Court of Queen's Bench of Alberta

Citation: R v Neilson, 2020 ABQB 556

Date: 20200921
Docket: 150422848Q2
Registry: Calgary

Between:

Her Majesty the Queen

Crown

- and -

James Russell Neilson

Offender

Reasons for Sentence Judgment
of the
Honourable Madam Justice K.M. Eidsvik

Introduction

[1] I convicted Mr. James Russell Neilson of multiple counts of fraud, theft and money laundering arising from representations he made to multiple people to induce and keep millions of dollars of investments into businesses controlled by him, including ABACA Solutions Inc. ("ABACA") and APO Group Inc. ("APO").

[2] More specifically, I convicted him of fraud, money laundering and theft of investments made by Grenville SRC in the amount of $1,052,081 between May 9th, 2014 and November 30th, 2014 (counts 1, 2 and 3), fraud and theft with respect to a loan in the amount of $65,000 made by Mr. Chris Nadeau between June 1st, 2014 and August 1st, 2014 (counts 4 and 5), and fraud and money laundering with respect to a number of investments by investors (the public) in the amount of $1,182,000 between January 1st, 2009 and October 31st, 2014 (counts 6 and 8). In light of the ***Kieneapple*** principle, the Crown stayed the theft convictions.

[3] The convictions dealt with investments and a loan which total approximately $2.3 M – of which approximately $1.7 M was lost. The approximate total invested in ABACA and APO was $5.5 M.

[4] My Reasons for Judgement with respect to the convictions were published at 2020 ABQB 433 ("Reasons"). I must now turn to determining the appropriate sentence for Mr. Neilson.

Circumstances of the Offence

[5] As set out in detail in my Reasons, Mr. Neilson worked as an accountant in Canmore for many years. In summary, between 2010 and 2014, Mr. Neilson convinced many people to invest in ABACA, and later, APO. He convinced them by showing them various documents with fraudulent statements, including in some cases fraudulently manufactured documents (banking statements and financial statements), and making various fraudulent representations about the potential and actual results of ABACA. The individual investments ranged between $44,000 and $440,000 from seven individuals, a loan of $65,000 from an individual, and $1,052,081 from a corporate investor.

[6] The investments were supposed to help fund ABACA (and later APO) in its business of providing offshore accounting services to mid sized accounting companies. Most likely some of these investments were used in ABACA's business, however some of it was also spent by Mr. Neilson for personal expenses. It was not clear at trial what was spent on the company and what and how the money was used by Mr. Neilson. It was clear however that he had converted and concealed, these investment funds (the details of which can be found in my Reasons).

[7] Most investments dealt with investments in return for shares in ABACA and later APO. In one instance, that dealing with Mr. Nadeau, the funds were provided to Mr. Neilson by way of a loan.

[8] As summarised in para 259 – 260 of my Reasons:

> Mr. Neilson admitted during final argument that he defrauded six investors from a total of $1.5 M. The Crown has proven beyond a reasonable doubt that in fact $2,299,081 was put at risk through Mr. Neilson's fraudulent behaviour. These include the following investments/loan made by these nine investors and lender:
>
> - Mr. Jason Brandt $44,000
> - Mr. Lyle Korytar $220,000
> - Mr. Daniel Knoch $118,000
> - Ms. Kumiko Terazawa $440,000
> - VirtuaLedger (Dr. Mauws) $200,000
> - Mr. Kim Megaffin $100,000
> - Mr. Paul Erickson $60,000

• Grenville LLC	$1,052,081
• Mr. Chris Nadeau	$65,000
TOTAL	**$2,299,081**

Further, I note that $622,384 was recovered ($100,000 by Dr. Mauws and $522,384 by Grenville). Also, I note that there is also the potential that Mr. Nadeau may recover some or all of his loan funds of $65,000. The rest has been lost.

[9] The net amount lost was **$ 1,671, 497**.

Position of the Parties

Crown position

[10] The Crown seeks a sentence of 9 years in a penitentiary broken down as follows:

Grenville related (Count 1) - 3 years

Nadeau related (Count 4) – 6 months to 1 year

Public related (Count 6) - 4 years

Money laundering (Counts 2, 8) - 1 year on each count, concurrent to each other consecutive to the other counts.

[11] In addition, the Crown seeks a restitution Order in the amount of $1,671,497 and a fine in lieu of forfeiture in the same amount, with 2 years to pay and in default, 6 years incarceration consecutive to the 9 years. Further, it seeks a DNA Order, and an Order pursuant to s. 380.2 which restricts his ability to have authority over other people's funds, for a period of 20 years.

Defence Position

[12] Mr. Neilson submitted that 3 years penitentiary time was appropriate. A "more realistic" quantum for restitution should be $300,000 with 10 years to pay and that no fine in lieu/forfeiture should be ordered since any personal benefit to Mr. Neilson was minimal. Alternatively, as submitted in oral argument, if there is a fine imposed, it should be in the amount of $300,000, or a calculation based on $30,000 per year for 10 years. He also objects to a DNA Order as being unnecessary and a s. 380.2 Order as inappropriate in these circumstances.

Victim Impact

[13] As noted, there were eight individuals who lost funds and one company. Five of the individuals filed Victim Impact Statements: Mr. Magaffin, Ms. Terazawa, Mr. Erickson, Dr. Mauws, and Mr. Nadeau. I also heard some evidence about the impact of this crime from the others during their testimony at trial.

[14] The victims were for the most part, accounting clients and personal friends. Many lost part of their retirement funds as a result of the fraud imparted on them – which has, in some cases, caused the victims to defer retirement for several years (Mr. Erickson, Ms. Terazawa's husband, Mr. Nadeau and Mr. Korytar). They spoke also of the obvious financial stress the losses put them under.

[15] In addition, there were tremendous emotional tolls that the victims suffered from. Many spoke of sincere trust issues, anger and frustration, guilt, feelings of being duped and being stupid, time lost, embarrassment, reputational damage, anxiety, sleep problems, marriage issues and impact on their families.

[16] These impacts are unfortunately common with victims of fraud: see ***R v Penney***, 2008 ABPC 339 at para 24 where Judge Allen discusses a study prepared for the Canadian Securities Administrators entitled *2007 CSA Investor Study: Understanding the Social Impact of Investment Fraud*. In that study it found that victims of fraud most often lost trust in other people, and that their health was affected in a number of ways including anger, depression, isolation, panic attacks and weight fluctuations. Victims pull back from their community and friends, and the fraud may contribute to family breakdown. All of these consequences were suffered here.

[17] It is notable that the victims here are educated, intelligent and successful people including sophisticated investors, a lawyer, accountants and a banker. That these people could be duped by the fraudulent actions of Mr. Neilson shows the sophistication of, and level of deceit and fraud Mr. Neilson perpetrated over the many years in questions.

Circumstances of the Offender

[18] Mr. Neilson is 54 years old. He is married and has 5 children (3 from a prior relationship and 2 with his present wife). He was born in Vancouver and raised in various cities in Canada. His father was an accountant and his mother was a school teacher. He has a younger brother. He did not have any discord in his family growing up.

[19] Mr. Neilson graduated from high school in Regina and attended a French language school for a year and a half before entering, and graduating from, McGill University with a Bachelor of Arts in economics and finance in 1989. Mr. Neilson worked abroad for years, in Africa, and moved back to Canmore, where his parents had settled, in 1999.

[20] Mr. Neilson worked with his father at his accounting firm in Canmore and obtained his Certified General Accountant designation in 2004. He took over his father's practice when he retired and worked there until he sold his practice in 2012 as a result of his involvement with ABACA.

[21] He separated from his first wife in 2008 and divorced in 2010. He married his second wife in 2010.

[22] He suffered from a downfall in his physical and mental health in 2013 because of personal problems and the financial situation with ABACA.

[23] Mr. Neilson was initially investigated by the Alberta Securities Commission and later the RCMP. He was arrested on May 13, 2015 and spent 2 nights in custody until he was able to meet his bail requirements.

[24] He was harassed in Canmore because of the news of the charges and allegations that had spread through the community. He was punched in the face in a supermarket in 2015 and someone poured a meal down his back in a café. As a result, he and his family decided to relocate to Airdrie in 2015. His older sons stayed in Canmore with their mother.

[25] Mr. Neilson declared bankruptcy on February 12, 2015. He is not yet discharged. He submitted to the Court, without evidence, that the only asset he has is a 2002 sedan worth around $1000.

[26] Further charges (to the Grenville original counts) were laid in June 2016.

[27] In July 2016, he entered into a sanctions agreement pursuant to the *Regulated Accounting Professionals Act*, and after making several admissions about falsely using a large public accounting firm's logo to financial statements that they did not prepare, and providing these to a Royalty company and a person, he was fined approximately $50,000, plus costs of the hearing, and had his designation cancelled.

[28] Mr. Neilson submitted that he had trouble maintaining employment while on bail. His wife tried accounting for awhile but then started a new company manufacturing weighted blankets. She is the breadwinner and Mr. Neilson is a stay at home father for his 2 younger children.

[29] On one occasion, Mr. Neilson attended the urgent care department of Airdrie Regional Health Centre with high levels of stress, chest pain and tingling in the hands but was released after tests showed that there were no urgent concerns and that he had supports in place.

[30] Mr. Neilson addresses his mental health concerns through pastoral care, a men's support group and his church. He does volunteer work.

[31] Mr. Neilson had several letters of support provided to the Court from friends and family. The friends are from Airdrie and have known Mr. Neilson for a few years. They spoke of his devotion to his children and help he has given others to support them with their issues. They also spoke of changes Mr. Neilson has made and his humility and remorse for his past actions.

[32] In particular, the letter from his wife was disturbing and sad. She said that after Mr. Neilson was arrested, she felt betrayed that she was left in the dark about what was going on and did not know the man that she was married to. She described having to become the sole provider for the family and having to attend the food bank for help. As far as she is aware, she claimed that they have no more assets. She also spoke of their faith and that he has repented and asked forgiveness so she is standing beside him.

[33] Mr. Neilson addressed the Court at his sentencing hearing. He acknowledged that his actions caused financial harm and emotional stress to those parties who lost money due to his

decisions, that he was wrong, and he wished to apologize to them. He also apologised to his wife and children for the stress, fear and financial uncertainty that he has put them under.

[34] He said that he was blinded by efforts to salvage his company without regard to others.

[35] Mr. Neilson suggested that he is a changed man since 2014. Through counselling and a support group he has learned to be empathetic and the importance of a moral compass founded on the belief in scripture and teachings of Jesus Christ. He is now interested in helping others. He regrets his decisions and hopes to make amends and rebuild his life.

Sentencing principles

[36] In terms of sentencing principles, I need to consider ss. 718, 718.1 and 718.2 of the *Criminal Code* that set out the fundamental purpose and the objectives of sentencing. In addition, since we are dealing with fraud convictions, s. 380.1 is relevant as it sets out certain statutory aggravating factors that must also be taken into account. Section 380(1.1) imposes a minimum sentence of 2 years for frauds that exceed $1 million.

[37] Further, with respect to statutory requirements for penalties, I must consider that fraud over $5000 carries a maximum penalty of 14 years in the penitentiary (s. 380(1)(a)). Further, restitution and a fine in lieu of forfeiture, along with further employment restrictions, are being sought here which brings into question further sections of the *Criminal Code* (s.738(1)(a) and s. 462.37).

[38] Section 718 provides as follows:

> 718. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[39] Here, in determining a sentence involving the damages caused by Mr. Neilson's fraudulent actions, the case law emphasizes that denunciation and deterrence are the paramount purposes of the sentence and primary considerations. There is no question that here, society denounces Mr. Neilson's actions and unfortunately Mr. Neilson has been the recipient already of vigilante justice denunciation in terms of the community reaction against him in getting punched in the face and a meal poured down his back.

[40] In terms of deterrence, specific deterrence is important. Mr. Neilson has already had his licence removed from his professional accounting association which aims at specific deterrence. An Order under s. 380.2 also aims at specific deterrence.

[41] Equally important is the need to deter others from committing similar crimes. It cannot be ignored that Parliament has demonstrated the need for general deterrence by continually increasing the penalties for fraud offences.

[42] Rehabilitation cannot be forgotten, and it appears that Mr. Neilson has already taken steps in this regard. However, it is of secondary importance in this case.

[43] The legislated purpose of seeking reparation for the victims needs to be dealt with as well here – especially when it comes to the discussion on restitution.

[44] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: s. 718.1. As the Supreme Court recently pointed out in ***R v Friesen***, 2020 SCC 9 at para 30, proportionality is codified as a "fundamental principle" of sentencing.

[45] Parity of sentences is also important: similar offenders who commit similar offences in similar circumstances should receive similar sentences (s. 718.2(b)). In this regard, Courts will look to starting points and sentencing ranges from other cases – many of which were put forward by the parties here. There is no starting point here for this offence and many cases with sentencing ranges have been proposed – with respect to which I will come to shortly.

[46] Despite my upcoming discussion of the many similar cases in order to keep the parity principle in mind, as discussed recently by the Supreme Court in ***Friesen*** at para 37: "This Court has repeatedly held that sentencing ranges and starting points are guidelines, not hard and fast rules..." (citations omitted here). Sentencing is an individual process, so sentences imposed for similar offences may not be identical.

[47] S. 718.2 indicates that the court must take into account mitigating and aggravating circumstances. In this regard, as mentioned, the *Criminal Code* has set out several principles that must be considered and deemed as aggravating factors in s. 718.2 and s. 380.1 including ones that may be relevant here: in s. 718.2 (a)(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim , and s. 718.2 (a) (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including health and financial situation.

[48] Further in s. 380.1(1), the following may be relevant, and if so, must be taken into account as aggravating if:

(a) The magnitude, complexity, duration or degree of planning of the fraud committed was significant;

(b) The offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;

(c) The offence involved a large number of victims;

c.1) The offence had a significant impact on the victims given their personal circumstances including their age, health and financial situation.

(d) In committing the offence, the offender took advantage of the high regard in which the offender was held in the community;

(e) The offender did not comply with a licensing requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject matter of the offence;

(f) The offender concealed or destroyed records related to the fraud or to the disbursement of the proceeds of the fraud.

[49] As mentioned above, s. 380.1(1.1) provides that it is aggravating if the fraud exceeds $1 million (note that this came into force in 2011 so does not apply to some of the fraudulent behaviour here although I note that prior to 2011 the applicable version of s. 380.1(1) also made fraud over $1M and aggravating factor).

[50] Also, of note is s. 380.1(2) which states that the court "shall not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to, or were used in the commission of the offence."

[51] I also note that other factors need to be considered such as collateral consequences from the offence, and the bail restrictions Mr. Neilson has been on.

[52] Finally, whether the sentence for the various counts should be consecutive or concurrent is important here considering the various counts Mr. Neilson has been convicted of. A last look needs to be done to determine the appropriateness of the totality of the sentence, including the ancillary orders sought by the Crown that are significant here.

Analysis

Duration of Sentence

Aggravating factors

[53] In terms of aggravating circumstances, I will review them in the order that I listed them above.

s. 718.2 (a) (iii) – *abuse of a position of trust*

[54] In this regard the Crown argued that this statutory aggravating factor should apply since Mr. Neilson used and abused his position as an accountant to leverage the trust relationship between him and many victims who were his former clients. He noted that Mr. Neilson used his professional designation to sign letters and emails and that he has been the subject of discipline from the Chartered Professional Accountant's association as a result of his actions.

[55] The Crown argued that this breach of trust was akin to the breach of trust cases dealing with lawyers. He relied heavily in this regard on the Court of Appeal case of ***R v Davis***, 2014

ABCA 115. In ***Davis*** at paras 31- 34 the Court set out cases in categories – with the second category being a series of cases involving dishonest lawyers. The Court said: "The amounts involved ranged from $700,000 to over $2,000,000 and the sentences from 12 months to 9 years. Theft of amounts in the middle six figures typically resulted in prison terms of three to three and a half or four years. Frauds involving over a million dollars ranged from seven years in *Cowan* to eight in *Liknaitzky*."

[56] The Crown submitted that as a result of this breach of trust, Mr. Neilson's sentence should be in the higher end of the range discussed in ***Davis***.

[57] The Defence submitted that Mr. Neilson was not acting as an accountant, but rather as the president and CEO of ABACA at the time and as a result was not in a position of trust or authority. Thus the Defence submits that this aggravating factor does not apply. Further then, that the "dishonest lawyer" cases should not apply here. Instead, the third category of cases discussed in ***Davis*** should apply where "others committing frauds exceeding $1,000,000" had received sentences in the 3 to 6 year range.

[58] On this point I agree with the Defence that Mr. Neilson was not acting as a trustee of the funds in his professional capacity as an accountant when he committed the frauds. Comparing this situation directly to lawyers', accountants' or employees' misuse of trust funds cases therefore is not completely comparable, but may be instructive. I'll come back to this shortly.

[59] On this point however, in some instances, such as with Ms. Kerazawa, he used the knowledge of her financial information that he had obtained in confidence as her accountant, to target her as a potential investor. In that sense, he did abuse his position of trust with her. He did the same with some other former clients such as Mr. Korytar, Dr. Mauws, and Mr. Magaffin.

[60] Further, in my view, the way Mr. Neilson used his professional designation as an accountant was aggravating in the sense contemplated in s. 380.1(1) (d) (to skip ahead a bit here) where he "took advantage of the high regard in which the offender was held in the community". He used his professional designation on material including the business plans and correspondence which gave the victim investors a sense of confidence in investing. Further, he laid out his extensive experience as an accountant and various accounting related board positions in the business plan material.

[61] Mr. Brandt testified that he invested in part because of Mr. Neilson's "good reputation". Mr. Korytar relied heavily on the trust he put into Mr. Neilson when making his investment decision. Others no doubt also trusted Mr. Neilson because he was an accountant with a good reputation in the Canmore area, although their decisions, in some cases were also based on fraudulent materiel that exaggerated ABACA's revenue (such as in the many shareholder updates) or material that was faked (such as the RBC banking information and fraudulent SCP and MNP financial statements).

[62] On the whole, I must take s. 718.2(iii) into account as an aggravating factor although I may not put the same weight on this factor as I would have had he used trust funds improperly.

s. 718(a)(iii.1) – *significant impact on the victim*

[63] The Crown points to the serious effect this fraud had on the victims. The Defence agreed that there was a significant impact but sought to distinguish this situation from those, like in ***R v Walker***, 2016 ABQB 695, where the victims were particularly vulnerable in that they were of limited means and suffered devastating financial consequences.

[64] The impact of the fraud certainly differed between victims here, but nonetheless, overall the impact of this calculated fraud with large monetary losses, especially to the individual victims, was "significant", in that it interrupted retirement plans and caused both mental and financial distress for all involved. It is an aggravating factor in my view.

s. 380.1(1)(a) – *magnitude, complexity, duration or degree of planning of the fraud*

[65] The Crown points in particular to the fraud on Grenville in terms of this aggravating factor. The Crown submitted that this was a complex fraud with an extraordinary amount of work in order to create an aura of reality to the investment. With respect to the individual victims the Crown notes the frauds were curated individually so that he could maximize the amount of money he could extract from each victim. The sophistication of the fraud included the use of fake documents including doctored bank records and financial statements. He knowingly created the material to fraudulently entice investors.

[66] I agree that the fraud perpetrated on the victims was complex in that the business plans were detailed and involved and required a significant amount of planning. The victims were sought out. The fraud lasted years. The magnitude of the money raised and lost places it amongst the most serious fraud cases. Notably, the magnitude lost is in the range that Parliament has designated this as a specific aggravating factor (i.e. over $1M). Obviously, one needs to be careful not to double count.

s. 380.1 (1) (b) – *investor confidence*

[67] Clearly, the fraud would rattle general investor confidence in small business operations but not in the financial system or market as a whole.

s. 380.1(1)(c) **–** *large number of victims*

[68] The Defence argued that this fraud was not necessarily perpetrated on a "large number of victims". Defence relies on the *Walker* case where 4 victims were not considered to be a "large number".

[69] Here, there were 8 individual victims and one institutional client who represented many shareholders. Although the individual incentive and material varied between victims, the general fraudulent misrepresentation – i.e. that ABACA was making a huge amount of revenue and so was a safe investment – was a similar thread through them all and lured one investor after another into the fraud. There are cases where this aggravating factor was considered and the number of victims was much larger – say for example ***R v Johnson***, 2010 ABCA 392 – where 50 investor victims were found to be a "large number" of victims. However, the Court did not say that this is a threshold number. On the whole, in my view, the fraud was perpetrated on a "large"

number of investors and is an aggravating factor. The size of the number will go to weight when comparing Mr. Neilson's circumstances to others.

s.380.1(1)(e) – *non-compliance with licencing requirement*

[70] The Crown points to the fact that Mr. Neilson has been sanctioned by his professional association and that this shows non-compliance with his licencing requirements. The Defence pointed out, as discussed earlier, that Mr. Neilson was not acting *per se* in his role as an accountant so this aggravating factor should not apply.

[71] It is perhaps obvious that committing a fraud would not comply with a licencing requirement or professional standard for an accountant. Accordingly, this is an aggravating factor, but I am wary not to double count with other similar aggravating factors.

s. 380.1(1) (f) *concealing records with respect to the fraud or disbursement of the funds*

[72] The Crown argued that Mr. Neilson in particular concealed records dealing with the fraud – in particular by the transference of funds to the Philippines and by transferring large amounts of the funds directly into "cash" so that they could not be traced.

[73] Although there is no evidence that Mr. Neilson deliberately tried to destroy banking records, it is clear that he made transfers from his accounts during the relevant periods in question that would be near impossible to trace – such as those mentioned by the Crown where thousands of dollars were immediately transferred to cash subsequent to the deposit of funds from an investor. This factor is aggravating in these circumstances especially in light of the limited amount of recovery that has been possible since the fraud was revealed. Again, I must be wary not to double count this factor however considering that Mr. Neilson was also convicted of laundering the funds fraudulently obtained.

s. 380(1.1) *minimum sentence of 2 years*

[74] The Crown argues that the minimum sentence would apply here on the counts dealing with the Grenville fraud and fraud on the public. The Defence points out that some of the fraud, with respect to Messrs. Brandt and Knoch in particular, occurred before this minimum sentence was brought into force in 2011. In any event, the Defence concedes that the sentence on a global basis should be beyond this 2-year minimum so the issue is academic.

[75] I agree that considering the Defence's position, this issue is academic. The section does however again point out Parliament's continued intention to take high value frauds seriously in terms of sentences.

Mitigating factors

First time offender

[76] The Defence argued that the fact that Mr. Neilson is 54 and comes to the court with a clean criminal record should be mitigating: ***R v Brooks***, 2012 ONCA 703. I agree.

Admissions and remorse

[77] Although Mr. Neilson did not plead guilty, the Defence argues that the significant admissions he made in final argument secured convictions for $1.5 million of the $2.3 million of fraud he was ultimately convicted of. This also showed remorse. In the latter regard, Defence also points to the admissions made to Mr. Parry in 2014 and to the CPA in 2016 along with the remorse he expressed to the Court.

[78] The Crown points out that the admissions made were on matters that were clearly proven so should be given little weight. The Crown did agree that there was a certain amount of trial time saved however with respect to the validity of certain records that should be recognised.

[79] In my view, the admissions made at the end of trial that he conducted himself fraudulently from July 2013 did not help save any court time and were only made in face of overwhelming evidence of the fraud that he had perpetrated after that time period. He did not admit to the more complicated parts of the fraud where he was found guilty of intentionally and fraudulently misleading investors about the value of the business income in ABACA. His late day admissions are of no mitigating value.

[80] I accept that he was helpful in terms of admitting certain records and that that was helpful in terms of Court time, as conceded by the Crown, and should be accepted as mitigating.

[81] I am uncertain about the genuineness of the remorse he professed to Mr. Parry and the Court about his actions – certainly not to the standard of proof required (i.e. the balance of probabilities). He only professed this to Mr. Parry in November 2014, when he was caught red-handed so to speak. With respect to his remorse with respect to the victims, I note that he has made no efforts at all in the last 5 years while on release to make any restitution for any of the amounts lost. Instead, amongst other things, he has declared bankruptcy to take advantage of attempting to obtain a clean slate from debt, and he has fought the civil action with respect to Mr. Nadeau's loss.

[82] Sometimes actions speak louder than words. Mr. Neilson has shown no effort to put his "remorse" into action.

Family and Community support

[83] Defence argues that although the fact that Mr. Neilson was previously held in high regard is not mitigating, the fact that he has built a new community that supports him is demonstrative of his potential for rehabilitation. Also, his wife and father have stood by him.

[84] I agree that he has built a new community with some support and the letters that were provided show some efforts to help out others. I agree that this is some evidence of some efforts at rehabilitation. However, I also note that there were no letters of support from the community that he harmed the most, in Canmore.

Funds recovered

[85] Defence noted that a total of $622,384 has been recovered: $100,000 by Dr. Mauws and $522,384 by Grenville. The Defence notes that the weight of this partial recovery may be minimal but that it bears noting. Restitution made before sentencing can be mitigating even if funds are obtained through civil litigation: ***R v Bordeleau***, 2001 ABPC 179.

[86] The Crown pointed out that the Grenville funds were only repaid after they were frozen and Mr. Neilson had no control over them any more. This should not be considered mitigating.

[87] I agree that the recovery of the Grenville funds cannot be considered mitigating – luckily, Mr. Neilson's fraud was uncovered before he had transferred, converted and/or spent it all so that some of it could be recovered. Further, there has been no proper accounting about what the money was spent on beyond vague suggestions that some money was spent in part to pay off company liabilities. He also admitted, in face of banking records that made it obvious, that about $35,000 was spent on personal luxury items.

[88] The repayment of the $100,000 to Dr. Mauws is mitigating as Mr. Neilson did acknowledge that the withdrawal of the US proposed plans for APO were not going to succeed. Note that he did not admit at that time any wrongdoing, and in spite of his acknowledgements to Dr. Mauws in early 2014, he continued to pursue investments from Grenville on the same basis. In any event, he did partially pay back Dr. Mauws.

[89] As noted above, Mr. Neilson has not paid back any other monies lost and has not made any efforts to do so. I recognise that he has certainly run into issues in continuing his employment as an accountant or other such occupation, but he has chosen to help his own family by staying at home with his young children, and has not been forthcoming in a satisfactory way about efforts he could have made to repay the monies lost or where the funds have gone even once he was convicted and has some onus on him to show what his financial status really is for sentencing purposes.

Bail conditions

[90] Defence submitted that the long delay and strict bail conditions that Mr. Neilson was on should be a relevant factor in sentencing. Defence acknowledges that a lot of the delay was caused by him seeking adjournments in face of counsel withdrawing, and confirms that he is not taking a position that there was a breach of s. 11(b) of the *Charter*, but nonetheless, he has been on bail that has restricted his movement and contacting his parents (until the condition was lifted at his request).

[91] I note that Mr. Neilson has been on bail and has complied with all of the conditions of his release for several years now. In this case however, his bail conditions were not onerous and have been amended from time to time to allow for extra provincial travel for instance. Further, much of the delay is of his own making. I do not consider this a mitigating factor, but rather a neutral one here.

Collateral Consequences

[92] The Defence argued that although failure to comply with standards that resulted in his losing his professional designation is an aggravating factor, it is also a collateral consequence that can be considered in sentencing: ***R v Pham*** 2013 SCC 15. An example provided as appropriate to this case was ***R v Bunn*** 2000 SCC 9 where a lawyer convicted of breach of trust suffered ruin and humiliation that provided sufficient denunciation and deterrence in the sentence.

[93] The Supreme Court in ***R v Suter*** 2018 SCC 34 has recently recognised that collateral consequences can be factored into sentencing although there is no rigid formula for doing so. In that case Mr. Suter was the victim of vigilante justice and lost his thumb. Here, certainly the community stigma and ostracization, along with the physical violence Mr. Neilson suffered from, should in my view be considered as going to some length to satisfy the denunciation component of sentencing. Further, the stigma and rightful consequence of losing his designation has likely caused him employability issues, although that is difficult to quantify with the lack of evidence led by Mr. Neilson on this point.

Parity with similar cases

[94] As already discussed in part, the Crown submitted that the *Davis* case set out the appropriate range for frauds committed in situations where a position of trust was abused, as being in the 12 months to 9 year range. The Crown also referenced the similar cases of ***R v Bailey,*** 2014 ABPC 223 where a lawyer was sentenced to 8 years for fraud and 1 year consecutive for money laundering of tens of millions of dollars and ***R v MacLeod***, 2017 ABQB 604 where $1.68 M was put at risk and $1M was lost. A sentence of 4 1/2 years was imposed by the Court with a note that most of the elements of the offence had been admitted.

[95] The Crown also referenced the Ontario Court of Appeal case of ***R v Reeve,*** 2020 ONCA 381 where a 10 year sentence was substituted from the 14 years imposed at trial in a fraud involving over $10 million from 41 unsuspecting clients of the convicted financial advisor (and a restitution order and fine in lieu was made in the amount of $10,887,885 with a further 10 years to be served in default).

[96] The Crown submitted that 9 years penitentiary time as a sentence was justified by either referencing the whole of the amount lost in the similar scheme that was used by Mr. Neilson against all of the victims, or by sentencing each count by imposing 4 years for the fraud against Grenville, 6 months to a year against Mr. Nadeau, 3 years for the other victims, and one year for the money laundering counts, all to be served consecutively, for a total of 9 years.

[97] The Defence pointed out that their position compared to the Crown's in terms of the amounts for the individual counts of fraud were not far apart. Defence counsel indeed pointed to paragraph 34 of ***Davis*** where it was suggested that the case range discussed for frauds exceeding $1M, where there was no breach of trust, were in the 4 to 6 year range. The Defence also pointed to what they suggested were similar cases to Mr. Neilson's: ***Davis***, where a lawyer stole almost $3M in a trust position and was sentenced to 4 years (plus a restitution order of $997,947) after a guilty plea, and ***R v Plange***, 2019 ONCA 646_where the offender was sentenced to 3 years after

pleading guilty in a $41M CRA fraud (although he was only able to access $15,000 from these funds). The ranges discussed in that case were also put forward as useful here. The Court said at para 40:

> In R. v. Koval, [2001] O.J. No 1205 (S. C.), Watt J. (as he then was) found that large-scale commercial frauds attract sentences of 5-8 years where large sums of money are put at risk. In R. v. Watts, 2016 ONSC 4843, [2018] D.T.C. 5024, the court set a sentencing range of 4-8 years in a case involving a large-scale fraud where $10 million was put at risk and the accused obtained $150,000 from the fraud. The fraudulent scheme involved the filing of false tax documents. Other large-scale frauds implicating loss or risk of approximately $2-40 million dollars have attracted sentences of 3.5-8 years. More recently, this court confirmed that in cases of large-scale fraud the range is generally 3-5 years: R. v. Davatgar-Jafarpour, 2019 ONCA 353, at para 34.

[98] Defence also pointed to ***Walker***, where a 3 year sentence was meted out in a $315,000 fraud; ***R v Evanson***, 2019 ABCA 122, where a 2 year term was imposed in a half million dollar fraud; ***R v Cuonsolo***, 2014 ONCA 364 where a 18 months sentence was imposed against a bit player in a $4M fraud (I note that the main leader was sentenced to 3 years); and ***R v Scholz***, 2019 ONSC 5490 where less than $1M was lost in a tax fraud, there were few aggravating factors and many mitigating were present, and a 2 year CSO was imposed along with a $445,789 fine.

[99] However, the main point the Defence submitted was that the fraud counts should not be made on a consecutive basis, but rather on a concurrent one especially when one considers the totality of the sentence (***R v McKnight***, 2020 ABQB 443 – which the Crown pointed out is under appeal). Counsel submitted that there was a significant overlap of the facts on each count. It was really a matter of timing which explains that the Grenville count was separate from that of public fraud, since it was the first one laid by the Crown. ABACA was the thread that ties the different counts together. Defence included the money laundering counts in the mix.

[100] Defence suggested that the Court determine what the overall appropriate sentence is and sentence Mr. Neilson to concurrent sentences in whichever manner this Court deems appropriate. (see the methods used in ***R v Elander***, 2015 ABQB 299 and ***Davis***). Thereafter, a final look would be appropriate. Here, based on the cases, a 3-year sentence on each count to be served concurrently was submitted as appropriate.

Discussion

[101] I have reviewed the many cases dealing with similar frauds put forward by the parties and otherwise – no two are alike.

[102] I note that both counsel relied on the ***Davis*** case, but I agree with Defence counsel that the case does not stand for the proposition that the range discussed is necessarily ones set out by our Court of Appeal as *the* appropriate range but rather, that paragraphs 32 to 43 summarizes the cases put forth in that case by the parties in light of the appeal in front of the Court at that time dealing with a fraudulent lawyer who committed fraud while acting in a position of trust. I note in that regard that many important fraud cases were not enumerated, such as the Court of Appeal

decision of ***Johnson*** where in a $2.3M fraud, the offender was sentenced to 10 years and ordered to pay almost $1M in restitution. Upon reading the ***Johnson*** case however, I note that the fraud was more serious in that the offender defrauded many more victims and was in a position of trust with respect to most of them.

[103] In terms of ranges of sentences, I note that the recent 2020 Ontario Court of Appeal case, ***Reeve***, reviewed many serious fraud cases (including ***Johnson*** from our Court) and summarised that very serious frauds, with serious breaches of trust, were landing sentences in the 8 to 12 year range.

[104] I agree that ***Davis, Reeve, MacLeod***, and the ranges discussed in the ***Davis, Plange and Reeve*** cases, are instructive here although none are exactly on point. The other four cases proposed by the Defence (***Walker, Evanson, Consolo*** and ***Scholz***), on a global basis, deal with frauds of much lesser amounts and some involve guilty pleas which make them less comparable.

[105] As I have already discussed to a certain extent, and elaborated on meticulously in my Reasons, the scheme behind the fraud perpetrated by Mr. Neilson was the same for all of the complainants: i.e. that ABACA was a great investment considering its amazing (and fraudulently exaggerated) revenue. The lies were used to incentivise investments from all of the victims even though the detail of the exaggeration changed over time. The business plans, shareholder updates, and ultimately the fraudulently fabricated bank records and financial statements were used by him in an overall elaborately planned scheme that was successful until he was caught. Ultimately the total that he was convicted of was $2.3 million, and this global amount is the way that would most fairly represent his criminal fraudulent actions. As such, in my view, the fraud counts can be sentenced in a concurrent fashion.

[106] With respect to the money laundering, this action can be distinguished from the fraudulent misrepresentations that incentivised the victims to invest. Once Mr. Neilson had the funds, he then took steps to conceal and convert them – especially with respect to the Grenville funds where a large amount appears to have gone directly to the Philippines. This behaviour aggravates the fraud here. The separate theft convictions have been stayed by the Crown in order not to double count this criminal behaviour. Considering their distinct nature in this situation, the money laundering counts warrant sentences on a consecutive basis with the fraud counts.

[107] To summarize the aggravating and mitigating factors I discussed above, I accept that it is aggravating that Mr. Neilson defrauded a significant amount of money (over $1M) in a complex, planned and deliberate way over several years; he was in a position of trust with many of his victims (in terms of using their confidential information obtained while he was their accountant); they all suffered a significant impact from the fraud; there were several investors caught in the web over many years; and he improperly used his position in the community and as a respected accountant to further his aims. On the mitigating side however, he is a first-time offender, helped to some degree with admissions to shorten the trial, has gained some support in his new community, and returned voluntarily $100,000 of the funds defrauded. I note that he has also suffered collateral consequences, has been on interim judicial release with conditions that he has complied with for many years, and claims remorse.

[108] Mr. Neilson's situation does not fit squarely in the cases where there were significant trust funds taken, but it also does not fit in the cases where lesser amounts are involved.

[109] In my view, considering all of the circumstances involved here, the global range of sentence appropriate for Mr. Neilson is 5 1/2 years penitentiary imprisonment. I would divide the sentence on the following basis: 4 1/2 years each for the counts against Grenville and the public investors (counts 1 and 6) to be served concurrently, 6 months for count 4 dealing with Mr. Nadeau to be served concurrently with counts 1 and 6, and 1 year for each of the money laundering counts, counts 2 and 8, to be served concurrent to each other and consecutively to the other counts: for a total of 5 and a half years.

Restitution and Fine in lieu

[110] The Crown seeks an order for restitution in the amount still left unpaid from the funds forwarded to Mr. Neilson: $1,671,497 pursuant to s. 738 (1)(a) of the *Criminal Code*. Further, the Crown seeks a fine in lieu of forfeiture pursuant to s. 462.37 for the same amount with 2 years to pay and in default, 6 years further jail time. The Crown further proposes that any amounts paid should be divided proportionally between the victims based on the amounts owing and should count towards the restitution award (vs. the fine – but the amount would obviously also reduce the amount of the fine).

[111] The Defence point out the different test for restitution versus a fine in that it should be considered in the overall proportionality of the sentence and factors such as rehabilitation and ability to pay should be considered. In these circumstances, Defence conceded that an order for restitution may be appropriate but that Mr. Neilson has declared bankruptcy, has lost his designation, and is facing a penitentiary sentence. Upon release he could hope to be employed gaining approximately $30,000 /year towards restitution. Considering his age, a reasonable amount of time would be 10 years, which results in an Order of $300,000.

Discussion

[112] Both parties agree that the fraud caused net losses to the victims in the amount of $1,671,497 and agree that some form of restitution order is appropriate here. Unlike the fine provisions, a restitution order is part of the punishment and ability to pay is a consideration, although a limited one when there is theft and fraud involved, as was the case here; see ***R v Abdulahi-Sabet***, 2020 BCCA 213 at para 13-14, ***Johnson*** at para 29, ***Walker*** at para 96 and 97.

[113] In ***Johnson***, $1.7M obtained by fraud remained unaccounted for. The Court found that this was highly relevant in terms of whether a restitution order should have been granted and on what terms. Further in para 29, our Court of Appeal confirmed that even if there does not appear to be any likelihood of repayment, such orders can be granted (especially in breach of trust claims). In that situation, the restitution order of almost $1M was upheld despite the fact that the 60 year old offender was sentenced to 10 years jail.

[114] In ***Walker***, the disclosure made by the offender was reviewed and the Court placed no weight on the unsworn information conveyed through counsel as to the offender's ability to pay given that his crimes, like here, involved significant dishonesty and obfuscation. The Court

repeated the comments in ***Johnson*** that "economic predators should not be permitted to walk away in the future from any obligations to their victims.".

[115] Here, I agree with Defence counsel that there is some evidence that the funds obtained by fraud were used to pursue the ABACA business and expenses entailed therein including employee and software costs for instance. No accounting was provided at the sentencing phase however about how the funds were spent and where they went. Indeed, it appears from the Canadian bank records that a large amount of funds were transferred to the Philippines, and there was evidence that Mr. Neilson built a "nice" house over there. None of the Philippine bank records were disclosed by Mr. Neilson and no accounting or evidence was led by him about where the funds went. There is some financial information about the status and payments in ABACA however, these records have been proven to have fraudulent misrepresentations in them, and therefore they are hardly reliable.

[116] Mr. Neilson's wife wrote a letter suggesting that they have limited means now – however I note that she also admitted in the same letter that she was in the dark about what was happening. Accordingly, she could well be in the dark about where the funds remain. In terms of the bankruptcy, it is unclear if the Trustee had any of the records in question or if he or she has had the means to investigate whether there are funds or assets in the Philippines or elsewhere. Accordingly, without this information, not much credence can be laid on the fact of bankruptcy by itself or bald assertions of little assets made at the sentencing hearing.

[117] As noted in ***Johnso****n* and ***R v Dieckmann***, 2017 ONCA 575 at para 100, the onus is not on the Crown at this stage to establish what has happened to the funds. Nor does the offender have to show what has happened to the funds, however, Mr. Nielson's failure to do so weighs heavily against him when dealing with the Court's discretion about whether to order restitution and for how much. As stated in ***R v Castro***, 2010 ONCA 718 at para 34:

> In cases of theft, robbery, fraud, breach of trust or the like, I see no reason why the court should accept an offender's bald assertion that he or she has no ability to make restitution because the money "is gone" when no evidence is proffered in support of this assertion. When the victims can clearly establish that "the replacement value of the property" under s. 738(1)(a) is the amount of money taken, surely it is the offender asserting that he or she has no ability to make restitution who is in the best position to provide transparency concerning what has happened to that money. A bald assertion that the money is gone should be given no weight. Similarly, when the location of the money illegally obtained by the offender is unknown, the sentencing judge is entitled to take that fact [page621] into account with respect to ability to pay in making a restitution order: see, e.g., R. v. Williams, [2007] O.J. No. 1604, 2007 CanLII 13949 (S.C.J.), per Hill J., at para. 41.

[118] In terms of overall sentence, the penitentiary sentence of 5 and a half years is not at the top of the range of possible sentences for such a large-scale fraud. In part I made it based on the recognition of the fact that in my view Mr. Neilson should face a large restitution order as part of his sentence and by applying the totality principle. In these circumstances, it is appropriate to order restitution in the full amount of $1,617, 497 which represents the net losses to the victims.

[119] With respect to the fine in lieu, as mandated in s. 462.37 of the *Criminal Code*, as mentioned, different tests apply. The leading case is from the Supreme court: ***R v Lavigne***, 2006 SCC 10. An excellent summary of the law on fine in lieu of forfeiture and s. 462.37 of the Criminal Code is found in the recent case of ***R v Kazman***, 2018 ONSC 2332 at paras 260 – 294, aff'd 2020 ONCA 22, on other grounds, leave to appeal to SCC refused 39077 (July 23,2020), and was also discussed in ***R v Reeve***, 2020 ONCA 381 (where a $10M fine in lieu was upheld).

[120] Generally speaking, as applied in this circumstance, if an order for forfeiture cannot be made if the proceeds of the fraud cannot be located, or may be located outside of Canada, then a fine may be imposed (s. 462.37(3)). While the fine is part of the sentence, its purpose is to replace the proceeds of crime and so it is not regarded as punishment for the fraud (***Lavigne*** at para 25)

[121] The Supreme Court in ***Lavigne*** also discussed the Court's discretion to impose a fine. It indicated that the Court's discretion applies mainly to the value of the property. Defence counsel suggested that the case of ***R v Freake***, 2018 ABPC 106 stands for the proposition that the discretion is wider and that the fine need not be imposed at all. However, there are many recent cases, mainly from Ontario, that have suggested that once the preconditions in the section are met, a fine is mandatory (see for example ***R v Angelis***, 2016 ONCA 675).

[122] Here, the pre-requisites of the section have been met: the money lost is agreed to in the amount of $1,671,497; once deposited, the funds were in the control of Mr. Neilson as the signatory to the bank accounts. Accordingly, the fine amount should be the full $1,671,497.

[123] S. 462.37(4) sets out the range of terms of imprisonment that should be imposed based on the amount of the fine. When a fine exceeds $1M, like here, the range of sentence that the court must impose is between 5 and 10 years (subsection (4)(vii)) and must be served consecutively to any other term of imprisonment imposed on the offender (subsection (5)).

[124] Here the Crown submitted that 6 years should be the term of imprisonment in default. Defence pointed out the comments in ***Freake*** where the Court felt that imprisonment for a debt smacks of a by-gone era and is no longer a norm in Canadian society.

[125] The time in default is mandatory according to the schedule set out in the section. Further, and importantly, it is noted that before a warrant is issued for his arrest with respect to this order, he has an opportunity to show the Court that he cannot pay and this time to pay may be amended (s. 734.3). So, if Mr. Neilson wants to avoid further time in prison, he can show the Court with the appropriate evidentiary and accounting information, where indeed the fraudulent obtained funds are or how they may have been spent. This should include information and banking records from the Philippines.

[126] Further, under s. 734.7(1)(b), when the time allowed for the payment of the fine instead of forfeiture has expired, the court asked to issue a warrant of committal may not do so unless it is satisfied that the offender has, without reasonable excuse, refused to pay the fine. As discussed in ***Lavigne*** at para 47, the failure to pay because of poverty (if proven) cannot be equated to refusal to pay.

[127] Accordingly, the default period I impose is 5 years, which is the minimum time allowed pursuant to the *Criminal Code*. The totality principle has influenced my decision to chose the lower end of the default range allowed under the section.

[128] With respect to the amount of time to pay, I note that ***Lavigne***, at para 45, discusses the fact that the time allowed for paying a fine is based on common law principles and is not addressed specifically in the *Code*. I found the case of ***R v Grant***, 2009 MBCA 9 instructive. There, the Court found that if the offender was going to pay then they would have to do by way of assets, and so gave a short time to allow the Offender to disclose and transfer them – 2 years.

[129] The Crown is seeking an order for 2 years to pay. Defence on the other hand is seeking 10 years based on Mr. Neilson paying back funds over a period once released and working and on the basis that presently he has no assets.

[130] As already mentioned, I have no faith based on the lack of disclosure by Mr. Neilson, that the only way for him to restore the victim's lost investments is by earning employment income. Further I note that to date he has done nothing of the sort. The fairest result in my view is for Mr. Neilson to show to the victims, and the Court, with proper disclosure and correct accounting, what his true position is. This can be done relatively quickly.

[131] Accordingly, I allow him 3 years from today to pay the fine. I note, as mentioned above, that this time to pay period may be extended if Mr. Neilson convinces a Court that he has a reasonable excuse for any non- payment (see ***Grant*** at para 124 and ***Lavigne*** at para 47).

[132] In sum, I order a fine in lieu of forfeiture in the amount of $1,671,497, and in default, 5 years further imprisonment consecutive to his 51/2-year sentence, with 3 years from today to pay. Finally, I order that the fine in lieu of forfeiture is to be reduced by any amount paid pursuant to the restitution order (see ***Reeve*** at para 3). Further, any payment made in restitution to the victims should be made in the percentage of the amount owing to them as follows:

Mr. Jason Brandt	$ 38,800 (2%)
Mr. Lyle Korytar	$ 220,000 (14%)
Mr. Daniel Knoch	$ 118,000 (7%)
Ms. Kumiko Terazawa	$ 440,000 (27%)
Dr. Michael Mauws	$ 100,000 (6%)
Mr. Kim Megaffin	$ 100,000 (6%)
Mr. Paul Erickson	$ 60,000 (3%)
Grenville LLC	$ 529,697 (31%)
Mr. Chris Nadeau	$ 65,000 (4%)
Total	**$ 1,671,497**

[133] An exception to this general payment rule will be if Mr. Nadeau can collect on his security through the civil proceedings he has had to bring – the details of which were not in front of me.

Ancillary Orders

[134] I agree with the Defence that in this case a DNA Order is not necessary. It will have limited practical use in detecting an offender in a fraud case and likely of limited purpose to deter Mr. Neilson or protect the community.

[135] The Crown also seeks a prohibition order under s. 380.2 of the *Criminal Code* which provides that the Court can prohibit an offender "from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person" for "any period the court considers appropriate." The Crown seeks the duration of 20 years for this order.

[136] Defence points out that this order is unavailable for count 6 (fraud against the public) since it contains offence dates that straddle the change in legislation in which s. 380.2 came into force (March 2011). However, the Order is available on the remaining two counts of fraud. Defence notes that Mr. Neilson has essentially been under such an order while on judicial interim release and faces a penitentiary term. Once he is released, it will have been some time since the offences occurred and he will owe significant amounts of money pursuant to the restitution order and fine. Limiting his employment further has the potential to meaningfully impact his ability to raise funds to pay these orders.

[137] I agree that this employment prohibition is an onerous one – however I also note that to date, Mr. Neilson's accounting designation has been removed and that the Alberta Securities Commission was involved in investigating him. I am not aware of any sanction issued by the Securities Commission, however, in cases of fraud it will regularly hand out sanctions that restrict the offender's employment capabilities in the public interest

[138] Here, in my view it would be reasonable to restrict Mr. Neilson's ability to have any authority over other's funds in light of his fraudulent misuse of Grenville and Mr. Nadeau's funds. It may well restrict his employment opportunities but there are many employment prospects that do not involve having any authority over funds that will remain available to Mr. Neilson upon his release. Accordingly, I will grant the s. 380.2 order requested for a period of 10 years commencing upon Mr. Neilson's completion of his sentence. I have ordered this for 10 years instead of 20 in light of his age (he will be approximately 70 years old when this expires).

Conclusion

[139] In conclusion, based on the sentencing principles discussed as applied to the present circumstances, and a "last look" with respect to the totality of the penalties, I sentence Mr. Neilson to:

- 5 1/2 years penitentiary time (4 1/2 years concurrent on the fraud counts 1 and 6, 6 months on the fraud count 4 concurrent to counts 1 and 6, and 1 year on the money laundering counts 2 and 8, consecutive to counts 1, 4 and 6),

- an order for restitution in the amount of $1,671,497,

- a fine in lieu of forfeiture in the amount of $1,671,497 with 3 years to pay from today and in default a further 5-year period of incarceration with any payment to be credited to restitution to the victims in the proportion of their outstanding losses, and

- a s. 380.2 prohibition order for a period of 10 years from the completion of his incarceration sentence.

Heard on the 27th day of August, 2020
Dated at the City of Calgary, Alberta, this 21st day of September, 2020

K.M. Eidsvik
J.C.Q.B.A.

Appearances:

Steven Johnston and Martha O'Connor
for the Crown

Meryl Friedland
for the Offender