

The Factual Overview

[5] The facts were provided by way of an Agreed Statement of Facts. It may be summarized as follows:

- a. Between January 2004 and November 2018, Mr. Rizzello was employed by the City of Toronto (the "City") as a support assistant clerk at the 2700 Eglinton Avenue West, Provincial Offences Courthouse. His duties included transcript support, court support, intake processing, file reopening and appeal extension processing, front line customer service and judiciary support.
- b. As a trusted government employee, Mr. Rizzello had full access to court documents, such as informations, as well as the ICON system in which dispositions on each Provincial Offences Act ("POA") file are entered.
- c. In and around 2010, Mr. Rizzello developed a gambling addiction. By late 2016, he had also developed a cocaine addiction. In early 2017, Mr. Rizzello's various addictions forced him to take time off work to attend rehab. By July 2017, Mr. Rizzello completed rehab and was back at work. He had taken on a significant amount of debt due to his time off work and the costs associated with rehabilitation.
- d. In January 2018, Mr. Rizzello was approached by Mr. Benito Bennardo, a licensed paralegal and former co-accused in this matter. Mr. Bennardo asked Mr. Rizzello if he would be willing to assist other paralegals to have POA applications brought before specific Justices of the Peace, who it was believed would be more likely to grant their applications. Mr. Rizzello agreed to assist but did not engage in discussions with any of the paralegals or Justices of the Peace regarding those applications. Mr. Rizzello did not receive any compensation from anyone for his assistance. Mr. Rizzello was further unaware of the nature of, or eventual outcome of any of those applications.
- e. Mr. Bennardo then asked if Mr. Rizzello would be willing to assist two other paralegals with some of their POA files. A meeting was arranged between Mr. Rizzello, Mr. Bennardo and the two other paralegals at a coffee shop near the 2700 Eglinton Avenue West courthouse. It was at this meeting that the other paralegals offered to pay Mr. Rizzello to assist in a "ticket fixing scheme". Mr. Rizzello would alter dispositions of their clients' POA matters.
- f. Mr. Rizzello did not know anything specific as far as any arrangement between either Mr. Bennardo and the other paralegals, nor of any arrangement between the paralegals and their respective clients. Mr. Rizzello nonetheless agreed to participate in the scheme, mainly because he needed the money and because he believed that he would not get caught due to his long-standing tenure at the City.

- g. Ultimately, Mr. Rizzello assisted the two paralegals by changing the dispositions on a handful of POA matters, receiving approximately \$50 each time. Mr. Rizzello was always paid in cash by Mr. Bennardo on behalf of the paralegals.
- h. In or around April 2018, Mr. Bennardo again approached Mr. Rizzello on behalf of another paralegal, Mr. Benito Zappia. He was seeking similar services provided by Mr. Rizzello to other paralegals. At the time, Mr. Zappia was the owner of "We Win or It's Free", a paralegal office specializing in POA offences.
- i. A meeting took place between Messrs. Bennardo, Zappia and Rizzello. All parties agreed to participate in a new "ticket fixing scheme."

[6] Although he was not privy to all communications among the other parties, Mr. Rizzello generally understood the scheme to work as follows:

- a. Mr. Zappia would charge a "premium" retainer fee to clients who wanted their charges "guaranteed to be dismissed", as opposed to potentially having their points reduced or charges amended on a guilty plea. Many of those clients faced serious POA charges ranging from careless driving to cell phone infractions and speeding.
- b. For any client who paid the "premium" retainer fee, Mr. Zappia would, unbeknownst to his client, schedule a trial at 2700 Eglinton Avenue West.
- c. Someone, usually Mr. Bennardo or Mr. Zappia, would advise Mr. Rizzello in advance of the client's trial date.
- d. On the trial date, nobody would appear for the defence. This resulted in a "conviction in absentia" on the official court record. Having the client convicted in absentia was to ensure that the file would attract minimal attention and to distance any particular paralegal from the court record.
- e. Mr. Rizzello would ensure that the original conviction was erased in favour of an acquittal or dismissal of charges. Mr. Rizzello did this by physically forging the writing on the information or by manually going into ICON system to erase the conviction and replace it with an acquittal or dismissal. The client would never receive a conviction notice from the "conviction in absentia" proceeding and thus would not be aware that a trial date had been set and that a trial had taken place. Mr. Rizzello would receive approximately \$50 cash per file.
- f. Finally, Mr. Zappia would advise his client that the charges had been dismissed in accordance with the "premium" retainer.

- g. Mr. Rizzello occasionally corresponded by phone with Mr. Zappia as part of the scheme. However, he more frequently dealt with Mr. Bennardo, who usually acted on behalf of Mr. Zappia.¹
- h. Mr. Rizzello occasionally corresponded directly with Ms. Rosa Zappia (Mr. Zappia's secretary during the relevant time) via phone in relation to Mr. Zappia's target matters that were appearing in court. Mr. Rizzello believes that Ms. Zappia was both aware of the scheme and actively assisting Mr. Zappia.²
- i. Although the majority of payments were delivered personally to Mr. Rizzello by Mr. Bennardo, Mr. Rizzello also attended at Mr. Zappia's office to pick up cash payments on multiple occasions.³

[7] On at least one occasion in Mr. Zappia's office, Mr. Rizzello observed different envelopes containing cash. Mr. Zappia implied that he had similar "ticket fixing" schemes running out of various POA courthouses in Ontario, although Mr. Rizzello did not ask for particulars.

[8] Mr. Rizzello's banking records reveal 19 separate cash deposits totalling at least \$7,000 during March – June 2018. In all cases, the money was quickly transferred out or withdrawn from Mr. Rizzello's bank account.

[9] In April 2018, the City received an anonymous tip that led them to begin a lengthy investigation of Mr. Rizzello's activity. The investigation involved the review of hundreds of audio court transcripts, months of employee records and hundreds of court files. It took the City months to determine the full extent of Mr. Rizzello's transgressions. As a result, the scheme lasted until mid-June 2018, when the City suspended Mr. Rizzello pending further investigation.

[10] By late August 2018, the City had located all the affected files and reinstated the convictions for all of the clients of Mr. Zappia, whose dispositions had been altered by Mr. Rizzello. They then began sending conviction notices to those individuals who had previously been told they were exonerated.

[11] In September 2018, City management brought Mr. Rizzello in for an audio-recorded interview that spanned four days. Mr. Rizzello was accompanied by his union representative. Mr. Rizzello readily admitted his role in altering each of the 100+ impugned dispositions but denied that he received any financial gain or that any other parties were involved. In denying

¹ Phone records obtained by Toronto Police reveal approximately 1,900 phone calls and/or text messages between Mr. Rizzello and Mr. Bennardo during April-June 2018. Similar phone records reveal approximately eight phone calls and/or text messages between Mr. Rizzello and Mr. Zappia during April-June 2018. The same phone records further show more than 590 phone calls and/or text messages between Mr. Zappia and Mr. Bennardo during April-June 2018.

² Mr. Rizzello is unable to recall which phone number Ms. Zappia used for their communication during that time frame.

³ That is also where Mr. Rizzello initially met Ms. Zappia.

that he had conspired with other individuals such as Mr. Zappia and Mr. Bennardo, Mr. Rizzello was untruthful to management. Similarly, in denying that he received money to carry out his role in the scheme, Mr. Rizzello was untruthful.

[12] In November 2018, the City officially terminated Mr. Rizzello and handed over its entire investigative file to Toronto Police Service.

[13] In January 2022, Mr. Rizzello, through his counsel Mr. Gerald Yasskin, approached the Crown regarding potential resolution. It was agreed that Mr. Rizzello would first need to be interviewed by 12 Division investigators before the Crown would engage in any substantive resolution discussions. It was also agreed that any statement provided by Mr. Rizzello would not be used as evidence against him at his trial. However, the Crown and police maintained the right to use Mr. Rizzello's statement against him for perjury or related charges.

[14] On January 29, 2022, Mr. Rizzello attended 12 Division and provided a sworn video-recorded statement. Mr. Rizzello essentially confessed in greater detail than in his original 2018 statement to City management. He advised that he received payment for taking part in the scheme and that he acted with various co-conspirators as detailed above in the Agreed Statement of Facts.

[15] Mr. Rizzello does not presently recall the names or any other details of the clients of Mr. Zappia's whose dispositions he altered. He never had any personal contact with the clients. However, Mr. Rizzello accepts the Crown's list of individuals attached to the Agreed Statement of Fact, as being true and accurate based on the disclosure provided to all parties.

[16] Mr. Rizzello also accepts that, in fraudulently altering those dispositions, he deprived the City of at least \$15,000 in fines. The City also expended significant court resources to initially prosecute the various matters under false pretenses, and to then investigate the scheme. The City will further expend resources, as many of the affected clients have since filed "reopening" applications to have their matters tried legitimately.

Background of Mr. Rizzello

[17] Mr. Rizzello's background was provided in a pre-sentence report and during the submissions of counsel. It may be summarized as follows:

- a. Mr. Rizzello was born in Toronto.
- b. He completed high school. He has also completed two college programs: police foundations and business management.
- c. He was employed as a court clerk from 2004 to 2018.
- d. Mr. Rizzello has been employed with a landscaping company since 2021. He was hired as a foreman for their landscaping crew. He was described, by his employer, as having a positive attitude and professional communication skills. He is currently earning \$32.00 per hour.

- e. Mr. Rizzello describes his upbringing as turbulent. His father was a heavy drinker and drug user. He commonly was violent towards members of the family.
- f. Mr. Rizzello describes that he was sexually abused by his brother when he was approximately 9 years of age. At the time they shared a room. The abuse stopped after they discontinued sharing a room. He reported this abuse to his parents when he was 21 years of age, but no action was taken.
- g. Mr. Rizzello has been married for over 21 years. He is described as a “supportive husband”.
- h. As a result of Mr. Rizzello’s addiction to cocaine, there are no drugs and no alcohol present in the house. His wife reports that he attends Cocaine Anonymous and that he actively participates. He has also attended individual counseling to help the thought patterns that underscored his behaviour.
- i. Mr. Rizzello and his wife have a nine-month-old baby boy. Mrs. Rizzello is on maternity leave until January 2023.
- j. Mr. Rizzello reports that his alcohol consumption commenced in 1993 and escalated thereafter. In 1996 he started using cocaine and became a daily drug user. Gambling became an issue. He went into debt and committed the offences before the Court in an effort to reduce some of his debt.
- k. Mr. Attila Bosnyak is Mr. Rizzello’s Cocaine Anonymous sponsor. He has known Mr. Rizzello for approximately six years. He reports that Mr. Rizzello is very committed to the program. He attends regularly and speaks to new recruits about the effectiveness of the program.
- l. Mr. Imran Wali has known Mr. Rizzello for approximately 20 years. He describes Mr. Rizzello as supportive and understanding. He believes that Mr. Rizzello understands the consequences of his actions and that he is remorseful.
- m. The author of the pre-sentence report states, “The transformation that Mr. Rizzello has managed to achieve is nothing short of miraculous and he should be proud of his achievements”.
- n. Mr. Rizzello expressed remorse at the sentencing hearing.

The Law

[18] The following is a summary of the legal principles applicable.

a. General Principles

[19] In determining an appropriate sentence for Mr. Rizzello, regard must be had to the sentencing objectives in s. 718 of the *Criminal Code*.

[20] 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;
- b. to deter the offender and other persons from committing offences;
- 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 or to the community.

[21] The sentencing judge must also have regard to the following: any aggravating and mitigating factors, including those listed in ss. 718.2(a)(i) to (vi); the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b)); the principle that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh (s. 718.2(c)); and the principle that courts should exercise restraint in imposing imprisonment (ss. 718.2(d) and (e)).⁴

[22] Section 742.1 provides for the imposition of a conditional sentence. It states that if a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community subject to certain conditions. One of those conditions is that the court must be satisfied that "the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2".

b. The Range

[23] The cases provided by counsel demonstrate that the sentence proposed is within the range. The cases may be summarized as follows:

⁴ See *R. v. Nur*, 2011 ONSC 4874, 275 C.C.C. (3d) 330, aff'd 2013 ONCA 677, 117 O.R. (3d) 401, aff'd 2015 SCC 15, [2015] 1 S.C.R. 773

R. v. Dennis:⁵ Ms. Dennis pleaded guilty to accepting a sum of money corruptly with intent to interfere with the administration of justice. Ms. Dennis was a file transfer clerk in the Crown Attorney's office. She had agreed to remove video evidence from a prosecution file for a person accused of impaired driving and refusing to blow in exchange for \$2,400. The mitigating factors included her lack of criminal record, guilty plea, her role as a mother and partial breadwinner, and the support and stability provided by her family. The aggravating factors included the fact that the offence involved a breach of trust in the criminal justice system, Ms. Dennis' tendency of dishonesty, her lack of submission to the criminal process, and her inability to accept responsibility for the seriousness of her conduct. Whealy J. sentenced her to 12 months' imprisonment, rejecting a joint submission seeking a conditional sentence.

The Court of Appeal for Ontario overturned Ms. Dennis's sentence and imposed a conditional sentence of 12 months.⁶ Cartzman J.A. concluded that the sentencing judge's reasons for departing from the joint submission reflected errors in principle.

R. v. Gyles:⁷ Mr. Gyles was a former municipal councillor who instigated two bribes from constituents, promising to exercise his influence to help them with rezoning applications. The repetition of the offence and length of time and planning involved were aggravating factors. He was 59 years old at the time of his sentencing and suffered from some health problems: diabetes and hypertension. He had no previous criminal record. He showed little, if any, remorse. The mitigating factors were his health problems, his lack of a criminal record, and his long record of public service. Mr. Gyles was convicted of breach of trust and municipal corruption. Wein J. sentenced Mr. Gyles to two-and-a-half years' imprisonment.

R. v. Gonsalves-Barriero:⁸ Mr. Gonsalves-Barriero pled guilty to three counts of breach of trust by a public officer. Mr. Golsaves-Barriero was an immigration officer who demanded money from three victims in exchange for help with their immigration applications. He was 55 years old and an immigrant himself. He had exploited a particularly vulnerable group of people who had endured a significant emotional and financial impact. He took initiative in soliciting the bribes. The Court also took into account that his actions placed the reputation of the screening process at risk. The mitigating factors were his lack of a criminal record, his guilty plea, and the fact that he had already incurred some punishment from the media attention drawn to the case. He had also made restitution to the victims. Tuck-Jackson J. sentenced him to 44 months' imprisonment.

R. v. Morency:⁹ Mr. Morency pled guilty to two counts of breach of trust by a public officer and to one count of bribery. He had used his position as a prosecutor to decline to institute proceedings against a long-time acquaintance and had also undertaken to

⁵ [2001] O.J. No. 1983 (S.C.J.).

⁶ [2002] O.J. No. 237 (C.A.).

⁷ [2003] O.J. No. 6249 (S.C.J.), aff'd [2005] O.J. No. 5513 (C.A.).

⁸ [2012] O.J. No. 4369 (S.C.J.).

⁹ [2012] Q.J. No. 4860 (Q.C.), aff'd 2012 QCCA 1836

help a friend's son avoid paying a fine. The mitigating factors included his guilty pleas; lack of criminal record; remorse and apology; acknowledgement of harm; demonstrated social reintegration efforts; the punitive effect of the professional humiliation and other consequences he had already suffered; a lack of a risk of re-offending; and positive reviews from his work supervisors. The aggravating circumstances included the sophistication, repetition, and premeditation of the offences; and the fact that the offences were committed during his duties as a criminal and penal prosecutor, which caused harm to the administration of justice and to the profession. Morand J.C.Q. sentenced him to a total sentence of three years' imprisonment.

R. v. Serré:¹⁰ Ms. Serré was convicted of 27 offences relating to fraud on the government and breach of trust by a public officer. Ms. Serré was a supervisor with Citizenship and Immigration Canada who participated in a joint scheme with another employee to accelerate applications and give positive results to certain immigrants to Canada for payment. She made a total of less than \$26,000 through this scheme. The mitigating factors included her lack of criminal record; the profound impact the charges and convictions had had on her life and ability to find employment; bail conditions; the extensive media coverage of the offence; support from friends and family; and the lack of evidence that Canada's security had actually been jeopardized. The aggravating factors included the breach of trust; the vulnerability of the victims involved; her supervisory position within the office; her continued and accelerated criminal activity after criminal investigations were launched; the high degree of planning and confidence involved in carrying out the scheme; the duration of the criminal activity which took place over a year-and-a-half; and that the offence was committed for personal gain. Aitken J. sentenced her to four years' incarceration followed by six months' probation.

R. v. Petrolo:¹¹ Ms. Petrolo was convicted of breach of trust of a public official and attempt to obstruct justice for improperly using her position as a paralegal prosecutor to influence the outcome of provincial offences prosecutions. Ms. Petrolo had arranged for favourable dispositions of traffic tickets for friends of her boyfriend. She was 37 years old. Ms. Petrolo's lack of criminal record and otherwise good character were considered mitigating factors, though the Court noted that they had a diminished effect, since they were very qualities that allowed her to be in a position of trust. Other mitigating factors included the collateral consequences of media coverage and job loss, as well as remorse. The aggravating factors were found in the offences themselves: she breached trust placed in her and attempted to obstruct justice. The Court noted that Ms. Petrolo's case was distinguishable from many similar cases because she did not do it for financial gain. However, Harris J. concluded that a conditional discharge was not appropriate, as it had only been granted in cases where the accused person had pled guilty. Harris J. imposed a conditional sentence of three months.

Ms. Petrolo appealed her conviction and sentence to the Court of Appeal for Ontario. On the sentence appeal, she argued that the sentencing judge had unreasonably

¹⁰ 2013 ONSC 1732, [2013] O.J. No. 1437

¹¹ 2020 ONCJ 122, aff'd 2021 ONCA 498, leave to appeal refused, 2021 CarswellOnt 18535 (S.C.C.).

distinguished cases where a conditional discharge had been granted by finding that they involved guilty pleas. Watt, Pardu, and Trotter J.J.A. for the Court of Appeal for Ontario dismissed her appeals, commenting that the weight assigned to the guilty pleas in those cases was a matter of discretion in those cases, and that Ms. Petrolo had not pleaded guilty.

[24] Based on these legal principles and precedents, I will now turn to a consideration of the fit sentence.

The Fit Sentence

[25] In considering the fit sentence for Mr. Rizzello, I find the following to be the aggravating factors:

- a. Mr. Rizzello was in a position of trust. He used his employment and seniority to commit a fraud on the City.
- b. It was Mr. Rizzello's good character that permitted him to commit these offences.
- c. He accepted money to divert the course of justice, a significant breach of trust.
- d. This was not a spontaneous offence. It was well planned.
- e. There were repeated offences over a significant period of time (eight weeks).
- f. The number of paying customers increased over time, once it was confirmed that Mr. Rizzello could provide the results promised.
- g. Mr. Rizzello was part of an enterprise driven by greed.
- h. Mr. Rizzello manipulated the results of at least 103 POA matters, earning \$7,000 for doing so.
- i. Mr. Rizzello cost the City financially as a result of the investigation they were required to conduct and the cost of properly prosecuting the matters that were improperly disposed of.
- j. Because of the position of trust occupied by Mr. Rizzello, the corruption was difficult to detect. It was made even more difficult because Mr. Rizzello misled the initial investigation into this matter.

[26] I find the following to be the mitigating factors:

- a. Mr. Rizzello pleaded guilty.
- b. Mr. Rizzello is a first offender.

- c. Mr. Rizzello appears to be a person of good character.
- d. He suffered a difficult childhood.
- e. Mr. Rizzello was addicted to cocaine and gambling. He has dealt with these addictions responsibly. He has been successful at rehabilitation and has set an example for others.
- f. Mr. Rizzello has already suffered some of the consequences of his acts. He has lost a job that provided a sound future for he and his family.
- g. Mr. Rizzello's circumstances have been published in the newspaper. As such, he has suffered public embarrassment and disgrace.
- h. When Mr. Rizzello did cooperate with the police, he provided a significant statement outlining the roles of other participants in the scheme.
- i. Mr. Rizzello has the support of his spouse.
- j. Mr. Rizzello is the father of a small child.
- k. Mr. Rizzello has secured employment since his arrest. He appears to have made a significant and positive impact on the business. He is a valued employee.
- l. Mr. Rizzello expressed remorse for his conduct.

[27] In this case, there is a difficult balancing of the goals of denunciation, deterrence, and rehabilitation. This is particularly so when dealing with first offenders such as Mr. Rizzello. However, a sentence must be imposed that deters others who might be tempted to use their unique and trusted position to interfere in the administration of justice for financial gain.

[28] I am satisfied that Mr. Rizzello is not at risk to reoffend. However, I am not satisfied that the imposition of a conditional sentence would comply with one of the fundamental purposes of sentencing: to deter others from committing offences. Mr. Rizzello's sentence must be denounced: public officials in positions of trust must be severely dealt with in the event they breach their trust. As stated in the case of *R. v. Gyles* at para. 28:

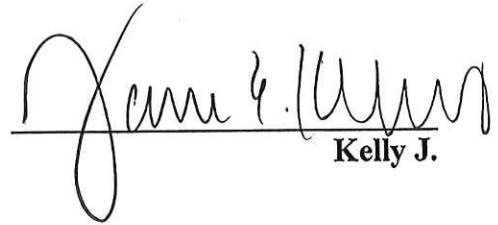
In general, it has been held that a serious breach of trust requires a sentence of incarceration:

... the crimes are serious. No violence, of course, but on the other hand, they involve the underhanded deceit of a person who, holding a position of confidence in the public service, undermines the system for personal gain. Such behaviour, in my view, calls for deterrence, ... which would give rise to a term of imprisonment. To hold otherwise would, in my view bring the

administration of justice into disrepute. *R. v. Robillard*
(*supra*) at 273-274.

Conclusion

[29] For the abovementioned reasons, Mr. Rizzello is sentenced to two years less one day. He shall serve his sentence in the reformatory.


Kelly J.

Released: October 13, 2022

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COURT FILE NO.: CR-20-50000262-0000
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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HIS MAJESTY THE KING

- and -

**FRANCESCO RIZZELLO,
BENITO ZAPPIA and ROSA ZAPPIA**

**REASONS FOR SENTENCE
FRANCESCO RIZZELLO**

Kelly J.

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