COURT FILE NO.: CRIM J(F) 173/05
DATE: 20080116

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
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HER MAJESTY THE QUEEN	)	Connie Zary, for the Crown
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- and -	)	
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JOHN PHILLIP TOPP and TOPP CUSTOMS SERVICES INC.	)	Neil Gregson, for the Defendants
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	)	**HEARD:** September 10-12, 17-21, 24-28, October 1, 2, 3, 5, 10, 2007

REASONS FOR JUDGMENT

Baltman, J.

[1] John Topp is a customs broker who ran his own company, Topp Customs Services Inc. Between early 1999 and late 2001 he received over 4.7 million

dollars from various clients which he failed to remit to customs. The Crown alleges this was a deliberate scheme on his part to cheat the taxpayers and his clients. The defence contends the Crown has failed to prove Mr. Topp intended to evade the duties owed, or that he didn't simply lose track of the money.

[2] Mr. Topp and his company have been charged with 16 counts of fraud and attempted fraud under s. 153(c) of the *Customs Act*[1]. Although all the charges were laid under the same section, the counts were broken down according to the time period in question and the particular importers involved, as set out in the appendices to the indictment.[2] All together, the counts reflect 463 separate transactions over the three year period in question.

[3] The accused were tried before me without a jury. The trial proceeded over a period of five weeks, with the Crown calling 7 witnesses and filing approximately 87 binders of documents[3]. The defence called no evidence.

[4] For the reasons that follow, I find the defendants guilty of all the counts in the indictment.

Factual Background

[5] Except where noted, the facts set out below are largely undisputed.

1. The Customs Process

[6] Customs brokers act on behalf of importers who are bringing goods into the country. They prepare and submit the necessary paperwork in order to clear goods through customs. They also collect from their clients various duties and taxes owing on the goods and then remit them to customs on the importer's behalf.

[7] The customs process generally involves two steps. The first step is to clear the goods through customs; the second step is to account for them. In the first stage, the broker submits an initial package to customs on behalf of the importer in order to have the goods released. This package typically consists simply of a cargo control document (CCD) and an invoice. That tells customs what type of goods are being imported and how much the importer paid for them. The broker submits the package to a customs agent at the port where the goods are being delivered. In this case, all the relevant goods arrived by air at Pearson airport.

[8] This first step involves minimal documents and does not require payment of duties and taxes. It allows the customs officer to release the goods quickly, often within 24 hours, which is particularly important with live or perishable

goods. This stage is often referred to as the “Release on Minimum Documentation” (“RMD”) stage.

[9] In the second stage, which typically occurs within five days after the first, the broker submits a “confirming entry package” (“CEP”) on behalf of the importer. This consists of a further copy of the CCD and the invoice, plus an accounting form known in the customs industry as a “B3”.

[10] The B3 is critical to this case. It is a standardized document issued by Canada Customs that requires the broker to fill in numerous fields describing the importer, vendor, type and value of goods, and, most importantly, the duties and taxes owing. Hence this is referred to as the “accounting” stage.

[11] The B3 contains multiple copies, separated by carbon. The bottom left corner requires a signature from the importer – or an agent such as his broker – declaring “the particulars of this document to be true, accurate and complete.”

[12] The customs clerk who receives the CEP enters the critical data from the B3 into the computer system. She is not expected to review or analyze the data, but simply enters it as is. This means that unless an audit is subsequently done, there are no checks and balances in place to ensure the accuracy of the B3

declarations. In other words, the B3 operates essentially as an honour system, a practice that is central to this case.

[13] At the end of each day customs prepares a statement for each broker, itemizing all the transactions the broker registered that day, with the attendant duties and taxes owing. This document is known as a “K84”.

2. Topp’s operation

[14] Mr. Topp is 63 years old, and has been a licensed customs broker since 1972. In 1993 Mr. Topp started a predecessor company, Topp Customs Inc., with his then wife, Jeanne Gonyeau. It began as a small operation, with Mr. Topp in charge of the customs side of the business and Ms. Gonyeau primarily responsible for the administrative and billing functions.

[15] The company also employed “raters”, namely people who rated the incoming shipments so that the proper duties and taxes were being charged. The raters classified the goods according to tariffs established under regulations to the *Customs Act.* When classifying goods, the rater typically referred primarily to the commercial invoice, which described the items in question. Depending on their nature - clothing, jewellery, automotive parts, etc. - each good had a

corresponding code in the tariff book. That code in turn determined the applicable duties and taxes.

[16] Typically, the rater filled out an initial B3 by hand, and provided it to the data entry clerk. The clerk entered the data into the company's computer and prepared a typed version. She then separated or "split" the B3 and matched the various copies with the corresponding paperwork. The customs package – the CEP – contained a copy of the B3 with the CCD and commercial invoice attached, and was usually provided to Mr Topp for his approval and signature before being submitted to customs. Once Mr. Topp approved the B3, a separate copy of the B3 along with a billing sheet was provided to Ms. Gonyeau, who then prepared the client's invoice.

[17] The company grew over the years and in 1997 Mr. Topp incorporated Topp Customs Services Inc. ("Topp Customs"), his co-defendant. With the increase in business Mr. Topp employed additional raters and clerical staff. However, he remained in charge of the customs end of the business throughout. From approximately 1997 onward Ms. Gonyeau reduced her hours and worked mostly in the mornings. In 1999 the couple separated but she along with several other persons continued to work there until 2001, when Mr. Topp sold the business to Cole International, another customs brokerage firm.

[18] Although the evidence was unclear on this point, it appears that these charges were triggered when one of Mr. Topp's clients, Kristofoam Industries, asked customs for a refund (known as a "drawback") with respect to goods it had previously imported but now intended to ship outside of the country. Customs rejected the drawback request, claiming the duties had never been paid, when in fact Kristofoam had remitted the amounts to Topp Customs. When Kristofoam alerted Mr. Topp to the discrepancy, he paid the outstanding duties to customs. Those transactions are relatively few in number and dollar value, and are identified in the evidence as "attempted" evasions.

The Legal Framework

[19] Mr. Topp is charged under s. 153 of the *Customs Act*, which provides:

> **153.** No person shall….
>
> (c) **wilfully,** in any manner, evade or attempt to evade compliance with any provision of this Act or evade or attempt to evade the payment of duties under this Act. [emphasis added]

[20] The consequence of a conviction under s. 153 is set out in s. 160, which provides that when proceeding by indictment a person is liable to a fine of up to $500,000 and/or imprisonment of up to 5 years.

[21] Also relevant to this case is section 151, which deals with duplicate filings:

> **151.** In any proceeding taken pursuant to this Act, the production or the proof of the existence of **more than one document** made or sent by or on behalf of the same person in which **the same goods** are mentioned as bearing different prices or given different names or descriptions is, in the absence of evidence to the contrary, **proof that any such document was intended to be used to evade compliance** with this Act or the payment of duties under this Act. [emphasis added]

[22] As indicated below in paragraph [27], because all the other elements of the offence are conceded, the sole issue in this case is whether Mr. Topp "wilfully" evaded or attempted to evade the payment of duties. The exact meaning of the word "wilfully" depends on the context in which it is used. In *R. v. Docherty* (1989), 51 C.C.C. (3d)1 (S.C.C.) the court found that the term "wilfully" denotes a relatively high level of *mens rea,* requiring both knowledge of what is required and a deliberate failure to comply. Wilson, J., writing for the court, stated:

> The word "wilfully" is perhaps the archetypal word to denote a *mens rea* requirement. It stresses intention in relation to the achievement of a purpose. It can be contrasted with lesser forms of guilty knowledge such as "negligently" or even "recklessly". In short, the use of the word "wilfully" denotes a legislative concern for a relatively high level of *mens rea* requiring those subject to the probation order to have formed the intent to breach its terms and to have had that purpose in mind while doing so.

[23] Similarly, in *R. v. Klundert,* [2004] O.J. No. 3515 (C.A.) Doherty J.A. held that the *mens rea* component in most cases of tax evasion is twofold:

> First, the accused must know that tax is owing under the Act and second, the accused must intend to avoid or intend to attempt to avoid payment of that tax. An accused intends to avoid, or intends to attempt to avoid, payment of taxes owing under the Act where that is his purpose, or where

> he knows his course of conduct is virtually certain to result in the avoiding of tax owing under the Act... [para 46]

[24] When applied to this case, I find the law requires the Crown to prove beyond a reasonable doubt that Mr. Topp both knew that duties were owing, and deliberately avoided or attempted to avoid their payment.

Nature of the Alleged Fraud

[25] The essence of the Crown's case is that Mr. Topp filed duplicate but misleading B3s in all 463 transactions: the B3s he filed with customs contained false codes and information, resulting in little or no duties and taxes owing; the B3s he provided to his client were filled out properly, resulting in the correct amount being paid by his clients, which he then kept for himself rather than remitting to customs. The total difference between what he collected and what he remitted over the course of the three years in question was $4,794,744.37.

[26] The Crown alleges that Mr. Topp personally prepared, directed or approved all the false B3s, regardless of whether he personally signed them or filed them with customs. Although all the alleged fraud involved duplicate B3s, the Crown maintains five different methods were used:

1. **Using a false currency code:** The B3 filed by Mr. Topp with customs as part of the CEP contained a false currency code. The false and lower code

resulted in a much lower value when the purchase price was converted to Canadian dollars, resulting in lower duties and taxes owing. However, the B3 provided to the client for the identical goods contained the proper currency code, resulting in the correct and much higher amount of goods and taxes owing. For example, with the importer Odyssey Time Inc. referenced in counts 1 to 4, the currency code on the B3 submitted to customs stated the purchase price in Hong Kong dollars. The B3 to the importer set out the currency in U.S. dollars, which accorded with the accompanying commercial invoice[4].

2. **Using code 66 to exempt the goods from GST:** The B3 filed by Mr. Topp with customs set out code "66" as the applicable rate of GST. This code exempts goods from GST. However, in the B3 provided to his client for the same goods, Mr. Topp charged GST at the rate of 7%[5].

3. **Using code 66 and a fake adjustment:** The B3 filed by Mr. Topp with customs used code 66, causing the goods to be exempt from GST. Mr. Topp initially submitted the identical B3 to his client, but then subsequently provided an amended B3 (known as an "adjustment B3") charging GST at the rate of 7%. Mr. Topp collected the GST from his client but never submitted the money – or the adjustment B3 – to customs[6].

4. **Using the name of a non-resident importer, combined with code 66:** The B3 filed by Mr. Topp with customs listed the importer as a non-resident (usually by substituting the vendor's name), in addition to using code 66. As non-residents are exempt from GST, this reinforced the impression that no taxes were payable. However, the B3 provided to the client for the same goods contained the true importer's name and charged GST of 7%[7].

5. **Not filing a voluntary B3:** A "voluntary" B3 is normally used to submit duties and taxes on goods that are already in Canada. Mr. Topp was hired by an importer to voluntarily account for aircraft that had been imported into Canada. Mr. Topp submitted a voluntary B3 to certain clients, charging the correct duties and taxes, but never submitted any version of that B3 to customs and never remitted the monies he collected[8].

Evidence and Analysis

1. The Crown's Case

[27] As noted above, counsel agree that aside from *mens rea,* all the essential elements of the Crown's case have been established. In particular, it is undisputed that:

- John Topp was the president and directing mind of Topp Customs
- Topp Customs charged its clients $4,794,744 in respect of the 463 transactions covered by the indictment
- The duties relate to goods that were imported into Canada
- The goods were properly subject to the duties that Topp Customs collected
- Topp Customs submitted duplicate B3s to clients and to customs with respect to identical goods, but with different duties and taxes owing
- Topp Customs failed to remit any of the $4,794,744 it collected to customs
- The continuity and authenticity of all the business records filed as exhibits are unchallenged

[28] In other words, it is undisputed that Mr. Topp, through his company, evaded or attempted to evade the payment of duties properly owing to customs. And as it is acknowledged the corporate accused was entirely under Mr. Topp's control, the company is liable for his actions: *R. v. Church of Scientology of Toronto* (1997), 116 C.C.C. (3d) 1 (Ont.C.A.) at pp. 70 ff. The only issue, therefore, is whether Mr. Topp had the requisite *mens rea*, that is whether he "wilfully" evaded or attempted to evade the duties owing.

[29] The critical evidence for the Crown came from the following five witnesses:

- Sherri Docherty

  Ms. Docherty is an investigator with the Canada Border Services Agency (CBSA), which oversees customs. She was the lead investigator on this case.

- Carl Janes

  Mr. Janes worked as a customs rater at Topp Customs from 1994 to 2001. In his final year there he also assumed managerial duties. Mr. Janes has worked as a customs rater for 35 years, and is currently employed with Cole International.

- Anita Cuevas

  Ms. Cuevas worked as a data entry clerk at Topp Customs during the year preceding its sale to Cole. Her duties included typing, answering the phone, and entering data into the computer system to produce B3s.

- Lori Anne Arsenault

  Ms. Arsenault has worked as a customs rater for the past 20 years. She has been employed throughout with Cole, except for a 7 month period in 2001 when she worked as a rater for Topp Customs.

- Jeanne Gonyeau

  Ms. Gonyeau was married to Mr. Topp. They started Topp Customs together in the early 90's and she worked there until approximately 2000. She was primarily in charge of invoicing clients and of various administrative aspects of the business.

[30] I found all these witnesses to be credible individuals who gave their evidence in a direct and straightforward manner. None of them displayed any *animus* toward Mr. Topp. Other than Ms. Goyeau, whose evidence I discuss further below, none of the witnesses were seriously challenged on cross-examination. Whatever minor qualifications were adduced did not significantly compromise the thrust of their evidence.

[31] Through these witnesses and extensive business records, the Crown advanced a formidable case against Mr. Topp. The Crown relied on the following

evidence to demonstrate that Mr. Topp both knew that duties were owing and deliberately avoided or attempted to avoid their payment:

a) Topp was in charge of the customs component of the business

[32] Mr. Topp has been a licensed broker since 1972. None of the other staff, including the raters, were licensed brokers. The unchallenged evidence was that he started the business and directed its growth throughout. He had the most expertise and was the "go to" guy whenever a customs-related question arose. The staff followed his protocol and deferred to his instructions. In sum, he was the person in charge of the customs end of the business.

b) Topp signed, approved or created the false B3s

[33] The Crown led compelling evidence that Mr. Topp signed 414 of the 463 B3s at issue[9]. The evidence also established that Mr. Topp approved all the B3s before they were submitted to customs, except on the rare occasions where he was on vacation. Janes, Gonyeau, Cuevas and Arsenault testified that the B3s were typically given to Mr. Topp for his review and approval. Cuevas noted that on occasion Mr. Topp would make handwritten corrections in red pen and return them to her for revision.

[34] Furthermore, none of the raters had access to the computer system used to create B3s. Although Cuevas and Gonyeau could conceivably produce duplicate B3s, their unchallenged evidence was that except on rare occasions no B3 left the office – be it headed to customs or to the importer - without Mr. Topp reviewing it.

c) Mr. Topp instructed the staff to use false information and codes

[35] Janes and Arsenault, both raters, provided particularly damning information in this regard. Janes testified that Mr. Topp instructed him to use code 66 (the exemption code) and the name of a non-resident even when the supporting invoice indicated the importer was a resident who would normally be subject to GST. Janes believed this to be incorrect but concluded it was fruitless to argue with Mr. Topp.

[36] Arsenault testified that Mr. Topp instructed her to use a false currency code, despite what was stated on the supporting invoice. When she questioned his instructions he provided reasons that made no sense to her, but she complied because he was her boss. Arsenault also questioned Mr. Topp on his instructions

regarding Code 66 but could not get a “straight answer”, and therefore stopped asking. The net effect of having different ratings on the duplicate B3s was not lost on Arsenault: “Yes, we’re not paying the Government, and the client’s paying us.”

[37] Neither Janes’ nor Arsenault’s evidence on this point was discredited in cross-examination. Janes acknowledged that “Customs’ system will accept ‘66’ on anything,” but stated that whether it “should be used on everything is a different matter.” Arsenault conceded that rating is not an exact science, and there are a number of ways to interpret the tariff regulations, but she never agreed with Mr. Topp’s approach. Both Janes and Arsenault were of the view that Code 66 was not applicable to the impugned transactions, and saw no justification for duplicate B3s. I find it significant that ultimately Arsenault left the job in part because of her discomfort with Mr. Topp’s practice. His approach “didn’t sit well” with her. As she put it, “basically I felt like I was lying.”

2. The Defence

[38] As noted above, the accused chose not to testify, and the defence offered no other evidence. From the submissions received, the defence appears to revolve around two principle submissions, which I shall examine bearing in mind

there is no onus on Mr. Topp or the company to prove anything. It is for the Crown to establish the elements of the offence beyond a reasonable doubt.

[39] The two prongs of the defence appear to be:

1. Someone else at Topp Customs Services committed the fraud, and/or

2. The money was simply lost, due to poor business practices within the office

[40] For the following reasons, I find neither assertion has any merit.

1. Someone else at Topp Customs Services committed the fraud

[41] The defence maintains that because the Crown failed to call all Mr. Topp's former employees as witnesses, it has not produced all available evidence of how the transactions in question unfolded. It suggests the "missing" employees may have been instrumental in the rating and data entry process, and without eliminating them we cannot be certain Mr. Topp is to blame.

[42] I see no merit to this argument. First, there is no evidence that any other employees were responsible for duplicate B3s or that they profited by the fraudulent gains. Second, the Crown is only obliged to produce sufficient evidence to establish the essential elements of the offence beyond a reasonable

doubt. That it has amply done. The Crown is not obliged to *disprove* highly speculative and unfounded theories advanced by the defence. Third, the defence had the option of calling any of the employees as their witness, and chose not to.

[43] The defence also hints that Ms. Gonyeau may be the true culprit here. It notes that she was in charge of the invoicing side of the business, and suggests she therefore may be responsible for the missing monies. It asserts I must consider the *Vetrovec* warning when assessing her evidence.

[44] I give no weight to that argument. All the evidence consistently established that in the years in question Ms. Gonyeau had little involvement in the customs end of the business. Her primary role was to invoice the clients according to instructions she received from Mr. Topp. He, not she, was responsible for reconciling the K84s with incoming monies.

[45] Even assuming (without agreeing) that a *Vetrovec* warning is required, the following pieces of evidence substantially confirm Ms. Gonyeau's evidence:

- Janes and Arsenault testified that Mr. Topp (rather than Ms. Gonyeau) was the person primarily in charge of the customs end of the business

- Janes, Cuevas and Arsenault testified that typically B3s were given to Mr. Topp for his signature and approval

- Janes and Arsenault agreed that if any questions or concerns arose regarding the correct rating process or the accuracy of B3s, they would consult Mr. Topp rather than Ms. Gonyeau.

[46] Finally, even if Ms. Gonyeau was aware of, or worse, a party to these transactions (and I am not able to so find on the evidence), it is inconceivable that this scheme was engineered and led by someone other than John Topp. He was the sole person with the knowledge, control and ability to operate the fraud. His signature is on most of the damning documents. I am satisfied that in the relatively few cases where others signed or submitted B3s they did so with his knowledge and under his direction. In short, he was at the hub of this wheel of deceit.

2. The money was lost due to poor business practices within the office

[47] The thrust of this defence is that the monies in question were misplaced due to internal errors or mismanagement. In support of this argument, the defence notes that according to the evidence, Topp Customs Service handled over 30,000 transactions a year, or nearly 97,000 transactions during the period covered by the indictment. The indictment covers 463 transactions, and so, argues the defence, the “error ratio is 0.47%.” In other words, these were

understandable errors given the huge volume of transactions moving through the office.

[48] I reject that assertion. The unchallenged evidence was Mr. Topp reviewed the K84 statements from customs that arrived on a daily basis, and reconciled them with the company's finances. It is inconceivable he would not have noticed the huge discrepancy between what customs reported him owing, and what his firm had received from his clients. Even spread over three years, 4.7 million is an enormous discrepancy, particularly given that some of the transactions involve very large amounts; for example, in count 9, one of the transactions was for over $295,000 and another was for over $62,000. If, as one would expect, he anticipated having to remit those amounts to customs, it is most peculiar that he didn't notice their omission from the K84 statements.

[49] The defence also asserts that the monies could have gone missing due to inadequate "quality controls" within the business. It noted evidence of how the computer system was somewhat antiquated, and John Topp's office was often cluttered with piles of paper. But that cannot explain the duplicate invoicing and the "loss" of nearly 5 million dollars. Nor does it explain why the errors always occurred to the benefit of Topp Customs, rather than the client; if the office was as disorganized as the defence portrays, one would expect that at least in some

cases the correct B3 would have gone to customs (showing the proper taxes and GST owing) and the incorrect B3 to the client (omitting the proper taxes and GST). That never happened.

[50] Alternatively, the defence blames the customs office at Pearson, claiming they may have lost B3s or made errors in processing them. This is utterly speculative; although there was some evidence that on rare occasions customs misplaced B3 filings or made arithmetic errors, none of that is relevant here. Except for count 9, all the counts involve duplicate filings, and in virtually all the transactions the Crown produced the B3 filed by Topp with customs. As for count 9, the absence of B3s filed with customs is precisely what implicates Mr. Topp; those transactions relate to goods that were already within the country, and therefore the purpose of filing B3s was not to release the goods but to properly account for them. This he did not do, despite collecting huge sums from the clients.

[51] The defence further suggested there are conflicting opinions among raters regarding the proper application of code 66, and therefore no blame could be attached to its use in this case. This argument is specious; Janes and Arsenault were clear that while code 66 may apply to a range of cases, there was no foundation for its use in the impugned transactions because the commercial

invoices showed the goods were being imported by a resident of Canada, and were therefore properly subject to GST. If there was any doubt on this point, why were duplicate invoices sent to the clients omitting code 66 and charging GST?

[52] Finally, the defence asserts there is no evidence Mr. Topp personally benefited from the alleged fraud, and therefore he cannot be guilty of it. That argument is meritless; aside from the fact that s.153 also makes *attempted* evasion a crime, it is undisputed that Topp Customs Services received the entire $4.7 million, through various cheques. All the cheques were cashed and deposited to Topp Customs Services or other bank accounts in John Topp's control. Even ignoring Ms. Gonyeau's evidence that Mr. Topp mentioned offshore banking to her as a way of concealing money, what Mr. Topp did with the money after he received it or whether it can be traced is utterly irrelevant.

Additional Submissions

1. Similar Fact evidence

[53] The defence submits that because the Crown has not brought a similar fact application, I cannot consider evidence from count to count. In particular, it notes that none of the employees referred specifically to the transactions in

counts 8, 9, 11, 13, 14, 15 & 16. Therefore, maintains the defence, there is no evidence of the *mens rea* component on those particular counts.

[54] This argument is flawed, for two reasons. First, there was ample evidence from Sherri Docherty (the customs investigator) about the duplicate filings on all those counts to demonstrate the necessary *mens rea*, particularly in light of the wording of s. 151 of the *Customs Act.* The one exception is count 9, which as I have explained above, is evidenced by Topp's failure to file *any* documentation with customs. Second, the evidence of Janes, Cuevas and Arsenault was not confined to specific transactions; it was general evidence about Topp's business practices that revealed a global pattern to all his dealings, and therefore can be applied to all the counts in the indictment.

2. Effect of Mr. Topp's failure to testify

[55] In their submissions both counsel devoted considerable time to the question of what, if anything, should be made of Mr. Topp's failure to testify. I do not find it necessary to address that issue, because the Crown's case alone establishes his guilt well beyond any reasonable doubt. In other words, in finding Mr. Topp guilty I have not used or relied upon his silence *in any manner,* as the Crown's case *on its own* demonstrates his guilt overwhelmingly and there was no other evidence that raised a reasonable doubt.

Summary of Findings

[56] After distilling all the evidence I find the Crown has established beyond a reasonable doubt that Mr. Topp possessed the necessary *mens rea.* He engineered and directed the duplicate filing scheme that resulted in 4.7 million being withheld from customs. I am satisfied beyond a reasonable doubt that with respect to all 16 counts and 463 transactions in question, he knew that duties were owing and deliberately evaded or attempted to evade their payment. The loss cannot be explained away by oversight, carelessness, or inadequate supervision but rather reflects a deliberate and calculated pattern of misrepresentations to customs over a 3 year period. As the company was directly under his control, it is equally liable. I therefore find both defendants guilty of all counts in the indictment.

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Baltman J.

Released: January 16, 2008

COURT FILE NO.: CRIM J(F) 173/05
DATE: 20080116

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

- and –

JOHN PHILLIP TOPP and TOPP CUSTOMS SERVICES INC.

REASONS FOR JUDGMENT

Baltman J.

Released: January 16, 2008

[1] R.S.C. 1985, c.1 (2nd Supp.)

[2] Counts 1-4 relate to the importer **Odyssey Time Inc.** and span successive intervals between March 12, 1999 and December 21, 2001; counts 5-7 relate to **Walbar Canada Inc.** and span successive intervals between November 15, 1999 and December 24, 2001; count 8 relates to **Thinkway Trading Corp.** and covers the period of December 27, 2000 to November 29, 2001; count 9 relates to **Chartright Air Inc.** and covers the period of February 18, 2000 to February 1, 2001; count 10 relates to **Kristofoam Industries Inc.** and covers the period of January 13, 1999 to September 28, 2000; count 11 relates to **Vingo International Inc.** and covers the period of July 21, 2000 to December 24, 2001; count 12 relates to **GGosco Engineering Inc.** and covers the period of January 18, 1999 to November 23, 2001; count 13 relates to **Pucka Computer Corp.** and covers the period of February 29, 2000 to August 15, 2001; count 14 relates to **Canny Marketing Co. Ltd.** and covers the period of July 18, 2000 to November 14, 2001; count 15 relates to **Mitsubishi Canada Ltd.** and covers the period of February 22, 1999 to February 27, 2001; count 16 relates to **First Effort Investments Limited** and covers the period of November 16, 2000 to December 4, 2001.

[3] Exhibit #89, entitled "Charts of Key Evidence" is an extremely helpful summary of the voluminous documentary evidence, and was referred to frequently throughout the trial. Subject to minor arithmetic corrections noted during the testimony of Sherri Docherty , counsel agreed the information contained in the charts is accurate.

[4] This method was used in counts 1-4, 8, 11 and 13-16 and involved the following importers: Odyssey Time Inc.; Thinkway Trading Corp.; Vingo International Inc.; Pucka Computer Corp.; Canny Marketing Co. Ltd.; Mitsubishi Canada Ltd.; and First Effort Investments Ltd.

[5] This method was used in some of the transactions in counts 5 and 10, and involved two importers: Walbar Canada Inc. (count 5) and Kristofoam Industries Inc. (count 10).

[6] This method was used in some of the transactions in counts 5 and all of the transactions in counts 6 and 7, and involved Walbar Canada Inc. exclusively.

[7] This method was used in some of the transactions in count 10 and in all of count 12, and involved Kristofoam Industries Inc. (count 10) and GGosco Engineering Inc. (count 12).

[8] This method was used in count 9 and involved Chartright Air Inc. exclusively.

[9] Although not formally conceded, this point was not challenged in the defence submissions. Should proof be needed, the signature on those 414 B3s appears identical to Mr. Topp's signature on various corporate and licensing documents: *R. v. Malvoisin,* [2006] O.J. No.3931 (C.A.) at para. 4. Moreover, Janes and Gonyeau identified the signature on those B3s as John Topp's. Finally, Janes, Gonyeau, Cuevas and Arsenault testified that B3s were typically given to Mr. Topp for his signature.