trailed Mr. Dawson as he drove to his residence or office at 26 Pleasant Avenue. He observed Mr. Dawson enter the premises with the envelope and spend about one hour there.

[234] The final time W.O. Francuz observed Mr. Dawson began at around 11:30 a.m. on March 7, 2012. On this occasion he saw Mr. Dawson drive his Ranger and park outside the 12 Wing Shearwater office where Mr. Ross worked. Mr. Ross came outside and got into the truck. About an hour later W.O. Francuz observed Mr. Dawson drop Mr. Ross off at the same location. He did not overhear any conversation or see either man carrying anything. W.O. Francuz agreed that 12 Wing Shearwater is an open base with a public parking lot.

Cpt. Evan Foster

[235] Cpt. Foster gave his testimony via videolink. In March 2012, he was a non-commissioned military police officer posted in Ottawa. He was assigned to the operation in Halifax between March 4 and 9, 2012. The targets were Bry'n Ross and Harold Dawson.

[236] Cpt. Foster believes he was with W.O. Francuz when he was at the Halifax airport and saw one target speaking with Mr. Ross in the baggage carousel area. He observed Mr. Dawson, Bry'n Ross and his wife as they went down on the elevator and then exited the airport terminal (Is there a reason to refer to Dawson as "the target" here rather than by name?).

Ricky Tucker

[237] Mr. Tucker gave his evidence via videolink. He is currently a CAF Reserve Member. In the spring of 2012, he was with the NIS surveillance unit in Ottawa. He was assigned surveillance duties in Halifax beginning in March, when he learned of the targets he believed to be "Mr. Dawson and Mr. Lang...".

[238] Mr. Tucker recalled that Mr. Dawson drove a bright yellow pick-up truck which was easy to follow. On March 7, Mr. Tucker was with MCpl. Allen when they observed Mr. Dawson meet up with Bry'n Ross. Mr. Tucker sat with his back to Mr. Dawson in a restaurant as Messrs. Dawson and Ross had lunch for about a half-hour. He recalled they talked about time shares and "power plant stuff … jargon to me". He said Mr. Dawson paid the lunch bill.

[239] Mr. Tucker recalled observing Mr. Dawson going into an Inn and "playing slot machines". He said he also saw him going to banking machines. In April 2012 he followed "Mr. Lang" from the plant to the Mic Mac tavern and recalled that "he went there quite often".

Keith Chant

[240] Mr. Chant testified via videolink. He retired from the CAF in February 2013. In April 2012 he was based in Ottawa and assigned to do surveillance in Halifax on target, Wayne Langille. He received a briefing and carried out surveillance from April 4 to 20, 2012. During this time he observed Mr. Langille at work, Tim Hortons, an arena and the Mic Mac tavern.

[241] On April 18 or 20, Mr. Chant observed Mr. Langille with Mr. Dawson at a Tim Hortons that he believed was close to Shearwater.

THE COMMANDING OFFICERS

Lieutenant Colonel Don Perrin

[242] Retired Lt.-Col. Perrin testified via videolink. Between 2008 and 2011 he was posted to CFB Halifax where he was Commanding Officer of the unit that included the 12 Wing Shearwater heating plant. Familiar with *FAA* and DND procurement policies, he said the policy was clear that "gifts are not permitted in any way".

[243] Mr. Perrin does not know Mr. Dawson or the Dawson Companies. At no time did he provide consent to the Dawson Companies to directly or indirectly confer any benefits on Wayne Langille or his family. He added that at no time did he delegate authority to do this, as it was not permissible.

[244] On cross-examination, Mr. Perrin said he was not familiar with the term "March madness".

Lieutenant Colonel Craig Crawley

[245] Lt.-Col. Crawley testified via videolink. Currently based in Ottawa, he worked out of CFB Halifax between 2005 and 2009. He was then transferred to Ottawa but returned to Halifax between 2011 and 2014. During both of his postings to Halifax, Lt.-Col. Crawley worked with FCE contracts officers and Wayne Langille. He said Mr. Langille "used my authority (as Commanding Officer at the time)…to have goods and services provide to him".

[246] Lt.-Col. Crawley stated he was familiar with the *FAA* and Treasury Board policies with respect to gifts and hospitality. He said the legislation promoted

"access and fairness" such that a DND employee could not accept anything of value from someone they were engaged in business with. At no time did Lt.-Col. Crawley provide his written consent for Mr. Dawson to confer any advantages to Mr. Langille or his family. In any event, Lt.-Col. Crawley does not know Mr. Dawson and is not familiar with the Dawson Companies.

Lieutenant Colonel David Lauckner

[247] Lt.-Col. David Lauckner testified by videolink. Currently posted to the Canadian Embassy in Ethiopia, he was Base Construction Engineer Officer at CFB Halifax from 2011 to 2012. In that position, he was responsible for 500 mixed military and civilian personnel, including the FCED group within the Shearwater heating plant.

[248] Wayne Langille was employed with FCED during the time that Lt.-Col. Lauckner was in charge. Lt.-Col. Lauckner is familiar with the *FAA* and Treasury Board policies on contracting including gifts and hospitality. He noted that it is "clearly wrong" and in "contravention of the *FAA*" for DND personnel to accept gifts and hospitality from vendors.

[249] Lt.-Col. Lauckner has never met or spoken with Mr. Dawson and is not familiar with the Dawson Companies. He did not provide his written consent to Harold Dawson or the Dawson Companies to directly or indirectly pay a commission or reward to or confer an advantage or benefit of any kind on Wayne Langille or to any member of Mr. Langille's family, or to anyone for the benefit of Wayne Langille, and did not delegate this to a subordinate.

[250] On cross-examination, Lt.-Col. Lauckner said he is familiar with DAODs but more familiar with the *FAA* provisions with respect to hospitality with contractors. He is also familiar with the QR&Os and some of the sections about gifts but understands that they pertain to CAF personnel. He does not know if the QR&Os are mentioned in the DAODs in this area.

Lieutenant Colonel Ulpiano Honorio

[251] Lt.-Col. Honorio testified via videolink. Presently posted to CFB Kingston, he was posted to FCED at the relevant time. Between the summer of 2008 and the summer of 2010 he served as operations officer and then executive officer until he was posted out of Halifax in the summer of 2011. During his time in Halifax he was under Lt.-Col. Perrin's command and the infrastructure portfolio included 12

Wing Shearwater's heating plant. Lt.-Col. Honorio knew Mr. Langille to have been one of the Shearwater heating plant's supervisors.

[252] Lt.-Col. Honorio is familiar with *FAA*, Treasury Board and DND procurement policies including those governing gifts and hospitality. Gifts and the payment of benefits by a contractor to a government employee are "in contravention of the rules and regulations".

[253] Lt.-Col. Honorio does not know of Harold Dawson or the Dawson Companies. At no time did he provide his written consent (or delegate his consent) to Mr. Dawson or the Dawson Companies to directly or indirectly pay a commission or reward to or confer an advantage or benefit of any kind on Wayne Langille or to any member of Mr. Langille's family, or to anyone for the benefit of Wayne Langille.

[254] On cross-examination Lt.-Col. Honorio said he did not know if the *FAA* applied to vendors – i.e., civilians not employed in the federal civil service.

HAROLD DAWSON'S SPOUSE, KIM MACDONALD

[255] See Appendix B (exhibit 40, reproduced).

THE EVIDENCE OF THE TWO ACCUSED

Bry'n Ross

[256] Mr. Ross retired from the DND after 30 years in January 2015. For all but the last couple of years he worked at Shearwater. He started in the warehouse. In 1997 he became a buyer or what was then known as a client service representative. While acknowledging that he received certificates over the years, he said he had "very little training, you learn by what the other fellow has done and then you're on your own".

[257] Mr. Ross worked in building 30 and said that between 2008 and 2012 there were seven other contracts officers and a supervisor "when we had one". He recalled Mike Melanson, P.O. Adshade and Ms. Doucet in the supervisor's position, as well as the contracts officers rotating as acting supervisors. He recalled getting "very little feedback" for his job performance. During the relevant time, Mr. Ross estimated that he prepared eight to 10 contracts per day or 12,000

per year. When it came to his job performance, he said Mr. Melanson and P.O. Adshade had "no concerns that I can remember".

[258] Mr. Ross worked with FCED and the main source of the contracts he prepared was the Shearwater heating plant. Over the years he only visited the plant on a few occasions but he knew that it was in bad shape on account of the large number of orders from there.

[259] With respect to Ms. McGuinness not being able to find any RFQ forms in his files from 2008 to 2010, Mr. Ross said the form did not exist until "the end of 2010". He likened the approach at Shearwater to that of a "teenage kid…we had our own way of doing things until we were told differently".

[260] Mr. Ross is familiar with the *FAA* and said he received s. 32 authority in late 2009 or early 2010. He added that Ms. McGuinness's concerns about a lack of s. 32 signatures in his earlier files failed to take this into account. He said, "She's looking at it here and now and not back then".

[261] Mr. Ross noted that he usually received a parts description from the customer. He added that he was not familiar with the details, saying "it's a bit beyond me". He said that if a vendor had a question he would go back to the customer to obtain more detail, but that "it didn't happen very often".

[262] Following the 2007 review, Mr. Ross always made sure to get three quotes. Shown one of the examples (BX1 CBB) that Ms. McGuinness criticized for only having one quote, Mr. Ross said the fact that the August 4, 2010, purchase order only had one "would be impossible…someone must have removed the paperwork". Shown another example that Ms. McGuinness characterized as an "invalid bid" (BX1 FF7) given that Colonial quoted on it the morning after the closing, Mr. Ross explained his "rule of thumb". Rather than "scrapping everything and starting from scratch", he allowed such deviations. He said he "rarely had complaints from my customers".

[263] Mr. Ross said he knew about the forbidden contract splitting but his approach was not to wait until the end of the day to see how many orders he could bundle. Referred to purchase orders BX1 CBB and BX1 CBD, he explained that the August 4, 2010, orders were "not similar items" and therefore, contrary to Ms. McGuinness's testimony, did not represent contract splitting. In any case, Mr. Ross said his approach was "to get it done as fast as I can, off my desk". He added

that involving PWGSC would usually result in the same vendor receiving the contract, but "one to two weeks to a month" later.

[264] Mr. Ross was referred to exhibit 23 (see para 189, *infra*), noting that he prepared the email after a meeting of contracts officers in late 2011. He was shown the "zeroed out faxes" critiqued by Ms. McGuiness and stated, "I paid very little if none attention to faxes received back". He added that he did not recall seeing the zeros at the relevant time. As for the missing page numbers on many of the faxes, Mr. Ross said this was because he did not keep the "redundant" terms and conditions in the files.

[265] Mr. Ross was taken to contract number BX1 FN1 dated July 29, 2011, and Ms. McGuinness's testimony that it was awarded to the highest bidder. He explained that "bad handwriting on my part" led to the six in $4,642.00 being mistaken for an eight such that the $4,842.00 contract was inadvertently awarded.

[266] Mr. Ross was stepped through two of the several MasterCard acquisition card statements put to Ms. McGuinness during her cross-examination. He demonstrated that the "vast majority" of contracts paid for with his MasterCard were for companies other than the Dawson Companies.

[267] Mr. Ross knew Mr. Langille as he was the Shearwater heating plant manager and he would regularly sign papers in Mr. Ross' office. They did not socialize and did not have lunch together. Mr. Ross kept FCED maintenance order forms with Mr. Langille's photocopied signature in his office. He also kept other managers' and Mr. Rumley's photocopied signed forms. He said he was never told this practice was improper.

[268] Mr. Ross is familiar with "March madness" as the budgets were up for renewal every April 1st. He said Mr. Langille would "typically" have money to spend at this time of year.

[269] Mr. Ross had conflict of interest training. It was his understanding that lunches with vendors were permitted due to their "minimal value", and because they were "reciprocal sometimes". Over the years he went to lunch with representatives of Lawson, Brody and Sako. Mr. Ross had a rule not to discuss business and, although the supplier "usually" paid, he would pay for lunch when on a pay day. Mr. Ross became acquainted with vendors when they came to his office and left a card.

[270] Mr. Ross also went to lunch with Harold Dawson perhaps two to three times per month. They first became acquainted when they were both Union representatives in the late 1980s, and got to know one another better when Mr. Dawson worked at the heating plant. Mr. Ross began doing business with Mr. Dawson after Mr. Dawson left DND in 1997. After working for a couple of vendors, Mr. Ross recalled that Mr. Dawson started Atlantic. He said, "He introduced himself at my office, gave me his business card and a line sheet".

[271] Mr. Ross came to know of Harbourside when "one day I showed up and a Harbourside business card was on my desk and a letter from Wayne saying we could use that company too". He added that "Kelly Moore, I think it was" was with Harbourside, although he did not meet anyone from the company in person. Mr. Ross became acquainted with Colonial in a similar manner. He said he later knew Kim MacDonald was with Colonial but thought that person was a male. In late 2009 or early 2010, he found out that Ms. MacDonald was a female and Mr. Dawson's wife. As for Robar, Mr. Ross said he spoke with Melanie Robar "a few times".

[272] Mr. Ross acknowledged that by 2008, he had a personal relationship with Mr. Dawson. If he was in Mr. Dawson's neighbourhood, he "might drop in to say hi for a coffee or something". When lunching with Mr. Dawson, he said his rule not to discuss business applied. As to the undercover officer's evidence that they may have discussed "steam plant stuff" during their March 7, 2012, lunch at Boondocks, he responded, "I don't know what he's talking about". Mr. Ross said Mr. Dawson was aware of his "adamant rule" not to discuss business over lunch. He added that he never had lunch with Mr. Dawson and Mr. Langille together.

[273] Mr. Ross added that he spent Wednesday evenings at his house with Mr. Dawson and about a dozen others as part of a Bible study group. As for why Mr. Dawson picked Mr. Ross and his wife up at the airport, he said "a series of unfortunate events" led to this; when others were unavailable, he called on Mr. Dawson. As for the Amazon book order in Mr. Ross' name, he said, "I would order on Harold's behalf". He added that these were religious items that had nothing to do with business.

[274] Asked about his contracts register being found at Mr. Dawson's residence, Mr. Ross responded that he was never told that the register could not be seen by someone else. He said he would have provided the register to "any other supplier if they wanted it".

[275] To Mr. Ross' knowledge, all ordered parts (from the Dawson Companies) were delivered. He said he did not have s. 34 authority except when filling in as supervisor of contracts officers. He added that between 2008 and 2009 there are missing s. 34 stamps because "that was when the stamp was taken away…I still had to make them sign for it".

[276] Mr. Ross said he sought to obtain the best value for DND and that did not necessarily mean the cheapest part. He vehemently denied perpetrating fraud.

Cross-examination

[277] Mr. Ross was stepped through the courses he took over the years as a contracts officer. He agreed that he was not supposed to "fulfill every desire of the customer" as he had to follow government procurement rules. He described these rules as "haphazard" until 2007.

[278] Mr. Ross was referred to the contracts officers' training manual and said he followed the bid solicitation process. He agreed that this required the contract terms and conditions to be included within the purchase order. Shown numerous contracts where there is no documentation to show he did anything to generate the contract, Mr. Ross said it was not his fault that paperwork was missing. For contracts under $1,000.00, Mr. Ross said the RFQ documentation was not required and that what his files disclosed was sufficient. Asked how this could be in a situation where there was a dispute over what was delivered, Mr. Ross stated, "There never was a dispute".

[279] Mr. Ross was shown various answers he had written for open book exams over the years. He confirmed his understanding of:

- contract splitting;
- the requirement for specific parts descriptions;
- what is meant by sole source contracts and justifications;
- the object of the Canadian government's procurement process; and
- the *FAA*.

[280] Mr. Ross agreed that the process is designed to ensure fair competition amongst independent businesses. He acknowledged that he was a "guardian" of

the tax payer, but described that as "an awful responsibility to fling on these poor old shoulders".

[281] He agreed that in the 2005 to 2007 period "things tightened up" with respect to the process in the wake of the sponsorship scandal and Gomery inquiry. In relation to his previous supervisors, he characterized Ms. Doucet as a "pretty strong" supervisor.

[282] With respect to the MasterCard statements, Mr. Ross acknowledged that he bought for not only the heating plant but "many groups" on the Base.

[283] Through a series of detailed questions about several contracts under $1,000.00 issued to the Dawson Companies on July 4, 2008, Mr. Ross was confronted with the fact that the individual contracts were all sent out at the same time. He replied, "I'm not adept at fixing things like that". When it was asserted that he would have had the time to bundle the contracts together, he replied, "I guess, what can I say".

[284] Mr. Ross said he was familiar with P&C and P&S but that the latter "hardly ever got back to me in time". He agreed that he did not receive quotes from P&C in the 2008 to 2010 period. He denied knowing of CTH, adding, "If they had come to me I would have used them".

[285] Later he was shown a P&S note on a bid response from May 2011 asking for more information on requested parts. He said he could not be sure if he responded to their request.

[286] Mr. Ross was asked about a P&C quote found at Mr. Dawson's home. He said he had no recollection of providing this to Mr. Dawson. When asked if it was possible that he had, he responded, "I really can't say".

[287] He said the business cards for Harbourside, Robar and Colonial were left on his desk and "one had a note from Wayne Langille". He could not recall when he received the cards. He added that he decided to "try out" these companies. Mr. Ross added that this was the "starting point" for various companies including Lawson, U.C., Brody and State Chemical. He said, "…for anyone who came to me, I would sit down and listen…I went to lunch with (representatives from) Lawson, Brody, Sako". He admitted that he never met anyone from Harbourside and, although he was aware that Colonial was operated by Mr. Dawson's wife, he did not perceive this as a problem. Mr. Ross felt that the Dawson Companies were

true competitors because they were separate companies. He added that it did not cross his mind that anything was problematic.

[288] Mr. Ross knew Melanie from speaking with her once or twice by phone. He thought she was "sort of an office manager who owned Robar". He was also aware that she worked for Mr. Dawson at Atlantic. While agreeing that the Dawson Companies were connected he felt they were "still separate and individual companies".

[289] Mr. Ross was shown various faxes that he admitted to sending from Shearwater to the Dawson Companies at a single location. He said he did not know how this happened, and that he "would have sent to different company numbers, somehow they got amalgamated".

[290] Mr. Ross "couldn't say, if I did or didn't see the zeroed out numbers". He agreed that these were frequent and odd, adding, "I was a very busy person, I didn't note, I was just interested in prices and getting the job done".

[291] He agreed that he could have bundled contracts together and when it was put to him that this would have involved less work, he responded, "I suppose, in a way". Mr. Ross denied that he was familiar with specific heating plant parts, stating that he was "just the purchaser, parts didn't concern me".

[292] He agreed it was a "little odd" that, on numerous occasions, faxes from the Dawson Companies came in one batch at the same time. Mr. Ross added, "I just did my job and didn't notice things like that" and that, "If you have a supplier meeting the needs of the customer, it's the best kind of relationship".

[293] Mr. Ross did not know how his contracts registers for the Dawson Companies were found at Mr. Dawson's residence. In reference to the Harbourside register, he said, "I might have given it to him". He added that he would not have given Mr. Dawson his register for a competitor.

[294] Asked about the August 30, 2010, Omnitech order for the Singer parts, Mr. Ross agreed that he could have prepared a sole source contract and justified it.

[295] By early 2011 Mr. Ross had a practice of emailing customers to request parts quotes. He was shown several such emails which are undated and do not show a time sent, all exclusively addressed to the Dawson Companies. Mr. Ross said he could not explain this, adding that he emailed four companies (when only

three bidders were required) as, "I'm allowed to send to eight, nine, or 10 if I want". When it was put to him that the emails are addressed to the Dawson Companies and no others, he said this was because "the customer is telling me they supply on time". He repeated that he did not know the companies were connected at the time.

[296] It was shown that there are numerous cases where the customer request is missing from Mr. Ross' files. He denied simply issuing the contracts without the requests, saying, "I would have had some contact with Mr. Langille". He added that he had pre-signed forms from several DND customers but agreed that the forms were supposed to be signed to confirm the money was available. Mr. Ross added that when he sent the pre-signed forms he "always" phoned the customer to confirm the authorization.

[297] On re-direct examination, Mr. Ross said his office and files were always left open.

Harold Dawson

[298] Mr. Dawson is originally from Sydney, Cape Breton. He later moved to the Halifax area and by 1987 was working at the CFB Shearwater heating plant. Mr. Dawson and his wife, Kimberly MacDonald, have two children, Jack and Heidi Dawson.

[299] When he worked as a secondary engineer at 12 Wing Shearwater, Mr. Dawson got to know Jim Rumley and Bry'n Ross. Mr. Ross and Mr. Dawson were both shop stewards and would see one another at union meetings.

[300] Into the 1990s, there were cutbacks at Shearwater and Mr. Dawson opted for a buyout. He was then hired by P&S. After about a year and a half there, he started his own business, Instrument Control Equipment (ICE). ICE supplied industrial products to DND and other customers and shared office space with Thermal Technical Engineering. The two companies soon amalgamated to form Icetech Engineering. Sometime later Mr. Dawson formed Atlantic, where he worked during the 2008 to 2012 period. Atlantic was the local representative for Bestobell, a company known for its patented (longer lasting) steam trap.

[301] During this time period, Mr. Dawson also started Colonial and Harbourside. He created these companies "in order to get my equipment into DND, Wayne

wanted my steam traps, he always needed more than one quote, I had the idea to form two companies and make the paperwork easier".

[302] Melanie Robar was Mr. Dawson's office manager. Among other things, she prepared his taxes and did paperwork. Mr. Dawson said that when he was away, "she would do pretty much everything". In any case, Ms. Robar "had her own [business] card for Robar and, "I told her she could grab a sale once in awhile – this gave her some cash, she was going through a divorce". Ms. Robar had Mr. Dawson's banking card and four-digit code during the relevant time, as did employee Darren Mossman.

[303] Mr. Dawson said that he did not talk about it but it was "no secret that I had more than one company". He did a lot of work with government and was never advised that he could not have more than one company. He did not regard this as "illegal", and said he "was trying to make things easier".

[304] The Dawson Companies carried inventory from the former Icetech Engineering and from buying out the inventories of Lasmo and Uniacke Mechanical. They carried (and could order from) Bestobell and other parts manufacturers.

[305] As a former Shearwater employee, Mr. Dawson received "lots of calls" for parts from shift engineers, Mr. Rumley, Charlie Cummings (Mr. Langille's predecessor) and Mr. Langille. He also "quite regularly" dropped in at the heating plant. Mr. Dawson noted that "the guys sent a lot of business my way" but that the situation changed starting in the early 2000s. By this time "things had to be filled out…I would give Melanie the price and she would send the quote over…"

[306] Asked about vague parts descriptions, Mr. Dawson said he would typically receive a call from the plant and he "would go to the site and spend an hour or more there sizing up the equipment, doing the leg work…I wanted this kept proprietary so I kept the information vague, I was protecting my interest". Mr. Dawson elaborated that a detailed parts description would allow a competitor to put in a competitive quote without doing the leg work.

[307] Mr. Dawson was questioned about the two competitors' quotes found at his home. He explained that a DND employee, Ricky Westhaver, bought parts from P&C and needed a secondary bid. To "tidy up the paperwork" a higher price quote was required and, after he was given the P&C quote(s) to work from, Mr. Dawson obliged.

[308] Asked about his HSBC debit card and the cash withdrawals, Mr. Dawson explained that he drew out significant amounts of cash to pay for his expensive "muscling-up cars" hobby.

[309] Mr. Dawson said met Mr. Langille in the mid-1980s when Mr. Langille was chief engineer at Stadacona and Mr. Dawson was job hunting. They had mutual interests in cars, hunting and fishing. Within a short time, they became good friends and Mr. Dawson also got to know Ms. Langille's wife and son very well. When she was in need of extra cash, Gail MacLean (Mr. Langille's wife) cleaned Mr. Dawson's office for a period of time.

[310] Mr. Dawson got to know Mr. Langille better when they were at Shearwater. He observed sales people regularly visiting the plant and dropping off gifts at Christmastime to the chief and maintenance people.

[311] Mr. Dawson was aware that Mr. Langille had a significant gambling problem. Mr. Langille gambled money that was intended to pay bills and he would approach Mr. Dawson in a "panic" to help. Rather than give him money, Mr. Dawson would meet Mr. Langille and go into various businesses to pay his accounts. Mr. Dawson did this on the understanding that he would be paid back. He noted that Mr. Langille "always paid me back or it would have been a one and only thing".

[312] Mr. Dawson said the stale-dated cheque from him made payable to Mr. Langille was for tires and rims that he was going to buy from him. Instead, Mr. Dawson's colleague bought tires and rims so Mr. Dawson told Mr. Langille "to get rid of" the cheque. As for the blank cheque and HSBC debit card – also found at Mr. Langille's residence – Mr. Dawson thought he must have inadvertently left them behind in Mr. Langille's vehicle. He explained that Mr. Langille occasionally drove him home on a Friday afternoon/evening after Mr. Dawson had enjoyed two or three beer. He said he told Mr. Langille to "get rid of" the blank cheque and "cut up and get rid of" the "void" card. Mr. Dawson denied ever giving Mr. Langille the card code or cash because he knew Mr. Langille "would put it in the machines".

[313] With respect to the windows, Mr. Dawson said Mr. Langille ordered them and found himself in "a jam". His next door neighbour had agreed to install them the following week, so Mr. Langille needed to pay for them right away. He asked Mr. Dawson for a loan. Mr. Dawson obliged and was paid back in April after Mr. Langille cashed in an RSP and received a tax refund.

[314] Mr. Dawson said he is "technically challenged" and "definitely" did not zero out numbers, adding that "90 percent" of the faxing was done by Melanie.

[315] Mr. Dawson said he got to know Mr. Ross better when he left DND and started with P&S. They had a "business relationship" and a lot in common, with a mutual interest in sports and their children. By the material time they were having lunch together about every second week. Mr. Dawson paid most of the time, with Mr. Ross picking up the bill if it was a Friday after he was paid. He denied gaining any advantage, saying, "There was no need, I was getting the business anyway". They did not discuss business over lunch.

[316] Over the years Mr. Dawson has attended Wednesday night group Bible study with about 10 to 12 others at Mr. Ross' house. With regard to the airport pick-up, he said, "Bry'n phoned me from Florida and asked…I was more than happy to pick him and Lois up".

[317] Mr. Dawson is familiar with "March madness" which involves "getting rid of the year-end budgets". He gave the example of Mr. Langille letting him know that he had been in a meeting with a manager and had $80,000.00 to spend, and telling him a few days later that he had another $20,000.00. Mr. Dawson added that if the money was not spent, the amount would be lost the next year.

[318] Asked about a $5,586.70 cheque from Atlantic to Robar, Mr. Dawson noted the signature was not his. He added that Melanie or Darren Mossman signed contracts and quotes on his behalf.

[319] Mr. Dawson noted that ordered parts were "always" delivered to DND and if there was an error, a refund was provided. He categorically denied cheating DND.

Cross-examination

[320] Mr. Dawson agreed that Bry'n Ross was the main person he dealt with at Shearwater. He dropped the Harbourside and Colonial cards off with Wayne to take to Mr. Ross. It was in 2010 or 2011 that he told Mr. Ross that Harbourside was his company. He did not know if Mr. Ross knew it was his company before that time.

[321] Mr. Dawson was shown exhibit 16 and various Robar documents. When shown that he was listed as an officer and director, he said he was unaware of this. When the company name was changed in 2005, Mr. Dawson's signature appears as

vice president but he said this did not "ring any bells". He agreed that Robar's change of name and the creation of the Harbourside and Colonial sole proprietorships occurred around the same time in February 2005. Although his wife's name appears on the Colonial documents, Mr. Dawson agreed that she had "very little" to do with the company.

[322] Through detailed questioning, Mr. Dawson ultimately admitted that Robar, Harbourside and Colonial were set up within the same time period in early 2005. While he admitted to "really running" the companies, he agreed that the average person at DND would not be aware of this.

[323] Mr. Dawson said that by 2008 he was familiar with the details of the government bidding process. He acknowledged that Robar was clearly tied in with his other three companies. Mr. Dawson admitted that Robar was a "vehicle to pay" Melanie Robar Harrisson.

[324] Faced with persistent questions about Ms. Robar Harrisson's involvement, Mr. Dawson stated, "Melanie would sign my name quite often, she would have my permission". He added that she had his authorization to sign for Kim MacDonald "who probably gave me permission, maybe". He then agreed that his wife had not told anyone they could use her signature.

[325] Mr. Dawson said he determined the price of parts when he submitted bids.

[326] Mr. Dawson was shown a graphic of a host of sales under $1,000.00 made by the Dawson Companies during the relevant time. He acknowledged that each company "got a sale(s)". Mr. Dawson was directed to examples where there had to be two or three quotes. He acknowledged many instances where his companies were the only bidders, and further acknowledged that these were not sole source contract. Knowing the lowest bid submitted would be the winner, he admitted that he would make the other bid(s) a little bit higher.

[327] It was put to Mr. Dawson that the quotes amounted to "ghost quotes" that were "not real" to fulfill the mandate and he did not disagree. He said, "Yes, that's what Wayne wanted".

[328] Mr. Dawson admitted that by 2008, Kelly Moore was only a "casual employee", notwithstanding that his signature (actually signed by Mr. Dawson or Ms. Robar-Harrisson) appears on Dawson Companies' documents submitted to DND.

[329] Later, Mr. Dawson agreed that the zeroed-out faxes were "probably" all sent from the same location – 26 Pleasant Street. Although he denied participating in zeroing-out the faxes, he agreed that the process made it so one could not appreciate that the faxes all came from one place.

[330] Mr. Dawson was shown FCED customer request forms that were filled out by him or Ms. Robar-Harrisson and sent to Mr. Ross. He admitted to doing this "after he (referring to Mr. Langille) told us what he wanted".

[331] Mr. Dawson said his car hobby was expensive and that this accounted for the significant cash withdrawals on the Harbourside debit card. He said he regularly visited Mr. Langille at the Mic Mac tavern and later added that he was there on a "daily basis". During these visits he would often get a VLT next to Mr. Langille in order to have a conversation, spending $20 to $40 in the process. Mr. Dawson also maintained that he regularly withdrew large sums of cash from the Mic Mac tavern ABM to pay for car parts. Confronted with the massive amount of withdrawals and Mr. Langille's gambling problem, Mr. Dawson insisted that the withdrawals were all his.

[332] Mr. Dawson said Mr. Langille was with him when he went into the Matheson office to pay for the windows. When shown that the actual invoice includes an installation fee, Mr. Dawson said he "was under the assumption Mr. Langille's neighbour was doing it". He added that he was paid back by Mr. Langille "not all at once, not in dribbles and drabbles, probably three payments".

[333] Mr. Dawson agreed that the debit card seized at Mr. Langille's residence would have been issued in 2005. When it was put to him that he would have received a replacement card in 2010, Mr. Dawson said he could not remember. He was then shown a form demonstrating that he signed for the new card in early 2010. Taken to his direct evidence that he thought the card was "dead" by the time it was seized in March 2012, he clarified that there would have been no money in the account then. He then agreed that the card had been used up until this time but maintained that he did not give the card to Mr. Langille.

[334] Mr. Dawson denied being involved with Mr. Langille in directing DND's business to the Dawson Companies. He insisted that Mr. Langille "was just getting rid of his budget, so I was more than happy to be there".

[335] Mr. Dawson denied checking DND acquisition card statements to see what was purchased from the Dawson Companies. It was put to him that there was "a

lot of paperwork going back and forth", and the March 6, 2012 surveillance was raised. He specifically denied returning to Mr. Langille's house. He said he knew that he was being followed and, in any event, went to a corner store at the end of Mr. Langille's street.

[336] Mr. Dawson admitted that he paid suppliers through just one of the Dawson Companies – Atlantic. He also acknowledged that Harbourside, Robar and Colonial were supplied parts through Atlantic's inventory.

[337] He admitted that he did not have permission from anyone in authority at DND to provide benefits to Mr. Langille.

[338] Mr. Dawson was shown a series of documents demonstrating that his companies charged DND over three and four times what they paid for selected heating plant parts. While admitting that his competitors charged 20 to 40 percent mark-up (except for one example of a 100 percent mark-up with Mr. Quigley), Mr. Dawson attempted to justify the Dawson Companies' profit margins (at times) of 200 or 300 percent. He initially denied knowing that his companies were often the only businesses bidding, but later said he had an "inkling" of this.

[339] Mr. Dawson was shown a purchase order Colonial received where they were paid $4,102.50 for ball valves, representing a charge of 15 times what he paid for them. He described this as a "hassle order". He agreed that the only other bidder was Atlantic, and then allowed, "It was March so I marked it up good, yeah".

[340] With respect to soot blower lances, Mr. Dawson "assumed" the plant blew soot because that was what the standard operating procedure said. Pressed that these were really "phantom orders" and that the large devices were never delivered, Mr. Dawson maintained that 10 to 13 were delivered to Shearwater during the relevant time.

[341] On re-direct examination, Mr. Dawson said he was never told by anyone at DND that he could only charge a certain percentage profit on parts. He said his companies were not restricted to standing order contracts which stipulated a 10 percent maximum percentage.

THE LAW

General Principles

[342] The burden is on the Crown to prove each essential element of an offence beyond a reasonable doubt. This onus rests with the Crown and never shifts to the accused. However, the Crown is not required to prove each fact that makes up its theory beyond a reasonable doubt; see *R. v. Morin* (1988), 44 C.C.C. (3d) 193 (S.C.C.), *R. v. Arp* (1998), 129 C.C.C. (3d) 321 (S.C.C.).

[343] Both accused testified in their own defence. All of their evidence must be considered through the *W.(D.)* lens, as explained by Justice Bourgeois in *R. v. N.M.*, 2019 NSCA 4:

> 23 I agree with the appellant's view of the import of *J.H.S.*, 2008 SCC 30 at para. 11. In *R. v. P.D.B.*, 2014 NBQB 213, Justice Ferguson helpfully explains the modification of *W.(D.)*:
>
> > [67] The test outlined by Cory J. in *W. (D.)* is as follows, although I have incorporated the second assessment element arising from *J.H.S.* that was not part of the original three *W.D.* credibility evaluation guidelines:
> >
> > First, if you believe the evidence of the accused, obviously you must acquit.
> >
> > Secondly, if you do not know whether to believe the accused or a competing witness, you must acquit.
> >
> > Thirdly, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.
> >
> > Fourthly, even if you are not left in doubt by the evidence of the accused, that is that his or her evidence is rejected, you must ask yourself whether, on the basis of the evidence that you accept you are convinced beyond reasonable doubt by that evidence of the guilt of the accused. (*Emphasis in original*)

[344] Another basic principle is that I can accept all, part or none of any witness's testimony.

[345] Mr. Dawson cites *R. v. Villaroman* in defence of his activities. Justice Rosinski touched on this case and its import with respect to circumstantial evidence in *R. v. Murphy*, 2018 NSSC 310, where he wrote:

> 32 Justice Cromwell has recently canvassed the jurisprudence on circumstantial evidence, and synthesized its principles in *R. v. Villaroman*, 2016 SCC 33.
>
> 33 These are helpfully summarized recently in *R v Delege*, 2018 BCCA 200 by Justice Newbury:

28 In *Villaroman*, the Supreme Court of Canada emphasized that it was for the trial judge to decide whether the evidence against the appellant in that case, considered in light of human experience and the evidence as a whole (including the absence of evidence), excluded all reasonable inferences other than guilt. It was not for the Court of Appeal to raise "purely speculative possibilities" in order to fill in "gaps" in the Crown's evidence. (At paras. 69 -- 70.) As we stated in *Robinson*:

> In circumstantial cases, *as in non-circumstantial cases*, the appellate court may not interfere if the verdict is one that a properly instructed jury could reasonably have rendered. (*Yebes*, at 186.) It is generally the task of the finder of fact to draw the line between reasonable doubt and speculation. (*Villaroman*, at para. 71.) It is not open to a court of appeal to conceive of inferences or explanations that are not reasonable possibilities; nor to attempt to revive evidence or inferences that the trial judge reasonably rejected... If an appellant is to succeed, an inference other than guilt must be "reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense." (*Villaroman*, at para. 36.) [*Robinson*, at para. 38; emphasis by underlining added.]

In *Robinson*, the appellant had raised other possibilities to explain his conduct, but the trial judge did not accept his explanation of discrepancies between his testimony and other evidence, including video evidence. Similarly, in *R. v. Grover* 2007 SCC 51, the trial judge had rejected the accused's testimony. The Supreme Court of Canada agreed with the Court of Appeal that it was not open to "acquit the respondent on the basis of speculation about a possible explanation of his conduct that was flatly contradicted by his own testimony." (At para. 3.)

29 In the case at bar, the appellant did not testify. However, the trial judge did consider "other possibilities" consistent with innocence. He found them to be highly unlikely at best. Considering the whole of the evidence, he then concluded that the Crown had proven that the appellant had assisted in the establishment of the grow operation, in possession of the marihuana for purposes of trafficking, and in the theft of the electricity. The question for us on the appeal is whether the trial judge, acting judicially, could reasonably be satisfied that the appellant's guilt was the only reasonable inference available on the totality of the evidence. In my view, while this case is close to the line, it does not meet the standard for an unreasonable verdict. Applying *Villaroman*, it cannot be said that the trial judge's conclusion, assessed logically and "in light of human experience", was one that a properly instructed jury could not reasonably have rendered on the whole of the evidence.

[346] In *R. v. Calnen*, 2019 SCC 6, Justice Moldaver, in the majority decision, discussed the difference between direct and circumstantial evidence, noting at para. 28 that "the jury was correctly instructed that proof beyond a reasonable doubt meant that a conviction could rest on circumstantial evidence only if they were satisfied there was no rational inference inconsistent with guilt".

[347] In the result, with respect to the circumstantial evidence, I must examine all of the evidence and draw inferences only if I am satisfied that they are proper. That is to say, in order to find Mr. Ross and/or Mr. Dawson guilty on the basis of circumstantial evidence, I must be satisfied beyond a reasonable doubt that their/his guilt is the only rational conclusion or inference that can be drawn from the whole of the evidence.

Section 380(1) of the *Criminal Code*

[348] Section 380(1) deals with fraud and reads:

> **Fraud**
>
> 380 (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,
>
> (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
>
> (b) is guilty
>
> (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
>
> (ii) of an offence punishable on summary conviction,
>
> where the value of the subject-matter of the offence does not exceed five thousand dollars.

[349] In *R. v. Colpitts*, 2018 NSSC 40, at paras. 468 – 476, Justice Coady drew on the seminal Supreme Court of Canada cases to guide his decision:

> **Proving the offence of fraud: s. 380(1)(a)**

468 From the statutory definition, it is clear that the *actus reus* for fraud under s. 380(1) consists of a conduct element (an act of deceit, falsehood, or other fraudulent means) and a consequence element (defrauds).

469 The Supreme Court of Canada in *R. v. Olan*, [1978] 2 S.C.R. 1175, 1978 CarswellOnt 49, considered the definition of "defraud" at para. 11:

> Courts, for good reason, have been loath to attempt anything in the nature of an exhaustive definition of "defraud", but one may safely say, upon the authorities, that two elements are essential, "dishonesty" and "deprivation". To succeed, the Crown must establish dishonest deprivation.

470 The Court addressed the element of deprivation at para. 13:

> The element of deprivation is satisfied on proof of detriment, prejudice or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of the fraud. The following passages from the English Court of Appeal judgment in *R. v. Allsop* (1976), 64 Cr. App. R. 29, in my view correctly state the law on the role of economic loss in fraud, pp. 31-32:
>
> > Generally the primary objective of fraudsmen is to advantage themselves. The detriment that results to their victims is secondary to that purpose and incidental. It is 'intended' only in the sense that it is a contemplated outcome of the fraud that is perpetrated. If the deceit which is employed imperils the economic interest of the person deceived, this is sufficient to constitute fraud even though in the event no actual loss is suffered and notwithstanding that the deceiver did not desire to bring about an actual loss.
> >
> > We see nothing in Lord Diplock's speech [in *Scott*, supra] to suggest a different view. 'Economic loss' may be ephemeral and not lasting, or potential and not actual; but even a threat of financial prejudice while it exists it may be measured in terms of money ...
>
> Interests which are imperilled are less valuable in terms of money than those same interests when they are secure and protected. Where a person intends by deceit to induce a course of conduct in another which puts that other's economic interests in jeopardy he is guilty of fraud even though he does not intend or desire that actual loss should ultimately be suffered by that other in this context.

471 In *R. v. Théroux*, [1993] 2 S.C.R. 5, 1993 CarswellQue 5, the Court confirmed that the following principles, first set out in Olan, will govern the definition of the *actus reus* of fraud:

(i) he offence has two elements: dishonest act and deprivation;

(ii) The dishonest act is established by proof of deceit, falsehood or "other fraudulent means";

(iii) The element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, caused by the dishonest act.

[para. 13]

472 *Théroux* indicates that where the *actus reus* of a particular fraud is an alleged act of deceit or falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not"; on the other hand, where "other fraudulent means" is alleged, "the existence of such means will be determined by what reasonable people consider to be dishonest dealing": para. 15.

473 In *R. v. Zlatic*, [1993] 2 S.C.R. 29, [1993] S.C.J. No. 43, McLachlin J. (as she then was), writing for the majority, explained "other fraudulent means" at para. 32:

> The fundamental question in determining the *actus reus* of fraud within the third head of the offence of fraud is whether the means to the alleged fraud can properly be stigmatized as dishonest: *Olan, supra*. In determining this, one applies a standard of the reasonable person. Would the reasonable person stigmatize what was done as dishonest? Dishonesty is, of course, difficult to define with precision. It does, however, connote an underhanded design which has the effect, or which engenders the risk, of depriving others of what is theirs. J.D. Ewart, in his Criminal Fraud (1986), defines dishonest conduct as that "which ordinary, decent people would feel was discreditable as being clearly at variance with straightforward or honourable dealings" (p. 99).

474 The *mens rea* of fraud was addressed by the Court in *Théroux* at paras. 21-23:

> [T]he proper focus in determining the *mens rea* of fraud is to ask whether the accused intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act) knowing or desiring the consequences proscribed by the offence (deprivation, including the risk of deprivation). The personal feeling of the accused about the morality or honesty of the act or its consequences is no more relevant to the analysis than is the accused's awareness that the particular acts undertaken constitute a criminal offence.
>
> This applies as much to the third head of fraud, "other fraudulent means", as to lies and acts of deceit. Although "other fraudulent means" have been broadly defined as means which are "dishonest", it is not necessary that an accused personally consider these means to be dishonest in order that he or she be convicted of fraud for having undertaken them. The "dishonesty" of the means is relevant to the determination whether the conduct falls within

> the type of conduct caught by the offence of fraud; what reasonable people consider dishonest assists in the determination whether the *actus reus* of the offence can be made out of particular facts. That established, it need only be determined that an accused knowingly undertook the acts in question, aware that deprivation, or risk of deprivation, could follow as a likely consequence.
>
> I have spoken of knowledge of the consequences of the fraudulent act. There appears to be no reason, however, why recklessness as to consequences might not also attract criminal responsibility. Recklessness presupposes knowledge of the likelihood of the prohibited consequences. It is established when it is shown that the accused, with such knowledge, commits acts which may bring about these prohibited consequences, while being reckless as to whether or not they ensue.

475 In *Zlatic*, the Court framed the *mens rea* requirement of fraud as follows at para. 40:

> ... The accused must knowingly, i.e. subjectively, undertake the conduct which constitutes the dishonest act, and must subjectively appreciate that the consequences of such conduct could be deprivation, in the sense of causing another to lose his or her pecuniary interest in certain property or in placing that interest at risk.

476 Irrelevant to a fraud charge is any claim by an accused that their motives were pure and that they did nothing wrong. This is made clear in *Théroux* at para. 33:

> Pragmatic considerations support the view of *mens rea* proposed above. A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If the offence of fraud is to catch those who actually practise fraud, its *mens rea* cannot be cast so narrowly as this.

[350] The above-cited authority likewise provides guidance in my determination of whether Mr. Ross and Mr. Dawson are guilty.

Section 121(1)(b) of the *Criminal Code*

[351] In addition to the charge under s 380(1), Harold Dawson is charged with an offence under s. 121(1)(b). Section 121 of the *Criminal Code* provides:

121. (1) Every one commits an offence who

(a) directly or indirectly

(i) gives, offers or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the government, directly or indirectly pays a commission or reward to or confers an advantage or benefit of any kind on an employee or official of the government with which the dealings take place, or to any member of the employee's or official's family, or to anyone for the benefit of the employee or official, with respect to those dealings, unless the person has the consent in writing of the head of the branch of government with which the dealings take place;

(c) being an official or employee of the government, directly or indirectly demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind for themselves or another person, unless they have the consent in writing of the head of the branch of government that employs them or of which they are an official;

(d) having or pretending to have influence with the government or with a minister of the government or an official, directly or in-directly demands, accepts or offers or agrees to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office;

(e) directly or indirectly gives or offers, or agrees to give or offer, to a minister of the government or an official, or to anyone for the benefit of a minister or an

> official, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence, or an act or omission, by that minister or official, in connection with
>
> (i) anything mentioned in subparagraph (a)(iii) or (iv), or
>
> (ii) the appointment of any person, including themselves, to an office; or
>
> (f) having made a tender to obtain a contract with the government,
>
> (i) directly or indirectly gives or offers, or agrees to give or offer, to another person who has made a tender, to a member of that person's family or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or
>
> (ii) directly or indirectly demands, accepts or offers or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind for themselves or another person as consideration for the withdrawal of their own tender.
>
> (2) Every one commits an offence who, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes or gives, or agrees to subscribe or give, to any person any valuable consideration
>
> (a) for the purpose of promoting the election of a candidate or a class or party of candidates to Parliament or the legislature of a province; or
>
> (b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in Parliament or the legislature of a province.

[352] Section 121 "was enacted for the important goal of preserving the integrity of government": *R. v. Hinchey*, [1996] 3 S.C.R. 1128, at para. 13. In Morris Manning, Q.C. and Peter Sankoff, *Criminal Law*, 5th ed., (Markham: LexisNexis Canada Inc., 2015), the authors describe the overall aim of the section, and the activities targeted under each subparagraph:

> **¶16.19** Section 121 of the Code is entitled "frauds on the government", but the heading is actually a bit of a misnomer. The real aim of this section is to prevent corruption or acts that taint the integrity of government officials and, consequently, the public trust in how government business is conducted. … Section 121 sets out seven different crimes of this sort. Each of them involves rewards or benefits that have the potential to taint the public's perception of the way government business is conducted, and punishes such

> conduct on the part of both the donor and the recipient. There is, as usual, some overlap between the offences.
>
> **¶16.20** Each of the subparagraphs target a different sort of corrupt activity, specifically:
>
> - (a) punishes *quid pro quo* arrangements where a personal benefit is provided in exchange for some specific form of assistance;
>
> - (b) and (c) target a specific reward or benefit given to a government employee by a person who has business dealings with government, even if there is no proof of a specific agreement to assist;
>
> - (d) addresses conduct by a non-government employee with influence or purported influence on government business;
>
> - (e) targets benefits provided in connection with appointments to office; and
>
> - (f) addresses corruption involving government tendering of contracts.
>
> Finally, subsection (2) prohibits corrupt dealings that direct money or influence to the election of particular candidates, as opposed to providing personal benefits.

[353] Sections 121(1)(b) and (c) are broader in scope than the other offences set out under s. 121. They target conduct by or in relation to government "employees", as opposed to "officials"; the word "employees" has been broadly construed to apply to workers at all levels of government. Furthermore, while some of the offences under s. 121 – like s. 121(1)(a) – are aimed at protecting the government's actual integrity, ss. 121(1)(b) and (c) have a different objective. In *Hinchey*, L'Heureux Dubé J. noted, for the majority, that the purpose of s. 121(1)(c) – and by extension s. 121(1)(b) – "is not merely to preserve the integrity of government, but to preserve the appearance of integrity as well": para. 16. In *Criminal Law*, 5th ed., the authors state at p. 748:

> The focus of these sections, thus, is not corrupt dealings, but upon the conferral of benefits with the potential to threaten the appearance of the government's integrity. Subparagraph (b) focuses upon the conduct of people "with dealings of any kind" with the government, forbidding them from conferring commissions, rewards, advantage of benefits upon government employees, while subparagraph (c) similarly prohibits receipt or demands for such things by government employees or officials.

[354] The offences under ss. 121(1)(b) and (c) are "conduct" crimes, meaning that they do not require, as part of the *actus reus*, proof that any result flowed from the

doing of the prohibited act: *Hinchey*, at para. 22. In other words, an individual who has dealings with the government may be found guilty under s. 121(1)(b) of conferring an advantage or benefit on a government official or employee with respect to those dealings without proof that the employee or official reciprocated by exercising his influence in favour of the person giving the benefit or advantage. The government official or employee need not even be aware that he has accepted an advantage or benefit. That is why, in *R. v. Pilarinos*, 2002 BCSC 1267, Dimitrios Pilarinos was found guilty of an offence under s. 121(1)(b), while Glen Clark, the former Premier of British Columbia, was acquitted on the corresponding charge under s. 121(1)(c). In acquitting Mr. Clark, Bennett J., as she then was, stated:

> 276 There is no question Mr. Clark exercised poor judgment in hiring Mr. Pilarinos to do renovation work for him when Mr. Pilarinos had an application for a casino licence before the government. However, there is nothing in his conduct that crosses the line from an act of folly to behaviour calling for a criminal sanction.
>
> 277 I find that Mr. Clark is not guilty of Count 11.
>
> 278 The fact that Mr. Pilarinos has been convicted of conferring a benefit on Mr. Clark, while Mr. Clark has been acquitted of accepting that very same benefit is not an anomalous result in the circumstances of this case. I have found that Mr. Pilarinos knowingly gave Mr. Clark the benefit of his free labour for the purpose of obtaining Mr. Clark's influence or assistance with respect to his casino application. Mr. Pilarinos was aware of the value of his work on the renovation. I have also found that Mr. Clark did not accept that benefit within the meaning of the law since he was under the impression that he had fully compensated Mr. Pilarinos. Mr. Clark did not know the value of Mr. Pilarinos' work on the renovation. The different states of mind of Mr. Pilarinos and Mr. Clark with respect to the benefit explain the different outcomes.

[355] In *Hinchey*, the Supreme Court of Canada considered the meaning of "advantage or benefit" for the purposes of s. 121(1)(c) and held that it refers to "a material or tangible gain": para. 59. Justice L'Heureux Dubé elaborated at para. 68 that, when deciding whether something amounts to an advantage or benefit:

> … [I]t is important to consider the relationship between the parties as well as the scope of the benefit. Obviously, the closer the relationship, the less likely the gift should be perceived as an advantage or benefit to the recipient. The size of the gift is also a crucial indicator. Where a gift is trivial, like a cup of coffee, I fail to see how it could ever be seen as a true "benefit" to someone. The same situation is not apparent when the gift is a car, a large sum of money, or a house. In these cases, a trier of fact might well find that the person has benefited from the gift well beyond anything he or she has contributed.

> Simply stated, it is a question of fact for the jury to determine based on all the evidence in the case. In most instances, this determination should not be a difficult one. In fact, while this case deals with the potential application of the section, the appellant was unable to cite one reported case where the Crown actually pursued someone for the receipt of a "trivial" benefit.

[356] In addition to proving that the person who has dealings with the government conferred an advantage or benefit on a government employee or official without written consent from the government, the Crown must prove that that advantage or benefit was conferred "with respect to those dealings". This element goes to the *mens rea* required for the offence. In *R. v. Cooper*, [1978] 1 S.C.R. 860, Ritchie J. held in relation to s. 110(1)(b) – now s. 121(1)(b) – as follows:

> It was contended on behalf of the respondent that criminal intent was not an element of the offence created by s. 110(1)(b) of the Code, but this involves the proposition that the acts thereby prohibited "are not criminal in any real sense but rather acts which in the public interest are prohibited under a penalty". See *Sherras v. DeRutzen*, which was recently affirmed in this Court in *R. v. Pierce Fisheries*, at p. 14. In my opinion the provisions of s. 110(1)(b) are directed toward the preservation of integrity amongst employees of the government and those who deal with them, and it is the importance of preserving this aspect of national life that persuades me that the offence created by that section is in a real sense a criminal offence of which "intention" to confer the benefits "with respect to" dealings with the government is a necessary ingredient.
> p. 875

[357] In *R. v. Greenwood*, 1991 CarswellOnt 118 (C.A.), Doherty J.A. said the following about the criminal intent required by s. 121(1)(b):

> Evidence that a person who was having dealings with the government bestowed a benefit on a government employee involved in those dealings during the currency of those dealings reasonably suggests a connection in the mind of the giver between the benefit and the dealings. Indeed, Lamer J., writing for the majority in *Starr v. Ontario (Commissioner of Inquiry) (sub nom. Starr v. Houlden)*, [1990] 1 S.C.R. 1366, 55 C.C.C. (3d) 472, 68 D.L.R. (4th) 641, 110 N.R. 81, 41 O.A.C. 161 , at pp. 1406-1407 [S.C.R.], pp. 501-503 [C.C.C.], described the inference as "almost irresistible."

ANALYSIS AND DISPOSITION

[358] In assessing whether the Crown has fulfilled their burden to prove beyond a reasonable doubt the guilt of Mr. Ross on the single count and Mr. Dawson on counts one and two, I am mindful of the totality of the evidence. This involves scrutiny of the *viva voce* and exhibited evidence. Both are extensive as this trial involved 21 days of oral evidence and a massive amount of documents. The

purchase orders alone number in the vicinity of 650 over the course of the four year charge period.

[359] In assessing the testimony, I am cognizant of the witnesses' credibility and reliability. With respect to the latter, I have considered the fact that the matters in issue began 11 years before this trial. Accordingly, I have allowed for faded recollections expressed at different times by various witnesses.

[360] When I assess all of the witnesses who came before the Court, I am left with reliability concerns with only one – Patrick Gates. At 85, Mr. Gates is of advanced age and it was apparent that he struggled with many of the direct, cross-examination and re-direct questions. Given his answers, I cannot be sure that there was a change in CTH's Shearwater business beginning in 2008 or 2011. More importantly, on the basis of his evidence I cannot discern anything of consequence from the quotes he provided to Sgt. Thompson. Finally, I found Mr. Gates' evidence regarding the practice of mark-ups to be confusing and of no probative value.

[361] With respect to credibility, in terms of the Crown's witnesses, I had no concerns other than with one military police officer. In the main, the police and civilian Crown witnesses gave businesslike testimony, and their cross-examinations did not reveal any significant lack of forthrightness.

[362] Unfortunately, P.O. John Dingwall was somewhat argumentative with Mr. Bright during cross-examination and this exposed his lack of credibility in relation to the circumstances of the search of Mr. Dawson's home and vehicle on May 9, 2012.

[363] When the video was shown, it was obvious that another military police officer – in uniform – followed Mr. Dawson when he went into his pick-up truck to retrieve papers. P.O. Dingwall initially said he was not sure if the individual was an officer. When he finally acknowledged that this man was likely a military police officer, he said – notwithstanding that he was the search leader – that he did not know if the officer had asked Mr. Dawson to retrieve items from his vehicle.

[364] With respect to the Defence, both accused took the stand and as will become abundantly clear, I have grave concerns with the evidence of each of Mr. Ross and Mr. Dawson. Indeed, even when viewed through the *W.D.* lens, I find both accused lacking credibility in vital areas.

[365] In the section of this decision titled "The Evidence of the Two Accused", I consciously devoted separate subsections to their cross-examination evidence. Scrutiny of this evidence, in the context of the entirety of the evidence led at the trial, reveals my substantive concerns with the credibility of Mr. Ross and Mr. Dawson as outlined below.

Mr. Ross

(1) his insistence that his files must be missing paperwork with the implication – completely unfounded in the evidence – that someone must have removed the critical documentation;

(2) when referring to the lack of RFQ documents, his certainty that there never was a dispute over what parts were delivered;

(3) Mr. Ross' comment that as he was just the purchaser, parts were of no concern to him;

(4) his answers to a series of questions concerning contract splitting to the effect that, despite his many years of experience, he was not adept at fixing problems so as to conform with policy;

(5) when it was suggested to him that he provided confidential competitor information to Mr. Dawson, he could not say whether or not this was the case;

(6) his insistence that he tried out Harbourside, Robar and Colonial on the basis of business cards left on his desk, contrasted with his evidence that he would lunch with competitor companies' representatives so as to build a relationship before trying them out;

(7) his answers that he never felt that it was a problem that the Dawson Companies all had links to Mr. Dawson notwithstanding his admitted training and understanding of the rules;

(8) Mr. Ross' explanation that he would have sent faxes to different Dawson Companies numbers but that somehow they became amalgamated such that they were actually faxed to one number (location);

(9) his equivocation that he could not say whether he saw the zeroed out numbers;

(10) his assertion when questioned about his emails addressed exclusively to the Dawson Companies that he was permitted to send RFQs to as many as 10 companies if he wished when none of his files show he ever did this; and

(11) Mr. Ross' evidence that he had pre-signed forms from several customers when the only ones found contained the photocopied signature of Mr. Langille, along with his additional evidence that he would always phone the customer to confirm their authorization when there are no file notes to this effect.

Mr. Dawson

(1) his testimony that it was not until at least 2010 that he told Mr. Ross that Harbourside was his company when he formed this company, along with Colonial and Robar, five years earlier;

(2) his evidence that he was unaware of his involvement with Robar notwithstanding the documents demonstrating, among other things, that he was vice president;

(3) Mr. Dawson's answers about who signed the Dawson Companies documents submitted to DND, especially with respect to his wife and whether she gave anyone permission to sign her name, along with his ultimate admission (as per Kim MacDonald's agreed statement, Appendix B) that his wife had not told anyone they could use her signature;

(4) his attempt to say his lack of technological savvy meant he knew nothing about the zeroed out faxes but that they were probably all sent from Atlantic's office;

(5) Mr. Dawson's progressive attempt to explain the tremendously high usage of the Harbourside debit card at the Mic Mac tavern as his own withdrawals in the face of the strong circumstantial evidence that it was used by Wayne Langille. I have determined beyond a reasonable doubt that Mr. Dawson gave Mr. Langille benefits in the form of cash (through the Harbourside debit card) and by paying several of Mr. Langille's outstanding accounts. As explored in my discussion of Mr. Dawson's lack of credibility, I find his explanation preposterous that he was the one who frequently used the debit card at the Mic Mac tavern.

(6) I find Mr. Dawson's explanation of how the card was found at Mr. Langille's house to be equally far-fetched. Even if it was somehow left on the seat of Mr. Langille's vehicle (during some unspecified date), why was it never retrieved in advance of the May 2012 search? In any event, on the totality of the evidence, I make the emphatic finding that Mr. Dawson gave significant benefits to Mr. Langille.

(7) in response to a host of questions about bill payments on behalf of Mr. Langille and his insistence that these were merely loans, I find Mr. Dawson's evidence about Mr. Langille paying him back to be highly suspect. When confronted with the windows receipt showing an installation fee (when he had testified that Mr. Langille's firefighter neighbour was going to install the windows and that this related to the tight time frame), Mr. Dawson had no plausible answer;

(8) his evidence that the Harbourside debit card was essentially invalid when seized from Mr. Langille's residence in May 2012, coupled with his clarification that there would have been no cash in the account by then;

(9) when questioned about mark-ups, Mr. Dawson's initial denial that he knew his companies were the only ones quoting and his later evidence that he had an inkling that this was the case; and

(10) his evidence that he assumed the heating plant blew soot in the relevant time period based on his having worked there approximately 10 years earlier, when, he acknowledged, he regularly went to the plant to do the leg work required with quoting.

The *W.(D.)* Lens

[366] When I consider the totality of the evidence I find both internal inconsistencies and a lack of harmony between the evidence of the two accused and the rest of the evidence. In the critical areas I do not believe the evidence of either Mr. Ross or Mr. Dawson. Indeed, I have found the other evidence causes me to disbelieve what they have said. Not only do I not believe their evidence, it leaves me with no reasonable doubt. Finally, in rejecting the evidence of Mr. Ross and Mr. Dawson in these critical areas, on the basis of the evidence that I have accepted, I am convinced beyond a reasonable doubt of the guilt of Mr. Ross on count one and of Mr. Dawson on counts one and two.

s. 380(1)

[367] In finding both the accused guilty of fraud, Crown counsel has proved each of these essential elements beyond a reasonable doubt:

1. that they deprived Her Majesty the Queen as represented by the Department of National Defence (DND) and the public of something of value;
2. that their deceit, falsehood or other fraudulent means caused the deprivation;
3. that they intended to defraud DND and the public; and
4. that the value of the property exceed $5,000.00.

s. 121(1)(b)

[368] As for the second count, I have found that the Crown has proved beyond a reasonable doubt these essential elements:

1. that Mr. Dawson had dealings with the government in that he regularly bid on contracts for the supply of heating plant parts to DND;
2. that Wayne Langille was an employee (or, official) of the government department with which Mr. Dawson had dealings;
3. that Mr. Dawson paid a commission or reward to or conferred an advantage or benefit on Wayne Langille;
4. that Mr. Dawson intended to pay a commission or reward to or confer an advantage or benefit on Wayne Langille with respect to Mr. Dawson's dealings with the government; and
5. that Mr. Dawson did not have the consent in writing of the head of the branch of government with which he had dealings.

Discussion

[369] When I consider all of the evidence it is clear that federal government policy, particularly in the wake of the sponsorship scandal, is designed to protect the Canadian taxpayer. The contracts officer training ensures that fundamentally, procurement involves a transparent and open bidding process. On the evidence I find that Mr. Ross turned a blind eye to what he must have known were the built-in protections for the public.

[370] It is not an answer to suggest, as Mr. Ross attempted to, that emergencies at the old heating plant required him to regularly deviate from the rules and regulations. The evidence of the plant personnel confirms that emergencies (requiring the plant to shut down) were essentially non-existent. Accordingly, parts would have rarely been required on an urgent basis.

[371] Mr. Ross' rationale for contract splitting fails to pass muster. The overriding evidence is that it was a fundamental rule that the contracts had to be bundled. The evidence led through Ms. McGuinness clearly shows that Mr. Ross split contracts on an almost daily basis.

[372] Mr. Ross attempted to explain that there was non-responsive bidding from competitive companies; however, it is my finding that because he did not follow the rules, non-Dawson Companies did not have an opportunity to submit competitive bids.

[373] In considering all of the evidence it is clear that Mr. Ross knew the Dawson Companies had common ownership. He knew his friend Harold Dawson had an interest and he favoured these companies over competitors. By his own admission he tried out three of the four Dawson Companies merely because business cards were left on his desk. The evidence showed that he continued to patronize these companies absent any real contact. This is to be contrasted with his evidence about building relationships with competitor companies.

[374] I further find that Mr. Ross actively participated in fraud on the Canadian government by attempting to camouflage his actions. For example, he sent emails and faxes purporting to be in relation to four different companies when he knew very well that they were most often going to the same location.

[375] The Crown led considerable evidence to establish that Mr. Ross and Mr. Dawson regularly lunched together, and that on one occasion, Mr. Dawson picked Mr. and Mrs. Ross up at the airport. Even if I were to accept the most relaxed reading of the conflict of interest rules, this is not an answer to the pattern of behaviour. For example, the evidence reflects that for the roughly 650 purchase orders, there was an infinitesimal percentage awarded to true competitor companies. Given this evidence, I have to be skeptical about the alleged benign nature of Mr. Ross' and Mr. Dawson's lunches and their regular weekly meetings. Close friends or family tend to pick one another up at the airport.

[376] In consideration of all of the evidence it is my finding beyond a reasonable doubt that Mr. Ross and Mr. Dawson enjoyed a close relationship and that together they intentionally perpetrated a fraud on the Canadian government. This fraud resulted in anything but a competitive bidding process. In fact, the end result was a monopoly situation where the Dawson Companies received the vast majority of the contracts Mr. Ross had charge over during the impugned time. While not acknowledging and, in fact, attempting to cover up what he knew, Bry'n Ross favoured his good friend Harold Dawson.

[377] With respect to Mr. Dawson, he admitted that he initiated his sole proprietorships so that he could give DND their required number of bids. Upon scrutiny it is clear that Mr. Dawson knew the Dawson Companies' bids were not

legitimate. After all, he admitted to coming up with the pricing and knowing that his lowest quote would win the day over his other (purposely higher) bids.

[378] The Crown has demonstrated on the evidence beyond a reasonable doubt that there was an actual loss of well in excess of $5,000.00 on account of the manipulated procurement process. Given that the proper bidding arrangement was not followed it is a fair observation that the best or fair price was never realized. For the vast majority of the contracts, true competitor companies were not afforded an opportunity to bid.

[379] Mr. Dawson admitted that he signed, or had Ms. Robar Harrisson sign, his wife's name on Colonial documents provided to DND. Similarly, Kelly Moore's signature was forged by Mr. Dawson and Ms. Robar Harrisson. These forgeries were dishonest and part of the ruse to pretend the company was distinct.

[380] As for the alleged mark-ups, Mr. Dawson says that of the well over 600 contracts in evidence, the Crown had but a few examples of significant price mark-ups. Mr. Dawson stresses the fact that he was not confined to a specific mark-up percentage and that within the free market it was open for him to charge whatever he could get. Mr. Dawson points out that the Crown's expert, Ms. Shea, confirmed that if one of his companies ever made an incorrect charge, DND was always reimbursed.

[381] While Mr. Dawson went to great lengths to emphasize his right to charge what he wanted in a free market, this evidence ignores the fact that he did this in an artificial market. The market was artificial because of his manipulation which excluded true competitors. This resulted in a true monetary loss to the government. In the result, when Mr. Dawson acknowledged charging up to 15 times what he paid (wholesale) for a part, this amounts to more than an extremely high profit. It represents a stark example of the deprivation to the government. When the contracts are scrutinized along with the quotes (and the prices the Dawson Companies received the parts for), it is easy to conclude the loss was far greater than $5,000.00.

[382] Much evidence was led by the Crown in an attempt to demonstrate that the heating plant bought more parts from the Dawson Companies than reasonably may have been required. While I find it difficult to accept much of this evidence beyond a reasonable doubt, I do find it is made out in relation to the soot blower lances. Mr. Dawson notes that when he worked at Shearwater in the 1990s, they routinely blew soot. He notes that the soot blowers were ordered by Wayne

Langille during March madness and that he simply complied with the request. In fact there were 11 of these devices purchased throughout the four year period. They were bought at times that do not fall within the "March madness" time period. Mr. Dawson said that he simply complied with Mr. Langille's requests but it defies logic as to why Mr. Dawson would have complied with the requests (which I do not believe were made) when he ought to have known (given his ongoing familiarity with the plant) that the plant had not blown soot in many years. I would add that there was no credible evidence demonstrating the soot blowing lances – allegedly received by the Dawson Companies from a company when it ceased business in 2006 – were ever delivered to 12 Wing Shearwater.

[383] Ms. Shea's evidence confirms that Mr. Dawson took approximately $1 million out of his companies over the course of the four years. In and of itself there would be nothing wrong with this; however, given the totality of my findings, I am of the view that much of this is attributable to Mr. Dawson's fraud and the benefit he gave to Mr. Langille. I have discussed the former at length. As for the latter, below I have assessed the evidence regarding the second count.

[384] The benefits Harold Dawson provided to Mr. Langille took several forms. As discussed above, I find that Mr. Dawson provided Mr. Langille with a Harbourside debit card which Langille (with Mr. Dawson's knowledge) used to regularly withdraw cash from the Mic Mac Tavern ATM. The debit card was also used to pay Mr. Langille's expenses, including bills from his insurer, Eastlink, Blue Wave and Wonder Auto. Mr. Dawson used cheques from Atlantic's HSBC bank account and his Visa card to pay for new windows and doors to be installed at Mr. Langille's residence. I find that Mr. Dawson intended to confer these benefits on Mr. Langille with respect to Mr. Dawson's dealings with DND. In other words, I find that Mr. Dawson had the *mens rea* required for a conviction under s. 121(1)(b). Consistent with Justice Doherty's observation in *R. v. Greenwood*, the evidence that Mr. Dawson had dealings with DND and bestowed a benefit on Mr. Langille, an employee of DND, during the currency of those dealings, reasonably suggests a connection in Mr. Dawson's mind between the benefit and the dealings. It is, as Lamer J. noted in *Starr v. Ontario (Commissioner of Inquiry)*, an "almost irresistible" inference. In this case, it is the only reasonable inference available on the totality of the evidence. The benefits in this case went far beyond the kinds of gifts that one close friend might reasonably give to another. In addition, most of the benefits were connected to two of Mr. Dawson's companies that had dealings with DND. The debit card was in the name of Harbourside, while the cheques for the windows and doors were drawn from Atlantic's HSBC account.

[385] In arriving at my beyond a reasonable doubt findings I carefully considered the cases referred to in my "General Principles" section, including *Villaroman*. In considering all of the evidence I can find no rational inference inconsistent with guilt. Said another way, I am satisfied beyond a reasonable doubt that both Mr. Ross and Mr. Dawson are guilty as it is the only rational conclusion or inference I can draw from the whole of the evidence.

Chipman, J.

APPENDIX A

ADMISSIONS

Bry'n Ross (Exhibit 1)

1. That Building 30 at CFB Shearwater contained Bry'n Ross's office and Mr. Ross was in possession of the office searched and the items seized from the office on May 9, 2012;
2. That Building 56 at CFB Shearwater contained the heating or steam plant at which Wayne Langille was employed;
3. That all evidence obtained by any officers involved in this investigation including seizing through search warrant, receiving through production order replies or voluntarily provided is admitted into evidence without the necessity of testimony by any officers involved in seizing or otherwise obtaining the evidence including testimony regarding where the evidence was seized from or otherwise obtained, and from whom evidence was obtained;
4. Harold Dawson and Bry'n Ross agree that evidence subject to the admissions outlined above may be introduced by the Crown through the lead investigator Tyson Springstead, without the requirement for any additional authentication,.
5. That Harold Dawson and Bry'n Ross admit that the unbroken chain of continuity of evidence obtained during this investigation has been proven by the Crown and is admitted by the defence.

Harold Dawson (Exhibit 2)

1. That between April 1, 2008 and May 9, 2012, 31 Guysborough Street was owned by Harold Dawson and Kimberley MacDonald, and Harold Dawson was in possession of the premises searched and the items seized at this address by investigators on May 9, 2012;
2. That Building 30 at CFB Shearwater contained Bry'n Ross's office and Mr. Ross was in possession of the office searched and the items seized from the office on May 9, 2012;
3. That Building 56 at CFB Shearwater contained the heating or steam plant at which Wayne Langille was employed;

4. That all evidence obtained by any officers involved in this investigation including seizing through search warrant, receiving through production order replies or voluntarily provided is admitted into evidence without the necessity of testimony by any officers involved in seizing or otherwise obtaining the evidence including testimony regarding where the evidence was seized from or otherwise obtained, and from whom evidence was obtained;
5. Harold Dawson and Bry'n Ross agree that evidence subject to the admissions outlined above may be introduced by the Crown through the lead investigator Tyson Springstead, without the requirement for any additional authentication;
6. That Harold Dawson and Bry'n Ross admit that the unbroken chain of continuity of evidence obtained during this investigation has been proven by the Crown and is admitted by the defence.

APPENDIX B

Agreed Statement of Facts Relating to the Evidence of Kim MacDonald

1. Kim MacDonald is currently and was between April 1, 2008 and May 9, 2012 (the material time) the spouse of Harold Dawson. She has never used the name Kim Dawson.
2. During the material time, Kim MacDonald and Harold Dawson jointly owned properties at 31 Guysborough Avenue and 26 Pleasant Street in Dartmouth.
3. Kim MacDonald gave a statement to Military police investigators on 2017 07 06. In relation to the four businesses relevant to this trial – M.E. Robar Industries Inc., Harbourside Controls, Atlantic Measuring Technologies Limited and Colonial Industrial Supply – she stated the following:
    a. She was independent of the business or businesses. She was married to a man that … owned his own business and that ahis customer was Shearwater, which she was aware of, but she played no part in his business. She had an independent job and ran a household.
    b. She had never heard of M.E. Robar Industries prior to the investigation.
    c. She knew Melanie Harrison or Melanie Robar as a person who worked for Harold as his in-house sales person and his accounting person.
    d. Ms. MacDonald was then asked about her involvement in Harbourside Controls. She stated that she did not think she had any role with Harbourside Controls.
    e. She was shown a document bearing the name Harbourside Controls and the signature K. MacDonald. She was asked whether she had signed the document. She stated no.
    f. She was shown a number of other documents on which the signature Kim MacDonald was written and she stated that she had not signed any of the documents.

g. She was not asked by anyone to use her signature.

h. She knew her name was involved in Atlantic Measuring Technologies Limited either as vice-president or co-owner. She did not play any part and was not an active participant in the business. She was aware that her name was on the company. She and Harold held everything joint. Their house, cars, everything was 50/50. She knew she was an owner of that and when it was originally started, it was more so that she could access money, if she had to, in an emergency. She did not play a part in the daily operation of the business. She reiterated that she played no part in any of the businesses.

i. Her role with Colonial Industrial Supply was similar to her role with Atlantic Measuring. It was the other company name with which she was familiar.

4. Kim MacDonald was asked about Bry'n Ross and stated the following:

   a. Bry'n Ross was a friend of Harold's before Harold started his business. She thought they were in the union together. She stated that he was a personal friend of Harold's for a long time.

   b. She stated that she knows Bry'n personally. That he is not a really close friend of hers but that he has been to her home and she has met his wife and sons.

   c. In response to questions about lunches and Harold paying for lunches she stated that she thought it was reciprocated, that they went out to lunch very often and Brian had lunch at her house a few times. She stated that they went out together every Wednesday evening for quite some time.

5. Kim MacDonald was asked about Wayne Langille and stated the following:

   a. Wayne Langille was Harold's boss at one time and they were friends. They worked together very often as friends and they went away weekends together as well.

b. Wayne came to their house as well and Kim MacDonald knows his wife. She stated that Wayne Langille's son erected their fence in their backyard.

c. Kim MacDonald confirmed that Harold was friends with both Bry'n and Wayne but she could not say whether Bry'n and Wayne were friends. Socially she knew Wayne a little bit, as he would drop over for a coffee.

d. She did not speak to Wayne about business. She was never in the office.