

COMMENTS ON PASSING SENTENCE

ESTCOURT J

The defendant, Michael David Maple, has been found guilty by a jury of four counts of fraud contrary to s 253A(d) of the *Criminal Code*. The total amount involved is \$37,414.77.

He had been charged with six counts of fraud, one committed each month between 17 February 2014 and 15 July 2014. However the jury found him not guilty of the first and fifth of the six counts.

Each of the frauds related to the provision to AMP Insurance of a false medical report in support of a claim for Income Continuation benefits under a policy of insurance.

The defendant was in prison during the period of the claims, but that did not disentitle him to benefits. What it did mean, however, was that he was unable to submit the required monthly Continuation Claim Form and Progress Medical Report. This was done by his sister, Kim Maple, who falsified the forms by stating that Dr Maurice Rybak had treated the defendant each month when that was not true.

Kim Maple pleaded guilty to all six counts and was sentenced to five months' imprisonment wholly suspended. Different sentencing considerations apply in her case, in my view, and no real issue of parity arises given the basis upon which she was sentenced.

The Crown accepts that the defendant did not have a fraudulent intent, but rather the crimes were committed either as a result of deceit, or as a result of the use of fraudulent means.

In acquitting the defendant on counts 1 and 5, the jury, in my view, must have accepted that the defendant believed that Dr Rybak had signed the February form and that it had not been changed prior to it being submitted to AMP, and that in respect of the July count, that the defendant had a belief his sister had an appointment and was going back to see Dr Rybak, and a belief that Dr Rybak would sign the form.

I am satisfied that the defendant's insurance agent encouraged Kim Maple to resubmit the same form after the first one, but I am not satisfied that he encouraged her to falsify the forms in the way that she did. Had the jury so found they would have consistently applied that fact to each of counts 2 to 6.

The defendant is 56 years old and has a prior conviction for dishonesty, albeit of considerable age, but which nonetheless attracted a 4 month suspended sentence of imprisonment when he was still a young man. He also has a prior conviction for aggravated sexual assault and for conspiracy to interfere with the complainant in that case as a witness.

He is not entitled to the discount that pleas of guilty might have attracted, but there was considerable delay in prosecuting him and bringing him to trial, and the Crown accepted in sentencing submissions that that is mitigating in this case.

The defendant is convicted of each of the four counts on which guilty verdicts were returned and I impose a single sentence of 9 months' imprisonment, which sentence I wholly suspend

on condition that the defendant commit no offence punishable by imprisonment for a period of three years.

I also make a community corrections order that contains, in addition to the statutory core conditions, a special condition that the defendant must, within the next two years, satisfactorily complete community service as directed by a probation officer or a supervisor for a period of 210 hours.

I make a compensation order in the amount of \$37,414.77 in favour of AMP Insurance Ltd.