

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
HER MAJESTY THE QUEEN)
) Tim Zuber and Joseph Perfetto,
- and -) for the Crown
)
JOSEPH FONTANA)
)
Defendant) Gordon D. Cudmore and Jim Dean,
) for the Defendant
)
)
) HEARD: May 26, 27, 28 and 29, 2014

REASONS FOR JUDGMENT

THOMAS J.

- [1] On June 4, 2005 Joseph and Vicky Fontana's son Michael was married. There was a reception at the Marconi Club of London for approximately 260 people. The issue in this trial is quite simply whether Mr. Fontana forged a contract so that the Government of Canada paid \$1,700 which Fontana knew was ultimately credited against the reception balance owed to the Marconi Club. The three counts on the indictment before me of breach of trust, fraud and uttering a forged document are the result of an RCMP investigation into that payment.

THE EVIDENCE

- [2] Joseph DiPietro was the general manager of the Marconi Club during the period of time in question. He booked all the events that were to be held in the four banquet rooms of

the Club. He completed the provisional function contracts, collected deposits, arranged the menus and staff.

- [3] On October 20, 2004 Vicky Fontana met with DiPietro and booked two halls for her son's wedding to be held on June 25, 2005. There was a mistake made and the event was shown as having a date of 2004, but being a physical impossibility, it was corrected to show the date some eight months hence. It seems likely this error was caught and later corrected by DiPietro's assistant.
- [4] Vicky Fontana signed the contract. The purpose of the booking was shown as "wedding" and the Fontanas paid a non-refundable deposit of \$1,700 by personal cheque which was deposited by the Marconi Club on October 25, 2004.
- [5] Importantly, the contract number 2661 appears at the top of the document. Mr. DiPietro knew Joseph Fontana. They had been friends for years. He testified that Mr. Fontana booked events at the Marconi Club on a regular basis. He knew Fontana was a club member.
- [6] The provisional contract came in triplicate. DiPietro kept the white or top copy, his assistant Marcie got the second or yellow copy, the customer, in this case the Fontanas, were to receive the third or pink copy. It appears there was some sort of mix up with the copies because the RCMP as a result of a series of search warrants executed at the Marconi Club located and seized the white and pink copies but not the yellow.
- [7] At some point the wedding date was changed and a copy of contract 2661 shows changes from an event date of June 25, 2005 to June 4, 2005.

- [8] DiPietro recalled speaking to the Fontanas about changing the date. He added Mr. Fontana's fax number to the contract and one of the two rooms rented was removed as unnecessary or unavailable.
- [9] It is clear that the wedding reception went off as scheduled and DiPietro prepared an invoice dated June 4, 2005. The invoice has been produced and accounts for food, drinks, hall and other rentals. The document has some deletions and changes which DiPietro explained came about as a result of a reduction in guests from 266 to about 260.
- [10] The amount owing was reduced by the \$1,700 deposit already paid. The final total was \$19,904.65. It was further reduced to \$18,900.00. DiPietro says it was likely at the direction of the Board.
- [11] That final reduced sum was paid by a series of cheques. Two cheques from the Noskos (the family of the bride), one from Mr. Fontana's mother, one from Mr. Fontana himself and then a \$1,700 cheque from the Government of Canada. All cheques were deposited by the Marconi Club on July 18, 2005. It was the Club's practice to hold cheques until the invoice was completed and the cheques accumulated.
- [12] The Government of Canada cheque stub was recovered showing a date of April 6, 2005 and reciting an invoice number 2661 for Joe Fontana M.P. Mr. DiPietro did not recall speaking with Mr. Trovato, the president of the Club, about the \$1,700 government cheque, or the fact that it was suggested it was for another event.
- [13] The payment of \$1,700 from the Government of Canada was made as a result a reimbursement memo completed by Kristy Cairns who was Fontana's parliamentary

assistant in Ottawa. She forwarded a memo (letter) dated March 24, 2005 to Michel Champagne who was an accounting officer for financial services at the House of Commons.

- [14] The memo requested payment of enclosed bills directly to Mr. Fontana. With the memo was recovered a yellow post-it note in Mr. Fontana's handwriting which states

Please submit

Miscellaneous Constituent Reception

Make Payable

Along with the memo went a copy of provisional contract number 2661 from the Marconi Club.

- [15] It was Cairns' evidence that her memo called for reimbursement directly to Mr. Fontana and that he would have reviewed and approved the claim, again, before it was submitted. She has no recollection of the yellow post-it note. Mr. Champagne processed Mr. Fontana's expense and reimbursement claims along with those of approximately fifty-one other M.P.'s at the time.

- [16] Contract number 2661 forwarded to Champagne was now a distinctly different document.

- [17] The contract bears a fax stamp at the top which indicates Mr. Fontana's home telephone number and a date of transmission of March 22, 2005, the time 8:45 and the name "Joe Fontana M.P."

- [18] The event date has been changed so that the month of June is removed and February is added in original black ink. Across the top is written "Original" in blue ink with

quotation marks. The names of the parties to the contract have been amended to add "M.P." besides the name Joe Fontana.

- [19] The rental paragraph in the body of contract has a date change to February (instead of June) and 2004 instead of 2005 (both in original black ink).
- [20] The purpose "wedding" is removed and "reception" added, again in black ink. Finally the signature of Vicky Fontana is mostly obliterated and over that signature is the signature of Joe Fontana in original blue ink.
- [21] Michel Champagne confirmed that he processed the claim from Joe Fontana M.P. that is represented by the Marconi Club contract. He testified that, while not a fully original document, often claimants wrote original across the top of a photocopy if they had lost the original. Use of an original was important and he would have checked in this case to ensure it had not been previously paid as one of the approximately 90,000 claims he processes annually. He has no recollection of the post-it note.
- [22] Champagne agreed that, pursuant to the written direction, the \$1,700 should have been reimbursed to the M.P. directly but likely due to an oversight by a staff member the cheque was mailed to the Marconi Club reciting the contract number (consistent with that of the Fontana wedding). In addition he agrees that the computer record of the reimbursement, notes the invoice date as February 25, 2005 and not 2004 as in the contract but suggests it was likely year corrected to reflect the impossibility of scheduling an event eight months after it had taken place.

- [23] Champagne explained that expenses for any given fiscal year needed to be processed by March 31st or within a grace period of a few weeks thereafter or they would count toward the M.P.'s budget for the next fiscal year.
- [24] The Marconi Club's deposit of the cheque against the balance owed for the wedding raised the suspicions of an informant whose information found its way to the RCMP via the Parliamentary Board of Internal Economy and it sparked an investigation.
- [25] On November 21, 2012, Constable Shawn Devine of the RCMP arrested Mr. Fontana. He conducted a meandering interview of almost three hours, much of the time spent attempting to ingratiate himself to his arrestee. Mr. Fontana was shown the documents particularly the changed contract and his response to the questioning can be summarized as follows:
1. he did not recollect ever seeing the document before;
 2. he questioned whether it contained his signature as the "J" looked different;
 3. he had booked numerous receptions at the Marconi Club; and
 4. the dates did not make sense to him.
- [26] Mr. Fontana testified. He provided evidence confirming the contract for Michael's wedding reception but proclaiming much of the planning for that event was handled by his wife.

- [27] He provided an explanation regarding the altered form of contract 2661. It was his evidence that in early February, 2005 he learned that the then Minister of Finance, Ralph Goodale, would be delivering a speech to the London Chamber of Commerce. Goodale had just tabled his first budget and in the days of a fractitious minority government this was an important political event for the Liberal Party in the area.
- [28] He believed a reception was in order and he recognized that Goodale's formal speech would be on Saturday February 26th. Mr. Fontana testified that he called Mr. Trovato, the president of the Marconi Club, and when it was confirmed the Club was available, he booked the big hall for a reception on Friday evening, February 25, 2005. It was his evidence that that was the only step he took. Others on staff took over and volunteers would have been responsible for getting the people out.
- [29] Unfortunately, as it turned out, Goodale could not attend in London until Saturday and the Friday reception at the Marconi Club had to be cancelled. Instead, he said, the event was reorganized as a breakfast at Joe Cool's on Saturday morning and others were instructed to make calls to redirect attendees to the Saturday morning event. It was his evidence that the change of plans was communicated only two to three days before February 25th.
- [30] The existence of the planned Goodale reception was confirmed by Elizabeth Cormier who was at the time the Liberal riding association president for the riding of London-Fanshawe. She confirmed the proposed Marconi Club event for February 25 and then the rescheduled breakfast at Joe Cool's. While Ms. Cormier has no knowledge of the

booking details she did recall the short turnaround time and the need to make calls to advise of the rescheduled event.

[31] There is no dispute that Mr. Goodale spoke in Toronto on Friday February 25, 2005 and then in London the following day.

[32] It was Mr. Fontana's evidence that he always felt that the Marconi Club was owed a deposit which in the normal course would have been non-refundable, even if the event was cancelled.

[33] He testified that likely on March 22, 2005 he sat down at home and decided to create a document that would allow the Marconi Club to be paid the money it was owed. Contract 2661 was handy and so he took it and made the alterations I have already discussed. He agreed in his evidence he likely used white-out and an eraser and then wrote over it. He photocopied it and faxed the new "original" document to his Ottawa office for reimbursement. It seems certain he saw it again in Ottawa. The writings on the contract are in original ink.

[34] Mr. Fontana believes the post-it note was likely attached by him to the contract in Ottawa directing it to be debited to the miscellaneous category of his budget as an M.P. He testified that the post-it was meant to direct payment of the \$1,700 to the Marconi Club despite the memo which requested that all amounts claimed were to be paid directly to him. It was his evidence that he chose the sum of \$1,700 as owing simply because it was the amount of the deposit paid for his son's reception.

- [35] His evidence confirmed there was no written document with the Marconi Club for the February 25, 2005 reception and no one from the Club ever requested a payment. It was his evidence that the Club improperly credited the payment against Michael's wedding (presumably since the government cheque recited 2661 the contract number for that family event). He testified that he never saw the final invoice until he was charged with these offences, and always believed the amount he paid to settle the wedding account was after the crediting of one \$1,700 deposit, not two.
- [36] When confronted with the altered contract 2661 by the RCMP he testified he simply did not recall the document and was surprised by it. He gave evidence that he has no recollection of ever altering any other document before submitting it for reimbursement.
- [37] At the time of the events in question Mr. Fontana had been a M.P. for sixteen years. He was the Federal Minister for Labour and Housing. He had a budget for his M.P. functions of approximately \$260,000 without taking into account expenses incurred as a member of Cabinet.
- [38] Mr. Trovato provided his version of this event. From time to time, as president of the Marconi Club, he would book events himself as a way of increasing club revenue. He agreed that Mr. DiPietro was salaried staff and did most of the bookings. His evidence was, however, that DiPietro was on vacation for most of February, 2005.
- [39] Trovato testified that in early February, 2005 he received a call from a female member of Fontana's staff wanting to book the large hall for the evening of February 25, 2005. As it was available the hall was booked and he requested a non-refundable deposit of \$1,700 at that time. It was his evidence that the normal deposit was \$1,750 for one hall. He

confirmed he had known Mr. Fontana for over forty years and knew that he regularly booked the Club.

[40] His evidence disclosed that beyond writing the event date in DiPietro's book he took no further steps to prepare for the event. There was no discussion about food, or the bar, or the number that would be attending. It was his evidence that three or four days before the event Fontana called him personally to cancel.

[41] Mr. Trovato testified that in April, 2005 DiPietro asked him about the \$1,700 Government of Canada cheque that had arrived. It was his evidence that he told DiPietro it was for another political event and that it should be deposited as he believed there was a fall event to be scheduled. There was no discussion he said about using these funds against the wedding reception account.

[42] Mr. Trovato told the Court that when he heard of the allegations against Fontana he thought they were a farce which Mr. Fontana could resolve. He agreed he took no steps to tell anyone including the RCMP about his information until he was contacted by defence counsel approximately one month before trial.

[43] As a result of Trovato's testimony, Mr. DiPietro was recalled and testified that he was not on vacation in February, 2005, but while still working, was concentrating on the illness of his father who died approximately a month later.

POSITIONS OF THE PARTIES

[44] The Crown's theory is that Mr. Fontana saw the offence as a way to have the federal government pay for an amount consistent with the deposit for his son's wedding

reception. He forged the new contract number 2661 but things went wrong when the money was sent to the Marconi Club and not to him personally. The Crown argued that there never was to be an event on February 25, 2005 and that this was all a fraud created by Mr. Fontana who needed a cover story when a member of the press alerted federal officials.

- [45] The defence admits to the foolishness of Mr. Fontana's actions in altering the contract and calling it an original. It is argued, however, that Mr. Fontana committed no criminal offence. This was a legitimate debt owed by his office to the Marconi Club as a non-refundable deposit on a cancelled event. It should never have been credited against the wedding reception account. Fontana did not know the credit had been made until after his arrest. If time had been taken to go through the documents with Mr. Fontana before he was arrested these criminal proceedings would have been averted. The defence evidence, it is suggested, should be accepted or at the very least be seen to raise a reasonable doubt.

ANALYSIS

- [46] The resolution of this case requires the review and assessment of all the evidence; direct and circumstantial; oral and documentary. It requires an assessment of credibility. In assessing credibility I utilized the analysis directed by *R. v. W.D.* (1991) 63 C.C.C. (3d) 397 (S.C.C.). I accept that the analysis is as described by Code J. in *R. v. Edwards*, 2012 ONSC 3373 at paras. 13-25; that is that I should consider the possibility of three distinct findings of fact after considering all the evidence. Either complete acceptance of Mr. Fontana's exculpatory account, complete acceptance of the Crown's inculpatory evidence

or uncertainty as to which account to believe. Possibilities one and three must lead to acquittal.

- [47] I have directed myself on the Crown's burden of proof as discussed by the Supreme Court of Canada in *R. v. Starr* (2000), 147 C.C.C. (3d) 449 and *R. v. Lifchus* (1997), 118 C.C.C. (3d) 1; that is proof beyond a reasonable doubt, proof much closer to an absolute certainty than a balance of probabilities.
- [48] But also I have reminded myself that reasonable doubt is not a far-fetched or frivolous doubt. It is a doubt based on reason and common-sense. It is a doubt that logically arises from the evidence or lack of evidence.
- [49] In coming to my conclusion in this matter I accept the evidence offered by the defence that an event was contemplated at the Marconi Club for February 25, 2005 upon the attendance in London of the Minister of Finance. In coming to that finding of fact I accept the evidence of Elizabeth Cormier about the rescheduling and the efforts of volunteers to redirect attendees. I accept Mr. Fontana's evidence on that point regarding the fact that this event was originally scheduled.
- [50] However, where his evidence seeks to describe a legitimate motive for his actions related to this payment of \$1,700, I reject it completely. I come to the conclusion that he and Mr. Trovato either collectively or individually concocted a story for this Court that was intended to create a reasonable doubt and in doing so allow Mr. Fontana to escape conviction. In my view any doubt raised in these circumstances would have to be far-fetched and fanciful and defy common sense.

[51] I come to that conclusion for the reasons below recognizing that Mr. Fontana need prove nothing to me.

[52] Mr. Fontana in 2004-2005 was a veteran politician. He was a cabinet minister. He was completely conversant in the policy, protocol, and direction associated with the reimbursement of M.P.'s expenses. He suggests to this Court that he chose on March 22, 2005, while sitting in his home, to alter his son's wedding reception contract in the manner described to see that the Marconi Club was paid a debt of \$1,700. He made those changes using white-out and an eraser, photocopied the altered contract still bearing the signature of Mr. DiPietro from the previous document and faxed it to Ottawa. He did this at a time when he described his life as busy and hectic due to his responsibilities and the tentativeness of a minority government. He did this when one phone call to the Marconi Club would have yielded a legitimate original invoice that could have been forwarded for reimbursement.

[53] He suggests that this was an expeditious way to ensure payment considering he was approaching the end of a fiscal year.

[54] I disbelieve him.

[55] Mr. Fontana says that the money was to have been paid directly to the Marconi Club as per his direction on the post-it note. I am unable to see that note as the direction he suggests. I find instead it was to be paid as directed by the typed memo from Kristy Cairns (then Pearson) to Michel Champagne, that is paid directly to Mr. Fontana. If that had happened no one would have been the wiser and we would not be here. But as

suggested by Champagne someone in his office slipped up and paid it to the Marconi Club.

- [56] Mr. Fontana says that it should never have been credited against the wedding but where else did he think it would go considering the Marconi Club could only reference it by contract 2661 (his son's wedding reception contract).
- [57] The Club had no copy of the altered document. They had never requested any payment. The reception for Goodale had never taken place and had been cancelled according to Trovato two to three days before February 25th without the Club expending any thought or effort at preparation.
- [58] Mr. Fontana says he made a call to Trovato and booked the hall in early February, 2005. Trovato testified the hall as booked by a female staffer. He told her the Club was owed \$1,700 as a deposit even though it is unclear how he arrived at that number.
- [59] Mr. Fontana says he used \$1,700 as the amount owing simply because it was a deposit paid by his wife for a completely different type of rental, paid in October, 2004, for the rental of two halls not one.
- [60] Mr. Trovato says that Fontana called to cancel the booking while Mr. Fontana is clear he only spoke to his friend of forty-four years when the hall was booked.
- [61] Six weeks before his arrest and interrogation by Constable Devine, Mr. Fontana was aware that local media had reported a fraud related to the payment of his son's wedding expenses. It became a flash point for the public and for council.

- [62] He testified that as he recalled this is the only time he doctored a document to create a false original for reimbursement by the federal government. It defies belief that at the time of his interview with the RCMP he did not recognize the document and contested his signature.
- [63] I have considered the testimony of Mr. Trovato. I do not believe he ever had a conversation with anyone about a \$1,700 deposit for the Goodale event. I do not think he ever considered money owing for the cancelled political reception. I do not believe he ever spoke to DiPietro about the payment being related to a political event and not the wedding. I find that DiPietro has no recollection of that conversation for a reason. It never took place.
- [64] Trovato's story does not hold together. At one point he states that the \$1,700 he suggested was a non-refundable deposit owing at the time of the booking. Later he suggests he told DiPietro they would hold the deposit to be used against a proposed fall political event. When he testified I got the feeling that Mr. Trovato was making it up as he went along. When it became clear he needed an explanation for why he took care of the arrangements and did not pass them off to DiPietro he came up with DiPietro's February vacation.
- [65] I have considered the arguments made by the defence. As mentioned I do not believe Mr. Fontana was confounded by the tactics of Devine in springing the documents on him at the time of the interview. It was, as he said, a document unlike any other he had ever created.

- [66] I do not find the wedding reception invoice to be confusing despite its deletions and amendments. I accept Michel Champagne's evidence as an explanation for why the cheque went to the Marconi Club and why the reimbursement computer record shows February, 2005 and not 2004 (that it was corrected to resolve a physical impossibility). I have considered that Mr. DiPietro may have simply been too busy or distracted to recall his conversation with Trovato. I reject that after considering the other inconsistencies in Trovato's evidence.
- [67] While I am perplexed as to why a man of such accomplishments might choose to take these actions for \$1,700, I do not find that that detracts from the strength of the Crown case. I have long ago abandoned the notion that motive results from a logical cost-benefit analysis.
- [68] Finally, then, I find as a fact that Joseph Fontana forged the document which is the Provisional Function Contract Number 2661 marked as part of Exhibit 4 in this trial. He did so with the intent that the House of Commons comptroller would view it as genuine and legitimate and pay \$1,700 directly to him. He saw his opportunity when viewing his son's reception contract and being aware of the possibilities provided by the cancelled reception of February 25, 2005.
- [69] His criminal activity was detected only when the payment went to the Marconi Club and it was credited against the wedding reception. At that point it became a problem. He could hardly ask that it be re-issued.
- [70] I find that the Crown has proven each of the essential elements of all three counts beyond a reasonable doubt.

[71] For a conviction of the offence of breach of trust under s.122 of the *Criminal Code*, the Crown must prove:

1. The accused is an official;
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.

[72] Clearly the accused in this case is an official for the purposes of s.122 of the *Criminal Code* under s.118. The accused was acting in connection with the duties of his office as he amended the document to include "M.P." and used a political event as the basis for the fraudulent document. As outlined in the facts, the accused breached the standard of responsibility demanded of him by the nature of the office. By submitting a fraudulent document for reimbursement for an event that never happened, for an amount that was not communicated to him in connection with the political event, he abused the public trust and used his public office for a purpose other than the public good.

[73] For a conviction of the offence of fraud under s.380 of the *Criminal Code*, the Crown must prove:

1. A prohibited act, be it an act of deceit, a falsehood, or some other fraudulent means;
2. Deprivation caused by the prohibited act, which may consist in actual loss or the placing of the complainant's pecuniary interest at risk.
3. Subjective awareness of the prohibited act.
4. Subjective awareness that the prohibited act could have as a consequence the deprivation of another.

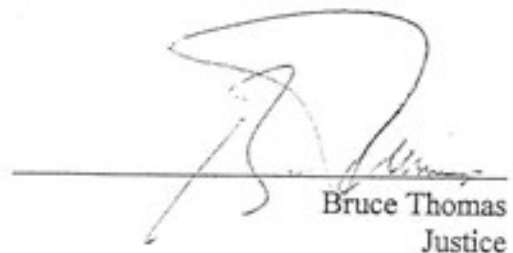
[74] In this case the Crown has proved that the forgery caused a deprivation of \$1,700. The accused created the forgery and his actions demonstrate that he knew it was a forgery and that forgery could cause a deprivation.

[75] For a conviction of the offence of uttering a forged document under s.368 of the *Criminal Code*, as it read during the time of the offence, the Crown must prove that:

1. The accused knew that the document was forged, and
2. The accused used, dealt with or acted on it as if it was genuine.

"False document" is defined under s.321. In order to be found guilty under s.368, the Crown must prove the document was a forgery under s.366.

- [76] In this case, the document satisfies the definition of "false document" under s.321, that is, it was false in some material particulars. The document was labelled as original when it was not the original. The contract number related to the original document for the wedding, not a political event. The document was intended to be acted on as genuine to the prejudice of the public purse. The accused knew that he forged the document as he altered the material particulars. The accused then wrote "original" on the document and used it for reimbursement as if it was genuine.
- [77] As I previously mentioned I come to this conclusion after considering the totality of the evidence. There will be findings of guilt on the three counts.
- [78] In addition I make the following observations. It has been suggested that the House of Commons Comptroller, and Michel Champagne, and his staff did a less than diligent job here. It has been suggested that this is an example where "the money flows easily" and the review of expenses is no more than a nod and a wink. It must be remembered that here Mr. Champagne was relying upon a document forged by a sitting M.P. This is an extreme case. It is unreasonable to expect the office of the Comptroller to inspect hundreds of thousands of claims for active forgery and fraud by sitting members. They should not shoulder the blame for these criminal acts.



Bruce Thomas
Justice

CITATION: R. v. Fontana, 2014 ONSC 3546

ONTARIO
SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

- and -

JOSEPH FONTANA

Defendant

REASONS FOR JUDGMENT

Bruce Thomas
Justice

Released Orally: June 13, 2014