

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Slaunwhite*, 2022 NSSC 308

**Date:** 20220901

**Docket:** CRH 501486

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Kathleen Marie Slaunwhite

**DECISION**

**Judge:** The Honourable Justice Ann E. Smith

**Heard:** June 14, 15 and 17, 2022, in Halifax, Nova Scotia

**Oral Decision:** September 1, 2022

**Written Decision:** October 28, 2022

**Counsel:** Adam McCulley, on behalf of the Provincial Crown  
Ian Hutchison, on behalf of Kathleen Marie Slaunwhite

**By the Court:**

[1] Kathleen Marie Slaunwhite stands charged:

That she between the 4<sup>th</sup> day of February 2013 and the 15<sup>th</sup> day of June 2018, at, or near, Halifax Nova Scotia, did by deceit, falsehood or other fraudulent means, did unlawfully defraud Total Kneads of a sum of money, a total value exceeding \$5,000.00 contrary to Section 380(1)(a) of the *Criminal Code*.

**The Law – General Principles**

[2] Ms. Slaunwhite comes before this Court with a presumption of innocence, meaning that the Crown must prove the offences of fraud beyond a reasonable doubt. That presumption of innocence stays with her throughout the trial and is displaced only if the Crown, on the evidence I accept, has proven Ms. Slaunwhite's guilt beyond a reasonable doubt. Ms. Slaunwhite does not have to prove her innocence.

[3] Proof beyond a reasonable doubt is a very high standard and derives from the presumption of innocence: *R. v. Morrison*, 2019 SCC 15 at para 56. A reasonable doubt is a doubt based upon reason and common sense, logically flowing from the evidence or absence of evidence.

[4] For the Crown to meet its burden, it does not have to prove the elements of the offence to an absolute certainty. A reasonable doubt is not an imaginary or frivolous doubt: *R v. Villaroman*, 2016 SCC 33 at para 28. However, the Crown must prove more than the accused is probably guilty. Proof beyond a reasonable doubt

lies much closer to absolute certainty than to a balance of probabilities: *R v. Starr*, 2000 SCC 40 at para 242.

[5] The standard of proof beyond a reasonable doubt applies to each of the essential elements of the offences charged (*R v. Morrison*, 2019 SCC 15 at para 51) and to the evidence as a whole (*R v. Ryon*, 2019 ABCA 36 at para 46 quoting *R v. Carrière* (2001), 2001 CanLII 8609 (ON CA), 151 OAC 115 (Ont CA) at para 48, but not to individual pieces of evidence (*R v. JMH*, 2011 SCC 45 at para 31).

[6] Ms. Slaunwhite testified at trial. This means that the Court must consider the instruction provided by the Supreme Court in *R v. W(D)*, 1991 CanLII 93 (SCC), [1991] 1 SCR 742, and recently restated by Justice Martin in *R v. Ryon*, 2019 ABCA 36. If I believe Ms. Slaunwhite's exculpatory evidence – or any exculpatory evidence – I must acquit. Even if I do not believe her evidence, I must still consider whether it leaves me with a reasonable doubt. If Ms. Slaunwhite's evidence does not leave me with a reasonable doubt, I do not use that as any evidence of guilt or to infer that the Crown's version of the case must be true. Rather, I can only convict Ms. Slaunwhite where the evidence that I do accept proves each element of the offence beyond a reasonable doubt.

[7] The elements of the offence of fraud under s. 380 (1) of the *Code* were set out by the Supreme Court of Canada in *R. v. Theroux*, [1993] 2 S.C.R. 5, by McLachlin J. (as she then was). The *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

[8] The *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another.

[9] Deceit is an untrue statement made by a person who knows that it is untrue, or has reason to believe that it is untrue, but makes it despite that risk, to induce another person to act on it, as if it were true, to that other person's detriment.

[10] A falsehood is a deliberate lie.

[11] The term “other fraudulent means” refers to any conduct which a reasonable person would view as dishonest: *R. v. Zlatic*, [1993] 2 S.C.R. 39 at p. 45 and *R. v. Olan*, [1978] 2 S.C.R. 1175. In *Zlatic* and in *Theroux*, the Supreme Court of Canada noted that courts have defined the sort of conduct which may fall under the third category of “other fraudulent means” to include the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds and unauthorized arrogation of funds or property.

#### The Interpretation of “Reasonable Person”

[12] In the context of fraud charges, conduct that would lead a reasonable person to conclude the conduct is deceitful or dishonest includes:

- Silence or omission as such that would mislead a “reasonable person”: *R. c. E. (J.) (1997)*, 1997 CanLII 10605 (QC CA), 117 C.C.C. (3d) 275 (C.A. Que.), at paragraphs 29-3;
- Where a reasonable person would find the defendant’s conduct to be deceitful. Examples of other fraudulent means include exploiting weaknesses of victims, personal use of corporate money and unauthorized diversion of

funds: *R. v. Drakes*, 2006 CanLII 730 (ON SC), 2006 CarswellOnt 1585, [2006] O.J. No. 129, [2006] O.T.C. 24, [2006] C.C.S. No. 3920 (WL);

- Conduct which reasonable decent persons would consider dishonest and unscrupulous: *R. v. Zlatic*, 1993 CanLII 135 (SCC), [1993] 2 S.C.R. 29, 79 C.C.C. (3d) 466;
- Would the reasonable person stigmatize what was done as dishonest?: *R. v. Iyer*, 2020 ABCA 439;
- Would ordinary, decent people feel this conduct is discreditable as being clearly at odds with straightforward or honourable dealings?: *R. v. Olan*, 1978 CanLII 9 (SCC), [1978] 2 S.C.R. 1175;

[13] The *mens rea* of fraud requires proof that the Ms. Slaunwhite intentionally and knowingly engaged in the conduct amounting to deceit, falsehood or other fraudulent means and did so with the subjective knowledge that the conduct would or could result in deprivation of the victim's, TKMT's pecuniary interests (*R. v. Theroux*, p.20).

[14] For the Crown to establish Ms. Slaunwhite's guilt, I must be satisfied beyond a reasonable doubt of each of the essential elements of the offence. There is no onus upon Ms. Slaunwhite to prove anything.

[15] In terms of circumstantial evidence, it is important to note that the standard of proof beyond a reasonable doubt applies only to the final evaluation of innocence or guilt. It does not apply piecemeal to individual items of evidence (see: *R. v. Wu*, 2017 ONCA 620, at para. 15). The evidence must be viewed in its totality and not in isolation. Furthermore, when assessing circumstantial evidence, the Court should consider other plausible theories and other reasonable possibilities which are inconsistent with guilt. However, the Crown is not required to negate every possible theory which might be consistent with the innocence of the accused (see: *R. v. Villaroman*, 2016 SCC 33 (CanLII), [2016] 1 S.C.R. 1000, at para. 37). Thus, in order for Ms. Slaunwhite to be convicted of fraud under s. 380 (1) of the *Code*, the Crown must have proven each of these essential elements beyond a reasonable doubt:

- (a) That Ms. Slaunwhite deprived TKMT of something of value;
- (b) That Ms. Slaunwhite's deceit, falsehood or other fraudulent means caused the deprivation;

- (c) That Ms. Slaunwhite intended to defraud TKMT; and
- (d) That the value of the property exceeded \$5,000.00.

## **Proceedings at Trial**

### The Agreed Statement of Facts

[16] Pursuant to section 655 of the *Criminal Code*, the Crown alleged, and Ms. Slaunwhite admitted for the purpose of dispensing with proof thereof, the following facts:

1. In January 2010, Ms. Slaunwhite commenced a business relationship with Leah Castel and Sarah Letcher, during which Ms. Slaunwhite would rent business space at the Total Kneads location, on order for Ms. Slaunwhite to offer therapeutic services.
2. Ms. Castel and Ms. Letcher conducted a review of Ms. Slaunwhite's financial transactions with Total Kneads and discovered that, commencing in February 2013 and continuing for approximately 5 years, Ms. Slaunwhite would conduct the following financial transaction pattern:
  - a. Ms. Slaunwhite would debit/make a purchase for therapeutic services she offered with a credit card attached either



to herself, her mother Anna Slaunwhite, or her father, Reginald Slaunwhite;

- b. Ms. Slaunwhite would then credit/refund the credit card which was used to make the purchase from Ms. Slaunwhite's services;
- c. The debit and credit transactions were facilitated by the Moneris equipment, point-of-sale machine, owned by Total Kneads;
- d. After each purchase and refund, the Moneris machine would provide a paper copy of the transaction;
- e. Ms. Slaunwhite would usually submit the paper copy of the debit/purchase of her services to Total Kneads;
- f. Total Kneads would issue a cheque to Ms. Slaunwhite for the value of the services she provided through the use of the Total Kneads establishment, less agreed deductions (i.e. rent); and
- g. Ms. Slaunwhite would deposit and accept the funds from the cheque issued to her from Total Kneads.

3. The transactions, which were debited and credited, and then invoiced to Total Kneads, including the values and which credit cards were used by Ms. Slaunwhite are identified in Appendix “A”, attached hereto.
4. In relation to the transactions from August 6, 2016 to June 9, 2018, the debits (purchases) and credits (refunds) do not balance out. The number of days between the purchase and refund dates began to increase and the amounts were not equal. The total amount of purchases during this time period was \$18,935.00 and the total amount of refunds was \$19,555.00.

[17] Ms. Slaunwhite, her counsel and Crown counsel signed this Agreed Statement of Facts on June 14, 2022.

[18] The Crown called three witnesses, Leah Castel, Sarah Letcher and Detective Constable Kel Rogers. I will now review the evidence given by each of these witnesses.

#### The Evidence of Leah Castel

[19] Ms. Castel testified that she is 48 years old and has been the co-owner of Total Kneads Massage Therapy Inc. (“TKMT”) since February 2014. In terms of

education, Ms. Castel has an Masters of Business Associations (May, 2018) and a Bachelor of Science degree.

[20] In cross-examination, Ms. Castel agreed that she had not had any training or certification in bookkeeping or accounting, despite completing her MBA in May 2018.

[21] Ms. Castel described TKMT as a health and wellness clinic, with the majority of its business being massage therapy, but she said they also have acupuncturists and a naturopathic practitioner. TKMT began treating clients in March 2004.

[22] Ms. Castel described her role at TKMT as management, accounting and bookkeeping and she treated client as a massage therapist until 2020, but not thereafter. Ms. Castel testified that every two weeks she would do up invoices for the sub-contractors and renters associated with TKMT and pointed to examples of such invoices for Ms. Slaunwhite which were included in the parties' Joint Book of Exhibits.

[23] Ms. Castel's evidence was that she prepared these invoices using an excel spreadsheet. Crown counsel took Ms. Castel through about ten of these invoices which she identified as having errors in the dates of the applicable two-week invoice period. Ms. Castel's evidence was that she gave all of these invoices in Exhibit 2 to

the police. These invoices cover the period January 14, 2013, to June 10, 2018. Ms. Castel stated that she changed some of the dates on these invoices to 2018 from 2017 (noticing that they recorded, in error, 2017) after giving the invoices to the police. She and Sarah Letcher also added the numbers of the credit cards which Ms. Slaunwhite used to make purchases or sales beside the transactions at issue in this proceeding, i.e., where no refund receipt was provided to TKMT.

[24] Ms. Castel agreed in cross-examination that she provided the police with three instances where Ms. Slaunwhite processed refunds for a client, with two of three of those transactions having receipts with Ms. Slaunwhite's name or initials indicated by handwriting. Ms. Castel said that the handwriting was not hers.

[25] Ms. Castel also gave evidence about Royal Bank of Canada ("RBC") Business Account Statements for TKMT which were also included as part of the Joint Exhibit Book. Ms. Castel stated that she downloaded these statements from RBC on-line banking and forwarded these to Cst. Kel Rogers.

[26] Ms. Castel's evidence was that all of the therapists at TKMT were either subcontractors and self-employed, with a handful of therapists just renting space from TKMT. Her evidence was that subcontractor massage therapists would pay

TKMT a percentage of their earnings, and renters paid a set fee for the treatment room and any supplies TKMT had agreed to provide.

[27] Ms. Castel was asked by Crown counsel to describe how client transactions would work at TKMT. Her evidence was that if she is a client there to receive services, she goes with the therapist to their room, receives the services, then either gives the therapist her insurance card for direct billing or pays directly through the point-of-sale machine. Ms. Castel said that for massage therapy it was a single purchase transaction, but for hydrotherapy there were bundles that could be purchased. Her evidence was that a client who wanted to purchase such a bundle would pay for the entire series in one payment, with that amount going into TKMT's bank account. Ms. Castel's evidence was that if a client paid with a debit or credit card, the funds would go directly into TKMT's bank account. She said that the therapist would print out two copies of the point-of-sale receipt, with one copy going to the client and the other, with the therapist's name into a pencil case so that she could credit that therapist with that purchase on a later invoice. Ms. Castel said that the kind of transactions which would go through the Moneris point-of-sale machine were purchases for massage therapy treatments, whether full amounts or co-pays and any services that were provided by Halifax Hydrotherapy that were charged for.

[28] Ms. Castel testified that at the end of every two-week period she would take the envelope/pencil case and the slips with the names, and credit the individual therapist with moneys TKMT had received on behalf of the therapist for those purchases. When asked by Crown counsel why the therapists would put their names on the purchase slips to go to her, Ms. Castel's evidence was that that was the process they were using to identify transactions for each individual therapist. Her evidence was that this was the only way for her to know what money belonged to them. Ms. Castel's evidence was that, essentially, over the two-week period TKMT was holding funds for the individual therapist.

[29] Ms. Castel's evidence was that TKMT used this process from 2004 until June of 2018, at which point they identified a way to give each therapist an ID number, so at present every therapist has their own ID, which they enter into the Moneris machine when they do a transaction.

[30] Ms. Castel's evidence was that Amanda McCarthy owned Halifax Hydrotherapy and it joined TKMT in December 2008. At that time, Ms. Slaunwhite was an employee of Halifax Hydrotherapy. The following year, 2009, Halifax Hydrotherapy was sold to Ms. Slaunwhite.

[31] Ms. Castel testified that TKMT had an agreement with Halifax Hydrotherapy to provide space, and basic supplies, such as sheets, lotion, access to the staff room, a printer, telephone, fax and the use of TKMT's point-of-sale machine. Her evidence was that Ms. Slaunwhite's services could be purchased by members of the public who would book appointments with her. She said that the client would come in and would discuss with Ms. Slaunwhite their treatments needs, whether one, three or six hydrotherapy sessions. The client would pay Ms. Slaunwhite often with debit or credit cards, but also with cash and by cheque.

[32] In terms of the amounts charged by Halifax Hydrotherapy for treatments, Ms. Castel stated that the amounts changed over the ten-year period when Halifax Hydrotherapy was with TKMT, but she thought that six treatments cost about \$500.00, three treatments in the high \$200.00's and 1 treatment about \$100.00. She said that she couldn't recall exactly these amounts.

[33] Crown counsel asked Ms. Castel who provided Ms. Slaunwhite with instructions about using the point-of-sale machine. Ms. Castel said that she would have provided those to Ms. Slaunwhite in December 2008 when Halifax Hydrotherapy came on board. She said that there would have been no new training when Ms. Slaunwhite bought the Halifax Hydrotherapy in 2009. Crown counsel asked Ms. Castel how the training would have happened. Her evidence was that it

was hands-on, they would have gone through the processes on the machine, including putting purchases and refunds through, printing receipts, and changing the paper. Ms. Castel's evidence was that she would tell anyone who was brought on board to write their name on receipts and put them into the pencil case.

[34] In cross-examination, Ms. Castel was asked if she recalled training Amanda McCarthy and Ms. Slaunwhite on the use of the Moneris system in 2008. Her evidence was that it was their onboarding practice to provide such training and she was very confident that she did so. She admitted that because it was 14 years ago, she had no clear memory of doing so. Her evidence was that she is the individual who provided the training and that it was a confident guess that she did so in December 2008. Defence counsel put to Ms. Castel that at the preliminary inquiry she was asked about the training provided to Ms. Slaunwhite and whether it occurred in the spring, winter, summer or fall and her answer was that she couldn't "tell you". Ms. Castel maintained before this Court that it was an educated guess that she had provided training on the Moneris system to Ms. Slaunwhite in December 2008. She denied that she would only have provided the training to Amanda, as the owner at the time, and not to Ms. Slaunwhite.

[35] Ms. Castel agreed in cross-examination that Ms. Slaunwhite could be quite disorganized, and that on occasion would lose the invoices that were issued to her.



[36] Ms. Castel also agreed in cross-examination that in 2010 when Ms. Slaunwhite took over Halifax Hydrotherapy that she had told her that she had limited business experience. She said that she recalled that she and Sarah Letcher gave Ms. Slaunwhite advice as small business owners, but she could not say what that advice was. Ms. Castel also agreed that Ms. Slaunwhite, as a renter, was not involved in the day-to-day financial operations of TKMT. Ms. Castel agreed that Ms. Slaunwhite was not made aware, whether or not, the Moneris systems was not being reconciled on a daily, weekly, or monthly basis.

[37] Ms. Castel was asked by Crown counsel how Ms. Slaunwhite was paid. Her evidence was that every two weeks she would prepare an invoice, making note of all Ms. Slaunwhite's receipts in the pencil case to make sure that she credited Ms. Slaunwhite with her purchases, deduct fees owing to TKMT and write Ms. Slaunwhite a check for the balance owed. Ms. Castel gave the example of \$1,000.00 going through the point-of-sale machine for purchases for Ms. Slaunwhite, Ms. Slaunwhite owing them \$400.00 for rent, so she would write Ms. Slaunwhite a cheque for the balance owed to her of \$600.00

[38] She said these invoices were paper invoices until October 2017; thereafter Ms. Slaunwhite was provided with electronic invoices. For the paper invoices, Ms. Castel's evidence in cross-examination was that she would fold the invoice over the

cheque to the therapist and at times put the therapist's initials on the outside of the folded receipt.

[39] Ms. Castel said that when Ms. Slaunwhite would owe TKMT, Ms. Slaunwhite would write them a cheque, but often times the balance she owed just carried forward and would be deducted on the next invoice from any money TKMT owed her.

[40] Crown counsel asked Ms. Castel how refunds worked. Her evidence was that refunds worked exactly the same as purchases. A therapist would put the refund through the machine, put her name on the refund slip and put it into the pencil case. The refund would be accounted for in red as a negative on the next invoice.

[41] Crown counsel asked Ms. Castel if Halifax Hydrotherapy had submitted refunds. Her evidence was that they had. Ms. Castel was asked if she knew what Halifax Hydrotherapy's policy was on refunds. Her response was that her understanding was that there were no refunds for services purchased unless there was a medical reason or other legitimate reason why the client couldn't proceed with their treatment. She said that the therapists all answered the phone for each other and that they were told that there were no refunds, apart from those situations.

[42] Ms. Castel identified copies of refund receipts in evidence in the Joint Book of Exhibits printed from the Moneris machine for refunds for client services

provided by Ms. Slaunwhite, one dated January 18, 2011, for \$140.00 and another dated September 27, 2012, for \$220.00. Ms. Slaunwhite's name, "Kathleen" and initials, "KS" appear on these refund slips. Ms. Castel identified the writing of the names and initials as being Ms. Slaunwhite's. She said that these receipts would have been put in the receipt envelope, i.e. the pencil case, that she used to prepare invoices at the end of every two-week period. Ms. Castel also identified an invoice for the period January 18, 2011, to January 30, 2011, which shows a refund of \$140.00 deducted. Ms. Castel also identified an invoice paid to Ms. Slaunwhite for the period January 8, 2018, to January 21, 2018. Ms. Castel stated that she would have known that this refund was to come off Ms. Slaunwhite's invoice because Ms. Slaunwhite had written her name on the refund receipt. In cross-examination Ms. Castel said that she no longer had this receipt but was positive that she saw it.

[43] Ms. Castel said that she usually prepared the invoices, although occasionally if she was unable to do so, Sarah Letcher did so. The purpose of the invoices, she said, was to inform subcontractors and renters of the amount they owed TKMT, the amount of money TKMT had collected on their behalf and the balance owed to them.

[44] Ms. Castel said that in February or March 2018 she started to notice on the bank statements refunds that were being taken out of TKMT's bank account by Moneris. She said that that seemed unusual since she hadn't seen any refunds going

through the pencil case. At that time, she said that she was in the middle of coming to the end of her MBA so she made note that she had to follow up on that. Ms. Castel testified that on June 12, 2018, she called Moneris to let them know that there must be some mistake, that they were taking money out of TKMT's account. Her evidence was the gentleman she spoke with told her that there were many refunds. She said at that point she and Sarah Letcher were able to go on-line to their Moneris account and look at one year of detailed transactions, and a previous year of "batched" transactions. Her evidence was that they were to identify many refunds that had not been brought to their attention through the system they had been using and identified that many of these transactions were happening on the same five credit cards to the amount of about \$20,000.00 at that point. They then reached out to Moneris to ask for transaction details going back five years.

[45] Ms. Castel was asked by Crown counsel what the effect was of having no refund slips for the refunds that were shown on the Moneris records. Her evidence was that essentially, by putting a purchase slip into the envelope, Ms. Slaunwhite was credited with the money that had gone into TKMT's bank account. By not putting the refund slip into the bank account, they didn't remove that amount from the balance owed to Ms. Slaunwhite. Ms. Castel's evidence was that they were crediting Ms. Slaunwhite for purchases that TKMT didn't actually have money in

their bank account for. I should have said earlier that these credit cards were identified later as being those of Ms. Slaunwhite and her parents (the “Slaunwhite credit cards”).

[46] Ms. Castel said that she and Sarah Letcher reviewed the Moneris documentation on a Wednesday and set up a meeting with Ms. Slaunwhite on the Friday, which was June 15, 2018. The meeting was held at the clinic, between Sarah, Leah and Ms. Slaunwhite. Ms. Castel said that when they arrived at the clinic, Ms. Slaunwhite was sitting in the office holding an envelope. They all then moved into the lounge. Ms. Slaunwhite said then that there was something that she needed to tell them, so they listened. Ms. Castel’s evidence was that Ms. Slaunwhite said that her accountant had told her that she owed TKMT between \$6,000.00 and \$10,000.00, that she had been overpaid. Ms. Castel said that at some point Ms. Slaunwhite handed her the last cheque that they had given her for about \$400.00.

[47] Ms. Castel stated that Ms. Slaunwhite told them that she and her mother were going to sit down over the weekend, go through the credit card statements and figure out how much she owed TKMT. Ms. Castel said that she told Ms. Slaunwhite that she and Ms. Letcher had gone through the Moneris reports and found that Ms. Slaunwhite owed them about \$23,000.00. When asked how Ms. Slaunwhite responded to that, Ms. Castel’s evidence was that Ms. Slaunwhite stated that she had

messed things up, had been stupid, that she couldn't believe that she had done this, that she was closing her business and her accountant was doing her previous two years of accounting and told her that she had been overpaid. Ms. Castel stated that Ms. Slaunwhite said that she wanted to make things right, and that she thought that she had been moving money around on her credit cards. Ms. Castel said that they were perplexed by Ms. Slaunwhite's explanation and didn't want it to be theft, her taking money from them.

[48] Ms. Castel was also asked about the June 15, 2018, meeting that she and Sarah Letcher had with Ms. Slaunwhite. Ms. Castel agreed that by the date of the meeting, she had already reported Ms. Slaunwhite to the police. She said that she had not, as suggested by Defence counsel, already made up her mind that it was theft, but rather contacted the police to start a process and that given the amount of time, and the number of transactions, it was difficult to believe that it could be a mistake. Ms. Castel agreed that TKMT had received a \$5,000.00 payment from its business insurance provider for its loss and she believed that it was a term of TKMT's policy that it cooperate with the police investigation and the Crown's prosecution.

[49] Ms. Castel stated that Ms. Slaunwhite, Halifax Hydrotherapy, finished with TKMT before the end of June and that they asked her to leave.

[50] When asked to describe her relationship with Ms. Slaunwhite during the time she was associated with TKMT, Ms. Castel said they were friends, attending social events together and that they chatted in the clinic.

[51] Ms. Castel said that in order to pay each therapist they relied on the point-of-sale slips that were in the pencil case. When asked by Crown counsel whether, other than taking receipts from the point-of-sale machine, there was any other option for the therapist to get the receipt to her, Ms. Castel's evidence was that on a very rare occasion, a therapist would tell her that they thought they had missed a receipt. They would tell her the time, and the amount, and she would look up the transaction on the Moneris on-line to verify if the transaction had happened.

[52] I should say that witnesses throughout this proceeding sometimes referred to the receipts going into the pencil case or the envelope or into the drawer. I will, for the purposes of this decision, simply refer to all those names, which were undifferentiated by any witness, to being in the pencil case.

[53] Ms. Castel's evidence was she and Ms. Letcher calculated the loss to TKMT from Ms. Slaunwhite's actions at approximately \$57,000.00 and change for the period 2013 to 2018. In cross-examination, Ms. Castel agreed that Moneris charged a \$2.00 fee (approximately) on each credit card transaction that Ms. Slaunwhite

conducted, which she paid. Ms. Castel also agreed that she had not had a forensic audit conducted.

[54] In cross-examination Ms. Castel said that she did not have copies of all of the invoices provided to Ms. Slaunwhite over the years. She also said that she did not have copies of all of the purchase receipts that she said that Ms. Slaunwhite had signed. She had some from 2011 and 2012 but had purged many of them. Her evidence was that she had given any refund receipts which she had for the period 2012 to 2018 to the police as well as any purchase receipts.

[55] Ms. Castel agreed in cross-examination that prior to 2018 she did not do a daily, weekly, or monthly reconciliation on the Moneris machine. Her evidence was that since these, she reviews Moneris reports twice a month.

#### The Evidence of Sarah Letcher

[56] Ms. Letcher was called as a Crown witness. She testified that she is 46 years old and is a registered massage therapist. She stated that she has been the co-owner of TKMT since 2004. In terms of education, Ms. Letcher stated that she has a kinesiology degree from Dalhousie University and a massage therapy certificate.

[57] Ms. Letcher's evidence was that her role at TKMT was to supply things for the clinic, ensure that the subcontractors are taken care of, and also works as a



massage therapist. Ms. Letcher said that Ms. Castel was responsible for the accounting. In terms of training, Ms. Letcher said that that was primarily Leah's responsibly.

[58] Ms. Letcher confirmed Ms. Castel's evidence that Halifax Hydrotherapy rented space from TKMT, and how that business was initially owned by Amanda who brought Ms. Slaunwhite with her as her employee in 2008.

[59] In terms of the matter before the Court, Ms. Letcher stated that in early 2018 Leah discovered that there were some refunds that didn't match up, and that when they dug deeper, they found that there were a lot of refunds that they had never seen. They contacted Moneris, obtained records, reviewed them, and noticed all of the refunds made by Ms. Slaunwhite.

[60] Ms. Letcher said that Ms. Slaunwhite had previously told them that she intended to close her practice by the end of June 2018. She said that there was going to be a meeting anyway with Ms. Slaunwhite, so that's when they asked her about what they had discovered. They called a meeting with Ms. Slaunwhite and asked her about what they had discovered. Ms. Letcher's evidence was that Ms. Slaunwhite told them that she had met with her accountant and that she owed TKMT between \$6,000.00 and \$10,000.00. The remainder of Ms. Letcher's evidence as to

what occurred during that meeting was very similar to the evidence given by Ms. Castel. Ms. Letcher was not cross-examined.

Detective Constable Kel Rogers

[61] The last witness for the Crown was Detective Constable Kel Rogers. D/Cst. Rogers is a member of the Halifax Regional Police and has been a detective constable since 2009. Prior to that time, D/Cst. Rogers was employed by the Toronto Police. D/Cst. Rogers is currently employed by the Halifax Regional Police in the financial crime unit.

[62] In 2018 the file involving Ms. Slaunwhite was assigned to D/Cst. Rogers. He explained how the investigation was carried out. D/Cst. Rogers pointed out several credit card invoices for the Slaunwhite credit cards which show refunds and purchases from TKMT. D/Cst. Rogers also pointed out the invoices paid to Ms. Slaunwhite for the approximate time period showing purchases for the same amount as was on the Slaunwhite credit card, but no refunds. The Detective also pointed to the business statements of TKMT which shows cheques in the same amount, which was paid to Ms. Slaunwhite on the full amount, but again not the refund. D/Cst. Rogers reviewed many other, similar transactions.

[63] D/Cst. Rogers was not cross-examined.

Ms. Slaunwhite's Evidence

[64] Ms. Slaunwhite was the sole witness for the defence.

[65] Ms. Slaunwhite is 41 years old. Currently, she resides in Newfoundland and Labrador, where she has been living since August 2018. In terms of education, Ms. Slaunwhite testified that she has a psychology degree from St. Mary's University and a nutrition degree through the Toronto Canadian School of Natural Nutrition which she obtained in 2008.

[66] Ms. Slaunwhite was asked to describe her employment history up to 2008. She testified that she worked as a server at a hotel in Halifax, a clothing store in Cape Breton when she was 17 years old and when she moved to Halifax to go to university, she worked at that same clothing store's Halifax location and also as a server. She also worked at another retail clothing store and at the Farmer's Market on Sundays. She testified that she also worked at a health food store in Toronto when she was studying nutrition.

[67] Ms. Slaunwhite testified that she met Amanda McCarthy while they were both studying nutrition in Toronto. Halifax Hydrotherapy Holistic Health ("Halifax Hydrotherapy") was at the time a business owned by Ms. McCarthy. Ms. Slaunwhite said that she specialized in digestion, as did Ms. McCarthy. Ms. Slaunwhite said

that she completed a concentration program in digestive health while in Toronto through the Naturopathic College. She said that Ms. McCarthy knew this and in 2009 asked her to work with her at Halifax Hydrotherapy. She agreed to do so. She testified that at that point she was an employee of Halifax Hydrotherapy, with Amanda McCarthy being the owner. At that time, Halifax Hydrotherapy was based out of a location near the Armdale Rotary in Halifax.

[68] Ms. Slaunwhite was asked to describe the nature of services that she provided to customers as an employee of Halifax Hydrotherapy. Her evidence was that she provided nutritional consultations and focused on colon-hydrotherapy treatments. Ms. Slaunwhite said that her qualifications to provide those services was as a result of her nutrition degree and a six-month specialization course she had taken in Toronto for digestive studies and colon hydrotherapy.

[69] Ms. Slaunwhite was asked about the circumstances whereby TKMT and Halifax Hydrotherapy interacted together. Her response was that she and Amanda McCarthy were both yoga instructors and Amanda knew Sarah Letcher through Halifax Yoga, and Leah and Sarah had bought and renovated a house in north end Halifax on Sullivan Street. Her evidence was that they asked Amanda if Halifax Hydrotherapy wanted a space there, and so Halifax Hydrotherapy moved the practice

to their clinic in 2009. Ms. Slaunwhite testified that that was the first time that she had met Leah Castel and Sarah Letcher, the owners of TKMT.

[70] Ms. Slaunwhite testified that shortly after she and Ms. McCarthy moved to TKMT on Sullivan Street, Ms. McCarthy decided to sell her practice. She said that Ms. McCarthy was about to get married, that she was the “business side of things” and that there was a bit of sense of urgency about that. Ms. Slaunwhite said that she was able to get a loan and purchase Halifax Hydrotherapy at the time. She said that she was able to leave her extensive equipment at the Sullivan Street location of TKMT, so that was where she stayed.

[71] Ms. Slaunwhite was asked to describe her understanding of the business relationship between Halifax Hydrotherapy and TKMT at the time. Her answer was that she was a practitioner who rented a room from them but was a separate business. She said that she was not an employee of TKMT. She described TKMT as more of a landlord.

[72] Ms. Slaunwhite was asked by her counsel to describe the nature of the “out of work” relationship between her, Leah and Sarah. She said that their work relationship was that she rented space from them. She said that her rent included sheets, toilet paper and that sort of thing, and that she was responsible for her own

equipment and supplies. Ms. Slaunwhite added that she was not allowed to have a Moneris system of her own, so they took care of all her accounting.

[73] Counsel clarified that he was asking about their relationship outside the workplace between 2009 and 2018. Her answer was that Sarah was like a big sister to her. She said they spent time together in the yoga community and doing other things together. She said that she just had a business relationship with Leah.

[74] Ms. Slaunwhite was asked to describe the relationship between her and TKMT after she became owner of Halifax Hydrotherapy. She said that it was a business relationship, with her renting space from TKMT. She said that she provided her services at their location. She said that they helped her and sort of took her under their wing businesswise as far as she was a new business owner and didn't have a whole lot of business experience in general. She added that she looked up to Sarah and Leah.

[75] Ms. Slaunwhite was asked by her lawyer what business experience she had running a business prior to becoming the owner of Halifax Hydrotherapy. Her answer was "none". She was asked what certificates or qualifications she had in bookkeeping or filing CPP, HST or EI returns to the Federal Government. She

answered, “None”. She said that she had not taken any courses or programs that would assist her as a business owner prior to purchasing Halifax Hydrotherapy.

[76] Ms. Slaunwhite testified that she had a meeting with Sarah and Leah in 2010 prior to purchasing Halifax Hydrotherapy. At that point, she said wasn’t sure if she was going to purchase the business. She said that Sarah and Leah also had an offer to purchase Halifax Hydrotherapy and have her work as an employee, but they declined that offer. Ms. Slaunwhite testified that Sarah and Leah encouraged her to make the purchase, told her how they started out and that they’d be there every step of the way for business purposes.

[77] Ms. Slaunwhite was asked how Halifax Hydrotherapy would pay rent to TKMT. She said that Sarah and Leah would take the deductions off her totals every two weeks.

[78] Ms. Slaunwhite was asked by her lawyer, “What is a Moneris machine?”. She answered that it was a point-of-sale transaction system. She said it was where you would process your sales of debit or credit.

[79] Ms. Slaunwhite testified that from 2008 to 2009/10 when she was working with Amanda McCarthy at Halifax Hydrotherapy, a Moneris machine was used.

After moving to TKMT, a Moneris machine was also used but under TKMT, not specific to Halifax Hydrotherapy.

[80] Ms. Slaunwhite was asked who first showed her or taught her how to use a Moneris machine within TKMT. She said Amanda McCarthy did so in 2010. She was asked whether, after she purchased Halifax Hydrotherapy, she was given any training about the use and operation of the Moneris system. She replied that she was given a PIN in order to do any kind of refund purchases. Ms. Slaunwhite agreed in cross-examination that Amanda McCarthy had told her to put her purchase receipts in the drawer/pencil case with her name on them. She said no one from TKMT explained anything further to her about how she would be paid after she bought Halifax Hydrotherapy.

[81] Ms. Slaunwhite was asked by her counsel to explain to the Court how to carry out a purchase at TKMT using the Moneris machine after the customer approached the desk to pay.

[82] Ms. Slaunwhite stated that she would already know what course of treatment had occurred by that point, after the appointment. She said that she would process the sale; if the customer wanted their copy of the receipt, she would give them a copy, she would write a copy in her receipt book and staple their copy to that receipt



and she would, usually, put the sales slip/receipt from Moneris into the drawer in the pencil case or envelope.

[83] Ms. Slaunwhite was asked by her counsel whether, prior to putting a sales receipt from the Moneris machine into the pencil case, there was anything specific that she would do to the receipt. She replied, “Sometimes I would put my name on it”. She added that sometimes she would put the client’s name on the receipt as well. Ms. Slaunwhite was asked about her understanding of the purpose of putting her name on the receipt. Her answer was that the purpose was, that when she and Amanda worked together, she was told to put her name on her receipts because “we’d have to know which one did what services, because we both charged the same amounts, to know, who did what”.

[84] Mr. Slaunwhite was asked what she did with these receipts before placing them in the pencil case from 2010 onwards after Amanda left, she said, “the same thing”. She was asked what she meant by “the same thing” and responded, “sometimes I write my name on it, sometimes a client’s name, and I put it in the drawer”. She added, “most of the time”. When asked why she was writing her name or a client’s name on the receipt after Amanda left, Ms. Slaunwhite replied, “I was told to and so I never really stopped. It wasn’t something I gave much relevance to”. Again, she said that it was Amanda who told her to do so.

[85] Ms. Slaunwhite testified that the receipt book belonged to her, for Halifax Hydrotherapy. She said that all the individual practitioners had a receipt book to record anything that they needed, to provide their insurance and registration numbers for clients in case they had insurance purposes, and just to keep general track of things.

[86] When asked about the actual clients that Halifax Hydrotherapy had issued refunds to, Ms. Slaunwhite's evidence that she had probably given refunds to 10-20 clients, perhaps more, in the eight years that she was involved with TKMT. When it was put to her that she had her receipt book, Ms. Slaunwhite's evidence was that she did not record refunds in her receipt book. Ms. Slaunwhite agreed with Crown Counsel that refunds weren't really an expected part of the practice of Halifax Hydrotherapy.

[87] Ms. Slaunwhite was asked by her counsel whether the Moneris system produced any document in terms of paper when a sale was made. Ms. Saunwhite said "yes", that a receipt comes out of the machine, and there is an option to hit "customer copy" and print a second copy for the customer.

[88] Ms. Slaunwhite said that when a customer walks into TKMT, that there is no receptionist. She said that the clients and anyone had "free range" from the street.

The customer sits in the waiting area until the practitioner comes to get them. The customer and practitioner come to what Ms. Slaunwhite described as a little podium where there is a desk with the practitioners' calendars with booked and re-booked appointments in a laptop. That was where the Moneris machine was. Ms. Slaunwhite said that the drawer was there where all practitioners kept their individual receipt books. That was also where the pencil case was kept along with pens, pencils, a stapler, batteries for the mouse, etc.

[89] Ms. Slaunwhite testified that if a client had insurance and wanted her registration number, at that point she would hand-write in the receipt book her registration number for the client and would staple the receipt from the receipt book to the existing sales receipt (if the client wanted one) and give it to the client.

[90] Ms. Slaunwhite was asked why the PIN was relevant to the Moneris machine. She testified that you were required to put that specific PIN in "if you run a refund". The PIN number was not required to make a purchase. The PIN was provided to her by TKMT in 2010.

[91] Ms. Slaunwhite was asked about the process of refunds. She was asked what steps she would take to process a refund for a client using the Moneris machine at TKMT. She testified that if a refund was required you would have to put the special

code in, enter the amount of the refund, process it. You had the option of two copies of the printouts for the refund. If the client was standing there for a refund, she said that she would give the printout if it was required. She said that she would usually put the second print-out in the drawer if it was required. Ms. Slaunwhite was asked whether, prior to placing that refund receipt in the pencil case in the drawer, there was anything which she would do to it, she answered, “Um, not usually, but if I did, I might write that client’s name on the receipt”.

[92] Ms. Slaunwhite was shown copies of receipts which had been previously marked as “Exhibit 3”. She said that the writing on one of these receipts (top left) looked like hers, and read the writing as stating, “Return for VN (I have used the initial of this client) – Kathleen”. She said that this receipt was for a refund from 2011. Ms. Slaunwhite said that a copy of another receipt on Exhibit 3 was also for a refund in 2012. She read the handwriting as stating, “Refund by phone colonic package”- KS. She said that the first part of the handwriting was hers, but the “KS” didn’t appear to be her handwriting. She said she had no memory of processing these returns.

[93] Ms. Slaunwhite was asked in cross examination again for her understanding as to why receipts were placed in the pencil case in the drawer. She testified “I don’t really know”.

[94] Ms. Slaunwhite was asked by her counsel what involvement she had on a day-to-day basis with the books or accounts of TKMT. Her answer was 'none'. She was asked by her counsel whether she had ever had an opportunity to review the books or accounts of TKMT. She said she had not. She was asked whether she ever had access to the books or accounts of TKMT, again she testified that she did not.

[95] Ms. Slaunwhite was also asked by her counsel what, if anything, she knew from 2009 to 2018 of the practices of TKMT, in terms of reconciling the Moneris machine. She responded, "What did I know? I didn't know anything concrete. I can tell you what I assumed. Ms. Slaunwhite was interrupted by her lawyer who, said, "No, I just want to know what you know". She replied, "I did not know, and I did not ask".

[96] Ms. Slaunwhite was asked by her counsel whether she was ever told by anyone within TKMT between 2009 and 2018 about what their practices were in terms of reconciling the Moneris machine. She answered, "No I was not". Ms. Slaunwhite's lawyer then stated, "I cut you off and you were about to say you assumed...". Ms. Slaunwhite replied, "Well I am just as surprised as anyone would be to learn through these events that I was paid, and the business was run by receipts only in a drawer".

[97] Ms. Slaunwhite was asked by her counsel to describe the process by which she would put through a purchase on a credit card belonging to herself or her parents, which she admitted she had done, on the Moneris machine. She answered:

Sure. I did not have physical cards. So, I've had both my parents' credit cards probably since I was 18, for university or other purposes that I would use them for. I would process a sale and I would ...process the sale ...and put a receipt in the drawer and I would, yeah that's what I did for a sale.

[98] Ms. Slaunwhite's counsel asked her if she would do anything to the receipt before she put it in the drawer. She answered, "No. I might put my name on it, I can't guarantee all receipts went into the drawer, but the ones that did, yeah. I'd have to see them to remember".

[99] Ms. Slaunwhite was asked why she would use her own credit card to put through a purchase on the Moneris machine. "Why would you do that?", she was asked.

[100] Ms. Slaunwhite hesitated slightly before answering, "Because. I was moving money around for myself. It's embarrassing. But that's what I did. Sometimes I was at my full totals for what I had to pay so I'd put money through and then take it off later; I assumed everything was balancing. "

[101] Ms. Slaunwhite's lawyer asked her, "So in effect it sounds like you paying yourself". Ms. Slaunwhite responded, "Yeah". Her lawyer asked, "You're paying

yourself through the credit card?”. Her response was, “I am, and I’m being charged a transaction fee to do so, yes.”

[102] The exchange between Ms. Slaunwhite and her lawyer continued as follows:

- Q: So you’re putting money from your credit card into what?
- A: Into my business. My pool of funds. Yes.
- Q: And who is holding that pool of funds for you?
- A: TKMT I guess is holding the pool of funds.
- Q: And now you’re putting money into your business with your credit card. How did you get the money back?
- A: I would do a refund.
- Q: It may not be clear to everyone in the Court, but why would you need to do this process?
- A To balance the transaction, to make sure...
- Q: No, not the refund...Why would you need to put money into your business and then take the money back. Why would you need to do that?
- A: I don’t understand the question.
- Q: You said that you are using credit cards and putting money into Halifax Hydrotherapy, through the credit cards, is that correct?
- A: That’s correct.
- Q: And eventually you’re doing refunds on the credit cards, is that correct?
- A: Yes.
- Q: What is the overall purpose of doing this?
- A: To get paid for the transactions.
- Q: And why do you need to be paid for the transactions?
- A: Because it’s my money.
- Q: Why do you need this money?
- A: I need to make sure that I am covering my bills and my rent for the space, my equipment, and my speculums and all my things to run my business. So checks and balances for the business.

[103] Ms. Slaunwhite testified that from 2010 onwards she did not have a business loan or line of credit to use to fund Halifax Hydrotherapy. Ms. Slaunwhite was asked by her counsel what was the source of credit for Halifax Hydrotherapy at the time. Ms. Slaunwhite stated that it was transactions with clients and “If I needed to put extra in, I would with my own credit card”.

[104] Ms. Slaunwhite’s counsel then asked her, “you put money into the business through your credit card, how do you get the money out or back?”. Ms. Slaunwhite started to say, “If it was close to payroll I would”...but her voice trailed off, and her counsel asked her the question again. Ms. Slaunwhite replied, “To return, to balance the credit cards, I would perform either a full refund for the amount that I put through on the series, or a partial refund.”

[105] Ms. Slaunwhite testified that she would have to put in the specialized PIN in the Moneris system to then enter the amount total she was putting in for a refund in the system. She said that it was her understanding that it takes three to five business days for a refund to be processed.

[106] Ms. Slaunwhite’s lawyer then asked her, “So money is taken off the credit card, money is refunded back to the credit card, did the credit card balance?” Ms. Slaunwhite answered, “Yes”. Her lawyer then asked her, how do you get the



physical money in your hand? Ms. Slaunwhite answered, "I was given a cheque". Her lawyer asked her, "By who?". She responded, "TKMT".

[107] Ms. Slaunwhite testified that her use of the Slaunwhite credit cards on TKMT's Moneris system in this manner went on for six years, she says "that's what I was explained to, I did think it was 2012 when it started but, I'm not sure". She added, "I've never seen any documentation".

[108] Ms. Slaunwhite agreed in direct examination that the evidence she had heard in the matter the previous day of trial was the amounts of money involved in all of these transactions amounted to just over \$57,000.00. Ms. Slaunwhite was asked about her previous evidence concerning transaction fees. She said that she paid percentages for each transaction that she ran through the Moneris system. She stated that the percentages were all different, depending on if it was a VISA, MasterCard, or debit. Her evidence was that she didn't know the exact percentages, but they were in the range of \$12.00 to \$16.00 per card.

[109] Ms. Slaunwhite's lawyer put to her, "The Crown's case is that you benefited through this to the sum of \$57,000.00 plus change. What do you say about that?"

[110] Ms. Slaunwhite's response was:

Ms. Slaunwhite: I'd say that isn't correct.

Counsel: Why?

Ms. Slaunwhite: I did not know that I was running a balance. Also, I wouldn't harm my parents.

Counsel: I'll ask the question this way. The Crown's case is that you benefitted from these transactions to the sum of \$57,000.00 plus change. Knowing what you said about the interact fees, what do you say about this figure?

Ms. Slaunwhite: I'd say it's an incorrect figure and I'm not quite sure exactly what the figure is.

[111] Ms. Slaunwhite agreed with her counsel that TKMT would take rent from her. She was asked how TKMT would collect that rent. Ms. Slaunwhite testified that "they would deduct it from what they owed me".

[112] Ms. Slaunwhite's lawyer asked her, "How did you understand TKMT were calculating how much money they owed you?".

[113] Ms. Slaunwhite replied:

My understanding was they could easily look at my calendar to see how many clients I was going through and using the Moneris system to make sure everything was balanced and equal and specific to me, as a practitioner.

[114] Ms. Slaunwhite testified there were 13-15 people who worked at TKMT and were using the Moneris machine. Her counsel asked her how balancing the Moneris machine would assist TKMT to know how much money belonged to her. She answered, "Their prices were very different than mine". "Mine were very easily laid out, so to speak, if you will". Her evidence was that TKMT employed massage therapists. She stated that they did singles, but she did package series of three or six

sessions or single sessions, depending on the client and the reason they were coming. She said that her prices were completely different, and they were set. Her evidence was that the massage therapists only did singles.

[115] Ms. Slaunwhite was asked in direct examination if, at any time, she questioned how TKMT was calculating the money they owed her. She replied, “No, I did not”. Ms. Slaunwhite was asked if TKMT ever provided her with any documentation explaining how much money they owed her and how much money they had collected. She responded, “No they did not”.

[116] Ms. Slaunwhite was asked by her counsel if she was receiving invoices from TKMT. She said that she was. She said that she believed that Leah was providing these, but sometimes Sarah did. Ms. Slaunwhite testified that she would be given a paper copy which was folded. She said that her cheque would be in the folded invoice, and it would be placed in the staff room in a paper file folder. She said that they each had file folders. Ms. Slaunwhite said that she thought that Sarah started to email her the invoices in October 2017 but added that Sarah would still wrap the cheque in the paper copy of the invoice and put it in her file folder.

[117] Ms. Slaunwhite’s counsel asked her whether, when she was processing refunds on her credit cards or the credit cards in her parents’ name, there was a

receipt generated by the Moneris machine. She responded, “Yes, there was”. She was then asked by her lawyer to explain to the Court what happened to those refund receipts:

Ms. Slaunwhite: I would usually keep those receipt to make sure that I balanced things later.

Counsel: Was there a receipt placed in the envelope, purse, drawer, whatever it was, for these refunds on your credit cards or your parents’ credit cards?

Ms. Slaunwhite: Not for mine, only a client. If a client is standing there.

Counsel: I think the answer is obvious, but just so the record is clear on this, no receipts for your credit cards?

Ms. Slaunwhite: That is correct.

Counsel: What about receipts for your parents’ credit cards?

Ms. Slaunwhite: No, I kept those, they were mine.

Counsel: So, no receipts for any of these refunds you conducted on the Slaunwhite credit cards, is that fair.

Ms. Slaunwhite: No receipts conducted on the Slaunwhite credit cards. That is correct.

Counsel: Why not?

Ms. Slaunwhite: Because I had to put a PIN into the Moneris system which means that it was being tracked and I left quite a detailed paper trail. I believe that that Moneris system was balancing things and tracking everything for me.

[118] Ms. Slaunwhite’s counsel asked her whether there was anything significant about the sums of money that she was debiting and crediting off the Slaunwhite credit cards. Ms. Slaunwhite answered that they were very specific to the amounts that she charged clients of Halifax Hydrotherapy. She said that no other practitioner who worked at TKMT had anything similar to her transaction totals.

[119] Her lawyer asked Ms. Slaunwhite what the significance was of using these sums of money to her. She hesitated before she responded, then stated: “There wasn’t ...It was just my series amounts, so specific to me. Ms. Slaunwhite testified that a “series” with her meant more than one treatment session. She stated that there were series of one, three and six. At the relevant time, Ms. Slaunwhite charged \$250.00 for a series of three sessions.

[120] Exhibits before the Court showed copies of Interact Summaries where Ms. Slaunwhite charged \$295.00 to her own credit card for services she did not perform. Her evidence was that the sum of \$295.00 was specific to her. With reference to the Moneris system, Ms. Slaunwhite said that this sum was “easily identifiable”.

[121] With reference to another invoice paid to Halifax Hydrotherapy for the period May 14, 2018, to May 27, 2018, Ms. Slaunwhite charged on the Slaunwhite credit cards the sum of \$295.00 and \$565.00 for services she did not perform. Her lawyer asked her if she had made those VISA transactions, whether she would have made rent that month. Ms. Slaunwhite responded:

Ms. Slaunwhite: Yes.

Counsel: Pardon me?

Ms. Slaunwhite: Yes.

Counsel: You would have made rent?

Ms. Slaunwhite: [Pause] Oh pardon me, no.

[122] Other “legitimate” transactions on that same invoice totalled \$260.00. Ms. Slaunwhite agreed with her counsel that payments for those amounts by TKMT would not have covered her \$400.00 bi-weekly rent (\$400.00 +\$60.00) plus a \$5.00 fee. Her counsel asked her, “So where did the balance of the rent come from Ms. Slaunwhite?”. She responded: “My transactions, that I put through for my business.” This invoice shows that a percent fee was charged to Ms. Slaunwhite for her use of the Slaunwhite VISA cards. When Ms. Slaunwhite hesitated before answering these questions, her counsel asked her, “Do you actually understand how these invoices work?”. She responded, “Um, I, not entirely”. Asked the question again, Ms. Slaunwhite said that the \$200.00 shortfall between the legitimate transactions of \$260.00 and the rent of \$460.00 came “from my money”.

[123] Ms. Slaunwhite was asked the purpose of using the Slaunwhite credit cards on another such invoice (April 16, 2018, to April 29, 2018) where there were only Slaunwhite cards charged to the sum of \$950.00 (with rent, HST and transaction fees totalling \$465.00). She paused, and then responded:

Ms. Slaunwhite: Using these cards?

Counsel: Yes. Those three transactions. What was the purpose of doing so?

Ms. Slaunwhite: I imagine to cover my expenses.

Counsel: By expenses, what do you mean?

Ms. Slaunwhite: My expenses for the clinic, to run my business.

[124] Ms. Slaunwhite was asked whether anyone ever asked her where the money was coming from for this transaction (the \$950.00 she charged to the VISAs). She responded, “No.” She was asked by her lawyer whether anyone from TKMT ever asked to compare her calendar, which Ms. Slaunwhite said that Sarah and Leah had access to, to her interact transactions and asked how the money was coming into the business. Ms. Slaunwhite responded, “No, they did not”. Ms. Slaunwhite was paid \$465.07 for that invoice. Her counsel asked her what she understood Halifax Hydrotherapy’s tax situation would be. Ms. Slaunwhite responded that it would be an invoice that she would give to her bookkeeper for income tax purposes. She testified that she was “behind a few years in my taxes”. Her lawyer suggested to her that this meant that she was paying income taxes on her own money, since there were no clients involved.

[125] In cross-examination, Ms. Slaunwhite agreed that sometimes she would refund the “purchases” on the Slaunwhite credit cards right away, and sometimes later on. When asked why, she said sometimes it would be later on.

[126] Ms. Slaunwhite was asked by her counsel whether there were any assumptions or understandings or beliefs on her part as to how the Moneris machine would be reconciled between 2009 and 2018. Ms. Slaunwhite responded, “Yes. My assumption, I presumed, which I was clearly wrong would be that they would

balance everything on a Moneris systems where everything is tracked and balanced and recorded and keep things safe and match totals; everything is recorded on a Moneris machine, everything is there for you”.

[127] Ms. Slaunwhite was asked by her counsel what she meant by “recording”. She stated “every processed sale on that machine is recorded. It’s into the Moneris system. You can print it out at any time, you can look at your statements. At any clothing place that I worked you balance cash, you balance your totals. You have a record of everything, it’s a master copy. I kept a very clear paper trail of everything I did through a Moneris system for accessing your records, they’re all there.”

[128] In cross examination Crown counsel asked Ms. Slaunwhite if her focus was on balancing why not refund \$500 on the credit card at the same time she charged \$500. Her evidence was:

Ms. Slaunwhite: Why not charge...Um [pause] because I only wanted \$250.00 deducted at that time because I probably didn’t have enough money to cover that in my accounting that was coming in to TKMT then I’d take \$250.00 later off myself, so that was covered, later on the bi-weekly amount. Yes. Are you asking if balancing credit cards or balancing my actual accounting, because they are two different things?

Crown Counsel: Did you believe there was an actual Halifax Hydrotherapy account with money in it at TKMT?

Ms. Slaunwhite: Absolutely. There is a pool of bi-weekly amounts of transactions that are mine. All my money is going into the system, that’s where my cheque is being cut from, it is the amount accumulated in that two-week process.



[129] Ms. Slaunwhite was asked in cross-examination how she would know how taxes would be assessed for her business. She said that she would go to the bookkeeper that she had. Ms. Slaunwhite was asked when she first hired a bookkeeper. She said that that was in 2014. Ms. Slaunwhite was asked in cross-examination why she didn't start with a bookkeeper in 2010. Her response was, "I just didn't". When asked in cross-examination why she did so in 2014, her response was that she needed to, that things were adding up and she had to get things taken care of. When asked why that was, Ms. Slaunwhite said that she had to go through her taxes and get everything organized for her business. When asked why that was, Ms. Slaunwhite stated "because four years had gone by". When asked what she meant by that, Ms. Slaunwhite stated, "Four years that I didn't have a proper bookkeeper or accountant". She stated that when she finally got one it was a little bit of a pileup to go through, so she hired a contracted person with accounting background to do so.

[130] Ms. Slaunwhite was asked in cross-examination whether she told the accountant or bookkeeper about doing the refunds:

Ms. Slaunwhite: Nope.

Crown Counsel: Why not?

Ms. Slaunwhite: Because it was all transactions reported on my invoices, as far as I was concerned.

Crown Counsel: You said the refunds were reported on the invoices?

Ms. Slaunwhite: Yeah, like, the taxes were based on my income, they weren't based on receipts. I didn't have receipts other than invoices, cheques and the amount of money that was in my accounts, that's how everything is put in for taxes, based on the income that I made, not my receipts, I didn't have them.

Crown Counsel: How would you show your accountant your income?

Ms. Slaunwhite: Invoices that were given to me from TKMT and the cheques that were entered into my accounts.

Crown Counsel: Right. And I asked you why you didn't tell your bookkeeper/accountant about the refunds, and you said they were on the invoices.

Ms. Slaunwhite: Oh, the total balances were on the invoices, as far as I knew.

[131] Ms. Slaunwhite was asked in cross-examination if she would review the invoices when they were given to her. She replied, "No, I just kept them for tax purposes, and piled them up". When it was put to her in cross-examination, that she would have to open up the invoice to get the cheque, Ms. Slaunwhite responded, "Yeah, of course". "Yeah, I've looked at them". Crown counsel's questioning continued:

Crown Counsel: Do you ever recall seeing refunds on them?

Ms. Slaunwhite: No, I do not recall looking at refunds on them. I didn't really, I kind of looked at the total, deposited my cheque. I didn't really have any questions if I was able to cover my expenses.

Crown Counsel: Would you have provided your bookkeeper...there was no way for your bookkeeper to know about these refunds?

Ms. Slaunwhite: To me it was all balanced. I thought it was all balanced and the balance was valid. The amount of money I claimed was the amount of money I claimed.

[132] When it was put to Ms. Slaunwhite in cross-examination, that she was satisfied to turn a blind eye to the accounting provided by TKMT, Ms. Slaunwhite said that she wouldn't call it a blind eye, but rather that she didn't have the business savvy or experience to know the difference. Ms. Slaunwhite's evidence was that she was renting a space and that her accounting was provided to her through TKMT. She stated that she didn't have to do accounting for her transactions and that she just needed her invoices to show income for tax purposes.

[133] Ms. Slaunwhite was asked in cross-examination if she even tried to figure the accounting out. Her response was, "No, not really". When it was put to her that she ignored all the accounting, she replied, "Nope, I trusted that everything was done properly, by the people who were responsible to balance my accounting".

[134] When asked what side of the accounting Ms. Slaunwhite paid attention to by Crown counsel, Ms. Slaunwhite said, "Cashing my cheques, paying my bills", she added making sure her ordering was done and her stock supplied.

[135] When asked whether, during the four years that she did not have a bookkeeper, she was figuring out what her income was, Ms. Slaunwhite's testimony, was "no", she was just making sure her bills were paid.

[136] Crown counsel put to Ms. Slaunwhite, “So in your view, it made more sense to have Ms. Castel go through your calendar and match it up with all the receipts, rather than writing your name on it”. Ms. Slaunwhite replied, “Yeah, I thought she would balance everything through the transaction machine to make sure everything was balanced and proper, receipts are easily lost.

[137] In cross-examination, Ms. Slaunwhite said that she didn’t know that she was only getting paid by receipts. When asked, “How else would you be paid?”, Ms. Slaunwhite’s evidence was, “By the transactions in the Moneris machine. Everything you enter goes into the system. It wasn’t just based on receipts”.

[138] When Crown counsel put to Ms. Slaunwhite that TKMT’s process for paying since 2014, was only based on receipts, Ms. Slaunwhite answered, “That’s what is being said now”. Crown counsel asked Ms. Slaunwhite, “And what made you think it was based on Moneris printouts?”. Ms. Slaunwhite stated, “Again, I presumed. Because any other retail position, they use the Moneris system, to make sure they balance their totals, to make sure they look at what is coming in and out of their business. I was very shocked to see that they were only paying money based on receipts in a drawer. To me that is shocking, if it’s not for you, I’m sorry sir”.

[139] When asked in cross-examination, why then, she didn't just throw away the purchase receipts Ms. Slaunwhite's answer was because she did what she was told, and she was told to put the receipts in the drawer. Her testimony was that she never asked why. In terms of refunds using the PIN, Ms. Slaunwhite said that massage therapists didn't do refunds, but that she did.

[140] In cross-examination, Crown counsel put to Ms. Slaunwhite that the purchases and refunds on the credit cards cancelled each other out, according to her own evidence, in three to five days. Ms. Slaunwhite agreed. She was then asked, "So how does TKMT owe you anything?". Ms. Slaunwhite responded, "In what context?". Crown counsel suggested that her evidence had been that she'd do a purchase, and TKMT was holding money for her, that would then be cancelled out, so asked again, why would TKMT owe you any money? Ms. Slaunwhite's explanation was, "Because it's done in two-week intervals", that it was "coming on" in one two-week period and "off" in the next two-week period, so it was "kind of balancing in that regard".

[141] When asked to agree in cross-examination, that putting a receipt in the drawer would tell TKMT that she had made a purchase, Ms. Slaunwhite stated, "I wouldn't agree that that was the only way they'd know about purchases. They'd also see it on their Moneris machine."

[142] Crown counsel put the following to Ms. Slaunwhite:

- Crown counsel: If you put that receipt in the pencil case, do you agree with me that that's basically telling TKMT, "I am owed this money by you"?
- Ms. Slaunwhite: By their standards, for them, sure. Yes.
- Crown counsel: And by not including the refund receipt, they don't know that that's already been refunded to you, correct?
- Ms. Slaunwhite: And based on their accounting, that is correct.
- Crown counsel: Right, they don't know that you had already taken that money back.
- Ms. Slaunwhite: If that's how they did their accounting. I'm not sure if you want to know how I was doing things. I can't speak on behalf of how they were doing things, I can't agree to something that I wasn't doing. They were doing it.
- Crown counsel: I think you agree by purchasing and refunding, you are no longer owed any money.
- Ms. Slaunwhite: Sure, it balances out.

[143] Crown counsel put to Ms. Slaunwhite that when it's already balanced out on the credit card and on the Moneris machine, and then a receipt goes through in the envelope, without seeing that refund receipt, essentially, she was asking for that money again. Ms. Slaunwhite responded, "I don't know what you're asking, it's not making sense to me, I'm sorry". Crown counsel said that he would try again. He put to Ms. Slaunwhite that when a purchase is made and goes through the Moneris machine, owned by TKMT, that she was basically telling TKMT that she performed a service and was owed money for that service. Ms. Slaunwhite agreed. Crown counsel said that whether she did a refund that same day or accounted for that refund

three or four weeks later, she wasn't entitled to that money anymore. Ms. Slaunwhite responded, "That is correct". Crown counsel then asked, "Right, so when you put that purchase receipt in there, and you take that money from that invoice, I'm going to suggest to you, you took extra money from TKMT". Ms. Slaunwhite responded after pausing, "Not knowingly". Crown counsel then asked, "Not knowingly, because why?".

[144] Ms. Slaunwhite stated, "Because I didn't realize that wasn't balancing out. I feel like you are always [inaudible] certain things without knowing the actual processes...I'm really having a hard time understanding...". It was again put to Ms. Slaunwhite by Crown counsel that if TKMT was not made aware of a refund by a receipt, that had been made on a purchase, that she was essentially asking for that money again. Ms. Slaunwhite replied, "That's not what I was doing". When asked, "Why wasn't the refund receipt going in the envelope?". Ms. Slaunwhite's evidence was, "It was my understanding that it was being completely tracked through the Moneris system. The refund copy that I took was to make sure I balanced my credit card. And I already explained, I feel like you are pushing me into saying something that isn't my truth."

[145] Crown counsel then put to Ms. Slaunwhite:

Crown counsel: I'm trying to understand why you included the purchase receipt but not the refund receipt.

Ms. Slaunwhite: I already explained it.

Crown counsel: Can you explain it to me.

Ms. Slaunwhite: Sure, there's a PIN. It basically goes in. If you don't enter that PIN you can't do a refund. That's tracking everything. You're entering a PIN into a system to do a refund. Therefore it's tracked. It's there. It's computerized. There is a paper trail. That was what I assumed was happening. And I just explained that. And I feel that you're twisting things into a different way of getting me to answer it. And I'm having a hard time

[146] When asked by Crown Counsel why she didn't tell TKMT what she was doing with the credit cards, Ms. Slaunwhite stated that she didn't think she had to, that she thought everything was balancing and they could see everything in clear transactions. She testified that she didn't think it was their business, that it was her business. She said that she would have loved to have had her own Moneris system, that she had asked Leah if she could, and was declined. She said that if she had access to her own system, she wouldn't have had to wait for the bi-weekly payroll to access her funds.

[147] Ms. Slaunwhite was asked whether she told anyone about using the Slaunwhite credit cards on the Moneris system. She said that she did not. When asked why not, Ms. Slaunwhite's evidence was that she didn't think she had done anything wrong. "Obviously I learned, she said, that I was wrong. I wish that I would have asked more questions, unfortunately I did not".



[148] When asked by Crown counsel if she believed Halifax Hydrotherapy's sales went into a separate pool, Ms. Slaunwhite said "no".

[149] In follow-up, Crown counsel asked Ms. Slaunwhite how she would know how much money was in her account to balance it out, Ms. Slaunwhite said that based on how many clients she had booked and coming in through she'd have a general idea how much she had made.

[150] With reference to the Agreed Statement of Facts, Crown counsel put to Ms. Slaunwhite that she agreed that with respect to purchases, she would usually put the purchase receipt in the envelope. Ms. Slaunwhite responded that she could not guarantee that all purchase receipts went into the envelope because she wasn't aware that was how the accounting was done and she was only being paid by a receipt in a drawer.

[151] She was asked about the invoices and what significance, if any, did red font or black font have on the invoices issued by TKMT. She responded, "None whatsoever because they were never consistent from the red and the black."

[152] Ms. Slaunwhite also confirmed that from 2010 onwards she took no bookkeeping courses. Ms. Slaunwhite said that she had no additional training on the Moneris system after 2010.

[153] When asked why she would use her parents' credit cards, she said that she always had access to them, and she would use them because she might already had too much on her own credit card. She said that she was accustomed to doing so.

[154] Ms. Slaunwhite's counsel asked her why she did not keep the receipts on the refunds for the credit cards. She responded:

Because I had to enter a code. So, the code, to me, is tracking everything on that Moneris system. And I just assumed that everything was being balanced. I didn't hide anything. It's right there, in the Moneris system.

[155] Crown counsel suggested to Ms. Slaunwhite that the "paper trail" she kept referring to was the receipts. She responded, "No, the paper trail was the entire system".

Crown counsel: You acknowledge that the paper trail would also have included the purchases, correct?

Ms. Slaunwhite: Yeah, sure.

Crown counsel: So if you were choosing not to include the refunds because there is a paper trail, why were you including the purchases?

Ms. Slaunwhite: Because I was told to.

Crown counsel: You were never told to include refund receipts in the envelope?

Ms. Slaunwhite: I did put refund receipts in the envelope.

Crown counsel: All the refunds that we have attached to the Agreed Statement of Facts, did you put any of those refund receipts in the envelope?

Ms. Slaunwhite: None that were mine, only with clients.

Crown counsel: So why wouldn't you put them in if they were your cards or your parents' cards?

Ms. Slaunwhite: Because to me it wasn't relevant about credit cards...I thought everything was balancing through the Moneris system. So I thought everything was being tracked. I didn't question it. I didn't think about it. I didn't give it as much thought as you are right now.

Crown counsel: So if it wasn't relevant because it was your cards or your parents' cards, why were you still putting the purchase receipt in the envelope for your cards and your parent's cards?

Ms. Slaunwhite: Because I put it in as a therapist. It was a client transaction, and I was told to put purchase receipts in the drawer, and that was what I was doing.

Crown counsel: Were they actually client transactions?

Ms. Slaunwhite: Yup. They were my client transactions. I was the client.

Crown counsel: Were you performing services on yourself?

Ms. Slaunwhite: [laughing] No. In this case, these were my transactions.

Crown counsel: Were you performing services on your parents?

Ms. Slaunwhite: No.

Crown Counsel: So these weren't actual client transactions?

Ms. Slaunwhite: No, they weren't.

[156] In cross-examination, Ms. Slaunwhite testified that she didn't recall ever seeing a refund on an invoice. When asked whether she ever mentioned this to Leah, she said "no", that she just thought everything was accurate. She said that they could have come to her, that they had to come to her over the years with discrepancies, so why wouldn't they if there was a discrepancy. When asked by Crown counsel if she would agree that the refund receipts would have helped, this was Ms. Slaunwhite's evidence:

Ms. Slaunwhite: Would I agree with you, that their way of accounting was an acceptable way to do accounting, no.

Court: You have to answer the question that was asked.  
Crown Counsel: You're indicating they never came to you  
Ms. Slaunwhite: No, there was no discrepancy that I was ever aware of, I thought everything was balanced.  
Crown Counsel: Right, but you'd also agree that the refund receipts were never put in there for them to see.  
Ms. Slaunwhite: Yeah, that's correct. Yeah.

[157] Ms. Slaunwhite agreed that she met with Sarah and Leah on a Friday in June 2018. She testified that prior to that meeting she knew nothing about an investigation concerning Moneris and the credit card payments she had been making. Her counsel asked Ms. Slaunwhite who first raised the issue of overpayments at that meeting. Ms. Slaunwhite said that she did.

[158] She was also asked about that meeting in cross-examination. She said that she had been thinking about closing her business and was meeting with her bookkeeper. Her evidence was that she had been going through her receipt book and realized that she owed Sarah and Leah money. She said that she then immediately brought this to Sarah and Leah's attention at the meeting which had been previously set up.

[159] When asked by Crown counsel, "What did you owe them money for?", Ms. Slaunwhite responded that "things weren't balanced" and the "transactions weren't closed". Her evidence was that the bookkeeper that she had in 2014 became ill and couldn't work for her anymore. In 2018 she retained a new bookkeeper who asked her about her receipt book.

[160] Ms. Slaunwhite agreed in cross-examination that the amount she owed TKMT was over \$5000.00.

[161] Ms. Slaunwhite's testimony was that she had figured that she owed TKMT about \$10,000.00 for 2018. She said that she only had her receipt book for 2018. She also stated that Leah and Sarah told her that the amount was \$20,000.00 for the past two years. She said that when she reviewed her 2018 receipt book, it didn't balance with the cheques in her account.

[162] With respect to the Indictment, Ms. Slaunwhite's counsel asked her what she had to say to the charge that she acted in a deceitful, dishonest, false manner in terms of these transactions. Ms. Slaunwhite responded:

I absolutely did not and I've carried this for the past four years in terms of being accused of something I did not do. I had no intention to harm anyone, including myself, or my family or the girls I worked with.

[163] Her lawyer asked her how she could explain this situation. She responded:

I was obviously in over my head in the business aspect of things. And vulnerably, and embarrassingly, I admit that perhaps I should have asked more questions. I had full trust and faith in their processes. I'm humiliated and I'm mortified

[164] Ms. Slaunwhite said that her reputation has been torn apart and she has lost relationships and friendships. She said that her parents had been arrested. She said that if she needed money, she would have borrowed money directly from her parents and that she was close to them.

[165] Ms. Slaunwhite testified that it was very incorrect and not true that she had used her parents' credit cards to commit fraud. Her lawyer asked Ms. Slaunwhite what she said to the allegation that she knew that TKMT was paying her money that she was not entitled to. Ms. Slaunwhite said that she did not know that. She said that she was walking into work every day for eight years and that any moment a hammer could come down, because there was an obvious paper record and transactions records on the Moneris system.

[166] When asked when Ms. Slaunwhite met with Sarah and Leah she said before that she realized after reviewing her receipt book, she realized in talking to the bookkeeper that the transactions weren't balanced and closed. When asked again by Crown counsel what she meant by that her evidence was "I explained to him -her bookkeeper-exactly what I did." And they were like "OHHH, the transactions didn't get closed on the Moneris system. The refunds didn't get balanced."

[167] Ms. Slaunwhite testified that she did not know that TKMT was losing money because of her actions, "she would have corrected it immediately, just like she did once I found out. Ms. Slaunwhite said that she came with cash in hand and assured them that she would right this.

[168] Ms. Slaunwhite's counsel what she said in response to the suggestion that she exploited weaknesses within the accounts systems of TKMT. She responded, "I had no idea how they were running their totals". She added that she was as shocked as everyone else that "it was based on a receipt in a drawer".

[169] Ms. Slaunwhite's final question to her in direct examination was what she said to the suggestion that she intentionally hid refunds on the Slaunwhite credit cards by not submitting receipts. Ms. Slaunwhite's answer was "That's not what I did".

### **The Defence's Position**

[170] Defence counsel submits that the evidence shows that Ms. Slaunwhite made purchases using the Slaunwhite credit cards. He suggests that, in essence, Ms. Slaunwhite was using these credit cards as a line of credit, and that what Ms. Slaunwhite has done is very unusual. He says that Ms. Slaunwhite would use these credit cards to fund her business.

[171] Defence counsel says that the issue before the Court is really the *mens rea* – the intent. What did Ms. Slaunwhite intend in terms of the use of the credit cards, and was that intent to defraud TKMT in terms of the sums of money which were eventually credited to her?

[172] Defence counsel says that Ms. Slaunwhite would usually put purchase receipts for clients generated by the Moneris machine in the pencil case, although there may have been, according to her evidence, 20-30 times over the course of nearly ten years when she did not do so. Defence counsel said that Ms. Slaunwhite did not put the refund receipts from the Moneris machine into the pencil case. Defence counsel said that the distinction, was that the credit card involved using Ms. Slaunwhite's money.

[173] Defence counsel says that one of the fundamental issues before the Court is knowledge. Defence counsel says that the Crown says that the Court can infer in the circumstances that Ms. Slaunwhite should have known that the receipts going into the pencil case were being used to credit money to her, and that Ms. Slaunwhite's explanation as to why she didn't put the refund receipt in the pencil case is not reasonable and shouldn't be accepted by the Court.

[174] Defence suggests that a problem with the Crown's case is that in 2009 Ms. Slaunwhite joined Halifax Hydrotherapy as an employee of Amanda McCarthy. He says that Ms. Slaunwhite's evidence was that Amanda McCarthy told her, as her employee, to write her names on receipts so that she would know which services she provided, and which services Ms. Slaunwhite provided. Of course, as Defence counsel acknowledged, Ms. Slaunwhite continued that practice for many years. He says that the question is "Why?". Defence counsel asks when it was that Ms.



Slaunwhite was ever explained how payments from TKMT would come back to her. Defence counsel acknowledges that there is a dispute between Ms. Slaunwhite and Ms. Castel about whether or not she was trained on the Moneris system in that regard. Defence counsel, however, says that the real issue is whether Ms. Slaunwhite knew what purpose the receipts served. Defence counsel suggested that the Crown under *R. v. Villaroman* in terms of inferences to support, a finding of guilt, is that Ms. Slaunwhite must have known that TKMT would use the refunds receipts from credit cards to calculate the amounts owed to her.

[175] Defence counsel says that Ms. Slaunwhite gave evidence that provides an alternative to that theory. He suggests that Ms. Slaunwhite's evidence was that no one actually told her. She assumed TKMT was running a Moneris report and reviewing her calendar in determining how to pay her, and that the Moneris report would have showed that she credited the refund.

[176] Defence counsel argues that Ms. Slaunwhite had very little business acumen in terms of how a business is run on a day-to-day basis despite her post-secondary education. Defence counsel says that Ms. Slaunwhite believed that it was her own money coming off the credit cards, and her own money being credited to those credit cards.

[177] Defence counsel argues that Ms. Slaunwhite's evidence was that she didn't know that what she was doing was depriving TKMT of money or putting their money at risk. He argues that she lacked the requisite criminal intent, and that the *mens rea* of the offence has not been proven beyond a reasonable doubt and Ms. Slaunwhite should be acquitted.

### **The Position of the Crown**

[178] The Crown says that both the *actus reas* and *mens rea* of the offence as charged has been made out.

[179] The Crown points out that Leah Castel testified that she trained Ms. Slaunwhite, although she did not have a clear memory of doing so, this being 13 or 14 years ago. She testified that it was her practice to train a new therapist on the practices and procedures, including how money was going to get to, Halifax Hydrotherapy.

[180] Crown counsel points out that in cross-examination, that Ms. Slaunwhite agreed that prior to coming to TKMT, Halifax Hydrotherapy had its own Moneris machine, and she understood that the money went into TKMT's account, not Halifax Hydrotherapy's account.

[181] Crown counsel also noted that although the ASF says that Ms. Slaunwhite would usually submit the paper copy of the debit/purchase from the Moneris machine into the envelope, she agreed in cross-examination that it was possible that all of those purchase receipts went into the envelope/pencil case. He points out that Leah Castel's evidence had been that the receipts were used to pay Ms. Slaunwhite, and that was the only way that TKMT used to calculate what was owed to her Ms. Slaunwhite agreed that she was paid for her services.

[182] In terms of whether what Ms. Slaunwhite was doing constituted a dishonest act, the Crown says that Ms. Slaunwhite made it appear to TKMT that a purchase was made, or a service was given by her, when it was not. The Crown says that, in addition to any legitimate services she provided to actual clients, Ms. Slaunwhite was representing to TKMT that there was a purchase or a service, and as a result, she was credited that amount, and despite the fact that Ms. Slaunwhite refunded the amount on the credit card but did not tell TKMT about such refund.

[183] The Crown says that for Ms. Slaunwhite to suggest that for over an eight-year period starting in 2010 that she assumed TKMT was reviewing the Moneris system for purchases and refunds is incredible. The Crown says that the Court should accept the evidence of Ms. Castel that she did train Ms. Slaunwhite, that she explained how things worked, and that the evidence from Ms. Slaunwhite is a story she has come

up with as to how this happened and why she has not committed a criminal offence. The Crown argues that Ms. Slaunwhite's evidence in this regard doesn't make sense, and in fact she did know how TKMT was performing the reconciliation and how the money would get back to her.

[184] The Crown argues that Ms. Slaunwhite claims to be entitled to the money from TKMT during the two-week payroll period. While it's true that she did have some entitlement to that money, but how she went about getting it, is where deceit and falsehood comes into play. Crown counsel refers to *R. v. Kingsbury*, 2011 BCCA 62, para. 54 citing *R. v. Must*, 2011 ONCA 390. In that situation, the accused felt entitled to the money, but obtained it deceitfully by forging timesheets, employing a unilateral method which didn't allow the victim an opportunity to scrutinize or dispute the amounts. Crown counsel submits that that is very similar to what happened in the within case. Ms. Slaunwhite submitted false purchase receipts, which would give her a payment from TKMT, without telling TKMT about the refund that she had made for those purchases. Crown counsel says that TKMT had no opportunity to review what Ms. Slaunwhite was submitting, to see if they were appropriate receipts, or to dispute the claims that she was making, like the case before the Court in *Must*. The Crown acknowledges when it was put to him by this Court, that to say there was "no opportunity", because TKMT could have reviewed

the Moneris printout, but the Crown counsel says that Ms. Slaunwhite would have known that they did not review the Moneris receipts. The Crown says that Ms. Slaunwhite was trained by Ms. Castel and knew that payments were made based on receipts in the envelope. That is the way that Ms. Slaunwhite was paid for eight years.

[185] Crown counsel points out that a clear direction from *Kingsbury* is that whether or not Ms. Slaunwhite felt that what she was doing was dishonest or wrong, is irrelevant to the analysis. The Crown says that the subjective awareness that the acts could cause deprivation to TKMT has been proven circumstantially. The Crown says that the evidence shows that Ms. Slaunwhite had been trained on the procedures and processes when she came on board, either by Ms. McCarthy or Ms. Castel. Ms. Castel's evidence was that she, as owner of TKMT and the Moneris system, trained Ms. Slaunwhite on the processes and procedures as to how she would be paid. The Crown counsel points out that the evidence shows that Ms. Slaunwhite submitted the purchase receipts for other, legitimate transactions. Ms. Slaunwhite's evidence was that she submitted all the purchase receipts when using her or her parents' credit cards, despite no services being provided, using similar amounts for what she would charge for her hydrotherapy series, and did so for about ten years. Ms. Slaunwhite acknowledged that she would refund the amount charged to the credit card but would

not include a refund receipt to TKMT. Rather, her evidence was that was not relevant to what she was doing.

[186] The Crown says, that possibly most telling about the circumstantial evidence is that Ms. Slaunwhite didn't tell anyone what she was doing, including her parents, Leah, or Sarah (whom she described as a friend) or her own bookkeeper, despite her evidence that she had no business acumen and that she didn't understand business practices. The Crown says that it is very hard to believe that Ms. Slaunwhite just didn't believe that what she was doing was relevant to anything. The Crown says that the proper inference to make from all this evidence is that Ms. Slaunwhite knew that what she was doing was wrong – she kept it hidden and was aware it was deceitful and could cause deprivation to TKMT.

[187] The Crown says when considering the circumstantial evidence, to make an inference of guilt, it must be the only reasonable inference based on the totality of the evidence. The guidance in making that decision is to apply logic, common sense and human experience. The Crown says that based on all of the evidence in this case, the only common sense, logical explanation for why this would occur, was because Ms. Slaunwhite was committing a deceitful act which she knew could cause deprivation to TKMT.

[188] The Crown says that although Ms. Slaunwhite gave evidence, denying a deceitful intent, this Court should reject Ms. Slaunwhite's evidence as not being credible, especially when considering and weighing it against all the other evidence.

[189] The Crown submits that if the circumstantial evidence does not lead the Court to conclude that Ms. Slaunwhite intentionally caused a deprivation to TKMT, that the Court can find that she was reckless in her conduct and thereby that Ms. Slaunwhite had the subjective knowledge that deprivation could occur.

[190] The Crown notes that recklessness requires a subjective standard, that the accused is aware that there is a danger that her conduct could bring a result prohibited by criminal law, but nonetheless persists in that risk.

[191] In that regard, the Crown submits that Ms. Slaunwhite, despite knowing of the danger of submitting the purchase receipts, without submitting the refund receipts continued to do so and took that risk, which the Crown says is proven circumstantially. The Crown says that, on her own account, Ms. Slaunwhite acknowledged that she was "in over her head". The Crown says based on all the evidence the only common sense, logical explanation for why this occurred was because Ms. Slaunwhite was committing a deceitful act which she knew could cause deprivation to TKMT.

[192] The Crown says that, on her own, without asking others, Ms. Slaunwhite decided, because she needed money, submitted a purchase, carried out a refund, but still falsely claimed money from TKMT for that purchase. The Crown says by Ms. Slaunwhite's own evidence this was reckless. The Crown points out that during her evidence, Ms. Slaunwhite said a few times, "I shouldn't have done this", "I never told anyone", "I never attempted to get training". The Crown says that when Ms. Slaunwhite looks at her past behaviour, she recognizes that she shouldn't have done these things and that when looking back, even Ms. Slaunwhite sees that she was reckless.

### **Assessment and Findings**

[193] The identity, time and jurisdiction for this alleged offence have been admitted.

[194] The Crown as well as the defence say that the crux of the case is really whether Ms. Slaunwhite had the required *mens rea*, i.e., the subjective knowledge that she was depriving TKMT of an economic interest, either intentionally or recklessly and that this can be proven either with direct evidence or circumstantial evidence.

[195] The *actus reus* of the offence has been proven by the evidence before the Court. Ms. Slaunwhite conceded that the loss to TKMT was in excess of \$5,000. The exact amount of TKMT's loss is not before this Court for calculation, but I am



satisfied that it is in the very approximate range of \$57,000, but that amount may well be subject to deductions including for credit card and Moneris fees already paid by Ms. Slaunwhite. I make no finding of the exact amount of TKMT's loss other than it is in excess of \$5,000.

[196] *Thereoux*, establishes if the Crown proves the *actus reas* and the *mens rea*, the accused is guilty, irrespective of whether the accused, Ms. Slaunwhite, actually intended the consequence of her actions, or was reckless as to whether that consequence would occur.

[197] The Court must always consider the credibility of witnesses. I find that each of the Crown witnesses was credible. Ms. Castel and Ms. Letcher gave their evidence in a very straight-forward manner, as did D./Cst. Rogers. Ms. Castel, who was responsible for the accounting part of TKMT business, openly testified as to the accounting practices in place at the time Ms. Slaunwhite was associated with the business. Some of these practices were very lax; yet she freely admitted to them. The minor discrepancies brought to the attention of Ms. Castel between her evidence at the preliminary inquiry and her evidence at trial, did not affect my conclusion that Ms. Castel was a credible witness.

[198] In terms of Ms. Slaunwhite's evidence, I found certain parts of her evidence to be credible, but I have found key parts of her evidence to lack credibility. For example, Ms. Slaunwhite testified that she did not record refunds in her receipt books. Yet, her evidence was that it was going through her 2018 receipt book and her discussions with her accountant was what lead her to believe that she had been overpaid.

[199] Her explanation in cross-examination as to why she owed TKMT money was that when she was thinking about closing her business she met with her bookkeeper. she went through her 2018 receipt book and realized she owed Leah and Sarah money. However, her evidence earlier was that she didn't record refunds in her receipt book according to her evidence.

[200] She said that she then realized the transactions weren't balanced and closed. When asked by the Crown counsel what she meant by that, her evidence was, "well I explained to him, the bookkeeper, exactly what I did and they were like, OOOH the transactions didn't get closed on the Moneris system and the refunds didn't get balanced." That evidence simply makes no sense.

[201] If Ms. Slaunwhite didn't record refunds in her receipt book how would reviewing that book lead her to believe that she had been overpaid? She and her

bookkeeper did not have access to the Moneris records at that point in time. How could she conclude therefore that the transactions didn't get closed on the Moneris system?

[202] Further, the Moneris system is where she maintained that she balanced the credits and refunds and where, she said, Ms. Castel should have looked. This evidence very negatively impacted Ms. Slaunwhite's credibility.

[203] Ms. Slaunwhite was, I find, often deliberately hesitant to answer questions around her practice of not putting receipt refunds in the pencil case. She relied upon a kind of mantra, to the effect of "what I did was trackable, traceable, and left a paper trail". Such answers to many of the questions posed to her did not provide an explanation and certainly not a credible explanation of why she did what she did but rather attempted to put the blame on Sarah and Leah for not catching her. Several times during cross-examination Ms. Slaunwhite feigned misunderstanding of straight-forward questions asked by Crown counsel and she accused him of, in essence, trying to confuse her on more than one occasion. There was nothing at all confusing or misleading about these questions.

[204] One example of this kind of answering by Ms. Slaunwhite is when, in cross-examination, Crown counsel put to Ms. Slaunwhite that the purchases and refunds

on the credit cards cancelled each other out, according to her own evidence, in three to five days. Ms. Slaunwhite agreed. She was then asked, “So how does TKMT owe you anything?”. Ms. Slaunwhite responded, “In what context?”.

[205] Another example is when asked to agree in cross-examination, that putting a receipt in the drawer would tell TKMT that she had made a purchase, Ms. Slaunwhite stated, “I wouldn’t agree that that was the only way they’d know about purchases. They’d also see it on their Moneris machine.” Ms. Slaunwhite hadn’t been asked if that was the only way to advise TKMT about a purchase. Rather than provide a straight-forward response to the question asked, Ms. Slaunwhite gave an answer that tracked her theory that TKMT could have found out what she was doing by reviewing the Moneris records.

[206] I accept Ms. Castel’s evidence over that of Ms. Slaunwhite that she had been trained by Ms. Castel on the use of the Moneris system. Ms. Castel gave convincing evidence that it was her long-standing practice to train new therapists as she said when they came on board on the use of the Moneris system, and there is no compelling reason for this Court to conclude that she would not have trained Ms. Slaunwhite. Ms. Slaunwhite’s evidence that she had not been trained was self-serving. I accept Ms. Castel’s evidence over that of Ms. Slaunwhite where that evidence in any way conflicts.

[207] I also find as a fact that Ms. Slaunwhite knew and was trained by Ms. Castel to put both purchase and refund receipts in the pencil case. Refund receipts for client transactions where Ms. Slaunwhite had written her name or initials were in evidence before the Court. There were only three of these receipts, but the evidence of Ms. Castel was that refunds were not given for massage therapy sessions except in exceptional circumstances, so the vast majority of refunds would have been those of Ms. Slaunwhite. Ms. Slaunwhite's own evidence established that she put both refunds and receipts into the pencil case for client transactions. She did give evidence that there were 20-30 times over a nearly 10-year period when she may not have put purchase receipts in the pencil case. However, there is no evidence corroborating that contention.

[208] In terms of the credit card transactions, Ms. Slaunwhite represented to TKMT on numerous occasions, that she had performed hydrotherapy services on clients and charged those clients fees to do so, in circumstances where there were no clients and no services had been performed. TKMT paid her for those services, which Ms. Slaunwhite never performed. That was a repeated misrepresentation to TKMT. It was deceitful conduct. At no point did Ms. Slaunwhite tell Ms. Castel or Ms. Letcher what she was doing.

[209] Ms. Slaunwhite kept saying in her evidence that it was “her money”. It was not. TKMT was paying her their money. She said that she had no idea of how they ran their business. If that was the case, how would she know that telling them that she had performed a service, when she had not, which generated a payment to her, would not negatively affect the business of TKMT? It was not all about “her money” as Ms. Slaunwhite repeatedly suggested.

[210] This was not a one-time event. Rather, this occurred many times for many years. Nor is it an answer to suggest that Ms. Slaunwhite needed the money for her business. That may be true but what she did to get that money was dishonest and deceitful.

[211] Ms. Slaunwhite is a very well-educated individual. She did not need business acumen to know that TKMT was paying her for services she had not performed. That is a dishonest act and is deceitful. She did not require business savvy to know that refunding those credit cards on the Slaunwhite credit cards, but not putting the refund receipt in the drawer, would not alert TKMT that not only had she not performed any services, but that she had refunded those services on the credit card.

[212] In terms of “other fraudulent means” (as established by *Theroux*), I find that Ms. Slaunwhite’s conduct in not putting the refund receipts in the pencil case, or

otherwise bringing them to the attention of TKMT was and would be viewed by a reasonable person to be dishonest.

[213] Ms. Slaunwhite said that she “assumed” that TKMT was reviewing the Moneris records and accounting for her credit card refunds. However, she also gave evidence that she did not know that that was the case and nor did she ask. Ms. Slaunwhite’s assumption was not grounded in all of the evidence before the Court that was known to Ms. Slaunwhite at the time.

[214] As noted earlier, Ms. Slaunwhite gave evidence that she kept a receipt book which belonged to her, in which she would record client purchases. She said that, in addition, she used the receipt book to “keep general track of things”. Yet, her evidence was that she didn’t record refunds in her receipt book. Again, by her own evidence it was her review of the receipt book for 2018 which caused, in part at least, to conclude that TKMT had overpaid her.

[215] I accept that Ms. Castel trained Ms. Slaunwhite on how purchases were processed, and that involved putting receipts and refunds in the pencil case or envelope. It does not make any sense that Ms. Slaunwhite thought that Leah or Sarah was reviewing the Moneris records in order to calculate how much she was owed. Why else would she be told to put receipts, purchase, and refunds, in the pencil case?

Why would Ms. Slaunwhite bother to put the purchase receipt for a so called “purchase” on the Slaunwhite credit cards in the pencil case? Her explanation, “because I was told to do so” is correct, but the corollary of that is also true that she was told to put refund receipts in the pencil case as well. I find that Ms. Slaunwhite knew that the way that she would be paid was to put the credit card receipts for the services she performed in the pencil case. She was never told to put any credit card purchases for services she didn’t perform in the pencil case. However, if she was going to do that, which she did, she should have put the refund receipts in the pencil case as well. If she thought that TKMT’s accounting processes included reviewing the Moneris reports, why bother putting the purchase receipts for her credit card transactions in the pencil case at all? The answer is obvious to this Court, that she knew that she needed to do so in order to be paid. I reject in its entirety Ms. Slaunwhite’s evidence that she “didn’t really know” why she had been told to put receipts in the pencil case.

[216] As I said, she didn’t tell anyone what she was doing – not her bookkeepers, Ms. Castel, or Ms. Letcher (whom she described as a friend and that she looked up to her). The inference that this Court makes from this evidence is that Ms. Slaunwhite knew what she was doing was wrong, but kept it hidden. She was aware it was deceitful and would or could cause harm to TKMT.



[217] I reject Ms. Slaunwhite's evidence that she didn't tell her accountant (before, apparently, 2018) about the refunds because "it was all transactions reported on my invoices as far as I was concerned". Yet she never reviewed those invoices carefully, or at all, by her own evidence. The few times when Ms. Slaunwhite had legitimately processed a client refund, those refunds showed as deductions on her invoices.

[218] When asked in cross-examination, if she even tried to figure out the accounting. Her response was, "No, not really". When it was put to her that she ignored all the accounting, she replied, "Nope, I trusted that everything was done properly, by the people who were responsible to balance my accounting".

[219] That answer reveals a complete abdication on the part of Ms. Slaunwhite to the responsibilities she owed TKMT. She owed them a duty of honesty, at a minimum. She was careful to account for services she never performed by putting a receipt for those services in the pencil case, but kept TKMT completely in the dark about how she was using it as a bank, and more importantly, by not telling them that she had been refunded for the non-existent services that TKMT was paying her for.

[220] To make the inference of guilt using circumstantial evidence, that inference, as I said, must be the only reasonable inference based on the totality of the evidence. In doing so I must be guided by logic, common sense, and human experience. Based

on all of the evidence in this case, the only common-sense, logical explanation for why Ms. Slaunwhite did what she did, was that she was committing a deceitful act which she knew would cause, or was reckless that it would cause, harm or loss to TKMT.

[221] I reject Ms. Slaunwhite's evidence denying a deceitful intent when I consider all of the evidence and weigh Ms. Slaunwhite's evidence against that evidence.

[222] I find that, and as admitted by Ms. Slaunwhite, errors in dates on the invoices from TKMT did not confuse her; nor did red or black ink indicating credits or negatives confuse her. Her evidence was that the invoices were largely irrelevant to her. She just looked at her cheque and cashed it.

[223] Ms. Slaunwhite was using TKMT as though it was a bank. Despite calling Sarah her friend, she never told her what she was doing or asked her if it was alright. That is because, and I find, Ms. Slaunwhite took steps to cover her tracks. She could have put in any amount on the Slaunwhite credit cards for services she didn't perform, but she chose to put in for amounts that mirrored the amounts that she would have charged real clients for actual hydrotherapy sessions. As she said, those amounts were unique to her. Had she used other amounts, these might have aroused

suspicion on the part of TKMT. I reject Ms. Slaunwhite's evidence that she used those amounts to make sure it was "trackable" and "visible".

[224] Ms. Slaunwhite repeatedly said during her evidence, smugly at times, in this Court's assessment, that she left a vivid paper trail behind her. That argument is basically, she should have been caught. I find that is an argument not rooted in what was happening at the time, but rather is a story made up after the fact to justify her fraudulent activities. As I said, I found key aspects of Ms. Slaunwhite's evidence shows her to be a witness lacking credibility.

[225] It is true that TKMT had lax accounting procedures. The one point on which I agree with Ms. Slaunwhite is that it is a very lax practice, indeed, to pay therapists based upon receipts with their names in a drawer. However, fraud and deceit often occur when an individual finds a weakness or laxity in some accounting practice and takes advantage of it. The evidence in this case convinces me that that is exactly what Ms. Slaunwhite did.

[226] Any reasonable small business owner would, over the course of one year, let alone ten, carefully review their invoices for errors or omissions. If she had done so, she would have seen that the refunds she was giving herself on her credit cards for services she did not perform or not being accounted for on the invoices by which

she was paid for those same services. Despite all, if she was convinced that TKMT was using the Moneris systems to determine the two-week balance owed to her, then she would have easily and quickly determined that they were not, had she reviewed the invoices that she was given.

[227] As I said, *Theroux* clarified that the test for *mens rea* of fraud should reflect traditional *mens rea* principles. The focus should be on the accused's subjective knowledge of the prohibited act and the prohibited consequences that together compose the *actus reus* of the offence. The majority also made it clear that a number of matters are not relevant to the *mens rea*. An honest belief that one's conduct is not dishonest, is irrelevant. An honest belief that one's conduct is not wrong or a hope or expectation that no deprivation will occur is equally irrelevant.

[228] Based on all of the evidence in this case, the only common-sense, logical explanation for why Ms. Slaunwhite did what she did, was that she was committing a deceitful act which she knew would cause, or was reckless that it would cause, harm or loss to TKMT.

#### Returning to W.D.

[229] I do not believe Ms. Slaunwhite's evidence, and her evidence does not leave me with a reasonable doubt as to her guilt. However, the evidence that I do accept,

both from her and from the Crown witnesses proves each element of the offence with which she is charged beyond a reasonable doubt. None of the documentary or *viva voce* evidence which I accept raises any reasonable doubt as to Ms. Slaunwhite's guilt.

[230] Ms. Slaunwhite is convicted of fraud under s. 380 (1) of the *Code*. The Crown has proven each of the following essential elements beyond a reasonable doubt:

- (a) That Ms. Slaunwhite deprived TKMT of something of value;
- (b) That Ms. Slaunwhite's deceit, falsehood or other fraudulent means caused the deprivation;
- (c) That Ms. Slaunwhite intended to defraud TKMT; and
- (d) That the value of the property exceeded \$5,000.00.

Smith, J.