

*R. c. Bernard*, Cour supérieure de justice de l'Ontario, 21 avril 2010

### **30 mois pour complot visant à frustrer le public**

M. Bernard a été déclaré coupable de complot visant à frustrer le public et de méfait. Le complot a eu lieu durant l'été, l'automne et l'hiver 2005 ainsi qu'au début de 2006.

M. Bernard et son complice, M. Reid, avaient embauché des personnes – généralement de jeunes femmes – pour acheter des articles de consommation dans de grands magasins tels que Winners et HomeSense en utilisant de la monnaie contrefaite. Ces articles étaient ensuite retournés dans les mêmes magasins, mais à des endroits différents, en échange de monnaie ayant cours légal.

La Couronne a recommandé que M. Bernard reçoive une peine d'emprisonnement de quatre ans, à purger de façon consécutive à celle qu'il purgeait déjà pour des infractions sans lien avec la cause. La Couronne a déposé un affidavit de la Banque du Canada, aux termes de l'article 722 du *Code criminel*, qui soulignait l'importance de la contrefaçon au Canada et ailleurs dans le monde. La Couronne a déclaré que M. Bernard avait joué un rôle central dans le stratagème, puisqu'il était chargé des opérations et qu'il avait la responsabilité du recrutement et de la supervision des jeunes femmes. La Couronne a indiqué qu'une grande quantité de monnaie contrefaite avait été écoulée, ce qui avait rapporté beaucoup d'argent à M. Bernard. Dans son témoignage, une employée a dit qu'il lui arrivait fréquemment de passer 1 000 dollars par jour ou 5 000 dollars par semaine, et que le stratagème avait commencé à l'été 2005 pour se poursuivre jusqu'en janvier 2006. Enfin, la Couronne a invoqué le principe de la parité des peines par rapport à celles déjà imposées à des coconspirateurs.

L'avocat de la défense a allégué que l'accusé devrait recevoir une peine d'emprisonnement de 12 à 18 mois, à purger de façon consécutive à sa peine déjà en cours. L'avocat de la défense a fait valoir la situation personnelle de M. Bernard et a laissé entendre que le tribunal devrait prendre en considération le fait que l'accusé était déjà sous le coup d'une peine, suivant le principe de la totalité des peines.

La juge a examiné les objectifs du prononcé des peines exposés à l'article 718 du *Code criminel* et a conclu que ceux qui devraient prédominer dans la cause étaient la dissuasion générale, en raison des effets d'une telle fraude sur la société, et la dissuasion spécifique à l'égard de M. Bernard. Elle a également considéré la nécessité d'une réadaptation, en tenant compte du jeune âge relatif du contrevenant (l'accusé était âgé de 23 ans au moment de son arrestation, et de 27 ans au moment du prononcé de la peine). Après avoir soupesé les facteurs aggravants et atténuants, elle a imposé à M. Bernard une peine de 30 mois pour complot visant à frustrer le public le public, à purger de façon consécutive à sa peine déjà en cours, et de 30 jours pour méfait, à purger en même temps que sa peine pour complot visant à frustrer le public, mais consécutive à sa peine déjà en cours.

5 IN THE SUPERIOR COURT OF JUSTICE

10 HER MAJESTY THE QUEEN

15 against

GREGORY BERNARD

15 \*\*\*\*\*

16 REASONS FOR SENTENCE

17 GIVEN BY THE HONOURABLE MADAM JUSTICE MOSSIP

18 on

19 April 21, 2010, at BRAMPTON, Ontario

20 \*\*\*\*\*

21 APPEARANCES:

22 D. Maylor, Esq.

23 Counsel for the Crown

24 J. Penman, Ms.

25 Counsel for the defendant

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5           April 21, 2010

REASONS FOR SENTENCE

10           MOSSIP, J. (Orally) :

Mr. Bernard was found guilty by me sitting as a  
judge alone of the following crimes.

- 15
- (1) Conspiracy to defraud the public;
  - (2) Commit mischief by wilfully damaging  
property, namely display cases of The  
Shoe Company.

20           Mr. Bernard is presently in custody on various  
robbery charges and imitation gun charges,  
serving a sentence of seven and a half years. He  
received pre-trial custody credit of 35 months  
for an actual sentence to be served as of August  
25           21, 2007 of four and a half years or 55 months.  
There is no dispute that there is no pre-trial  
custody credit for the offenses I am sentencing  
Mr. Bernard on. Further, the sentence I impose  
will run consecutively to the sentence Mr.  
30           Bernard is currently serving pursuant to s.  
718.3(4)(a).

5

At the sentencing hearing, I heard from Mr. Parreira for the Crown. He is employed by the Bank of Canada and has been for 29 years. He is the senior regional representative of the Bank of Canada since July 2, 2002. As set out in his affidavit sworn February 1, 2010, he is responsible for local delivery of the Bank of Canada's public currency education program and he monitors local developments related to currency and counterfeiting activity.

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Mr. Parreira's affidavit was filed as exhibit two at this hearing. In the affidavit, Mr. Parreira sets out the role of the Bank of Canada in the economic welfare of Canada and the responsibility of the Bank of Canada for the issuance of bank notes. Mr. Parreira then goes on to outline in some detail the prevalence of counterfeiting in Canada and elsewhere in the world and gives a comparison of those figures. There is an outline of the impact of the counterfeits seized in connection with the project "More Money." This operation is alleged to have caused an economic

5 loss of over \$1.7 million. Mr. Parreira candidly admitted in cross-examination that there was no way of determining what percentage of that loss  
10 Mr. Bernard's activities accounted for. Finally, Mr. Parreira sets out the impact of counterfeiting on the direct victims in this case, primarily large box stores, and the impact on society at large, both on the issue of confidence in the monetary system and on increased costs to the Bank of Canada which  
15 trickle down ultimately to taxpayers.

20 Also filed at this hearing were:

- 25
- (1) Mr. Bernard's criminal record as exhibit three;
  - (2) Letter from Mr. Bernard's mother as exhibit four;
  - (3) Letter from Mr. Bernard as exhibit five.

30 Background to the Offenses

The conspiracy to defraud the public that Mr. Bernard was convicted of being part of took place

5 during the summer, fall and winter of 2005 and  
into early 2006. The scheme to pass counterfeit  
money was for someone Mr. Bernard and/or Mr. Reid  
had recruited to use counterfeit money to  
10 purchase consumer items from large stores such as  
Winners or Home Sense as examples. The purchased  
items were then returned to the same store, but  
at a different location, and legal currency was  
given to the persons returning the items. Mr.  
15 Bernard recruited a number of young women to  
purchase the items for him using counterfeit  
money, usually \$50 bills. He would keep the  
receipts and then give the items and the receipts  
20 to the young women to return the items for legal  
money which would be turned over to him.

25 The events related to the mischief charge  
involved Mr. Bernard damaging some property at  
The Shoe Company when one of the women tried to  
return some shoes bought with counterfeit money.

30 Position of the Crown

The Crown's position is that Mr. Bernard should  
serve a sentence of four years consecutive to the

time he is currently serving. The Crown listed several aggravating factors which I will deal with below. The position of the Crown is that Mr. Bernard played a principle role in the scheme, that he is highly intelligent, manipulative and was able to make the scheme work. The Crown submitted that although Mr. Andre Reid and Mr. Bernard were partners in this scheme, Mr. Bernard was the more intelligent person and the one in charge. It was, the Crown submits, Mr. Bernard who primarily recruited and supervised the young women the two men used for their scheme. This major involvement of Mr. Bernard was evidenced by his own words in the wire taps and through the evidence of the young women carrying out the scheme. The Crown submitted that I should rely on the evidence of Mr. Parreira at this hearing as an aggravating factor because of the negative impact on society of the scheme that passed the counterfeit money. As to how much counterfeit money Mr. Bernard put into society, the Crown submitted that one of the women testifying stated she often passed \$1,000 a day or \$5,000 a week and that the scheme went on

5 from the summer of 2005 until January 2006. A  
rough calculation demonstrates that there was a  
lot of counterfeit money passed and a lot of  
money made by Mr. Bernard as a result. The Crown  
set out the sentences of the other major players,  
10 namely Mr. Andre Reid, Mr. Ramanathan and  
Christina Palin in addressing the sentencing  
principle of parity. Lastly, Crown counsel went  
through numerous cases filed in his brief of  
authorities to support his position that a four  
15 year sentence is within the range of other cases  
for similar offenses.

20 Position of the Defence

The position of the defence is that Mr. Bernard  
should receive a sentence of 12 to 18 months, to  
run consecutively to the sentence he is currently  
serving. Defence counsel highlighted the  
25 personal circumstances of Mr. Bernard which I  
will deal with shortly. Defence counsel stressed  
the "totality" issue and submitted that since Mr.  
Bernard is serving a seven and a half year  
sentence, her proposed range of sentence would  
30 result in a sentence of eight and a half to nine

5 years in total. Further, defence submits that I  
should consider, in deciding my sentence, that  
almost all of Mr. Bernard's jail time to date has  
been served in a Provincial institution. In the  
10 Provincial system, Mr. Bernard does not receive  
any of the benefits of being in the Federal  
penitentiary such as life planning, counselling  
and courses, as examples. Defence counsel also  
submitted that I had to consider the issue of  
15 parity with the sentences the other persons  
involved in this scheme received such as Mr.  
Andre Reid, Phillip Reid, Ms. Palin and Mr.  
Ramanathan. Defence counsel, in dealing with the  
20 impact of counterfeiting on society, stressed  
that, as with all crimes, counterfeiting costs  
society in many ways, however the cost the Bank  
of Canada is incurring for education and security  
25 costs is a sign of good governance and good  
banking and cannot all be laid at Mr. Bernard's  
feet. Counsel stressed that based on the graphs  
in the affidavit, there is a downturn in the  
circulation of counterfeit money and, when it was  
30 at its height, it had nothing to do with Mr.  
Bernard's scheme; further that we have no idea

5 what percentage of the project money that was seized can be attributed to Mr. Bernard's scheme.

10 Defence counsel submitted that I should consider that Mr. Bernard did not cause a loss to vulnerable or actual people, but to large scale box stores. In considering Mr. Bernard's record, defence counsel submitted that I should put some perspective to the record in that there were no frauds or history of this kind of crime I am sentencing him for and also that several of the entries are from when Mr. Bernard was a youth.

15 Defence counsel stressed that if I sentence Mr. Bernard to four years on top of the seven and a half years that he is currently serving, it would "crush" Mr. Bernard. Defence counsel submitted that, based on the letters filed as exhibits, Mr. Bernard has learned from the time he has been in custody, that he is anxious to come out and do something with his life, he has a supportive mother and that there is potential for Mr. Bernard, who is still young, to do something with his life. In reviewing the case law she filed, defence counsel stressed that Mr. Bernard, who the evidence shows was a distributor, not a

5 printer, of counterfeit money, is treated differently by the Courts and that four years is outside of the range for a distributor of counterfeit money.

10 Analysis

15 It is helpful to remind myself of the governing principles of sentencing set out in s. 718 of the Criminal Code which lists the objectives a judge should try to achieve in fashioning any sentence. S. 718.1 sets out that it is a fundamental principle of sentencing that any sentence imposed be proportionate to the gravity of the sentence and the degree of responsibility of the offender before me. S. 718.2(b) sets out the principle of parity of sentences to similar offenders for similar offenses and s. 718(2)(c) sets out that, where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. A Court must also always consider the rehabilitative prospects of the offender before them.

5           In this case I am satisfied that the sentencing  
objectives that dominate are:

- 10
- (1) General deterrence with respect to the crime  
of passing counterfeit money, given the  
impact of such a fraud on society;
  
  - (2) Specific deterrence to Mr. Bernard tempered  
by a sentence which must assist in the  
rehabilitation of a relatively youthful  
offender.
- 15

Circumstances of Mr. Bernard

20           Mr. Bernard was born February 11, 1983. He had  
just turned 23 when he was arrested March 13,  
2006. He has been in custody since that date.

25           Mr. Bernard is now 27 years old. Mr. Bernard was  
born in Canada. He was raised in Toronto and  
then moved to Brampton. He was raised by his  
mother and father. His father died of a heart  
attack when Mr. Bernard was 20. He has one  
brother named Chris. Mr. Bernard completed his  
grade 11 credits while in custody so far.

30           According to the letter written to me by Mr.  
Bernard's mother, she spoke candidly of troubles  
Mr. Bernard had as a teenager and then  
particularly after his father died. Mr. Bernard

5 was also the victim of a life-threatening  
stabbing five months after his father's death.  
Both of these events set Mr. Bernard back and he  
went down the wrong path. Mr. Bernard has a  
10 young son, Nashawan, who is five years old. He  
has been in custody for most of his son's life,  
but to the extent he has been able, he tries to  
be in touch with his son and have a role in his  
life. According to defence counsel, this son is  
15 a driving force in Mr. Bernard's life and one of  
the reasons he wants to get his life in order.  
Mr. Bernard's letter to the Court was forthright  
in his desire to have another chance. Mr.  
20 Bernard says he has changed and he wants to get  
out of custody to make amends to his father's  
memory, his mother and, most importantly, his  
son.

### Aggravating Factors

The aggravating factors in this matter are:

- 30                   (1) This was a planned and well-organized scheme to defraud the public which extended over a considerable period of time and over a large geographic area;

- 5                             (2) There were victims of the crime, namely the large stores;
- 10                            (3) Mr. Bernard played a principal role in the scheme and how it was organized and carried out;
- 15                           (4) Mr. Bernard recruited young women, some he picked up from high school, and put them at risk of getting criminal records. Some did get criminal records for their involvement;
- 20                           (5) The motivation for the scheme was greed. Although it is not clear how much money Mr. Bernard made from the scheme, it is clear that, at its height in the fall/winter of 2005, there was a considerable amount of money made from the scheme;
- 25                           (6) Mr. Bernard does have a significant criminal record. In addition to his record filed as exhibit three, on June 14, 2007, Mr. Bernard was convicted of three counts of robbery, for which he received in August a sentence of six and a half years and two counts of using an imitation firearm for which he received one year for one count to run consecutively to the robbery sentence and one year consecutive but concurrent to the other use imitation firearm for a total of seven and a half years that, as I have said, he is currently serving;
- 30                           (7) Mr. Bernard's record goes back to 1997 when he was a youth up to 2004 and includes offenses of violence, theft and robbery, along with failures to comply.

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Mitigating Factors

The primary mitigating factors are as follows:

10 (1) The relative youth of Mr. Bernard at the time of the offenses;

15 (2) Mr. Bernard has expressed remorse in his letter to me and I accept that expression as genuine, notwithstanding the timing of it;

20 (3) Mr. Bernard has had some difficulties in the past as expressed by his mother and himself. He appears to have some insight into how those difficulties affected his choices and appears to take responsibility for his choices;

25 (4) I noted that there was no specific evidence presented at this hearing that Mr. Bernard was kept in the Provincial system unwillingly. I have no evidence that he consistently requested to go to a Federal institution to serve his sentence while awaiting trial on the other charges including the charges before me. The fact that Mr. Bernard has primarily been at a Provincial institution since his arrest in 2006, although considered by me, has not therefore had a great impact on my sentence.

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5                   Range of Sentence/Parity/Totality

The cases filed by both counsel are helpful, but, as always, it is clear that sentencing is unique to the facts of the case before me and the offender before the Court. It is a principle that arises from those cases that distributors of counterfeit money generally receive lesser sentences than the printers of counterfeit money.

15                  The issue of parity is a bit difficult to deal with in this case on a pure numbers of years sentenced analysis. The other persons involved in the conspiracy, who all pleaded guilty, all received various sentences from three years for Andre Reid to a conditional sentence for Ms. Palin, but there are so many factors that went into those final sentences, including other offenses, forming part of the whole package-- guilty pleas, cooperation with the police and testifying at trial--that it was not all that helpful to me.

30                  With respect to the issue of totality, as I understand the facts, on August 21, 2007 Mr.

5                   Bernard was sentenced to seven and a half years  
in custody for various offenses. He received  
pre-trial credit of 35 months. Therefore, on  
June 14, 2007, his actual sentence to be served  
was 55 months or four years and seven months.  
10                  That is his sentence to be served that day, not  
seven and a half years. By my rough calculation,  
as of today he has served 32 months of that  
sentence and there remains, not considering  
15                  mandatory release issues, a remaining sentence of  
approximately 23 months. My understanding of the  
case law (see R. v. Forst) is that I consider the  
total sentence to which Mr. Bernard was subject  
20                  that remains unexpired at the time that I impose  
my sentence when considering the totality issue.

Disposition

25                  I have considered all of the above including the  
fact that I think there is still good reason to  
be hopeful for Mr. Bernard. I do not give up on  
Mr. Bernard and I hope he is genuine in his own  
30                  hope to make a productive life for himself and  
his family when he leaves custody. Mr. Bernard  
does have family support which will be very

5 important for him in the future. I have  
therefore considered the rehabilitation prospects  
of Mr. Bernard as positive in fashioning my  
sentence. I have also considered the seriousness  
of the offence of the conspiracy to defraud the  
public, the elaborate scheme involved, Mr.  
Bernard's role and Mr. Bernard's criminal record.  
Lastly I have considered the issues of the issues  
of parity and the principle of totality to ensure  
that Mr. Bernard's sentence is appropriate and  
not excessive, given the remainder of the  
sentence he has left to serve.

20 Considering all of the factors and the principles  
of sentencing, I find a fit and just sentence in  
all of these circumstances would be as follows:

- 25 (1) 30 months in the penitentiary on count one  
to run consecutively to the sentence Mr.  
Bernard is currently serving;
- 30 (2) A 30 day sentence on count four to run  
concurrently with the sentence imposed on  
count one and consecutively to the sentence  
Mr. Bernard is currently serving.

5  
I hereby certify the foregoing to be a  
true and accurate transcription of my  
verbatim reporting of the proceedings  
to the best of my skill and ability.

10  
Catherine A. Champagne

Catherine A. Champagne  
Certified Verbatim Reporter (CVR).

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