

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

EDWARD HARRY LEEFE, LEXCAN INTERNATIONAL CORP.
(Ontario Number 1038191) also doing business as The
Calcom Business Centre, Lexam International Corp., MPL,
H & P Communications Inc. (Ontario Corporation Number
1038192)

---Before THE HONOURABLE MADAM JUSTICE H. SACHS, at the
Superior Court of Justice, 361 University Avenue,
Toronto, Ontario, on March 30, 2007 commencing at
approximately 9:00 a.m.

REASONS FOR SENTENCE

A P P E A R A N C E S:

J. Palumbo for the CROWN
J. Cantwell for the ALL ACCUSED

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MARCH 30, 2007

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THE COURT: Mr. Leefe and the corporate accused have plead guilty to a number of violations of the Competition Act and, to two Criminal Code offences; fraud over \$5,000 and possession of proceeds obtained by crime in an amount exceeding \$5,000.00. In addition, Mr. Leefe has plead guilty to failure to comply with an undertaking given to the officer in charge when he was released after his arrest.

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The offences arise out of a telemarketing enterprise. The details giving rise to the charges and the convictions are set out in the agreed statement of facts filed as an exhibit on this sentencing hearing.

The parties have put before me a joint submission for sentencing. That submission is:

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1: That Mr. Leefe be sentenced to a conditional sentence of 18 months, to include nine months of house arrest and nine months of curfew restrictions.

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2: That Mr. Leefe pay a fine of

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\$50,000.00.

3: That the accused corporations pay a fine of \$1.5 million; and

4: That are a ten-year prohibition order under the Competition Act be imposed on Mr. Leefe and the accused corporations.

IS THE JOINT SUBMISSION ON SENTENCE ONE I SHOULD ACCEPT?

The sentencing judge has an overriding discretion as to whether or not to accept or reject a joint submission on sentence. However, the case law has established that a judge should only reject a joint submission if to accept it would bring the administration of justice into disrepute. As put by Berger J.A. of the Alberta Court of Appeal in C(GW) (2000) 150 C.C.C. (3d) 513 at 519-20.

"The certainty that is required to induce accused persons to waive their right to trial can only be achieved in an atmosphere where the courts do not lightly interfere with a negotiated disposition that falls within or is very close to the appropriate range for a given offence."

It is clear both from the written material and oral presentation that this is a joint submission that

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5 was arrived at after extensive negotiations and with a full
and thorough appreciation of all of the relevance sentencing
considerations. It is also clear that by pleading guilty
the accused have saved the systems what would have been a
long and expensive trial.

10 I do not propose to repeat the written
submissions that were made by the Crown concerning the
nature and severity of the offences at issue. I agree with
Justice Molloy that dishonest business practices have an
15 impact beyond just the individuals who are directly affected
by those practices. Our community and our economy are also
affected.

20 In this case there were the following
aggravating factors that are relevant to sentence that must
be taken into account:

25 1. This was a sophisticated
telemarketing scheme carried out over a 7
year period that produced total gross
revenues over that period of
approximately \$7 million.

30 2. Mr. Leefe was the directing mind of
the scheme.

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3. The scheme affected a large number of customers who included non-profit organizations. It also affected customers in the United States.

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4. The conduct was wilful and involved a deliberate effort to conceal. A particularly egregious instance of this was the falsehood regarding the \$80,000 worth of cheques that were seized by the police.

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5. Other aggravating factors that are relevant under the Competition Act are that there were lists used to create a data base of customers that were re-victimized and, that abusive tactics were used by Mr. Leefe.

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The mitigating factors to be taken into account in this case are that the accused did plead guilty. Mr. Leefe has expressed remorse for his action and Mr. Leefe is a first offender. Mr. Leefe's personal circumstances are also compelling. He is 45 years old and is the sole provider and caretaker to two children who are 10 and 13

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5 years old. His wife is in a psychiatric hospital. Mr. Leefe is an actor, who proposes to turn his life around by upgrading his credentials through further education.

The proposed sentence has four components that I propose to address in turn.

10 First, it is proposed that Mr. Leefe receive a conditional sentence of imprisonment. None of the offences carry a minimum sentence. Mr. Leefe is a first offender and a review of the case law for similar offences would indicate that a sentence in the range proposed is appropriate. I am also satisfied that the safety of the community would not be endangered if Mr. Leefe were to serve his sentence in the community. The goal of rehabilitation is an important consideration when sentencing a first offender. Allowing Mr. Leefe to serve his sentence such that he can continue to care for his two children and upgrade his education would clearly further this end. The question is whether the ends of denunciation and deterrence can be met by a conditional sentence. The Supreme Court of Canada in Proulx recognized the punitive impact of conditional sentences, particularly where onerous conditions such as house arrest are imposed. In this regard, it is

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5 also worth noting that unlike most sentencing of incarceration, an offender who receives a conditional sentence will serve all of that sentence.

10 The second aspect of the proposed sentence is that Mr. Leefe be ordered to pay a fine of \$50,000.00. this amount was arrived at after Mr. Leefe swore to his current financial circumstances. It is a figure that appropriately takes into account the need for a fine imposed on an individual to recognize that individual's ability to pay. 15 The one issue that has arisen with respect to the fine is whether the \$20,000 that will not be satisfied from the bonds that Mr. Leefe posted as security for his release, should be paid immediately or within a year. In my view, 20 the fine should be paid forthwith. Mr. Leefe has assets that he can use to pay the fine. The amount remaining to be paid will far from exhaust those assets. In the end, Mr. Leefe engaged in the crimes at issue, for profit. Paying a 25 fine in a way that causes him to feel the pain of that payment is an appropriate means of reinforcing the message to Mr. Leefe that crime does not pay.

30 The third component of the proposed sentence is the proposal that the accused corporations be ordered to

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pay a fine of \$1.5 million. It was acknowledged before me that it is unlikely that this fine will ever be paid in full. The corporations, while they may have some assets, are essentially inactive. The purpose of the amount is to deter other corporate entities from being tempted to engage in similar activities. Simply put, if the fines are high enough they cannot be regarded as a simple cost of doing business.

The last aspect of the sentence is the prohibition order. By virtue of this order, the public will be protected from having Mr. Leefe or the corporations engaging in any similar activities for a period of ten years.

For these reasons I am accepting the joint submission.

Mr. Leefe will you please stand. Mr. Leefe, I am sentencing you to a conditional sentence of imprisonment of 18 months. As I am satisfied that the safety of the community will not be endangered, I direct that you serve your sentence in the community. This sentence will be subject to the following statutory conditions that I now impose.

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5 1. You shall keep the peace and be of good behaviour.

2. You shall appear before the court when requested to do so by the court.

10 3. You shall report to a supervisor within five working days and thereafter when required by the supervisor and in the manner directed by the supervisor.

15 4. You shall remain within the jurisdiction of this court, unless written permission to go outside the jurisdiction is obtained from the court or the supervisor; and

20 5. You shall notify the court or your supervisor in advance of any change of name or address, and promptly notify the court or supervisor of any change of employment or occupation.

25 In addition, you shall comply with the following conditions that I now impose:

30 1. You shall make reasonable efforts to find and maintain suitable employment and

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or attend school.

2. During the first nine months of your sentence you shall remain confined to your residence, except for attendances for education, employment, medical appointments, religious services, legal obligations regarding compliance with the orders I have made, responsibilities relating to caring for your two children, providing for the necessaries of life such as grocery shopping and any other times or purposes that may be approved of in advance, in writing, by your conditional sentence supervisor.

3. Except in the case of emergency medical appointments for yourself or your children or in the case of last minute child care responsibilities, you shall provide your supervisor with advance notice and proof of your scheduled medical appointments, educational or employment opportunities and religious

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services.

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4. You shall also provide your conditional sentence supervisor with advance notice and proof of appointments necessary for the care of your children. Your conditional sentence supervisor in his or her discretion shall incorporate these into a written letter of permission to be out of residence and that letter shall at all times be carried on your person while out of your residence.

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5. You shall be obliged upon demand by a peace officer or police officer, to produce the order to him or her. You may obtain from your conditional sentence supervisor written permission to be absent from your residence for any reason that your supervisor deems appropriate. Such written permission shall be carried on your person at all times while out of the residence and produced on demand to a peace officer.

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6. During the second nine months of your sentence you shall remain confined at your residence during the hours of 11 p.m. and 6 a.m. except in the case of medical emergencies involving yourself or children, or in the case of other emergency child care responsibilities.

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In addition to this conditional sentence, I am ordering you to pay a fine of \$50,000.00. \$30,000 of this fine is to be paid from the security you posted which is hereby forfeited to the Crown. The remaining \$20,000 is to be paid by you within ten business days of this order. The two accused corporations that you are the directing mind of, namely Lexcan and H & P Communications, are to pay a fine of \$1.5 million. Both corporations are jointly and severally liable for the payment of this fine.

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In addition, I have signed a prohibition order in the terms to which you have consented. Mr. Leefe, it took intelligence and resourcefulness to commit the offences you committed. What you lacked was integrity. You have two young children who need you and look to you as their role model. For their sake, if not for your own, I

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hope that you have learned from this experience and that you will use the gifts you have to contribute to the world instead of undermining the community you live in. You have been given a chance to start over. Use it well. For I can assure you that if you find yourself in front of the courts again on a criminal charge, or for a breach of the orders I have made, you will very likely find yourself behind bars.

You may be seated.

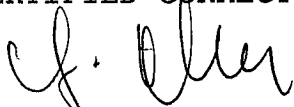
I have signed the order on disposal as well.

Is there anything else?

THE CROWN: Nothing Your Honour. Thank you for your attention to this matter. It is appreciated.

THE COURT: I thank you both for all of the assistance you provided and for working so hard to come to a resolution of this matter.

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Y. Clarke
Official Court Reporter
SUPERIOR COURT OF JUSTICE