

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 48/2010**

4  
5 **THE QUEEN**

6  
7 **V**

8  
9 **ERICK ADAM**



10  
11 **Appearances:**

12 **For the Crown:**  
13 **Ms. Elisabeth Lees, Senior Crown Counsel**

14 **Defence Counsel:**  
15 **Mr. John Furniss**

16 **Before:**

**Hon. Mr. Justice Charles Quin**

17 **Sentencing Submissions Heard:**

**13<sup>th</sup> June 2012**

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19 **SENTENCE RULING**  
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- 21
- 22 1. Following a trial by jury in the Grand Court from the 16<sup>th</sup> to the 18<sup>th</sup>, and the 20<sup>th</sup>  
23 April 2012, the Defendant was found guilty of theft contrary to s.241 of the Penal  
24 Code (2007 Revision) namely, that the Defendant on the 14<sup>th</sup> September 2009,  
25 within the jurisdiction of the Cayman Islands, stole property, being money to the  
26 value of US\$29,987.33, belonging to Kevin Barcant. The Defendant was also found  
27 guilty of false accounting contrary to s.255 of the Penal Code (2007 Revision),  
28 namely that the Defendant, on the 14<sup>th</sup> September 2009, within the jurisdiction of the  
29 Cayman Islands, dishonestly, and with a view to gain for himself, falsified a  
30 document used for accounting purposes, to wit, a Term Deposit Letter of Instruction  
31 by falsifying the client's signature.  
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1           2.     The client, Mr. Kevin Barcant (“Mr. Barcant”), had been a customer with the Royal  
2                     Bank of Canada (RBC) since 1982, where he held a term deposit for his wife and his  
3                     five adult children.

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5           3.     The Defendant had been an RBC employee for at least three years and, by  
6                     September 2009 held the post of a Personal Financial Services Representative  
7                     (PFSR). The Defendant had been assigned to the Barcant account and it was part of  
8                     his portfolio of client accounts. The Barcant account had been inactive for many  
9                     years.

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11          4.     The evidence showed that the Defendant forged the name of Mr. Barcant’s daughter,  
12                     Heidi Barcant, on a letter of instruction to break the term deposit and to release the  
13                     funds.

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15          5.     The evidence showed that some of the banking procedures were not being strictly  
16                     adhered to, for example, the RBC Compliance officer testified

17                                     *“...we are supposed to send the customer to get the cash themselves,”*  
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20                     However, in this case, none of the Defendant’s colleagues recalled seeing any  
21                     customer in relation to this transaction.

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23                     The bank’s manager candidly acknowledged that the Defendant had been able to  
24                     breach a number of the bank’s internal checks and balances, and that the signing in  
25                     procedure for clients of the bank had not been strictly adhered to.

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27                     Additionally, and of significance in relation to these breaches, was that the  
28                     Defendant did not take a photocopy of the ID of the person he claimed was Heidi

1 Barcant and who the Defendant claimed had received the amounts of CI\$16,400.00  
2 and US\$9,984.00 in cash, which he had accessed. I recount that the Defendant said  
3 in response to Senior Crown counsel:  
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5 *“Which is why I did say that I looked at the ID. It did say Heidi Barcant. It did*  
6 *look like the lady in front of me. However, like what I said, I didn’t photocopy*  
7 *the ID, which was the biggest mistake ever...”*

8  
9 There were other significant breaches related to the breaking of a Term Deposit. As  
10 Shan Jefferson’s evidence disclosed, to break a term deposit, the money on the term  
11 deposit would first need to be placed in an account. The victim’s account preceded  
12 the creation of this rule by the bank, and therefore, there was no account into which  
13 the funds could first be placed. The alternative, according to established procedure  
14 detailed by Ms. Jefferson, was that, where term deposits were broken without a  
15 corresponding client’s account into which the money could be transferred, the  
16 money from the term deposit could be wired directly to an overseas account.  
17 However, neither of these options was employed by the Defendant and he obtained  
18 an authorization to close the Term Deposit and issue the money in a draft.  
19

20 6. Summarily, the Defendant managed to obtain cash, although there was a specific  
21 mandate that PFSRs should not have had access to cash on behalf of customers.  
22 Additionally, the Defendant had a cash limit of CI\$10,000.00, that is, he should not  
23 have been able to carry out a transaction over his cash limit of CI\$10,000.00,  
24 without a completed, and signed, Large Cash Transaction Form. The Defendant did  
25 not take the Large Cash Transaction Form to his immediate supervisor, but to  
26 another officer of the bank, who said she did not know what the Defendant’s cash

1 limit was, and also said that she thought she was approving the “override” of the  
2 system for the large cash transaction for another RBC officer, who brought the  
3 documents to her for approval.

- 4
- 5 7. The Jury found that, on the 14<sup>th</sup> September 2009, the Defendant forged the signature  
6 of the account holder’s daughter, Heidi Knaggs (nee Barcant). Without going to his  
7 direct supervisor the Defendant was able to obtain a draft in the sum of  
8 US\$29,987.33.

9  
10 The evidence showed that Mr. Barcant’s daughter, Heidi Knaggs, had not called  
11 herself “Barcant” for over 21 years, and that she had never been to the Cayman  
12 Islands.

- 13  
14 8. On the 25<sup>th</sup> September 2009 the account holder, Mr. Barcant, came to the bank to  
15 talk about his account, and it was then discovered that the account had been closed.  
16 The Defendant was asked for the file and the file was never found.

17 Not only was the client’s original file not found, but, in addition, the file the  
18 Defendant said he had created eleven (11) days earlier, on the 14<sup>th</sup> September 2009,  
19 when, according to the Defendant, someone claiming to be Heidi Barcant came to  
20 him to close the Term Deposit, was also never found. On that “14<sup>th</sup> September 2009  
21 file” the Defendant said he placed a copy of the term deposit, Heidi Barcant’s  
22 personal information form, and, a copy of the bank draft.

- 23  
24 9. The account holder has been refunded the full amount of his money by RBC, and  
25 accordingly, the Crown has asked the Court for a Compensation Order in the amount  
26 of US\$29,987.33 to RBC as opposed to the account holder.

- 1           10.    The Crown pointed out that the maximum for theft is ten (10) years and, for false  
2                    accounting, the maximum sentence is seven (7) years.  
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- 5           11.    The Crown points out that the Defendant was in a position of trust as an employee of  
6                    RBC and that he held the post of a PFSR with responsibility for the particular Term  
7                    Deposit belonging to this longstanding client of the bank.  
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- 9           12.    The Crown points out that the account holder was an elderly man and was  
10                    completely shocked when he visited the bank to find that his account was, in fact,  
11                    empty.  
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- 13          13.    The Crown has submitted that, apart from the financial loss, the Defendant's actions  
14                    have created significant tangible and intangible expenses, due to staff investigations,  
15                    client follow-up, court proceedings and reputational damage. The Crown submits  
16                    that the issue of reputational damage is difficult to quantify but it is critical to the  
17                    bank's overall brand and reputation.  
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- 19          14.    The Crown has relied upon the Chief Justice's guidelines dated 2002 where he  
20                    states:  
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22                                *"For the offences of theft or related offences depending on the value of property*  
23                                *stolen, and any other aggravating factors, particularly where there is a breach*  
24                                *of trust in the context of a relationship of employment, an immediate term of*  
25                                *imprisonment ranging from one to four years for a first offence, and an order*  
26                                *for repayment will likely be imposed. The tariff could be higher still, depending*  
27                                *on the seriousness of the offence."*  
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- 30          15.    The Crown also highlights that the Court of Appeal in *R v. Fyne* 2011 CILR 181  
31                    confirmed that the principle remained that a custodial sentence was appropriate for  
32                    offences of theft involving employees who abuse the position of trust. Further Senior

1 Crown counsel highlighted that the Cayman Islands Court of Appeal has applied the  
2 English Court of Appeal authorities in *R v. Barrick* (1985) 81 Cr App. R. 78 and *R*  
3 *v. Clarke* (1998) 2 Cr App. R. 137.

4 16. Defence counsel has highlighted that, whilst the Defendant did not admit that he had  
5 stolen the money, he made an offer to recompense the Complainant. Accordingly,  
6 although the bank had reimbursed its client, the Defence does not object to a  
7 compensation order for reimbursement to be made to the bank in question.

8 17. Counsel for the Defendant accepted that the Defendant breached the trust invested in  
9 him as an employee, however, counsel also highlighted that there was considerable  
10 relaxation in many areas of the bank's required procedures during the time this  
11 incident took place.

12 18. Counsel for the Defendant also highlights the Defendant's age and that, although he  
13 has matters before the Summary Court for ganja, as well as for a domestic problem,  
14 the Defendant has no convictions for dishonesty.

15 19. Defence counsel submits that in childhood, the Defendant's first language was not  
16 English, and, points out that the Defendant had to work hard to overcome this  
17 difficulty. Defence counsel continues by saying that it is to the Defendant's credit  
18 that he has improved himself to the extent of obtaining a significant post at RBC.

19 20. Defence counsel highlights that the Defendant's only convictions are two  
20 telecommunications matters.

21 There are also drug offences for which the Defendant has entered guilty pleas.

1 Defence counsel maintains that what is important is that there are no offences for  
2 dishonesty.

3 21. Defence counsel has provided the Court with references.

4 There is a letter dated the 30<sup>th</sup> May 2012 from Janice Ebanks, a family friend, who  
5 confirms that the Defendant's conduct has greatly improved since he became a  
6 father – having made positive changes to his lifestyle. Ms. Ebanks attests to the  
7 Defendant being a good father.

8 In addition, there is a letter from Stephen Trench of Caribbean Gourmet Foods, who  
9 describes the Defendant as a dependable employee, and he, Mr. Trench, has no  
10 reservations about re-employing the Defendant in the future.

11 22. Additionally Defence counsel has provided the Court with two other letters – one  
12 from the Defendant's mother, Lissa Adam, who, I note, was in Court throughout the  
13 trial.

14 The other letter is from the mother of the Defendant's child, Joanna Powery. Both  
15 letters attest to the Defendant's difficulties with his schooling and that he had  
16 challenges and barriers whilst adjusting to a new life in Cayman, which was thrust  
17 upon him suddenly at 12 years of age. Both Mrs. Adam and Ms. Powery attest to the  
18 Defendant being a good son, as well as a good father to his daughter Khloe.

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1           23.    The Cayman Islands Court of Appeal has adopted the guidelines set out by Lord  
2                   Lane in **R v. John Barrick** and in particular reminds the Court that it:

3                                “...should have regard to the following matters – (i) the quality and degree of  
4                                trust reposed in the offender including his rank; (ii) the period over which the  
5                                fraud or the thefts had been perpetrated; (iii) the use to which the money or  
6                                property dishonestly taken was put; (iv) the effect upon the victim; (v) the  
7                                impact of the offences on the public and public confidence; (vi) the effect upon  
8                                fellow employees or partners; (vii) the effect on the offender himself; (viii) his  
9                                own history; (ix) those matters of mitigation special to himself such as illness;  
10                              being placed under great strain by excessive responsibility or the like; where,  
11                              as happens, there has been a long delay, say over two years, between his being  
12                              confronted with his dishonesty by his professional body or the police and the  
13                              start of his trial;...”

14           24.    The Court takes into account that the Defendant is 28 years of age.

15           25.    The Defendant had a very significant position within the bank, which involved a  
16                   high degree of trust in his integrity. The Defendant worked in the bank for three  
17                   years, and, it is the Court’s view that that period is certainly long enough for the  
18                   Defendant to have fully recognised the level of responsibility, integrity and  
19                   correctness that is demanded from him and all officers of the bank.

20                   The Defendant comes from a good home and a close family, where the Defendant  
21                   was in the fortunate position to learn at first hand the important qualities of integrity,  
22                   honesty and responsibility.

23           26.    The Defendant was earning approximately \$3,000.00 per month and, in addition  
24                   earned some \$1,200.00 per month from his motor vehicle projects. The Defendant’s  
25                   expenses were \$1,000.00 per month, inclusive of rent, utilities and maintenance  
26                   towards his daughter. There is no complaint from the Defence that the Defendant  
27                   was suffering from any lack of funds.

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1           27.    It is clear to the Court that there has been a very significant breach of trust on the  
2                   part of the Defendant – not only to his employers, but equally to the client with  
3                   whose affairs he was entrusted. One can only imagine the shock that the elderly Mr.  
4                   and Mrs. Barcant experienced when they discovered that their account had been  
5                   closed by the Defendant, and that their savings had gone.

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7                   Additionally, the Defendant’s employers and colleagues have been seriously tainted  
8                   by the questions such criminal activity within a bank, which is entrusted with the  
9                   hard earned cash of individuals, must raise.

10  
11                  It has been said repeatedly that the banking industry is the cornerstone of the  
12                  Cayman economy, and acts such as this one have a very damaging effect on the  
13                  reputation of the bank concerned, and the reputation of the Cayman Islands,  
14                  generally.

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16           28.    I note from the helpful SIR prepared by Ms. Marvo Callender that there is a distinct  
17                  absence of remorse on the part of the Defendant, and that this can only be explained  
18                  because the Defendant still does not accept his culpability.

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20           29.    The SIR report indicates that there is a medium risk of the Defendant re-offending  
21                  within the 12-month period. However, Ms. Callender adds that this probability can  
22                  be reduced with effective intervention.

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24           30.    The English Court of Appeal decision applied by the Cayman Islands Court sets  
25                  down guidelines in relation to Sentencing. Where the amount of money in question  
26                  was small, but was less than £17,500.00, a term of imprisonment from a short period  
27                  of imprisonment up to 21 months would be appropriate. Cases involving sums over  
28                  £17,500.00 and under £100,000.00 would merit two (2) to three (3) years.

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31. Crown counsel and Defence counsel are agreed that the sentence falls somewhere between two (2) to three (3) years – depending on aggravating and mitigating circumstances.

The Defendant refuses to accept his guilt in this case – a consequence of which is that there can be few mitigating circumstances.

32. I have highlighted the aggravating circumstances:

The Defendant has sullied the reputation of his employer, the bank: Weaknesses in procedures aside, a bank relies fundamentally on the integrity of the people it employs, and the Defendant has clearly failed to honour his commitment to his employer, and to his employer’s clients, in this regard.

The Defendant has let his colleagues down.

In particular, the Defendant has let down his parents who, it is clear, tried to ensure that the Defendant had access to a good education and many other opportunities.

Finally, and probably most importantly, the Defendant, as a 28-year old man, with dependents, has let himself and his young family down.

Despite Mr. Furniss’s great experience and his hard work on the Defendant’s behalf, there are many more aggravating factors than mitigating factors in this case. These factors lead the Court to consider a penalty of 3 years imprisonment, which is at the higher end of the Sentencing Guidelines scale. However, in light of the relatively young age of the Defendant, and the fact that it is the Defendant’s first offence for

1           dishonesty, I will impose a sentence of imprisonment of two (2) years and six (6)  
2           months.

3           33. Mr. Erick Adam, I urge you to ensure that this dishonest criminal act is never  
4           repeated. When you complete your time in prison you are in the fortunate position of  
5           having immediate employment. You are still a young man, and I also urge you to  
6           concentrate on your work, concentrate on looking after your young family and on  
7           showing some gratitude for the unconditional help and support you have received  
8           from your parents.

9           34. I also order that this sentence is to commence from the 23<sup>rd</sup> April 2012, which is the  
10          day the jury convicted the Defendant, and, the Defendant was remanded in custody.  
11          Therefore, time spent in custody is to be taken into account.

12          35. In relation to the second Count of false accounting, I impose a sentence of 12  
13          months imprisonment, to run concurrent to the sentence of 2 years and 6 months.

14          36. Finally I order that that Defendant reimburse RBC in the sum of twenty nine  
15          thousand nine hundred and eighty seven dollars and thirty three cents US dollars  
16          (US\$29,987.33).

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18          **Dated this the 25<sup>th</sup> day of June 2012**

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23          **Honourable Mr. Justice Charles Quin**  
24          **Judge of the Grand Court**

