

*R. v. Nasser*, 2005 CanLII 60125 (NS P.C.)

**2 years less a day conditional sentence with 150 hours community service + restitution for passing counterfeit \$10s and possessing \$15,890 in counterfeit \$10s**

Nasser and two university friends traveled from Hamilton to Halifax to pass counterfeit bills. They were arrested in a bar, after the bartender noticed a counterfeit bill, asked the accused some questions and notified the police. Mr. Nasser pled guilty to passing fake \$10 bills and having another 15,890 in his possession. About 50 fake \$10 bills were found in a vehicle being used by Nasser and his accomplices. The car contained several bags of newly purchased items from a variety of stores. Over \$14,000 in counterfeit bills were seized from the group's hotel room. The hotel room also contained numerous new items which the police determined had been purchased with counterfeit money. In all, the police seized a total of \$15,890 worth of counterfeit money.

The Crown recommended a period of 18 to 24 months of incarceration because of a number of aggravating circumstances including:

- the accused was on probation for a offence committed while he was a minor;
- the crime was motivated by greed and required premeditation;
- the amount of counterfeit money was significant;
- the pre-sentence report was negative.

Defence counsel argued in favour of a 10 month conditional sentence in light of the accused's young age (19) and the absence of previous adult convictions.

The judge imposed a conditional sentence of two years less one day with conditions including:

- 150 hours of community work; and
- restitution to the stores where purchases were made.

The judge took into consideration Mr. Nasser's young age, the absence of danger to society and the testimony of his father. The Court considered that the sentence imposed was not significantly more lenient than what the Crown had recommended. The judge stated:

It is clear that in every case offences of counterfeiting have been, and no doubt will continue to be, regarded as serious offences. These are cases where deterrence is regarded as the paramount consideration in determining the appropriate sentence. These are not cases where fines or suspended sentences are routinely imposed. Far from it. These are serious offences warranting custodial terms in most instances. The Crown submits, quite accurately from my reading of the cases, that real jail time is most often imposed for offences of this nature.

1  
2 CANADA  
3 PROVINCE OF NOVA SCOTIA

CASE NO. 1530109-10

4  
5  
6  
7  
8  
9 IN THE PROVINCIAL COURT

10  
11  
12  
13  
14 HER MAJESTY THE QUEEN

15  
16  
17 versus

18  
19  
20 ALKARIM NASSER  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

31  
32 **HEARD BEFORE:** The Honourable Judge Barbara Beach

33  
34 **PLACE HEARD:** Provincial Court  
35 Halifax, Nova Scotia

36  
37 **DATE HEARD:** July 7 and September 9, 2005

38  
39 **COUNSEL:**  
40  
41 Tim O'Leary Crown Attorney

42  
43 Joel Pink, Q.C. Defence Attorney  
44

45  
46 **SENTENCING HEARING**  
47

I N D E X   O F   W I T N E S S E SPAGE NO.

1		
2		
3		
4		
5	July 7, 2005	
6		
7	<u>DET. CST. DANA DROVER</u>	
8		
9	Direct Examination by Mr. O'Leary	8
10	Cross-Examination by Mr. Pink	21
11		
12	<u>DIAMOND NASSER</u>	
13		
14	Direct Examination by Mr. Pink	27
15	Cross-Examination by Mr. O'Leary	35
16	Redirect Examination by Mr. Pink	44
17		
18	<u>SUBMISSIONS BY MR. O'LEARY</u>	48
19		
20	<u>SUBMISSIONS BY MR. PINK</u>	84
21		
22	<u>REPLY BY MR. O'LEARY</u>	109
23		
24	September 9, 2005	
25		
26	<u>DECISION</u>	120
27		

1 **MATTER COMMENCED**

2 THE COURT: All right. That leaves us then with Mr.  
3 Nasser's matter. As I indicated before Mr. O'Leary  
4 arrived, there was some documentation arrived this  
5 morning. I have not had an opportunity to do anything  
6 more than just skim it. And as well, there was other  
7 material that was sent to me that I may need time to  
8 review, but I do want to proceed with the evidence,  
9 with your arguments and any other comments. We may be  
10 looking at a decision going over to another day. Have  
11 a seat there, Mr. Nasser.

12 MR. O'LEARY: I apologize for not being here right at  
13 9:30, Your Honour.

14 THE COURT: Oh, that's all right. We couldn't have  
15 dealt with it in any event, so...

16 MR. O'LEARY: So the agreed statement of facts has been  
17 provided?

18 THE COURT: I -- as I indicated, I got it at 9:21 this  
19 morning.

20 MR. O'LEARY: I apologize, Your Honour. We -- well, we  
21 only agreed to the agreed statement of facts...

22 THE COURT: All right.

23 MR. O'LEARY: ...very recently. I'm going to pass up a  
24 copy of the case R. v. McCurdy, and that's found, I  
25 believe, at tab 2 of the list of cases I provided to

1           you, just...

2           THE COURT:    I want to make sure that we don't lose  
3           sight that there are some outstanding matters as well  
4           that are going to have to be addressed at some point  
5           today.

6           MR. O'LEARY:    Yes, Your Honour.    The reason I passed  
7           that case up is when I was looking through, I believe  
8           the photocopy probably given to you isn't legible.

9           THE COURT:    Thank you.

10          MR. O'LEARY:    I'm also passing up a letter from  
11          Christine McPhail.    She's the former probation officer  
12          of the accused.

13          THE COURT:    I did get -- there was something  
14          attached...

15          MR. O'LEARY:    I believe you received a presentence  
16          report.

17          THE COURT:    I know I've read something from her.    All  
18          right, thank you.

19          MR. O'LEARY:    I've provided My Friend a copy.

20          THE COURT:    Again, I'm going to have to have time to  
21          read all of these, but...

22          MR. O'LEARY:    Yes.    As My Friend readily points out and  
23          I've disclosed to him, I had a conversation -- you'll  
24          see the last line of that letter and in the presentence  
25          report she indicates that the accused is not suitable

1 for community supervision. I had a conversation with  
2 Ms. McPhail and when I questioned her on that, she  
3 explicitly stated to me by community supervision she  
4 meant probation, and the reason she said -- and when I  
5 asked her, "Well, do you think that a conditional  
6 sentence order is also included in that?" she indicated  
7 to me, "Well, I can't really comment because I deal  
8 with youths, and there are no conditional sentence  
9 orders for youths," so...

10 THE COURT: Well, that's not, in fact, true. There  
11 is...

12 MR. O'LEARY: Well, there's...

13 THE COURT: ...provision in the **Youth Criminal Justice**  
14 **Act** that is almost a duplication of conditional  
15 sentence orders.

16 MR. O'LEARY: I didn't question her any further but I'm  
17 just disclosing that that's what she meant by community  
18 supervision.

19 THE COURT: All right.

20 MR. O'LEARY: And I'm -- the last thing I'm going to  
21 hand up, Your Honour, is an affidavit from the Bank of  
22 Canada. It's from Monique Grant of the Bank of Canada.

23 My Friend does have some issues and he had asked that  
24 Ms. Grant be here for cross-examination. I have  
25 attempted over the last few days to contact her to have

1 her here, but to no avail. I could not get in touch  
2 with her.

3 THE COURT: Where is she?

4 MR. O'LEARY: I don't know. Basically, what happened  
5 was we discussed this form of affidavit a while back  
6 and then I provided him an updated affidavit from Ms.  
7 Grant -- My Friend an updated affidavit from Ms. Grant  
8 last week, at which point he raised that he would like  
9 to cross-examine her. And then from Monday on this  
10 week I tried to get in touch with her and to no avail.

11 THE COURT: So you're still going to want that  
12 opportunity, Mr. Pink...

13 MR. PINK: No.

14 THE COURT: ...at some point?

15 MR. PINK: No. I think it's fair -- if Your Honour  
16 pleases, I took exception to a number of statements  
17 that she made in the affidavit, which I don't really  
18 think is appropriate for an affidavit, where, in fact,  
19 she quotes law.

20 THE COURT: I see.

21 MR. PINK: And I think that Your Honour can go through  
22 that affidavit and you can expunge those points that  
23 are not really proper.

24 THE COURT: Thank you.

25 MR. O'LEARY: And I will state just that, Your Honour,

1 I am relying on this affidavit basically for paragraphs  
2 9 through 12 just dealing with the prevalence of  
3 counterfeit money in Canada, and I don't believe My  
4 Friend really has any issue with those paragraphs.

5 MR. PINK: No.

6 MR. O'LEARY: Now that those matters are out of the  
7 way, the Crown intends to call one witness.

8 THE COURT: Thank you.

9 MR. O'LEARY: Cst. Dana Drover. Mr. Drover's resume is  
10 attached as schedule A to the agreed statement of  
11 facts.

12 THE COURT: I've seen that.



1 **DET. CST. DANA DROVER, SOLEMNLY AFFIRMED, TESTIFIED:**

2 **DIRECT EXAMINATION**

3 BY MR. O'LEARY:

4 Q. Hi, Detective Drover. You're a member of the  
5 Halifax Police force?

6 A. Yes, I am.

7 Q. And how long have you been a member?

8 A. Approximately 18 years.

9 Q. And what are your current duties?

10 A. Currently I'm assigned to the Financial Crimes  
11 Section with the Halifax Regional Police, and I specialize in  
12 counterfeit money investigations.

13 Q. Okay. And how long have you been specializing in  
14 counterfeit money?

15 A. Approximately three and a half years.

16 Q. Now, you became involved in a counterfeiting  
17 investigation that we're here to speak to today?

18 A. That's correct.

19 Q. What was your involvement?

20 A. I was the follow-up investigator for a complaint  
21 of counterfeit money that had been detected at a local  
22 nightclub here in Halifax on January 8th of this year.

23 Q. And throughout the investigation, I'm told you  
24 found approximately \$15,890 in counterfeit money?

25 A. Actually, it was over 16,000 by the time it was

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 all accumulated and -- and accounted for.

2 Q. How do -- can you speak to how counterfeit money  
3 is detected?

4 A. Well, there's a number of means to detect  
5 counterfeit money. Genuine currency feature -- for example,  
6 have features that are meant to be known to the average  
7 person. They have visual features and tactile features, as  
8 well as security features, on them. Counterfeit money is  
9 made to imitate or mimic those features. It doesn't have to  
10 necessarily reproduce them but be sufficiently adequate to  
11 mimic them so that they are successful in being passed.

12 Q. Okay. Can you speak to what some of those  
13 measures are?

14 A. For genuine currency features, they have tactile  
15 features, which is generally known as raised ink or intaglio  
16 printing. That's a feature that can be felt on the paper  
17 itself. The visual features would include such things as the  
18 colour of the bill, the clarity of the reproduction, such  
19 things as micro printing, such things as offset printing.  
20 There's items that include security features, and in the case  
21 of the \$10 bill that we're speaking of, a genuine \$10 bill  
22 would, for example, have a UV or ultraviolet light feature,  
23 which would include fibres that would fluoresce under UV  
24 light, a coat of arms over the portrait that would fluoresce

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 under UV light. Additionally, the paper itself on a genuine  
2 bill would not fluoresce. These particular bills that are in  
3 question here had quite a number of these features  
4 incorporated into them, so it raises the bar in terms of  
5 their sophistication of reproduction.

6 Q. Okay.

7 A. Additionally -- pardon?

8 Q. What features did they have?

9 A. The features that these bills included, first of  
10 all, started off with paper that simply wasn't just regular  
11 photocopy paper. This paper was, in fact, what's known as UV  
12 dull, which means that if you were to put this particular  
13 bank note imitation under a UV light, it would not fluoresce.

14 A genuine bill, obviously, does not fluoresce. It's made  
15 not to fluoresce. A second feature that it imitated was the  
16 coat of arms over the portrait. That coat of arms is printed  
17 in UV fluorescent ink, so therefore, when a detection vice --  
18 device such as a UV light is used, you will see the coat of  
19 arms over the portrait. So that was incorporated onto this  
20 bill. A third feature was the three gold translucent leaves  
21 that are present on the front of this bill. On a genuine  
22 bill, they're there. They are meant to be referenced as a  
23 security feature and have a translucent or a pearlescent  
24 effect. These bills in question, again, had imitation gold

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 leaves which had some translucency and pearlization effect.

2 Q. Do you actually have some of the money with you?

3 A. Yes, I do.

4 Q. Could you produce it?

5 A. Yes, I...

6 Q. And just to be clear, this is money seized in this  
7 investigation. So this is money that was seized in this  
8 investigation?

9 A. Yes, it is.

10 Q. I'm not sure if My Friend wants to see this.  
11 Could you point out to Her Honour the security features you  
12 were just talking about?

13 A. Certainly.

14 Q. I apolo...

15 THE COURT: Is this going to be marked as an exhibit?

16 MR. O'LEARY: I apologize. It can't -- I don't think  
17 we should mark it as an exhibit because it's required  
18 for the actual trial of the other co -- two co-accused  
19 if it goes -- goes ahead, although...

20 THE COURT: It can't be an exhibit in relation to two  
21 different matters potentially?

22 MR. O'LEARY: I guess it could be. Yeah, perhaps...

23 MR. PINK: Why don't you just take one bill?

24 MR. O'LEARY: Yeah.

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 BY MR. O'LEARY:

2 Q. Point out to Her Honour the security features on  
3 it.

4 A. Okay. On this particular bill we have a colour  
5 reproduction which is very accurate to a known genuine.  
6 Additionally, the three gold leaves I spoke of are present  
7 and mimic those of a genuine. The coat of arms over the  
8 portrait, you can just make out some of the printing itself.

9 If a UV light were to be shone on this particular piece of  
10 paper, you would see the coat of arms fluoresce, just as a  
11 genuine should. Additionally, the paper itself would not  
12 fluoresce, as a genuine should as well.

13 Q. So does normal paper fluoresce when under a UV  
14 light?

15 A. Normal paper that is not treated for UV dull would  
16 fluoresce, yes, very, very noticeably so.

17 Q. Any other features that are present that are  
18 normally present on money?

19 A. Yes. The actual clarity of the bill itself in  
20 terms of the fine line printing and micro printing is very  
21 accurate. There's additionally the cut of the paper itself.

22 There's no excess edges which would alert a person that this  
23 bill was not a genuine. And it has a very good reproduction  
24 of micro printing, both front and back.

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 Q. Now, from your resume, you've been involved now in  
2 over 2,000 investigations...

3 A. That's correct.

4 Q. ...involving counterfeit money?

5 A. That's correct.

6 Q. And how would this compare to the money in the  
7 other counterfeit investigations?

8 A. This is certainly on the very high end, and  
9 certainly a higher level of sophistication than the majority  
10 of files that I have investigated.

11 Q. How would you rank its -- I guess, on a scale of 1  
12 to 10, 1 being bad, 10 being the best, how would you rank the  
13 quality of this counterfeit money?

14 A. Certainly an 8 or a 9.

15 Q. Now, how is counterfeit money usually  
16 manufactured?

17 A. Well, counterfeit money can be manufactured in a  
18 number of ways. The most prevalent ones in Canada in most  
19 recent years have been through inkjet printers and/or laser  
20 printers. And in this case of these bills here, these \$10  
21 bills, they were done through an inkjet printer method.

22 Q. Is it hard to make money through an inkjet  
23 printer?

24 A. Not particularly so. With the advances in

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 technology and software advances and the relatively low cost  
2 of computer equipment, scanning equipment, photo imaging  
3 software, it's made the work of the counterfeiter much easier  
4 to reproduce genuine currency features.

5 Q. Okay. So for this particular bill, would it have  
6 been difficult to reproduce with an inkjet printer?

7 A. Not terribly difficult at all. When you have the  
8 software in place, it can be readily reproduced.

9 Q. So once -- one the money is manufactured,  
10 generally, how is it distributed or laundered?

11 A. It can be distributed or laundered in a number of  
12 ways. If there is, for example, a person who is in the  
13 business strictly of manufacturing money, they would be  
14 perhaps a manufacturer or perhaps a wholesaler and they would  
15 sell it at arm's length to someone who would use it for their  
16 own purposes. Additionally, there could be individuals who  
17 would be their own entrepreneurs, so to speak, make their own  
18 for their own purposes of distribution. The actual  
19 distribution can take a number of forms and that can be  
20 outright uttering a counterfeit bill for exchange of goods or  
21 services...

22 Q. What do you mean by that?

23 A. Well, if someone went to a store and decided that  
24 they wanted to produce -- wanted to buy a particular product,

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 they would pay for that in counterfeit money.

2 Q. Okay.

3 A. And so it's 100 percent profit. They haven't paid  
4 any real money for it. They could use counterfeit bills as  
5 part of a payment with genuine currency, again, to offset the  
6 actual cost of an item. There's instances, and actually,  
7 quite many -- quite a few in my experience where people have  
8 gone into businesses and made what's known as a no purchase  
9 exchange. They could, for example, request that -- if they  
10 had several \$10 bills, and request a \$20 bill. It's a  
11 complete laundering of the genuine currency.

12 Q. So when you say the no purchase exchange, are you  
13 talking about getting change for money?

14 A. No. I'm talking about a straight exchange in  
15 terms of if I have \$50 in counterfeit 10s and I would like to  
16 have a \$50 bill back that is genuine, then it would be a no  
17 purchase exchange. They haven't bothered to buy anything.  
18 They don't want to buy anything. They're trying to maximize  
19 their profit through a straight exchange of counterfeit bills  
20 for genuine. And there's also other schemes which would  
21 involve, say, purchasing goods or services and then refunding  
22 those items back. Merchants will, in all -- most  
23 circumstances, give a refund in the same means by which an  
24 item was purchased. If there was, for example, a credit card



DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 purchase, the person would get a credit card refund. If it  
2 was a cash purchase, then the person would get a cash refund  
3 on the goods. In this particular investigation here, this  
4 appears to have been some part of that.

5 Q. Okay. Well, can you talk about this case? Now,  
6 you've described several ways the -- the money could be  
7 distributed. What evidence is there in this particular case  
8 that counterfeit money was distributed in those manners?

9 A. As part of this investigation, the initial onset  
10 began at a local nightclub known as the New Palace, and there  
11 were waitresses and drink servers there that first detected  
12 these bills by various means. One of the downfalls of this  
13 bill, of course, is that, since it is an inkjet printed bill,  
14 it's subject to water affecting the ink. On a genuine bill,  
15 for example, the ink is fixed. It does not run. It is not  
16 affected by moisture. These bills are affected by moisture.

17 And again, once they get affected like that, the ink will  
18 run. Additionally, with the UV light, there's features that  
19 simply would not show up, and they would include the  
20 fluorescent fibres.

21 Q. All right. So was the counterfeit money passed at  
22 the Palace?

23 A. Yes, it was. There were several bills that were  
24 passed and detected by staff, who alerted their security

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 officers, who in turn were able to locate the individuals and  
2 turn them over to officers at the scene.

3 Q. And when the money was passed, they received  
4 genuine money back in change and things of that nature,  
5 correct?

6 A. Yes. There were instances where the individuals  
7 approached other patrons within the bar and asked to make  
8 straight exchanges of money. There were also instances where  
9 perhaps they had bought drinks themselves, again, paying for  
10 it with counterfeit.

11 Q. And that matches the -- one of the previous ways  
12 that you indicated that counterfeit is generally distributed,  
13 is that correct?

14 A. Correct. Subsequent investigation also revealed  
15 that these individuals had also gone to a number of merchants  
16 in the preceding day and had purchased several hundred  
17 dollars worth of goods from several merchants in the  
18 Dartmouth area, and both the merchandise and the receipts  
19 were recovered from their possessions, as well as their  
20 residence here.

21 Q. Okay. So how did that tie in to the previous  
22 method you indicated earlier, counterfeit, they exchange --  
23 or launder it?

24 A. As an exchange, it would be sufficient to buy an

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 item with counterfeit cash, save the item, save the receipt,  
2 and then go back perhaps at a later date, a day or two later,  
3 and then get a full exchange of the goods for genuine  
4 currency. Additionally to that, there's an additional profit  
5 in that, if an item, say, for example, cost \$55 and six \$10  
6 bills that were counterfeit were tendered, well, first of  
7 all, they would get \$5 in genuine currency back on the  
8 change, plus when they made the refund they'd get the full  
9 cash refund. So they've maximized their profit even more  
10 than 100 percent.

11 Q. Is there any evidence that these accused actually  
12 returned the money -- or returned the goods?

13 A. Not at this point, no.

14 Q. No. And, but they did receive the goods?

15 A. Yes, they did.

16 Q. And can those goods be resold?

17 A. They could be resold, they could be refunded,  
18 certainly.

19 Q. Certainly. And that's part of the normal scheme  
20 in which counterfeit money is distributed?

21 A. Yes.

22 Q. So in your opinion, based on this investigation,  
23 were the three accused in this case following the normal  
24 patterns you'd expect to see for distributing money?

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1           A.    Absolutely, yes, and not just one but several  
2 patterns.

3           Q.    Okay.  And can you just -- sorry to belabour the  
4 point, but just explicitly state what those patterns are?

5           A.    That would be approaching individuals to make a  
6 straight exchange of counterfeit funds for genuine, buying  
7 and purchasing goods themselves, and purchasing goods for  
8 perhaps later resale or refund.

9           Q.    Now, you've been involved in the past three and  
10 half years for counterfeit money in Halifax.  Can you speak  
11 to any trends with counterfeiting in Halifax over that time?

12          A.    Yes, certainly.  There's been a noticeable upswing  
13 in the number of complaints and certainly the number of bills  
14 passed, as well as the value of those bills as they  
15 accumulate.  In the year of 2002, approximately 251  
16 complaints were received by the Halifax Regional Police.  In  
17 2...

18          THE COURT:  Sorry, that was 2000 and?

19          DET. CST. DROVER:  2002.

20          THE COURT:  There were 251?

21          DET. CST. DROVER:  Yes.

22          BY MR. O'LEARY:

23          Q.    And when you say complaints, do you actually find  
24 counterfeit money on those complaints?

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 A. In the vast majority, yes.

2 Q. Okay.

3 A. In 2003, there 741 complaints of counterfeit  
4 money. In 2004, there were 882 complaints. And already this  
5 year to date, there's over 400 complaints. And the dollar  
6 amount from 2004 totalled close to \$47,000, and this one  
7 seizure from this particular investigation exceeds by a third  
8 the total dollar value -- or, pardon me, is a third of last  
9 year's figure already. So I would anticipate that this year  
10 could actually meet or exceed last year's totals, both in  
11 dollar value and number of complaint files.

12 Q. What happens once money, counterfeit money, gets  
13 into merchants' hands? I assume it's -- the complaints are  
14 mostly dealing with merchants.

15 A. Yes.

16 Q. Okay. And how...

17 A. Merchants, bankers. What happens is, once the  
18 bill is detected, either by the merchant or perhaps their  
19 banking institution, it ends up being a dead loss to the  
20 person who had passed it or had possession of it. In other  
21 words, if you were to go to your bank, if you run a small  
22 business, for example, and made a deposit of your daily  
23 receipts, the bank, because they have detection equipment in  
24 place, would detect the counterfeit bills and deduct from

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 your deposit the amount of counterfeit bills that you had put  
2 in with your genuine currency unknowingly. As a result, it's  
3 a direct loss to that business. Additionally, if you're an  
4 individual perhaps going into a store, buying your groceries,  
5 for example, and you had passed counterfeit money to buy the  
6 daily groceries and the clerk detected that bill, they would  
7 not give you credit for that, and as a result, it's a direct  
8 loss to the individual.

9 Q. Now, you indicated that there was a number of  
10 complaints. I suspect that there's a number of times that  
11 counterfeit money isn't detected, correct?

12 A. Yes, and in those instances there, usually the  
13 individuals' bank, eventually, if they make a deposit, will  
14 detect those bills. It's not uncommon to have someone  
15 unknowingly pass a counterfeit bill. Again, depending on the  
16 sophistication of that bill, its quality of reproduction, the  
17 person could genuinely pass it without knowing, and again,  
18 the person receiving it could genuinely receive it, not  
19 knowing it's a counterfeit bill, and reissue it.

20 Q. So what's the effect of that in the community?

21 A. It really erodes the public confidence in the  
22 money supply system. It causes merchants and individuals to  
23 have a high degree of suspicion in terms of having reliance  
24 on genuine bank notes. It causes them to take preventative

DET. CST. DROVER, Direct Exam. by Mr. O'Leary

1 measures, such as having to buy detection equipment, perhaps  
2 to hire additional staff to deal with counterfeit money as  
3 part of their money stream. It has a wide-ranging effect.  
4 It can really spiral out in terms of the number of victims  
5 and revictimization as these bills get circulated and  
6 recirculated until the point they degrade to the point where  
7 they become noticeably known as a counterfeit bill. But in  
8 the meantime, they could have recirculated dozens of times,  
9 and at each occurrence someone could be a potential victim.

10 MR. O'LEARY: Thank you. Those are all my questions.

11 Please answer My Friend's questions.

12 THE COURT: Cross-examination.

13 **CROSS-EXAMINATION**

14 BY MR. PINK:

15 Q. Cst. Drover, dealing with your figures for the  
16 year 2004, according to your evidence, there was 882  
17 complaints, correct?

18 A. Yes. We had received 882 complaints.

19 Q. And the total amount of money involved was  
20 approximately \$46,000, is that correct?

21 A. Yes.

22 Q. So out of those 882 complaints, the average was  
23 approximately \$50 per complaint?

24 A. If you went about an averaging of that method, you

DET. CST. DROVER, Cross-Exam. by Mr. Pink

1 would arrive at that figure, yes, but that's not necessarily  
2 respective -- or reflective of individual complaints. They  
3 do vary.

4 Q. Do you have any idea how much money is in  
5 circulation in the prov -- or Halifax Regional Municipality?

6 A. No, I don't.

7 Q. Okay. Would you agree with me it could be in the  
8 millions?

9 A. Absolutely.

10 Q. And, in fact, \$46,000 is really a small portion of  
11 the total amount of money that may be in circulation within  
12 the Halifax Regional Municipality?

13 A. That's correct.

14 Q. Now, you said that you were the follow-up  
15 investigator in this matter. What do you mean by follow-up  
16 investigator?

17 A. I was not the officer on scene or the initial  
18 responding officer to this complaint when it arose. Because  
19 it arose in the manner it did and the officers at the scene  
20 felt that it was going to lead to something beyond their  
21 ability to resolve at that point in time, and since they knew  
22 that I specialized in these investigations, I was contacted  
23 that night and asked to report to duty to follow up on this  
24 matter, which I did subsequent to that.



DET. CST. DROVER, Cross-Exam. by Mr. Pink

1 Q. And what follow-up procedures did you follow?

2 A. From the point I was called in, I met with the  
3 initial responding officers to gather their information to  
4 determine what exactly had taken place, what evidence had  
5 been gathered to that point, and to lay out a plan as to what  
6 investigation needed to be done after that.

7 Q. Did you have any contact with the Windsor Regional  
8 Police?

9 A. Yes, I did.

10 Q. And did you, in fact, have the residence of Mr.  
11 Nasser searched?

12 A. I didn't cause them to make a search. I passed on  
13 information to Windsor Regional Police that there may be a  
14 situation involving one of the co-accused that the money  
15 itself may have originated from that location.

16 Q. Okay. Did you, in fact, have any further  
17 communications to see whether or not his residence was, in  
18 fact, searched?

19 A. I'm not entirely certain if it was a formal search  
20 that was done. My understanding was that the officers may  
21 have gone to his residence. Beyond that, I'm not certain  
22 exactly what they -- they did.

23 Q. Do you have any evidence to offer this Court as to  
24 whether or not Mr. Nasser was involved in the manufacturing

DET. CST. DROVER, Cross-Exam. by Mr. Pink

1 of counterfeit money?

2 A. Not at this point.

3 Q. So, therefore, is it fair to say that, based on  
4 your investigation, is that what Mr. Nasser was doing is what  
5 you have described as the distribution of counterfeit money?

6 A. Yes.

7 Q. Now, you, in fact, have no evidence to indicate at  
8 any time did Mr. Nasser ever, in fact, return anything that  
9 he purchased, is that correct?

10 A. That's correct.

11 Q. And according to an agreed statement of facts that  
12 we have agreed to, basically, Mr. Nasser purchased a Sony  
13 tape recorder for \$91.99, correct?

14 A. I believe so.

15 Q. Would you agree with that?

16 A. Yes, I would.

17 Q. That Mr. Nasser, together with two other  
18 individuals, involved in purchases from The Bay of \$328.31?

19 A. Yes.

20 Q. Now, I appreciate that we always can surmise or  
21 assume, but is there any other evidence, Constable, that --  
22 other than those two purchases, that Mr. Nasser, in fact,  
23 did, in fact, use counterfeit money for the purchase of  
24 anything?

DET. CST. DROVER, Cross-Exam. by Mr. Pink

1           A.    I believe there's (instances ?) at the Palace that  
2 night. I'd have to review the file.

3           Q.    And at -- and the Palace, which was a very small  
4 amount, correct?

5           A.    Yes.

6           Q.    So, therefore, if we look at it -- and let's just  
7 round it off for convenience sake -- we have \$100 at the Sony  
8 Store, correct?

9           A.    Yes.

10          Q.    And we have one-third of 328.31 at The Bay, which  
11 is another \$100, correct?

12          A.    Yes.

13          Q.    And another, let's say, \$30 at the Palace?

14          A.    Yes.

15          Q.    So as far as Mr. Nasser goes, as far as  
16 distribution, up until the time he was caught, he had dispute  
17 -- distributed no more than about approximately \$300?

18          A.    That's correct.

19          MR. PINK: I have no further questions.

20          THE COURT: Redirect.

21          MR. O'LEARY: No redirect, Your Honour. That's the  
22 evidence the Crown is calling at this time. My Friend,  
23 I understand, is calling evidence. I'd like to reserve  
24 my submissions until afterward.

1 THE COURT: Thank you. You may step down, Constable.

2 **WITNESS WITHDREW**

3 THE COURT: Mr. Pink.

4 MR. PINK: I call Mr. Diamond [ph] Nasser, please.

1 **DIAMOND NASSER, SOLEMNLY, TESTIFIED:**

2 THE CLERK: Please state your full name and spell your  
3 last name for the record.

4 MR. D. NASSER: My name is Diamond Nasser. Last name,  
5 Nasser, N-a-s-s-e-r.

6 **DIRECT EXAMINATION**

7 BY MR. PINK:

8 Q. What is your address, Mr. Nasser?

9 A. 24 Southgate Crescent, Richmond Hill, Ontario.

10 Q. Your occupation, sir?

11 A. I work as a financial controller.

12 Q. You are the father of Alkarim Nasser, is that  
13 correct?

14 A. That's correct.

15 Q. And what is the age of your son, sir?

16 A. Nineteen right now. He became 19 in December.

17 Q. Now, I would like to go back to March of 2003.  
18 Where was your son living at that time?

19 A. He was living with my sister. He moved out of the  
20 house because he didn't want to abide the rules and  
21 regulations of my house.

22 Q. And I wonder if you could explain to Her Honour  
23 what these rules and regulations are that your son at that  
24 time did not wish to comply with.

25 A. School nights, there was a 9:00 curfew. He wanted

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 to be out during school nights. Weekends, 11:00 curfew. I  
2 didn't want him to take any drugs, to drink. He was under  
3 age. And I wanted him to study. I didn't want him to  
4 associate with people that had criminal backgrounds.

5 Q. Now, when he was living outside of your house, did  
6 he get himself into trouble with the law?

7 A. Yes, he did.

8 Q. And that was back on March the 11th, 2003, he was  
9 convicted for a break, enter -- or pleaded guilty to break,  
10 enter and theft, and he was sentenced to probation for 18  
11 months, is that correct?

12 A. That's correct.

13 Q. As a result of that, what happened to your son?

14 A. I brought him home. I started supervising him.  
15 He had strict rules to follow. He had to abide by the rules  
16 of the house and he had to abide by the Court's conditions.  
17 He had a 9:00 curfew. He started working hard at school.  
18 His marks improved drastically. As a result, by June, July,  
19 he graduated. In fact, he got an award as an Ontario scholar  
20 and got admission at University of Windsor. In September, he  
21 went to Windsor, and after that he wasn't in my care and  
22 supervision.

23 Q. And how did he do at the University of Windsor,  
24 Mr. Nasser?

MR. D. NASSER, Cross-Exam. by Mr. Pink

1           A.    So-so.  His marks, compared to what he did in the  
2 previous term in high school, the last two terms, he just  
3 squeaked through.  He wasn't performing at his ability or  
4 capability.  He's a brilliant student if he wants to work on  
5 it.

6           Q.    Do you have any -- can you give the Court any  
7 reason why that may have happened?

8           A.    I think he was a freshman, he got his freedom, and  
9 I think started meeting -- making friends that weren't really  
10 role models.

11          Q.    How would you describe his maturity at the time he  
12 went to the University of Windsor?

13          A.    He was still 17.  He wasn't really mature enough  
14 to be independent, living alone.

15          Q.    When was it that you first found out that he was  
16 arrested in Halifax for passing counterfeit money?

17          A.    In January 2005, first week of January.

18          Q.    As a result of that, sir, what happened?

19          A.    He phoned me to -- to tell me what happened.  I  
20 told him that "I'm not coming to Halifax.  I will not even  
21 get involved in taking you out on bail, unless you agree to  
22 my terms and conditions," that he would have to adhere to the  
23 rules of the house.  After half a dozen phone calls, finally  
24 we agreed that he will abide by my rules and regulations.

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 Q. And did...

2 A. So I came here and with the Court's permission to  
3 take him out on bail.

4 Q. And that was in January of 2005?

5 A. That's correct.

6 Q. And where did you -- where did he go after that,  
7 sir?

8 A. He came home. For the last six months, he has  
9 been home. I have been supervising him. The first thing I  
10 told him was find a job, so within a month he found a job. I  
11 didn't like the company he worked for. It was a  
12 telemarketing company. I wanted him to find a job which has  
13 a future, which provides training. So after a month or so,  
14 he found a job with Bell Canada. They sent him for training.

15 He has completed his training and is working full time with  
16 Bell Canada.

17 Q. And what is he doing for Bell Canada?

18 A. Customer service. He sorts out all the phone  
19 calls coming in that customers have problems and he helps  
20 them take care of those problems.

21 Q. And he's been at that job for how long?

22 A. About seven or eight weeks.

23 Q. Have you ever -- have you had any conversations  
24 with his supervisors?



MR. D. NASSER, Cross-Exam. by Mr. Pink

1           A.    No, but I have a reference letter by his training  
2 manager from Bell Canada.  If the Court doesn't mind, I can  
3 read just two or three sentences from it.

4           Q.    If you would like to.

5           THE COURT:  Any difficulty with that?

6           MR. O'LEARY:  Your Honour, I think it's already in as  
7 evidence.

8           MR. PINK:  It's already in as...

9           MR. O'LEARY:  So I'm not sure if it's necessary.

10          BY MR. O'LEARY:

11          Q.    Okay.  Just go ahead, sir.

12          A.    I just want to read one or two sentence.  I'll be  
13 brief.

14          "Alkarim has shown outstanding work ethic.  He has  
15                shown strong literacy qualities.  Alkarim is  
16                a fine example of a dedicated, motivated  
17                individual."

18          Signed by his hiring and training manager.

19          Q.    What are your son's plans?

20          A.    He wants to work for Bell Canada for several  
21 years, and meanwhile, he wants to start going to university  
22 part time, either through online courses or going in the  
23 evening and taking -- and finishing his university degree.

24          Q.    There's been some mention to me, at least, about

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 York University.

2 A. Yeah, because I don't want him to be out now. I  
3 want him under my safe care and supervision.

4 Q. And if, in fact, he was to go to university, where  
5 would he live?

6 A. At home.

7 Q. How far is your residence from York?

8 A. About 10 kilometres.

9 Q. Are your wife and you willing to take him under  
10 your supervision, as you have for the last six months, if the  
11 Court should allow you to do so?

12 A. Yes.

13 Q. What rules and regulations would you put on him  
14 if, in fact, he was allowed to live in your house?

15 A. He has to abide by the curfew, no drugs, drinking  
16 only on social occasions, help in the house, go to church,  
17 mosque.

18 Q. It appears from my conversations with you, sir,  
19 that religion is very important to your family.

20 A. It is.

21 Q. I...

22 A. I go to the mosque at least two or three times a  
23 week.

24 Q. And up until the time that your son had

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 difficulties back in 2003, was he, in fact, a regular  
2 attender at the mosque?

3 A. He used to go once or twice a week, and our  
4 friction was part of that, okay. He didn't want to go to  
5 church.

6 Q. And what about during the last six months?

7 A. He has started going to church.

8 Q. Is it a rule of your household that he must go to  
9 church?

10 A. Yeah. He must at least go once a week.

11 Q. And what about your curfews? What curfews would  
12 you impose upon him if, in fact, the Court saw fit to allow  
13 him to return?

14 A. Weeknights 9:00, unless he goes for university  
15 classes and comes a bit late, and weekends maybe 11:00.

16 Q. What, if anything, can you say about his  
17 associates in the last six months?

18 A. Last six months, I have been keeping track of who  
19 he associates with. He only has a couple of friends that I  
20 am comfortable with and I only allow him to deal with those  
21 friends.

22 Q. As his father, do you believe that he is a leader  
23 or a follower?

24 A. He used to be a follower but he can be a leader.

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 He has that intelligence.

2 Q. He knows the difference between right and wrong?

3 A. Yes.

4 Q. If, in fact, he was allowed to return under, let's  
5 say, a conditional sentence order, which has been explained  
6 to you, can you tell Her Honour whether or not you, as you  
7 are under affirmation here, would turn your son in if, in  
8 fact, he, in fact, breached any of the Court's orders?

9 A. That's correct. I believe in rules and  
10 regulations. Society has to function and there has to be  
11 rules. In the home, there has to be rules. That was the  
12 cause of the friction before, but for the last six months I  
13 believe he has (noticed this ?). I believe he is willing now  
14 to abide by rules.

15 Q. Your son has spent a few days in jail.

16 A. Yeah.

17 Q. Do you think that has had an impression upon him?

18 A. Yes. That's the first time he spent, and he spent  
19 a week in jail. I believe that may have opened his eyes.

20 Q. Has there been any indication over the past six  
21 months, Mr. Nasser, that your son was not obeying the law?  
22 Was there any -- any indication that you've witnessed whereby  
23 he was not following what the laws are of this country?

24 A. No, no indication at all.

MR. D. NASSER, Cross-Exam. by Mr. Pink

1 Q. You've had an opp...

2 THE COURT: That question was in relation to since  
3 January?

4 MR. PINK: Since January.

5 BY MR. PINK:

6 Q. You've had an opportunity to read the presentence  
7 report?

8 A. Yes.

9 Q. Of course, it appears that you've told the writer  
10 of the presentence report much of what you've told Her Honour  
11 this morning. Is there any comments, sir, that you wish to  
12 make in relation to the presentence report?

13 A. I believe the presentence report was biased. It  
14 only showed the negative aspect of Alkarim. It didn't show  
15 the positive aspects, his intelligence, his willingness to  
16 change. Like, when he got into trouble in 2003, within six  
17 months his results changed drastically. So under  
18 supervision, he can mature and become a good member of  
19 society.

20 Q. And you're willing to give him that guidance, sir?

21 A. Yes.

22 MR. PINK: I have no further questions.

23 THE COURT: Cross-examination.

24

**CROSS-EXAMINATION**

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 BY MR. O'LEARY:

2 Q. So directly after he got arrested in November, he  
3 came back home to live with you, is that correct?

4 A. November? No.

5 Q. In November of -- I apologize. It was November of  
6 '03 when he got arrested for the break and enter.

7 A. No. He was arrested February or March of '03, and  
8 then he came back.

9 Q. Okay. After...

10 A. '03 was his sentence.

11 Q. I apologize. So he was sentenced in '03, and he  
12 was in your care.

13 A. Yeah.

14 Q. You didn't go to his meetings with his probation  
15 officer?

16 A. In Windsor, no.

17 Q. And her name is Christine McPhail, correct?

18 A. Yes.

19 Q. So you don't have any first-hand knowledge of what  
20 actually happened at the meetings?

21 A. No.

22 Q. So your only knowledge of what happened at the  
23 meetings is based on what he's told you?

24 A. Yes.

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 Q. And you were closely supervising him?

2 A. Not in Windsor. I was closely supervising...

3 Q. No. That period that he was on probation, when he  
4 moved home after.

5 A. No.

6 Q. No?

7 A. Because he was in Windsor. He was under my care  
8 and supervision from March to September. September, he moved  
9 out of town.

10 Q. What year did he go to University of Windsor?  
11 2003?

12 A. September 2003.

13 Q. September 2003.

14 A. So for six months he was under my care and  
15 supervision.

16 Q. And you saw a noticeable change in those six  
17 months, correct?

18 A. Yes. His grades improved drastically.

19 Q. So you'd be -- I take it that after the break and  
20 enter occurred you talked to him?

21 A. Yes.

22 Q. You had many conversations?

23 A. Yes.

24 Q. I suppose he told you something like this would

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 never happen again, correct?

2 A. Yeah.

3 Q. So he indicated to you he wouldn't be in trouble  
4 again?

5 A. Yeah.

6 Q. And yet he is, correct?

7 A. That's correct.

8 Q. And you'd be surprised that from November '03 to  
9 September 9, 2004, he missed 10 of his appointments with his  
10 probation officer? You didn't know that, did you?

11 A. I believe there was some scheduling problems that  
12 my son mentioned to me.

13 Q. So you think that he had scheduling problems for  
14 10 appointments? Is that correct? You can't comment?

15 A. I can't comment because I wasn't involved. The  
16 probation officer never spoke to me or I haven't spoken to  
17 her.

18 Q. Now, you were aware that, from the sentencing date  
19 in November till -- he also received an order for 100 hours  
20 community service, correct?

21 A. Yes.

22 Q. And you're aware from November '03 to January '04  
23 he'd only completed eight hours of that community service  
24 work, correct?



MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 A. Yeah.

2 Q. Is that correct?

3 A. Yeah.

4 Q. I apologize, you just have to speak up so that the  
5 record...

6 A. Yeah, yes.

7 Q. Okay. So over a year, he only completed eight of  
8 100 hours of community service, correct?

9 THE COURT: Did you say November '03 to January '04?

10 MR. O'LEARY: Yes.

11 THE COURT: I don't see that as over a year.

12 MR. O'LEARY: I apologize.

13 BY MR. O'LEARY:

14 Q. Over two months, he only completed eight hours,  
15 correct?

16 A. Yeah.

17 Q. And because of that, you had indicated that he  
18 could complete his community service work at your mosque?

19 A. Yes.

20 Q. Correct?

21 A. Yeah.

22 Q. And he was supposed to be doing that in January of  
23 '04, correct?

24 A. I don't remember the exact month but...

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 MR. O'LEARY: I apologize. I think I'm -- I apologize,  
2 Your Honour.

3 BY MR. O'LEARY:

4 Q. From November '03 to January '05, he had only  
5 completed eight hours of his community service, correct?  
6 Correct?

7 A. Yes.

8 Q. So over that year, he'd only completed eight  
9 hours. Because of that, he had discussions with the  
10 probation officer about getting the community service work  
11 done.

12 A. Yes.

13 Q. And he was supposed to complete an additional 25  
14 hours by January 12th of 2005, correct?

15 A. Yeah. If you say so.

16 Q. Yeah. In any event, in January, he was supposed  
17 to be completing community service work at your mosque,  
18 correct?

19 A. Yeah.

20 Q. And it was during that time that he was supposed  
21 to be completing the community service work that he came to  
22 Halifax and committed these crimes, correct?

23 A. It -- yeah.

24 Q. I am asking.

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 A. Yes.

2 Q. He was supposed to be doing community service work  
3 at your mosque when he committed these crimes?

4 A. Yes.

5 Q. Did you know he was coming to Halifax?

6 A. No.

7 Q. You had no idea?

8 A. No. Because he -- he'd already gone to Windsor.

9 Q. So you were -- you had no clue he was coming to  
10 Halifax?

11 A. No.

12 Q. So it came as a total shock?

13 A. Yeah.

14 Q. Especially since he had said that there wouldn't  
15 be any more trouble, correct?

16 A. Yeah.

17 Q. Now, you've had problems with him in the past when  
18 he was living at home, haven't you?

19 A. Just minor problem when he was 12 or 13.

20 Q. Thirteen? Your wife, in the presentence report,  
21 described him as being a troublemaker. Can you comment on  
22 that?

23 A. I think troublemaker is -- is the wrong word.

24 Q. She says he was less respectful at home and failed

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 to keep his curfew. Is that correct?

2 A. Yeah, but that was when he was in high school.

3 Q. So you sent him away to private school, correct?  
4 And that's because you were having trouble controlling him at  
5 home?

6 A. Yes.

7 Q. So the reason he got sent to private school is  
8 because he was hard to control?

9 A. There were a couple of friends in the  
10 neighbourhood that I wanted him to be away from.

11 Q. So that was part of the reason.

12 A. Yeah.

13 Q. And the other part of the reason was that he was  
14 difficult to control?

15 A. No, that was the main reason, I was taking him out  
16 of his friends' circle, because I didn't want him to go to  
17 the same school as those friends.

18 Q. Now, he's probably indicated to you that he'll  
19 never do anything like this again, I assume.

20 A. Yes.

21 Q. Yes. The same way he indicated before?

22 A. He was still growing up. Now he's an adult.  
23 There's a difference. I believe he has matured.

24 Q. You indicated there would be house rules.

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 Previous house rules where he had a curfew of 9, did he abide  
2 by that?

3 A. Yes.

4 Q. You indicated that when he was younger one of the  
5 house rules you imposed was no drugs or drinking. Did he  
6 abide by that?

7 A. Yes.

8 Q. It wasn't his idea to get the job at Bell? It was  
9 your idea, wasn't it?

10 A. It was both. We wanted to find a company that had  
11 a future.

12 Q. Okay. When he came home in January...

13 A. Yeah.

14 Q. ...it was your idea that he get a job, wasn't it?

15 A. Yes.

16 Q. The person who wrote the reference letter, do you  
17 know that person?

18 A. No.

19 Q. Does your wife work?

20 A. Yes.

21 Q. So you're both out of the house during the day?

22 A. Yes.

23 Q. If there was a condition of house arrest where he  
24 couldn't leave the house, there'd be nobody there to

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 supervise him, correct?

2 A. That's correct.

3 Q. You say you don't want him to go away to  
4 university. Are you referring to York as being away?

5 A. No.

6 Q. No. Why wouldn't you trust him to go away?

7 A. I want to say that he has matured. I -- I want to  
8 make sure that he follows rules and somebody's taking --  
9 supervising him till he matures enough to live on his own.

10 Q. So you're not sure he can follow rules without  
11 somebody...

12 A. I believe he'll follow.

13 Q. That's not what I'm asking you. Without somebody  
14 supervising, you don't know if he can follow the rules?

15 A. I'm not 100 percent sure.

16 Q. Now, he had 100 hours community service, correct?

17 A. Yes.

18 Q. He completed 65 of those hours only after this  
19 incident happened, correct?

20 A. Yeah.

21 Q. That's correct?

22 A. I think so.

23 Q. Yeah. And he only got the job after this incident  
24 happened, correct?

MR. D. NASSER, Cross-Exam. by Mr. O'Leary

1 A. Yes.

2 Q. And, in fact, his marks were going down and he was  
3 doing worse in school before this incident happened, correct?

4 A. Yeah. The marks were so-so. They weren't great.

5 Q. And your son knows he faces great jeopardy because  
6 of this incident?

7 A. Yeah, obviously.

8 Q. So it's fair to say the improvement in behaviour,  
9 the gaining employment and finishing off the community work  
10 service is due in great part to having this incident over his  
11 head?

12 A. It's partly because of that.

13 MR. O'LEARY: Thank you. Those are all my questions,  
14 Your Honour.

15 THE COURT: Redirect?

16 MR. PINK: Yes, Your Honour.

17 **REDIRECT EXAMINATION**

18 BY MR. PINK:

19 Q. Your son was on probation for a period of 18  
20 months...

21 A. Yes.

22 Q. ...is that correct?

23 A. That's correct.

24 Q. And under his terms of probation, there was no

MR. D. NASSER, Redirect Exam. by Mr. Pink

1 requirements as to when he had to have the community service  
2 done, was there?

3 A. Yeah, there was no requirement.

4 Q. He is not on probation as of today?

5 A. That's correct.

6 Q. Is it not true, sir, that he, in fact, finished  
7 his 100 hours of community service prior to the termination  
8 of his probation?

9 A. That's correct.

10 Q. Is it not also true he was ordered to make  
11 restitution?

12 A. That's correct.

13 Q. And he did so?

14 A. That's correct.

15 Q. And he also had to write an essay for the Judge,  
16 and he completed that, sir?

17 A. That's correct.

18 Q. So he completely fulfilled all the terms of his  
19 probation order?

20 A. That's correct.

21 Q. Even though it may have been towards the end, he  
22 did complete it before the termination?

23 A. That's correct.

24 Q. You had never met his probation officer in



MR. D. NASSER, Redirect Exam. by Mr. Pink

1 Windsor?

2 A. Never.

3 Q. At no time did she ever call you?

4 A. No.

5 Q. When was the first time that you learned about  
6 scheduling problems or meeting problems?

7 MR. O'LEARY: Your Honour, I'm not sure if this is  
8 correct re-examination. I believe these incidents  
9 could have been covered on direct. I mean,  
10 probation...

11 THE COURT: True enough, but we're in a sentencing  
12 hearing, so I don't think it's really going to issues  
13 that are monumental in terms of the matter that's  
14 before me.

15 MR. O'LEARY: That's fine, Your Honour.

16 BY MR. PINK:

17 Q. When was it you found out about his scheduling  
18 problems?

19 A. After January.

20 Q. Of two thousand and?

21 A. Five.

22 MR. PINK: Thank you, sir.

23 THE COURT: Thank you. You may step down. Those are  
24 really omitted questions. Was there anything arising

1 out of them, Mr. O'Leary?

2 MR. O'LEARY: No.

3 THE COURT: Further evidence, Mr. Pink?

4 MR. PINK: No, Your Honour.

5 THE COURT: All right. I'll hear from the Crown.

**SUBMISSIONS**

1  
2 MR. O'LEARY: Your Honour has before you the agreed  
3 statement of facts. I realize you haven't had much  
4 opportunity to review it. As indicated or as you've  
5 seen from the evidence, the accused does have a record  
6 of one incident of November of '03, break and enter,  
7 for which he received 18 months probation.

8 I submit, Your Honour, as I've indicated, the Crown is  
9 asking for incarceration in the range of 18 to 24  
10 months. I submit there's several aggravating features  
11 that -- that warrant that in this case. The first,  
12 Your Honour, I'd submit, is that this is an instance of  
13 crime based on greed. The presentence report indicates  
14 that this is an accused that was relatively well off, a  
15 good family upbringing, no psychiatric issues, no  
16 substance abuse issues, not the usual telltale signs  
17 that you'd expect for somebody to become involved in  
18 crime to obtain money. There may be some issue as to  
19 whether he needed the money for school or something of  
20 that nature. I can't anticipate what defence will say  
21 on that. But in any event, I submit that is not a good  
22 excuse. What we have here is a case where a crime was  
23 committed where the motive was to obtain the money. If  
24 he did need money for school, that's not a useful  
25 explanation. He could get a job, even part-time, to

SUBMISSIONS BY MR. O'LEARY

1 resolve the factors. I submit a second...

2 THE COURT: It is possible that this was a situation  
3 where it was perhaps the thrill of pulling off the  
4 criminal activity that was the motive was opposed to  
5 the financial aspect.

6 MR. O'LEARY: Well, in any event, I'd submit that also  
7 is an aggravating feature, to commit a crime just for  
8 the -- to see if you can get away with it.

9 THE COURT: The sensation.

10 MR. O'LEARY: Yes. It's not something where -- it's  
11 not something where he's addressing a need or he has  
12 something controlling him, making him do it. It's a  
13 question where he purposely made a choice and carried  
14 out the crime. The Crown is submitting that, for  
15 something like that, that the obvious motive is greed.

16 I'd submit the second aggravating factor here is the  
17 amount. In the agreed statement of facts, we list  
18 \$15,890. Detective Drover said it's now around 16,000.

19 The 15,890 would be whatever amounts were disbursed,  
20 which we don't know about, if that's the case. This is  
21 a significant amount, Your Honour. Granted, My Friend  
22 will say it was between three friends, but they took  
23 part in this together. I mean, this is a new car.  
24 This is just not an instance of somebody with a little

SUBMISSIONS BY MR. O'LEARY

1 extra spending money.

2 The third factor I'd submit is the quality, an  
3 aggravating factor. Detective Drover describes it  
4 visually as an 8 or 9 -- or described the quality as an  
5 8 or 9 out of 10. Given that, it's hard to spot. It's  
6 easy to pass in the community. It's greater risk to  
7 the community because, as Detective Drover indicated,  
8 it can get passed numerous times, creating a greater  
9 potential for loss.

10 But I submit the third aggravating factor, from the  
11 Crown's perspective, probably the biggest aggravating  
12 factor, is this is a crime which required a large  
13 amount of sophistication or premeditation and planning.

14 As you'll see from the agreed statement of facts, the  
15 three -- three 20 year olds or around 20 year olds come  
16 down from the University of Windsor. They have no  
17 connection to Halifax except that Mr. Nasser or Mr.  
18 Jaffer have a cousin in Halifax. They fly down and  
19 they're just down for 10 days. Plane tickets indicate  
20 that they'll be flying back -- they fly down January  
21 6th and fly back on the 16th, so they're scheduled to  
22 fly back after a short period. They concealed in their  
23 luggage, not their carry-on luggage but their luggage,  
24 the money, and there's a text message found on one of

SUBMISSIONS BY MR. O'LEARY

1 the cell phones of one of the three saying it's not --  
2 basically indicating that checked luggage is not  
3 checked as easily as carry-on luggage. The money for  
4 this particular accused was \$4,000 found in his kit bag  
5 concealed in envelopes under the kit bag that was  
6 checked.

7 They rent a car, once again only for ten days, or for  
8 ten days. There is a message found in the hotel room,  
9 everything is going to plan, or in part everything was  
10 going to plan. They pay for the hotel room with cash.

11 Mr. Nasser indicates that, in fact, he's from England,  
12 and that he'll be paying by cash since his credit card  
13 is maxed, additional evidence that they were trying to  
14 cover their steps.

15 They buy goods at the mall, MicMac Mall, with  
16 counterfeit money, and they exchange money at the bar  
17 to get change back. As you've heard from Detective  
18 Drover, these are established ways of distributing  
19 counterfeit money. They're in -- they're starting to  
20 carry out their plan.

21 I should point out, Your Honour, although he's only  
22 charged with uttering counterfeit money at the four  
23 locations, the Foot Locker, the Sony Store, The Bay,  
24 and as well the Palace, the receipts and goods found in

SUBMISSIONS BY MR. O'LEARY

1 the car, the rental car that the three accused had  
2 rented, were for more than eight stores at the MicMac  
3 Mall, so it's quite possible that, in fact, counterfeit  
4 money had been used to buy those goods and items and  
5 already been disbursed, although I concede the Crown  
6 cannot prove that's the case. I'm just saying it is a  
7 possibility. Now, it's fair to note...

8 THE COURT: What weight do I give that?

9 MR. O'LEARY: Well, Your Honour, I submit that what we  
10 have here is that on January 6th they come down, on  
11 January 7th they're buying stuff, on January 8th  
12 they're caught. I submit that there's only one  
13 conclusion you can draw, which is that they came to the  
14 area where they're not known, little connection, for a  
15 short stay with \$16,000 in counterfeit money with the  
16 idea being they're going to distribute at least a large  
17 part of it over 10 days and be out of town before the  
18 merchants can know they're gone and before the city can  
19 know -- before it's known they're gone. I submit that  
20 what's the point of coming to Halifax with little or no  
21 connection, having all this counterfeit money hidden in  
22 their bags, renting a hotel room, paying cash, renting  
23 a car, getting out of town within ten days, unless  
24 there was a plan to disburse the counterfeit money? I

SUBMISSIONS BY MR. O'LEARY

1 submit this is an extremely aggravating factor. And  
2 what's happened is they got caught early in the plan.  
3 And I submit that it's lucky they got caught early.  
4 Otherwise, potentially, who knows how much of the  
5 16,000 or 15,890 could have been distributed.

6 Now, this particular accused, another aggravating  
7 factor, I submit, is that he's on probation. He's  
8 doing all this while he still has four months of  
9 probation left. I submit that it doesn't appear that  
10 he took his probation order seriously. He committed a  
11 serious crime before, break and enter. The letter from  
12 the probation officer which I've provided you indicates  
13 that he missed numerous appointments, that he was  
14 defiant, found him to be difficult dealing -- he was  
15 challenging at times and demeaning to her. He had only  
16 completed 35 of the 100 hours prior to the incident  
17 we're dealing with now, 100 hours of community service.

18 I submit that if he was taking the probation order  
19 seriously, over one year he would have completed more  
20 than 35 hours. I submit that, looking at this, the way  
21 the timeline goes, he gets arrested for this in  
22 January, and then all of a sudden he can finish off 65  
23 hours rather quickly. I submit that, based on that,  
24 it's a strong inference that he began taking the



SUBMISSIONS BY MR. O'LEARY

1           probation order seriously once he knew he was in  
2           trouble and facing great jeopardy. And I submit  
3           another aspect that shows how little respect he had for  
4           the judicial system is the fact that, when his  
5           probation officer questioned him on if he had any  
6           contact with the police, he repeatedly denied that he  
7           had. From January through April when he finished off  
8           the probation order, he did not tell her that he was --  
9           had been arrested in Halifax. I submit this is  
10          evidence that, at the very least, the accused is quite  
11          capable of being disingenuous and does not respect a  
12          court order, or at least the spirit of a court order.

13          In fairness to the accused, Your Honour, there are some  
14          mitigating factors. There was an early guilty plea  
15          entered. He is young, and I concede that there is no  
16          evidence that this accused manufactured the counterfeit  
17          money in question.

18          As I understand it, My Friend will be asking for a  
19          conditional sentence order. As I indicated, the Crown  
20          is asking for a real -- well, real jail. I submit that  
21          counterfeiting -- in counterfeiting, it's settled law  
22          that deterrence and denunciation are the primary  
23          considerations for the Court when sentencing. I  
24          concede that in some cases a conditional sentence order

SUBMISSIONS BY MR. O'LEARY

1 can achieve those goals, but I submit that crimes in  
2 the nature of counterfeiting -- because a conditional  
3 sentence order, I submit, generally works best for  
4 specific deterrence. Crimes in the nature of  
5 counterfeiting also have a large emphasis on general  
6 deterrence. And in this case, I submit actual custody  
7 is required to be a deterrent, especially when you  
8 consider the aggravating factors.

9 Now, I submit that the distinction between a  
10 conditional sentence order and actual custody, I  
11 submit, is helpfully examined in McCurdy, the case I  
12 have at tab 2 of my book, which I've handed up a clean  
13 copy to you today. He pled guilty to conspiracy to  
14 possess marijuana for the purpose of trafficking. He  
15 had been sentenced to 18 months, an 18 months CSO. The  
16 sentence was set aside and he was given three years  
17 imprisonment. Now, granted, it's a different type of  
18 offence than ours, but I submit it's a -- it's helpful  
19 to help us analyze the actual factors here. And I'll  
20 draw your attention, Your Honour, to paragraph 14. Or  
21 I'll draw Your Honour's attention to paragraph 5.

22 "The accused admitted responsibility for the offence  
23 and advised the writer of the report that he  
24 knew the consequences of the action.

SUBMISSIONS BY MR. O'LEARY

1           However, the money outweighed the punishment  
2           at the time."

3 I submit counterfeiting is that type of offence. It's a  
4 risk/reward type of offence for an accused. They know  
5 there's potential punishment out there but there's  
6 great reward too that they can get away with the money  
7 scot free. Then paragraphs 14 through 17:

8 "Section 18 [sic] sets out several objectives of  
9 sentencing, including denunciation,  
10 deterrence and rehabilitation. Although  
11 conditional sentences are available for all  
12 offences for which there is no minimum  
13 sentence, Lamer in Proulx has emphasized that  
14 incarceration provides more deterrence than a  
15 conditional sentence, a conditional sentence  
16 is more lenient than incarceration, and that  
17 in some circumstances the need for  
18 denunciation and punishment is so pressing  
19 that incarceration would be the only suitable  
20 way to express society's condemnation of the  
21 offender's conduct."

22 I submit that's the case here.

23 "The Court has indicated several times in cases of drug  
24 trafficking deterrence will be a primary

SUBMISSIONS BY MR. O'LEARY

1           consideration.       For example, in R. v.  
2           Ferguson Justice Jones stated: 'This Court  
3           has repeatedly emphasized the need for  
4           deterrence in the case of drug traffickers.  
5           Persons who become involved in trafficking do  
6           so deliberately with full knowledge of the  
7           consequences.       The general range of  
8           sentences, even for minor traffickers, is  
9           between six and twelve months imprisonment.  
10          The primary element for sentencing for  
11          trafficking must be deterrence."

12       Your Honour, I submit that that is also the case for  
13       counterfeiting. The general -- at the low end of the  
14       range, Your Honour, would be six months of  
15       imprisonment, and it is an offence deliberately  
16       undertaken where the accused knows there are  
17       consequences.

18       "Although it's not necessary that the length of  
19       sentence be precisely proportioned to the  
20       quantity of drugs involved, commercial  
21       distributors and growers require materially  
22       larger sentences than petty retailers, as  
23       stated in R. v. Fifield. There was no  
24       question in this case that the respondent was

SUBMISSIONS BY MR. O'LEARY

1           motivated by financial gain and the operation  
2           was well established, sophisticated, large-  
3           scale commercial. These are all aggravating  
4           factors."

5 Here, Your Honour, as I've indicated, we have a large amount  
6           of counterfeit money with an apparent relatively large  
7           amount of planning to get it to Halifax. I'd submit  
8           that that is an aggravating factor.

9           Another critical aggravating factor not mentioned by  
10          the sentencing judge was that the respondent was on  
11          probation at the time of this offence, which, according  
12          to Proulx, is a significant factor in assessing the  
13          risk of reoffence and thus suitability for a  
14          conditional sentence. That is directly appropriate for  
15          our case, Your Honour.

16          As I indicated, there are -- in the end, he did receive  
17          -- the judge did find that the need for denunciation  
18          was so pressing that incarceration was the only  
19          suitable sentence. I do concede that there were other  
20          circumstances which factored into his response. This  
21          is at paragraph 23. But...

22          THE COURT: I'm trying to find out how old Mr. McCurdy  
23          was.

24          MR. O'LEARY: He was 41.

SUBMISSIONS BY MR. O'LEARY

1 THE COURT: I think that's a fairly significant diff --  
2 feature that differs between the two cases.

3 MR. O'LEARY: I will be addressing cases where young  
4 people are involved, Your Honour. I'm just putting  
5 this case out for the proposition that -- why a  
6 conditional sentence order in this case would not be  
7 appropriate, given the nature of counterfeiting, and  
8 I'm saying it's analogous to a trafficking type offence  
9 where generally deterrence is very important and that  
10 in Proulx you should consider deterrence. And I will  
11 refer Your Honour -- I've included Proulx in the -- at  
12 tab 1 for Your Honour's reference. I'd just refer you  
13 to paragraphs 40 and 44.

14 THE COURT: Sorry, where are you now?

15 MR. O'LEARY: At tab 1 in my book. And this is  
16 discussing conditional sentences and incarceration.

17 "Although a conditional sentence is, by statutory  
18 definition, a sentence of imprisonment, this  
19 Court in Shropshire recognized that there is  
20 a very significant difference between being  
21 behind bars and functioning within society  
22 while on conditional release. These comments  
23 are equally applicable to the conditional  
24 sentence. Indeed, offenders..."

SUBMISSIONS BY MR. O'LEARY

1 THE COURT: Sorry, what paragraph are you at again?

2 MR. O'LEARY: 40.

3 THE COURT: 40, okay. Carry on.

4 MR. O'LEARY: "Even if their liberty is restricted by  
5 the conditions attached to their sentence,  
6 they are not confined to an institution and  
7 they can continue to attend their normal  
8 employment or educational endeavours."

9 As the accused would here if given a conditional sentence.

10 "They are not deprived of their private life to the  
11 same extent. Nor are they subjected to a  
12 regimented schedule or an institutional  
13 diet."

14 And at paragraph 44:

15 "In light of these observations, a conditional  
16 sentence, even with stringent conditions,  
17 will usually be more lenient than a jail term  
18 of equivalent duration. The fact that  
19 incarceration is threatened punishment for  
20 those who breach their conditions further  
21 supports this conclusion. In order for  
22 incarceration to serve as a punishment for  
23 breach of a conditional sentence, logically,  
24 it must be more onerous than a conditional

SUBMISSIONS BY MR. O'LEARY

1           sentence."

2   So based on those reasons, the Court in Proulx finds that  
3       there are cases where denunciation and deterrence, when  
4       they are particular pressing, are preferable to  
5       conditional sentence orders, and I submit, even with  
6       counterfeiting cases, that is the case.

7       Now, I submit -- basically, Your Honour, it's the  
8       Crown's submission that a conditional sentence order  
9       would send the wrong message here. What we have are  
10      three youths coming down from -- not youths -- three  
11      young people coming down from Windsor, Ontario, some  
12      sort of plan to distribute the counterfeit money.  
13      They're going to go back to Ontario. They know coming  
14      down they might get caught, they might not. The  
15      message that would be being sent is, if you do come  
16      down, if you are planning to distribute counterfeit  
17      money, what you're going to get is some form of house  
18      arrest or conditional sentence. I submit that a  
19      stronger message of deterrence is, in fact, that jail  
20      is the appropriate sentence.

21      And why is deterrence so important in counterfeiting  
22      cases, Your Honour? Basically, I'm just going to  
23      explore quick points. It's a very serious offence. It  
24      potentially affects the economy of the community, as



SUBMISSIONS BY MR. O'LEARY

1 well as the country. And I'll refer you to the case of  
2 Haldane at tab 4, paragraphs 17 and 18.

3 THE COURT: What tab are you in?

4 MR. O'LEARY: Tab 4.

5 THE COURT: I've got the -- are you on the Court of  
6 Appeal decision?

7 MR. O'LEARY: I'm in my book of authorities, Your  
8 Honour, R. v. Haldane.

9 THE COURT: Yeah. You've got the Superior Court and  
10 the Court of Appeal decisions in there.

11 MR. O'LEARY: I'm at the Superior Court one.

12 "Counterfeit money constitutes a very serious threat to  
13 the community from the economy -- of the  
14 community to the economy of the country,  
15 particularly now when it can be produced  
16 relatively easily, although the government  
17 does try to keep one step ahead. That is  
18 why, I'm told, it is almost impossible to  
19 produce current \$20 counterfeit bills, but  
20 the still current but older \$20 bills you  
21 were producing are fairly easy to produce on  
22 basic computer equipment. Our dollar has  
23 enough pressures and strains these days  
24 without additional strain of counterfeit

SUBMISSIONS BY MR. O'LEARY

1 money circulating freely."

2 As Detective Drover has indicated, it can be produced quite  
3 easily. It does affect the community. The bills get  
4 repassed. It is a loss to the merchants. It is a loss  
5 to the people that get them. Paragraph 18:

6 "I do not think I'm known as a judge who takes a  
7 particular tough stance with respect to most  
8 property offenders, Mr. Haldane, but  
9 counterfeit money is one in which I agree  
10 with the majority of my colleagues that there  
11 must be some significant -- significant  
12 general deterrent penalty imposed."

13 The second point, Your Honour, why deterrence is so important  
14 is this, in these cases, is that they're precisely the  
15 type of crime in which a deterrent would work. Because  
16 it is a risk/reward type crime, Your Honour, a strong  
17 deterrent is required. It is the type of crime where  
18 there can be great reward but the person, going in,  
19 knows of the great risk, or knows there is a risk. I  
20 submit that basically the Court should make that risk  
21 as high as possible in these types of cases, and I  
22 refer you to -- at tab 3 in my book, the case of Le  
23 from the BC Court of Appeal, paragraph 6, where they  
24 note that:

SUBMISSIONS BY MR. O'LEARY

1 "Counterfeiting -- counterfeiting is an offence for  
2 which, in my view, deterrence is a far more  
3 important factor than it is for many other  
4 offences. It requires premeditation and  
5 planning and is driven entirely by greed."

6 The third point why I submit that deterrence is so important  
7 in these cases is, as Detective Drover indicated, with  
8 the technology, the money can be produced relatively  
9 easily. As he indicated, it's not that hard to produce  
10 good quality counterfeit money. That's also referred  
11 to in Haldane at paragraph 17 that I referred to easily  
12 [sic]. These are the type of cases where there should  
13 be a significant deterrent to stop people who see the  
14 easy opportunity in front of them.

15 The fourth point, Your Honour, which I'm going to raise  
16 is related to paragraph 3, and that deals with  
17 prevalence in the community. I submit that  
18 counterfeiting in the community is a problem, and  
19 therefore, it must be addressed with a strong sentence,  
20 a strong deterrent. And I'm going to refer you to  
21 Rashid, a case at tab 8 of my book. This was a  
22 sentencing for a 26 year old. It was his first time  
23 being convicted for possession and uttering counterfeit  
24 money. The issue was what was the appropriate

SUBMISSIONS BY MR. O'LEARY

1 sentence, and he was given a five month term of  
2 imprisonment with twelve months probation. He had  
3 eighteen \$20 bills on him, so about \$360. The judge  
4 said at page 2, about halfway down that first  
5 paragraph...

6 THE COURT: This predates, of course, conditional  
7 sentences.

8 MR. O'LEARY: Yes, it does, Your Honour, but it does  
9 deal with the principle of prevalence and why it's an  
10 aggravating factor and why you should consider it in  
11 sentencing.

12 "He said, 'At least once daily we'd pick up counterfeit  
13 money at financial...'"

14 An officer had given evidence in this, and the evidence was  
15 that the merchants -- halfway down page -- the first  
16 paragraph, page 2:

17 "They are losing both merchandise and change when they  
18 inadvertently accept counterfeit money and  
19 the merchant then takes a loss. Now, with  
20 regard to that particular factor in  
21 sentencing, the prevalence of the crime in  
22 the community is a proper matter for the  
23 Court to consider in sentencing."

24 He cites a case and then says:

SUBMISSIONS BY MR. O'LEARY

1 "The prevalence of a crime adds to the gravity of the  
2 offence and justifies a more serious  
3 sentence."

4 He goes through in paragraph 4 and notes several cases where  
5 they indicate that counterfeiting is a serious offence,  
6 and then at page 5 -- or paragraph 5 indicates:

7 "I note that in none of the cases I was referred to and  
8 none of the cases I'm aware of was there any  
9 testimony called as to the prevalence of the  
10 crime in the community as was done in this  
11 case before me. Attempting to balance all  
12 these factors and to take principles from the  
13 Court of Appeal decisions in three provinces  
14 and repeat what the Court of Appeal decisions  
15 say in succinct fashion, counterfeiting is a  
16 very serious offence and there must be  
17 exceptional circumstances in order to justify  
18 the imposition of a nominal term of  
19 imprisonment."

20 I submit that even though this predates conditional sentence  
21 orders, factors regarding prevalence do apply, and it  
22 is an aggravating factor to be considered. It is a  
23 factor necessitating deterrence. And you have heard  
24 evidence of the prevalence from Detective Drover. He's

SUBMISSIONS BY MR. O'LEARY

1           noted that each year counterfeiting has gone up. He's  
2           noted that in the past year about \$47,000 in  
3           counterfeit bills were recovered. That's not money --  
4           counterfeit money that wasn't recovered. My Friend  
5           indicates that that's only small portion of the overall  
6           total of money in Halifax, but I submit it is a sign of  
7           prevalence. Fifty thousand dollars is a large crime.  
8           I submit to look at -- that's the only way you can look  
9           at it. Even though there may be a lot of money out  
10          there, a \$50,000 a year crime is significant,  
11          especially one that's growing. And I also note that in  
12          the Bank of Canada affidavit I've handed up to Your  
13          Honour, since 1994 -- if you look through paragraphs 9  
14          through 12, it addresses the prevalence of the crime  
15          nationally, and basically since -- there's been a 2,500  
16          percent growth in counterfeiting across Canada over the  
17          past 12 years.

18         "The charts set out below illustrate that the number of  
19                 counterfeit notes passed annually in Canada  
20                 has increased just over 25 -- 2,500 percent  
21                 in 12 years since 1992 to 2004."

22         That makes sense given the -- how easy it is now to produce  
23                 them. And I submit this is strong evidence with  
24                 respect to the prevalence of the crime and the need for

SUBMISSIONS BY MR. O'LEARY

1           deterrence.

2           Now, I'm asking for a sentence in the range of 18 to 24  
3           months of real jail or incarceration. I note that each  
4           case has its own set of facts and its own set of  
5           circumstances so sometimes it is dangerous to start  
6           referring to a case and say, "Well, he got six months  
7           so we should get six months here," but again, I'm going  
8           to refer Your Honour to tab 6 in my book of  
9           authorities, the Yung [ph] case. At paragraph 17, they  
10          do note that:

11         "Depending on the circumstances and the seriousness of  
12                 an offence..."

13         I apologize, Your Honour, I've referred you to the wrong  
14         case. In any event, Your Honour, the cases, basically,  
15         at the very high end of the range would be four years;  
16         at the very low end of the range would be six months.  
17         And most of the cases, I'll admit they come in under  
18         two -- well, around two years as the high end. Well,  
19         the very high end would be four years. With  
20         aggravating factors cases, it can range into the two  
21         year range a lot of the time. I submit that, given the  
22         aggravating factors here, that this case in the mid to  
23         high range of the severity factors.

24         Now, I acknowledge that there are a couple of instances

SUBMISSIONS BY MR. O'LEARY

1           where conditional sentences have been granted, but I  
2           submit that they are, in fact, the exception as opposed  
3           to the rule, and I'm going to refer you to tab 5, the  
4           case of Dunn, which I know is also in My Friend's book  
5           of authorities. This was an appeal by Dunn from a  
6           sentence imposed for convictions for conspiracy to make  
7           and making counterfeit money and possession of a  
8           machine for the use of making counterfeit money. Dunn  
9           was a first offender and he was 22 when the offences  
10          were committed. He was a follower rather than a leader  
11          in the commission of these offences. And then it goes  
12          on -- I'll refer you to paragraph 8:

13         "In our view, the appropriate range of sentence for  
14                 this particular offence and this particular  
15                 offender would be between 18...and two years  
16                 less a day."

17         I submit that's the case in our case, Your Honour.

18         "Leave to appeal sentence is granted, the appeal  
19                 allowed, and the sentence is reduced to 21  
20                 months."

21         Then they go on to consider the application of 742.1, the  
22                 conditional sentence order.

23         "The trial judge found that Mr. Dunn does not pose any  
24                 threat to society. Mr. Dunn has put forward



SUBMISSIONS BY MR. O'LEARY

1           substantial and successful efforts to  
2           compensate his wrongful acts by taking  
3           positive steps to secure a productive future  
4           life and to help others in the community.  
5           The chances of reoffending are almost non-  
6           existent."

7 I submit the presentence report doesn't come anywheres near  
8           saying that.

9 "We do not see individual deterrence as a serious  
10           consideration in this case."

11 I submit individual deterrence is serious here. He was on  
12           probation and he still committed the offence.

13 "We recognize that general deterrence is extremely  
14           important in forgery cases, but as cases  
15           involving the production of currency go, this  
16           offence and the appellant's participation in  
17           it were both at the low end of the scale."

18 I submit that we aren't at the low end of the scale.

19 "In our view, leniency in this case would not lead  
20           others to consider that the courts view  
21           forgery -- that the courts view forgery  
22           offences lightly. If a conditional -- if  
23           conditional sentences are ever to be granted  
24           in forgery cases, this is a case where one

SUBMISSIONS BY MR. O'LEARY

1           such concession should be made."

2   It's the Crown's position, Your Honour, that Dunn quite --  
3       was making an exception to the rule. It's stating when  
4       there's exceptional circumstances that, in fact, that's  
5       an appropriate time to give a conditional sentence  
6       order. I submit those factors aren't present in this  
7       case.

8       Now, at tab 9, Your Honour, is the case of  
9       Christopherson [ph], and it provides a useful analysis  
10      of the case law. The judge goes through and analyzes a  
11      number of cases and at paragraph 35 indicates:

12     "My review of these cases leads me to the  
13       conclusion..."

14     THE COURT: Carry on.

15     MR. O'LEARY: "My review of these cases leads me to the  
16       conclusion that deterrence is an important  
17       sentencing objective in counterfeiting  
18       offences. The degree of deterrence will vary  
19       with the degree of responsibility of the  
20       offender involved. Printers of counterfeit  
21       bills and other persons who take the lead  
22       role in such counterfeiting operations should  
23       generally be sentenced more severely than  
24       those who merely distribute."

SUBMISSIONS BY MR. O'LEARY

1 As we've conceded, there is no indication that he is a  
2 manufacturer, or that Mr. Nasser is.

3 "Counterfeiting can have an effect on the local  
4 economy, in some cases involving large  
5 operations upon the economy of the country.  
6 The degree of sophistication of the product  
7 and prevalence of the distribution are also  
8 to be taken into account."

9 So it's not -- other aggravating factors just aren't whether  
10 you're a manufacturer, Your Honour. You're to take  
11 into account the prevalence, the sophistication -- as  
12 you've heard evidence of, this money is sophisticated,  
13 and a relatively sophisticated plan to come down to  
14 Halifax, evidence of how it's affected the economy, are  
15 all additional aggravating factors. And I submit  
16 simply because you are not the manufacturer does not  
17 mean that you shouldn't be getting a stiff sentence and  
18 deterrence isn't -- is also important just with respect  
19 to distribution as a manufacturer, and I'm going to  
20 refer your Honour to Yung at tab 6. This is a 1985  
21 case from the British Columbia Court of Appeal.

22 "Basically, three young men arrived from Hong Kong on  
23 the 2nd of February, '84. Apparently,  
24 fortuitously, the questioning -- one of them

SUBMISSIONS BY MR. O'LEARY

1           was sent for secondary questioning by the  
2           initial customs officer when he saw him  
3           entering the customs area in Vancouver  
4           International Airport. One thing led to  
5           another, and ultimately he was searched and  
6           found in possession of 65,000 in traveller's  
7           cheques and United States currency. He was  
8           also found in -- 100 -- \$1,600 in US  
9           currency. The other two men passed through  
10          customs uneventfully and they were met by a  
11          man named Chan at a registered number hotel  
12          in Vancouver. On the 3rd of February, the  
13          second individual, Sui Fang Yung [sic], went  
14          to the Bank of Vancouver and at each bank  
15          uttered -- went from bank to bank in  
16          Vancouver and at each bank uttered  
17          counterfeit traveller's cheques in \$500  
18          denominations so he obtained \$5,500 for each  
19          traveller's cheque he uttered. Yung, the  
20          third one and the one who was the subject of  
21          this sentence appeal, does not seem to have  
22          been as active as Sui Fang Chung [ph] but he  
23          was ultimately arrested in his hotel room and  
24          there he was found in possession or in the

SUBMISSIONS BY MR. O'LEARY

1           possession of Sui Fang Chung a number of  
2           articles, some of which might indicate these  
3           men planned to utter some of the counterfeit  
4           traveller cheques in Montreal, Toronto and  
5           elsewhere in Canada. These three men were  
6           certainly part of a larger group of people  
7           involving the production and disposition of  
8           counterfeit traveller cheques and counterfeit  
9           money. An expert was called by the Crown who  
10          testified the traveller cheques and currency,  
11          which he concluded was counterfeit, was very  
12          good counterfeits, indeed some of the best  
13          apparently he had seen. The evidence  
14          indicated, from his experience in other  
15          counterfeit traveller cheques stemming --  
16          other counterfeit traveller cheques stemming  
17          from the same source as these traveller  
18          cheques, some 500,000 overall might have been  
19          involved."

20       So not found on these ones in the grand scheme of things.

21       "The submission of counsel for the three appellants  
22          essentially was that the three men were  
23          unsophisticated members of a group of people  
24          engaged in a counterfeit ring. They were

SUBMISSIONS BY MR. O'LEARY

1           likened to the street peddler of drugs who  
2           peddled drugs as part of sustain the drug  
3           habit, in part to provide money for other  
4           purposes. The essential comparison was with  
5           people at a very low level of organization  
6           such as this one."

7   And then at paragraph 14:

8   "No doubt if one knew the whole background of the  
9           preparation for and the production of the  
10          counterfeits, wherever that took place, one  
11          would have a much better idea of the scope of  
12          the entire operation. What we see through  
13          these appeals is undoubtedly only a small  
14          part of the overall operation of this group  
15          of people."

16   At paragraph 17:

17   "Other sentences elsewhere in Canada have varied from  
18          four years to one year or less,"  
19   as I had indicated earlier.

20   "Each, of course, depends on its own circumstances and  
21          depends upon the seriousness of the offence  
22          and, of course, the background of the  
23          offenders. Here, in my view, we have three  
24          offenders who are not particularly

SUBMISSIONS BY MR. O'LEARY

1           sophisticated but who were prepared for their  
2           own ends to participate in a pretty extensive  
3           operation.    Without their participation as  
4           those who actually take the counterfeit  
5           traveller's cheques/the money to a bank and  
6           receive genuine currency for them, the whole  
7           operation would be brought to naught, so  
8           their participation is a significant one."

9   Notwithstanding that, he found that the sentence imposed by  
10   the trial judge was excessive and imposed a sentence of  
11   two years on each.   Your Honour, I submit that that  
12   case has a lot of relevance to ours.   We have three  
13   young people coming to Halifax from another city.   Now,  
14   we don't have evidence as to how big the overall scheme  
15   is, but they got the counterfeit money from somewheres.  
16   I'd anticipate my evidence -- My Friend will -- this  
17   is a -- this is good quality counterfeit money.   It  
18   didn't just pop out of nowhere.   As stated in the  
19   presentence report by the accused, everyone was doing  
20   it.   There's evidence that there is a larger scheme  
21   taking place.   They might have been the low end  
22   distributors, but as indicated in this case, nobody  
23   profits unless they're doing what they're doing.   It's  
24   significant.   It requires deterrence.   And Yung did

SUBMISSIONS BY MR. O'LEARY

1 receive two years.

2 As I indicated, the plan here, they came with almost  
3 \$16,000. The plan in Yung was not carried out. I  
4 submit that's also relevant to here. The plan doesn't  
5 have to be carried out. It's an aggravating factor  
6 requiring deterrence.

7 And I'm also going to refer you to tab 7, which is the  
8 case of Mankoo from the Ontario Court of Appeal from  
9 2000. He pleaded guilty to possessing counterfeit  
10 American traveller's cheques, forged identification and  
11 embossing plates. The currency exceeded 3,000 --  
12 300,000 in value. Granted, that's larger than our  
13 amount. He also urged the -- argued that the judge  
14 erred by failing to impose a conditional sentence.  
15 Mankoo had a criminal record and was on probation at  
16 the time he committed the offences, the same as our  
17 case, Your Honour. He was sentenced to 23 1/2 months  
18 imprisonment. Granted, we don't know what the record  
19 is. But I bring this case to your attention, Your  
20 Honour, because...

21 THE COURT: Do we have an age for him?

22 MR. O'LEARY: I don't have an age for him, Your Honour,  
23 but the reason I'm bringing this case to your attention  
24 is because I submit it's significant because the



SUBMISSIONS BY MR. O'LEARY

1 appellant was only a courier of the counterfeit money.

2 He wasn't involved in the -- he wasn't involved in the  
3 actual manufacture. He was just taking it from place  
4 to place. So I submit even though being a manufacturer  
5 is a very aggravating factor, that does not lessen the  
6 fact that deterrence and denunciation are required when  
7 the money is being distributed, especially when there  
8 are several aggravating factors, as in this case.

9 At tab 3 I've included Le, another British Columbia  
10 Court of Appeal case, and I submit this would be at the  
11 low end of the scale. I submit our factors take us out  
12 of this range. He was convicted of possessing  
13 utterfeit -- uttering counterfeit \$100 bills. He  
14 possessed 24 of them. He may have had up to 8,000 of  
15 these bills in his possession. The accused was a 30  
16 year old sign painter with no criminal record and  
17 supported a wife and two children. Even in that case,  
18 Your Honour, the Court imposed nine months of jail.  
19 And as I referred to before, the case of Rashid is a  
20 1994 case. It was only eighteen...

21 THE COURT: What tab are you at?

22 MR. O'LEARY: Tab 8. It was eighteen \$20 bills, Your  
23 Honour, and he received five months imprisonment  
24 followed by a year's probation. And as I referred to

SUBMISSIONS BY MR. O'LEARY

1 before, in Dunn, he was 22 years old, a first time  
2 offender, a follower, not a leader, and the Court of  
3 Appeal in Ontario found that the appropriate range of  
4 sentence was 18 to 24 months.

5 So given the aggravating factors in our case, the  
6 prevalence, the sophistication, the planning, the  
7 quality of the counterfeit money, the fact that this  
8 accused was on probation, the fact that, as you've  
9 indicated, it could be the thrill of actually getting  
10 away with it, but I submit it's more likely motivated  
11 by greed, that this is in that 18 to 24 month range,  
12 Your Honour.

13 Now, with respect to this accused's particular  
14 circumstances...

15 THE COURT: Perhaps this is a good point to break. I'm  
16 not going to go right through the lunch hour. It's  
17 going to be a long afternoon, as it's currently  
18 looking, at least. We have Mr. Atton's sentencing at  
19 1:30 and then, of course, a full docket for the  
20 afternoon. We'll see where we stand when we return at  
21 1:30. I hope I can carve out some time to deal further  
22 with the matter sometime this afternoon.

23 MR. PINK: I have a pretrial upstairs but I'll be  
24 around the building, if Your Honour pleases.

**SUBMISSIONS BY MR. O'LEARY**

1 THE COURT: What time is that?

2 MR. PINK: 1:30. So I'll be...

3 THE COURT: All right. Well, why don't we say that  
4 we'll revisit this matter as soon as...

5 MR. PINK: That would be fine, Your Honour.

6 THE COURT: Obviously, the submissions are taking  
7 considerably longer. I think you've been at it for  
8 about an hour and a half. Would I be fair with that,  
9 Mr. O'Leary? Close to it. And assuming Mr. Pink is  
10 going to take the same length of time, really, what we  
11 should have set aside was virtually a full day for this  
12 matter. So we may be -- it may be that we're going to  
13 have to return to it for conclusion of remarks at  
14 another -- at another date, so -- and I don't know when  
15 that's going to be, but that's a possibility, and I  
16 wanted to put it out there now so that if you need an  
17 opportunity to discuss that with your client, it can be  
18 done over the lunch hour.

19 MR. PINK: Will do, Your Honour.

20 THE COURT: Recess at this time.

21 **MATTER ADJOURNED**

22 **MATTER RECALLED**

23 THE COURT: I realize that -- that it's an imposition,  
24 but unfortunately, today we -- I wasn't advised that --

**SUBMISSIONS BY MR. O'LEARY**

1 and, Mr. O'Leary, and I wish Mr. Pink were here. I'm  
2 going to address this later. When you're looking at a  
3 sentencing that's taking a half a day of court time and  
4 it just gets slotted in with the regular docket, you  
5 put everyone else to a disadvantage, because their  
6 matters all end up being adjourned to accommodate Mr.  
7 Pink's client, who's from out of town. I just don't  
8 think it's reasonable for counsel not to give me that  
9 information. I never would have slotted this in if I'd  
10 known it was taking a half a day.

11 MR. O'LEARY: Your Honour, I can apolo -- please accept  
12 my apology to the Court, but it wasn't you who actually  
13 set the sentencing date. You weren't here that day and  
14 the judge who did set it, it was a busy day and I don't  
15 think it was appreciated how long it was going to take.

16 THE COURT: We've had three trials already that have  
17 had to go to other dates. I mean, it's just created --  
18 it's a bit of a nightmare for me trying to deal with a  
19 docket in these circumstances. And it's not entirely  
20 you, Mr. O'Leary. As I said, Mr. Pink should be here  
21 listening to this too.

22 **MATTER ADJOURNED**

23 **MATTER RECALLED**

24 THE COURT: Mr. Pink, before you were in the courtroom,

SUBMISSIONS BY MR. O'LEARY

1 I indicated to Mr. O'Leary that this is extremely  
2 frustrating, to be dealing with a sentencing that  
3 should have been set for a half day and having the  
4 entire docket have to be -- virtually the entire docket  
5 had to be reset for other -- another -- other dates,  
6 which means inconvenience to many, many, many people.

7 MR. PINK: Everybody.

8 THE COURT: All I'm saying is that, if it was a half  
9 day matter -- I gather I wasn't here when it was set  
10 down, but...

11 MR. PINK: You weren't.

12 THE COURT: ...because your client is from out of town,  
13 I felt we should proceed with your matter, but had I  
14 known it was going to be a half day, I would never have  
15 set it for this morning, or I would have -- and I don't  
16 think whoever did set it down -- it looks like it was  
17 the -- Ms. Sherman has it in the book. In any event,  
18 just for future reference, because the docket is so  
19 heavily booked.

20 MR. PINK: I see that.

21 THE COURT: You ready to carry on, Mr. O'Leary?

22 MR. O'LEARY: Yes, Your Honour. Once again, I  
23 apologize for not informing the Court of...

24 THE COURT: Well, it's just it does create those -- and

SUBMISSIONS BY MR. O'LEARY

1           it creates...

2           MR. O'LEARY: I know.

3           THE COURT: It creates problems all around, as you  
4           know.

5           MR. O'LEARY: I'm going to be very brief, Your Honour.

6           I just wanted to briefly address the accused's  
7           personal circumstances. I'm not going to go into the  
8           presentence report or the probation officer's letter in  
9           any detail. In any event, Your Honour -- I'm just  
10          going to refer to the last paragraph of the probation  
11          officer's letter where she sums everything up from her  
12          perspective.

13         "During the period of probation supervision, the young  
14                 person satisfied the terms of the restitution  
15                 order and wrote an appropriate letter of  
16                 apology. He demonstrated poor reporting  
17                 habits throughout the term as it appeared he  
18                 wanted to report on his terms, when he was  
19                 available. He was also quite difficult to  
20                 motivate in regards to completing his  
21                 community service in a timely fashion as he  
22                 took advantage of the fact he had until May  
23                 2nd to complete the 100 hours. The probation  
24                 officer found this young man to be difficult

SUBMISSIONS BY MR. O'LEARY

1           to deal with as he was challenging at times  
2           and demeaning to the author. He was also not  
3           forthcoming with the information regarding  
4           his contact with Halifax Police/Court. Given  
5           the young man's poor response to probation,  
6           he does not appear to be suitable for  
7           community supervision."

8   As I indicated, now, she thought that meant probation.

9           THE COURT: Right.

10          MR. O'LEARY: I submit, though, that the combined  
11          effect of the presentence report and the letter from  
12          the probation officer aren't complimentary to the  
13          accused. They present a picture of somebody who's  
14          escalating from his mother's characterization as a  
15          troublemaker to somebody who's committed a break and  
16          enter to somebody now who's committed a very serious  
17          offence with respect to counterfeiting. Based on his  
18          father's evidence, there does seem to be a limited  
19          pattern, based on the evidence we have, that he got  
20          into trouble on the break and enter, he came home and  
21          was good for a while, and then went out, and once he  
22          was back in the community, slipped into his old ways,  
23          and I submit that that evidence of past behaviour is  
24          extremely relevant when considering his risk to

SUBMISSIONS BY MR. O'LEARY

1 reoffend and when considering whether or not he is  
2 suitable for a conditional sentence order. At the very  
3 least, Your Honour, I submit that he does not -- it's  
4 not as in Dunn where they found that there was  
5 absolutely no risk to reoffend.

6 I submit -- the Crown's submission, as I indicated,  
7 we're asking for jail. I've outlined the term I'm  
8 asking for. I'll leave it in Your Honour's discretion,  
9 but I submit that jail, incarceration, is the  
10 appropriate sentence. If you do find, though, that a  
11 conditional sentence order is possible, I submit that  
12 house arrest would be a necessary term to achieve any  
13 deterrence, if you find that the necessary deterrent  
14 can be met with a conditional sentence order, and I  
15 note that both parents are working and I'm not sure if  
16 house arrest can be enforceable in this instance. In  
17 any event, if it is -- if you do find that it will be a  
18 conditional sentence order, given the outline in  
19 Proulx, it should be a very lengthy one. But at the  
20 end of the day, Your Honour, as I indicated, based on  
21 the aggravating factors -- he was on probation. You've  
22 heard from Cst. Drover regarding how it hurt the  
23 community, how it spirals out of control. The victims  
24 lose 100 percent when they're caught with the



**SUBMISSIONS BY MR. O'LEARY**

1 counterfeit money, and it undermines the confidence of  
2 the public in the monetary system. And given those  
3 factors, I submit that this is in the, at least, medium  
4 to high range of severity with respect to counterfeit  
5 offences and jail is appropriate.

6 THE COURT: Thank you. Mr. Pink.

7 **SUBMISSIONS**

8 MR. PINK: Thank you, Your Honour. Your Honour this  
9 afternoon will be sentencing a young man 19 years of  
10 age who has no prior adult record. I wish to make it  
11 very clear at the outset that I am not asking the Court  
12 to impose probation at first instant or a suspended  
13 sentence on Mr. Nasser. Based on the case law that I  
14 have read and I have submitted to the Court, the Courts  
15 have held that, even for a first offence, jail is  
16 appropriate. But what I'm going to be asking the Court  
17 to consider is, of course, a conditional sentence.

18 I wish to make it very clear that this is not a case of  
19 making counterfeit money or of being in possession of  
20 equipment to produce counterfeit money, and I will have  
21 more to say about that in a few moments. Mr. Nasser  
22 has pleaded guilty to one count of possession of  
23 counterfeit money and two uttering of counterfeit  
24 money.

SUBMISSIONS BY MR. PINK

1 I also wish to make it very clear that Mr. Nasser, at  
2 the time of this offence, was a student at the  
3 University of Windsor on a fixed budget. Mr. Nasser  
4 did not -- and I wish to emphasize -- did not purchase  
5 the money. Mr. Nasser did not purchase the airline  
6 ticket to come to Halifax. Mr. Nasser was driven to  
7 the airport in Toronto to come to Halifax. Mr. Nasser  
8 did not pay for the car. Mr. Nasser, however, did make  
9 arrangements for the motel where he could obtain his  
10 family discount. I respectfully submit that those  
11 facts are facts to be considered by the Court. I think  
12 it's also very important for the Court to keep in mind  
13 that Mr. Nasser pleaded guilty at first instance.  
14 Your Honour has before you a number of documentation.  
15 You have a presentence report prepared by the Ministry  
16 of Community Safety and Correctional Services. You  
17 have a brief -- or book of authorities submitted by  
18 both the Crown and myself. I've also submitted letters  
19 of reference dated July 5th, 2005, from Mr. Nasser's  
20 employer and I have -- and Your Honour also has before  
21 you some additional information from the Ministry of  
22 Children and Youth Services of Ontario.  
23 Dealing first of all, if I might, with the presentence  
24 report. It is my respectful submission that the

SUBMISSIONS BY MR. PINK

1           comments made by my client's mother were pertaining to  
2           a young person or a youth who, in fact, was going  
3           through his teenage years at a very young age when he  
4           was having or causing problems within the school  
5           environment. We do know, however, that after he got  
6           himself into trouble and his parents were not happy  
7           with what was happening, they sent him off to private  
8           schools to continue his education. We do note that the  
9           first time he got himself into trouble with the law was  
10          at the age of 17. There's no doubt about it that at  
11          that time he was not living at home full time. He was  
12          hanging around with the wrong people. There's no doubt  
13          about it that he would not obey the rules of his  
14          parents. But for a period of six months, January up  
15          until -- when he was sentenced, that he did live there,  
16          he applied -- or complied with his parents' rules and  
17          appeared to manage himself very well. So between March  
18          and September of that year, 2003, Mr. Nasser did well.  
19          Of course, there was no place for him to go other than  
20          go on to university. No doubt about it, his parents  
21          had great expectations. He goes on to the University  
22          of Windsor. He's basically by himself as a young  
23          freshman. First year, he doesn't do very well. Second  
24          year, together with his associates, he gets involved in

SUBMISSIONS BY MR. PINK

1 the present offence. No doubt about it, he did come to  
2 Halifax. No doubt about it, he was in possession of  
3 some counterfeit money which had been purchased by  
4 someone else.

5 Now, it is interesting to note in the presentence  
6 report, under Assessment, it states:

7 "Background information reveals that the subject  
8 appears to have had a stable and caring  
9 upbringing in which traditional values and  
10 respect for the law was fostered. Due to  
11 behavioural problems at school, the subject  
12 was sent to private school from the age of 13  
13 until graduation. The subject's parents  
14 appear supportive; however, have expressed  
15 disappointment regarding the subject's  
16 involvement with the law and his academic  
17 performance. The subject first got into  
18 trouble with the law at the age of 17 and was  
19 being supervised by a probation officer there  
20 while attending the University of Windsor.  
21 He was recently -- he has recently obtained  
22 employment as a customer service  
23 representative. The subject presented as a  
24 personal yet independent young man."

SUBMISSIONS BY MR. PINK

1 Then it goes on:

2 "Negative peers may continue to be of concern. No  
3 problems with drug or alcohol abuse are  
4 indicated. Although the subject's mother  
5 related that the subject may have had -- made  
6 some positive changes as a result of his  
7 recent employment, she appears to express  
8 disappointment regarding the offender's  
9 involvement with the law. The subject's  
10 father expresses that he has concerns that  
11 the subject might continue to get into  
12 further trouble and associate with friends  
13 who are a negative influence should he not be  
14 under strict supervision. He suggested that  
15 a curfew might be beneficial for his son at  
16 this time."

17 Then under Recommendations, Your Honour, it says:

18 "In light of the above information, it is the opinion  
19 of the writer that, should community  
20 supervision be deemed appropriate, the  
21 offender would benefit from strict  
22 conditions. The following conditions are  
23 respectfully recommended by the writer: be  
24 employed full time or attend school; not to

SUBMISSIONS BY MR. PINK

1           associate with individuals who have been in  
2           trouble with the law; reside at his parents'  
3           residence and abide by their rules and not  
4           move out without the permission of his  
5           probation officer; and a possible curfew."

6 We are asking Your Honour to consider those terms in a  
7           conditional sentence order. And as did Mr. Nasser  
8           when, in fact, he testified this morning, he read from  
9           a letter from his employer, a person who he does not  
10          know, who states as follows:

11 "Alkarim frequently finishes assigned tasks well before  
12          the allotted time is complete and began  
13          assisting others in his extra time early on  
14          in the course. He asked if it was all right  
15          for him to support his fellow students and  
16          has become the person they look to for help  
17          if I am busy assisting someone else in the  
18          classroom. Alkarim is a fine example of a  
19          dedicated, motivated individual, genuinely  
20          interested in assisting others to realize  
21          their success."

22 Now, this is a letter written on June 13th, 2005, six months  
23          after his involvement, and I respectfully submit to the  
24          Court what has happened here is that Mr. Alkarim -- or

SUBMISSIONS BY MR. PINK

1 Alkarim Nasser has made up his mind that the rules and  
2 regulations set by his parents are not so unreasonable,  
3 and, in fact, when he operates within those rules and  
4 regulations, he, in fact, can be a useful member of the  
5 community, and, in fact, right now he enjoys being a  
6 member of his employment group, and, in fact, appears  
7 to be doing very well.

8 It is interesting as you'll note too from the letter  
9 from David Altbaum, A-l-t-b-a-u-m, it states:

10 "I firmly believe that the particular incident that  
11 took place was as a result of outside  
12 pressure and the silly things that teenagers  
13 do from time to time. After all, we are all  
14 -- we all were teenagers once. This does not  
15 lessen the incident, but for my part, knowing  
16 Alkarim as I do, I believe that it was a one-  
17 time mishap."

18 THE COURT: You know, I might be able to accept that at  
19 some level if it wasn't an offence that involved some  
20 level of planning and premeditation. This is clearly a  
21 situation where there was ample opportunity along the  
22 path to say, "Hey, wait a minute, this is wrong, this  
23 is bad. I shouldn't be involved. I'm getting out of  
24 this."

SUBMISSIONS BY MR. PINK

1 MR. PINK: You're absolutely right.

2 THE COURT: But -- and so it's not a mishap when it --  
3 I could appreciate that suggestion if we were talking  
4 about a spur-of-the-moment kind of offence.

5 MR. PINK: I -- I don't disagree with what Your Honour  
6 is saying. His two associates, one was his older  
7 cousin and another one was his friend from Bangladesh.

8 It is my understand from talking to both Mr. Nasser,  
9 Sr., and Alkarim that the cousin has an influence over  
10 him. That's why I asked Mr. Nasser whether or not he  
11 was a leader or a follower. It appears from reading  
12 the presentence report that Alkarim is probably  
13 labelled as a follower. He can be a leader and should  
14 be a leader, but I respectfully submit when you're  
15 dealing with older people, people who have influence on  
16 you, that you become a follower, and I'm respectfully  
17 submitting that is what happened in this particular  
18 case. Yeah, you're ab -- Your Honour is absolutely  
19 right. He could have backed out of it but he didn't  
20 back out of it. He has to pay the consequences.  
21 There's no doubt about it, jail's going to come his  
22 way. The only question is, is whether or not jail,  
23 actual custody, is what is appropriate or whether or  
24 not there should be a conditional sentence.



SUBMISSIONS BY MR. PINK

1           What I would like to do now is just spend a few  
2           moments, and what I would like to do is for Your Honour  
3           to take the book of authorities submitted by the Crown,  
4           and what I would like to do is -- I'm not going to read  
5           into the record but I would like to point out certain  
6           paragraphs for Your Honour to consider at the time that  
7           you impose sentence.

8           I would like to refer to the Crown's book of  
9           authorities under tab 1, and I first of all refer you  
10          to Chief Justice Lamer's comments at paragraph 1, and I  
11          would like to read this into the record.

12         "Parliament has sent a clear message to all Canadian  
13                 judges that they -- that too many people are  
14                 being sent to prison. In an attempt to  
15                 remedy the problem of over-incarceration,  
16                 Parliament has introduced a new form of  
17                 sentence, the conditional sentence of  
18                 imprisonment."

19         THE COURT: What page are you on? Because I...

20         MR. PINK: I'm sorry, paragraph 1.

21         MR. O'LEARY: Page 6 of Proulx at tab 1.

22         MR. PINK: Page -- page 6, paragraph 1.

23         THE COURT: All right. Okay.

24         MR. PINK: Okay?

SUBMISSIONS BY MR. PINK

1 THE COURT: Yeah.

2 MR. PINK: Then I'm going to ask the Court if you would  
3 then proceed to page 10, paragraph 12. I will not read  
4 that into the record but I ask the Court to consider  
5 it. Then I ask the Court to turn to page 16, paragraph  
6 46. This provision lists four criteria that the Court  
7 must consider before deciding to impose a conditional  
8 sentence. Then they set out the four criteria. Then I  
9 ask the Court to turn to page 19. In particular, refer  
10 to paragraphs 60, 62 and 65. This deals with the issue  
11 of danger to the community. I then ask the Court to  
12 turn to page 20 and consider paragraph 69 and paragraph  
13 70. At page 22, I refer the Court in particular to  
14 paragraph 82. I ask the Court then to turn to page 25,  
15 and in particular refer to paragraphs 98, 99 and 100.  
16 Then at page 28, the summary, I ask the Court to  
17 consider paragraphs 113, 114 and 115. And then finally  
18 dealing with the Proulx case, I refer Your Honour to  
19 page 30, and in particular, page one twenty --  
20 paragraph 127, which summarizes all the conditions,  
21 that is at page 30, 31 and 32.

22 At the very beginning of my submission I made it clear  
23 that this was not a case of making counterfeit money or  
24 of being in possession of equipment to purchase [sic]

SUBMISSIONS BY MR. PINK

1 counterfeit money. My Learned Friend at tab 4 has  
2 referred to the case of Haldane from the Superior Court  
3 decision, and once again, we're dealing there with an  
4 individual 50 years of age convicted of making  
5 counterfeit money and possession of forgery tools. I  
6 respectfully submit that the principles used to impose  
7 sentence on a person who is in possession of -- making  
8 counterfeit money or even possessing forgery tools is  
9 not equivalent to uttering and/or possession.

10 I also ask the Court to consider the Dunn case, which  
11 is at tab 5 of My Learned Friend's book of authorities,  
12 and once again, I ask the Court to keep in mind it's  
13 conspiracy to make or making counterfeit money. Once  
14 again, I respectfully submit, somewhat different than  
15 what we have here.

16 In imposing sentence, I also ask the Court to keep in  
17 mind the amount that is involved here. Here we have a  
18 total amount of \$16,000, of which only 300 of that was  
19 uttered by my client. The rest of it was found in  
20 possession of three of them. And if we look at the  
21 Mankoo case, which is at tab 7 of the Crown's book of  
22 authorities, you'll note there that we have currency  
23 exceeding \$300,000. I respectfully submit that that  
24 case can be distinguished from the one that is before

SUBMISSIONS BY MR. PINK

1 Your Honour.

2 And finally, at tab 8, the Rach -- R-a-c-h-i-d case, R.  
3 v. Rachid [sic] case, this is a decision in 1994, a  
4 decision, I respectfully submit, that may have been  
5 different if, in fact, it had been decided after the  
6 conditional sentence provisions, in fact, were -- when  
7 the **Criminal Code** was amended to incorporate the  
8 conditional sentence provisions.

9 If we now may look at the book of authorities that I  
10 have submitted to the Court. The first case that I'd  
11 ask the Court to look at is at tab 1, which is the  
12 Goody case. Now, I only put this case in so much to  
13 just show the Court what, in fact, the Crown can prove  
14 in order to prove the offence of uttering. I have been  
15 advised by Mr. McCarroll that Mr. Goody in this  
16 particular case was imposed a fine of \$500 by Justice  
17 Goodfellow.

18 I then refer the Court to the Christopherson case,  
19 which is found at tab 2, and in particular, I refer  
20 Your Honour to page 8 of that particular case,  
21 paragraph 35. This is a summary.

22 "My view of these cases leads me to the conclusion that  
23 deterrence is an important sentencing  
24 objective in counterfeiting cases. The

SUBMISSIONS BY MR. PINK

1 degree of deterrence will vary with the  
2 degree of responsibility of the offender  
3 involved. Printers of counterfeit bills and  
4 other persons who take a lead role in such  
5 counterfeiting operations should be generally  
6 sentenced more severely than those who merely  
7 distribute. Counterfeiting can have an  
8 effect on the local economy, and in some  
9 cases involving large operations upon the  
10 economy of the country. The degree of  
11 sophistication of the product and the  
12 prevalence of the distribution are also to be  
13 taken into account."

14 I ask the Court to keep that in mind. I then refer the Court  
15 to tab 3, the R. v. Bernsten case, a decision of the  
16 British Columbia Court of Appeal. This was decided  
17 prior to the conditional sentences being -- the  
18 amendment was made to the **Criminal Code**. In that  
19 particular case, I ask the Court to refer to page 2,  
20 paragraph twenty -- paragraph 7.

21 "The cases that have been put before us indicate that,  
22 in relation to counterfeit offences, a  
23 sentence of imprisonment is usually called  
24 for unless there were quite exceptional

SUBMISSIONS BY MR. PINK

1           circumstances.   Bernsten is 25 years of age.

2           He has no criminal record and was, at the  
3           time of the offence, steadily employed."

4   And in this particular case, he was sentenced to six months.

5           I then ask the Court to turn to tab 5, the Dunn case,  
6           the decision of the Ontario Court of Appeal.   You'll  
7           note that a 22 year old accused with no prior record,  
8           convicted of making counterfeit money, conspiracy to  
9           make such money and possessing a machine intended to  
10          use in making such money...

11   "With two others, the accused leased a photocopier  
12          which was used at the accused's place of  
13          business to make small amounts of US  
14          currency.   The trial judge found the accused  
15          no threat to society but sentenced the  
16          accused to 30 months concurrent imprisonment  
17          on each count."

18   Then I ask the Court to turn to page 3, the last paragraph on  
19          that page, where the Court stated as follows:

20   "We must now consider the question of the application  
21          of s. 742.1 to this case.   The trial judge  
22          found that Mr. Dunn does not pose any threat  
23          to society.   Mr. Dunn has put forth  
24          substantial and successful efforts to

SUBMISSIONS BY MR. PINK

1           compensate for his wrongful acts by taking  
2           positive steps to secure a productive future  
3           life and to help others in the community.  
4           The chances of his reoffending are almost  
5           non-existent. We do not see individual  
6           deterrence as a serious consideration in this  
7           case. We recognize that general deterrence  
8           is extremely important in forgery cases but,  
9           as cases involving the production of currency  
10          go, this offence and this appellant's  
11          participation in it were both on the low end  
12          of the scale. In our view, leniency in this  
13          case would not lead others to consider that  
14          the courts view forgery offences lightly. If  
15          conditional sentences are ever to be granted  
16          in forgery cases, this case is one where such  
17          a concession should be made."

18 I then ask the Court to consider, at tab 7, R. v. D., and in  
19          particular, I ask the Court to turn to page 6,  
20          paragraphs 17, 18 and 19, and on page 7, paragraph 20.

21          These are cases that we've already referred to. At  
22          paragraph 26 of that case, at page 8, it states as  
23          follows:

24 "I must now make a determination as to whether or not

SUBMISSIONS BY MR. PINK

1           the sentences should be served in the  
2           community. This is whether the sentence is  
3           one which, in all of these circumstances,  
4           should be made conditional and served in the  
5           community. S. 742.1 provides that, where a  
6           person is convicted of an offence, except for  
7           an offence that is punishable by a minimum  
8           term of imprisonment, and the Court imposes a  
9           sentence of imprisonment of less than two  
10          years and is satisfied that serving the  
11          sentence in the community would not endanger  
12          the safety of the community and is not  
13          contrary to other principles of sentencing,  
14          it may direct that the sentence be served in  
15          the community with conditions. I believe the  
16          Crown has conceded that in this particular  
17          case a community sentence is a consideration  
18          and would not endanger the community. Would  
19          service of such a sentence in the community  
20          be in accordance with other principles of  
21          sentencing? The imposition of a conditional  
22          sentence is not mandatory. It is  
23          discretionary on the part of the Court and  
24          must take in all of the circumstances of the



SUBMISSIONS BY MR. PINK

1 case. Of course, I have a concern, and I  
2 think a lot of judges have concern when they  
3 exercise discretion and order a community  
4 sentence, as to whether or not this does  
5 amount to a sufficient deterrent for the  
6 crime and whether the sentence adequately  
7 shows the Court denunciation of the actions  
8 of the individual so as to impress on others  
9 that this type of activity is to be  
10 discouraged. S. 718 of the **Criminal Code**  
11 points out fundamental purposes of  
12 sentencing, which include, along with crime  
13 prevention initiatives, to respect for the  
14 law and the maintenance of a just, peaceful  
15 and safe society by imposing just sanctions  
16 that have one or more of the following  
17 objections -- objectives: To denounce  
18 unlawful conduct; to deter other persons and  
19 the offender from committing the offences.  
20 I, of course, have to look closely at the  
21 principle of general deterrence. I have to  
22 ask what kind of message does go out to the  
23 public generally? The public, of course, is  
24 very concerned. S. 718 also provides that an

SUBMISSIONS BY MR. PINK

1           offender should not be deprived of liberty if  
2           less restrictive sanctions may be appropriate  
3           in the circumstances, and also that all  
4           available sanctions other than imprisonment  
5           that are reasonable in the circumstances  
6           should be considered.       Nonetheless, if a  
7           conditional sentence is imposed, it should  
8           reflect to some degree a term of  
9           incarceration.   I have decided that, in the  
10          circumstances of this case, that Mr. D. will  
11          not be a danger to the public.   Considering  
12          all of the matters that have been brought to  
13          my attention, including the submissions of  
14          counsel, this is an appropriate case in which  
15          a conditional sentence should be given.   A  
16          conditional sentence is therefore allowed and  
17          Mr. D. will serve his sentence in the  
18          community rather than in jail.   I impose the  
19          following conditions.       The mandatory  
20          conditions will be..."

21       And then he sets out from (a) to (e) the mandatory  
22       conditions.   Then it states in paragraph 30:

23       "The Court may prescribe as well additional conditions  
24       of sentencing and I believe that this is an

SUBMISSIONS BY MR. PINK

1           appropriate case to impose additional  
2           conditions so that it is brought home to Mr.  
3           D. the seriousness of this matter and that he  
4           must do something to address this problem.  
5           I've therefore concluded that Mr. D. will be  
6           placed under house arrest for the entire term  
7           of 18 months. He will not leave his house or  
8           residence except for immediate purposes of  
9           attending school or an educational  
10          institution, for securing medical treatment  
11          if required, counselling if and as required,  
12          participation in religious activities, and,  
13          of course, work."

14       Those are the conditions, if Your Honour pleases, that we are  
15       asking the Court to consider in the present case. I  
16       then ask the Court to turn to tab 8, paragraph 22, in  
17       the case of R. v. Grozell. Paragraph 22 states:

18       "This is an organized and sophisticated crime that is  
19               being perpetrated throughout Western Canada  
20               by the accused and his gang."

21       I respectfully submit that this case is distinguishable based  
22       on that one sentence. And I also draw Your Honour's  
23       attention...

24       THE COURT: Why?

SUBMISSIONS BY MR. PINK

1 MR. PINK: Because basically we are not a part of an  
2 organized or sophisticated crime here.

3 THE COURT: Well, one might argue that with you, Mr.  
4 Pink.

5 MR. PINK: Yes.

6 THE COURT: Three fellows travel, get their plane  
7 tickets, travelling to Halifax, money concealed in  
8 various compartments of suitcases. One might argue  
9 that there was some fairly sophisticated organization  
10 to the events that your client became involved in.

11 MR. PINK: Well, I think when you look at the agreed  
12 statement of facts, you'll find that it was not very  
13 sophisticated at all. Essentially what they did is  
14 they go up to the Palace, and what they do is they  
15 start exchanging money, and then right after that they  
16 start buying drinks with counterfeit money. And then,  
17 of course, when they search the car, they find money  
18 laying about in the car. When they search their motel  
19 room, it's in clear view of anybody who goes into that  
20 room. Even when they went to MicMac Mall, you know,  
21 they were being followed around with cameras. And as I  
22 say -- well, it is my respectful submission, that's not  
23 sophistication.

24 It is my understanding is that in order to purchase

SUBMISSIONS BY MR. PINK

1 counterfeit money, it is known amongst some people that  
2 you can go to Mr. A. and you buy the money. There's no  
3 doubt about it that once you buy the money, in order to  
4 distribute it, then what, of course, you do is you do  
5 as the constable said that you do. You know, there's  
6 one of three or four ways in which you can rid of that  
7 money. In this particular case, all that happened is  
8 that my client purchased a Sony recorder and he went to  
9 Sears and purchased some stuff there. All the material  
10 was found in the back seat of the car. I don't -- I  
11 respectfully submit that is not very sophisticated at  
12 all. And I don't believe that it's part of organized  
13 crime.

14 THE COURT: I didn't read -- I didn't read "organized  
15 crime" in that sentence.

16 MR. PINK: I agree.

17 "This is organized and sophisticated crime that is  
18 being perpetrated throughout Western Canada  
19 by the accused."

20 Well, we are not throughout the Maritime Provinces. We came  
21 to Halifax, and we were here at the time that we got  
22 caught. Then I draw Your Honour's attention to  
23 paragraph 53 at page 14 of the same case:

24 "Printers of counterfeit bills and other persons who

SUBMISSIONS BY MR. PINK

1           take a lead role in these type of  
2           counterfeiting operations usually should be  
3           sentenced more severely than those who merely  
4           distribute the money. Mr. Grozell is not a  
5           mere distributor. He was involved in the  
6           printing and passing, distributing in the  
7           transportation of the equipment of a very  
8           sophisticated, far reaching, extensive  
9           counterfeiting ring. This is a large  
10          operation. It can affect a local economy,  
11          etc."

12        Then I ask the Court to consider at tab 9 the case of R. v.  
13        Rafuse, and in particular, I refer you to paragraph 12.

14        "An examination of the jurisprudence regarding  
15          sentences for similar offences in similar  
16          circumstances revealed that the range is from  
17          six months to two years less a day. There  
18          have been cases which exceeded two years less  
19          a day but they are rare. The sentences  
20          imposed are adjusted upward to the high end  
21          depending on the amount of counterfeit money  
22          involved, and in cases involving a large  
23          amount of counterfeit money and a  
24          sophisticated operation may exceed two

SUBMISSIONS BY MR. PINK

1           years."

2 Then finally, I refer you to the Mankoo case at tab 10, and  
3 there you will find that the appellant was a courier of  
4 counterfeit currency that exceeded \$300,000, as well as  
5 plates capable of providing additional counterfeit  
6 currency, and international passports. Mr. Mankoo also  
7 had a prior criminal record and was on probation at the  
8 time of the offence in question.

9 If I may just go back for a moment to the Proulx case,  
10 which is found at tab 1 of the Crown's cases, I wish to  
11 draw Your Honour's attention to page 14, paragraph 35.

12       It states:

13 "In light of the foregoing, it is clear that Parliament  
14 intended a conditional sentence to be more  
15 punitive than a suspended sentence with  
16 probation, notwithstanding the similarities  
17 between the two sanctions in respect to their  
18 respective prohibitions."

19 At page 15, paragraph 38:

20 "The punitive nature of a conditional sentence should  
21 also inform the treatment of breaches of  
22 condition."

23 Paragraph 41, the last part of that:

24 "A conditional sentence may be as onerous as, or

SUBMISSIONS BY MR. PINK

1           perhaps even more onerous than, a jail  
2           sentence, particularly in circumstances where  
3           the offender is forced to take responsibility  
4           for his or her actions and make reparation to  
5           both the victim and the community, all the  
6           while living in the community under tight  
7           control."

8   At page 22, paragraph 79, the Supreme Court of Canada state:

9   "Thus a conditional sentence is available in principle  
10          for all offences in which the statutory  
11          prerequisites are satisfied."

12   I have prepared for the Court's consideration two documents  
13          which I'll ask that you consider. One is what I'm  
14          suggesting the Court consider for a conditional  
15          sentence order. In addition to the statutory terms,  
16          I'm asking the Court to sentence my client to  
17          imprisonment for 10 months, and during that 10 months,  
18          if the Court sees that it should be served in the  
19          community, there are certain conditions. One, he's not  
20          to take or consume a controlled substance as defined by  
21          the **Controlled Drugs and Substances Act** except in  
22          accordance with medical prescription. I'm asking the  
23          Court to allow him to complete 100 hours of community  
24          service by May 6th, 2006, to attend for assessment,



SUBMISSIONS BY MR. PINK

1 counselling or treatment as directed by his supervisor.

2 He is not to associate with or be in the community  
3 [sic] of the following persons: anyone who he  
4 knowingly has a criminal record. He is to make  
5 reasonable efforts to locate and maintain employment or  
6 an educational program as directed by his sentence  
7 supervision, and he is to make restitution through the  
8 clerk of the court on or before September 30th, 2005,  
9 Sony Store, MicMac Mall, \$91.99, and The Bay at MicMac  
10 Mall, \$109.44, which is one third of amount taken.

11 In addition, I'm asking the Court to consider that he  
12 be placed under house arrest, to remain in his  
13 residence at all times beginning at 11 p.m. on July 9th  
14 and ending at 11:49 p.m. on April 8th, 2006, with the  
15 following exceptions: when at regularly scheduled  
16 employment which his supervisor knows about and  
17 travelling to and from the employment by a direct  
18 route; when attending a regular scheduled educational  
19 program which his supervisor knows about or at a school  
20 or educational activity supervised by a principal or a  
21 teacher and travelling to and from the educational  
22 program or activity by a direct route; when dealing  
23 with medical emergency or medical appointment involving  
24 himself or a member of his household and travelling to

SUBMISSIONS BY MR. PINK

1 and from it by a direct route; when attending a  
2 scheduled appointment with his lawyer, his supervisor  
3 or probation officer and travelling to and from the  
4 appointment by a direct route; when attending a  
5 counselling appointment, a treatment program or a  
6 meeting of Alcoholics Anonymous or Narcotics Anonymous  
7 at the discretion of or with permission of his  
8 supervisor and travelling to and from the appointment,  
9 program or meeting by a direct route; when attending a  
10 regular scheduled religious service with the permission  
11 of his supervisor; and when making application for  
12 employment or attending job interviews Monday through  
13 Friday between the hours of 9 a.m. and 5 p.m.; and for  
14 not more than three hours per week, approved in advance  
15 by his sentence supervisor, for the purpose of  
16 attending to personal needs; and finally, to apply --  
17 prove compliance with the curfew, house arrest  
18 conditions, by presenting himself at the entrance of  
19 his residence should any supervisor or peace officer  
20 attend there to check compliance.

21 And following the conditional sentence, if Your Honour  
22 pleases, I am asking that the Court consider a period  
23 of probation for at least 12 months. Now, of course,  
24 if the Court considers a conditional sentence order as

**SUBMISSIONS BY MR. PINK**

1           inappropriate and you don't agree with my 10 months, of  
2           course Your Honour has the discretion to increase that  
3           to any length or period up until two years less a day,  
4           and the same way with probation. If you're not happy  
5           with the 12 months but you want 24 months, then of  
6           course Your Honour has that discretion. And basically,  
7           the terms of the probation, except for the curfew and  
8           house arrest, will basically be the same as that set  
9           out for the conditional sentence order.

10          So other than those remarks, if Your Honour pleases, my  
11          client, I know, wishes to address the Court. Unless  
12          there's no questions, I have no further comments.

13          THE COURT: Thank you. Is there any response from the  
14          defence -- or Crown, sorry?

**REPLY**

15  
16          MR. O'LEARY: Just briefly, Your Honour. My Friend  
17          made reference to the D.(S.M.) case from the New  
18          Brunswick Court. I believe it's tab 6 of his -- or, I  
19          apologize, tab 7 of his book of authorities. I do note  
20          that in D.(S.M.) there was evidence led that, in fact,  
21          the young -- the relatively young person was a video  
22          game -- video gaming addict, and I submit that is  
23          extremely relevant for whether a conditional sentence  
24          is appropriate because, as you know in Proulx,

REPLY BY MR. O'LEARY

1 rehabilitative needs are balanced directly versus the  
2 need for deterrence in determining whether it's an  
3 appropriate sentence, and that in that case he did  
4 receive a sentence -- total sentence of 18 months. And  
5 I submit that, in effect, when going through his  
6 analysis, the judge in that case totally looked at risk  
7 to reoffend and did not really address the issue of  
8 whether -- well, he didn't make much comment with  
9 respect to deterrence.

10 In our case, in deciding if a CSO is appropriate and  
11 going through the statutory conditions, you do have to  
12 address safety of the public, which includes the risk  
13 to reoffend, and I submit it's extremely relevant that,  
14 on a form of community supervision, a probation order  
15 form, he did breach that.

16 I take some issue with the amount of influence his  
17 cousin would have on him. He's one year older, and  
18 it's clear when they came to Halifax they were all  
19 acting together. He didn't have a gun held to his head  
20 to make him get on the plane. He didn't have a gun  
21 held to his head to make him go to the store and buy  
22 the stuff. These are three who were students in school  
23 together. I submit there wouldn't be that much peer  
24 pressure that you could say that he was under the

REPLY BY MR. O'LEARY

1 influence of somebody else.

2 At the end of the day, I disagree with My Friend's  
3 assertion that this wasn't a sophisticated plan. I  
4 submit that it was, and they shouldn't be rewarded just  
5 for the fact that they got caught early in it. Thank  
6 you, Your Honour.

7 THE COURT: Thank you. Mr. Nasser, anything you wish  
8 to say at this time? You don't have to say anything  
9 but this is your opportunity if you do have something  
10 you want to say.

11 MR. NASSER: I have a little bit to say.

12 THE COURT: Thank you.

13 MR. NASSER: In respect to what the probation officer  
14 had to say, I read her letter, and I forwarded a letter  
15 of my own to Pink -- to Mr. Pink. In respect to the  
16 second letter written by the Windsor probation officer,  
17 I have to confess that with school, work and being a  
18 freshman, I had strayed from my responsibilities. It  
19 was a bumpy road, but before the end of the probation  
20 term, I managed to satisfy all the conditions of my  
21 probation. I was to pay restitution, write an essay  
22 for the judge and complete 100 community service hours.

23 Each of these conditions were completed by the time my  
24 term was over.

1 Before I continue, I'd just like to say that in -- in  
2 the informations that the community service officer  
3 forwarded to us, or to -- to the Crown, there was --  
4 there was something that, like, I'd have to argue. My  
5 community service hours were done -- like, it was done  
6 -- the bulk of it, about 80 hours of it, were done  
7 before the Halifax incident. What happened was, is  
8 when she was saying, "Isn't there anything you've done  
9 in the last 18 months?" and I told her that I was  
10 regularly teaching a Saturday morning religious class,  
11 and in the summer, right after -- right after I was  
12 sentenced on the conditional discharge, I had taught  
13 that class for about eight weeks, and she's like, "That  
14 counts as community service," and she -- she recognized  
15 that for about 80 hours. And then I had the ones I'd  
16 done after that was another 10. And I did about 90 in  
17 total but she wrote it as 100 because -- because of,  
18 you know, my active -- proactive -- like, in addition,  
19 I helped with the community. I taught -- I taught  
20 little grade fives about -- about our religion because,  
21 you know, my dad is very religious so he kind of pushed  
22 me in that direction.

23 I'll continue reading, but -- the reason for the  
24 friction between me and the Windsor probation officer

1 was primarily because of the community service hours  
2 and appointment scheduling. She was not at all  
3 confident that I would complete them and so she got the  
4 impression that I did not care. However, I  
5 successfully proved that it was important to me to  
6 finish this community service and I did it.

7 The other problem we had was appointment scheduling.  
8 It was impossible to know a month ahead when  
9 appointments were booked that I would have a test or an  
10 exam at the university, so when I wanted to reschedule  
11 the meeting to take care of this, she would not be  
12 flexible, and so we had some friction. She took it...

13 THE COURT: Now, hold on there.

14 MR. NASSER: Yeah.

15 THE COURT: You have a schedule...

16 MR. NASSER: Yeah.

17 THE COURT: ...at the beginning of the term of when  
18 your classes are going to be.

19 MR. NASSER: Yes. For -- yeah.

20 THE COURT: And you wouldn't -- I mean, you only had  
21 probably six or eight hours of classes a week.

22 MR. NASSER: Yeah. No, I understand.

23 THE COURT: And you would have your test...

24 MR. NASSER: Yeah.

1 THE COURT: ...during your class hours...

2 MR. NASSER: Yeah.

3 THE COURT: ...correct?

4 MR. NASSER: Yeah.

5 THE COURT: So that as long as you scheduled  
6 appointments...

7 MR. NASSER: Yeah.

8 THE COURT: ...at a time other than class time...

9 MR. NASSER: Yeah.

10 THE COURT: ...you would have had no problem.

11 MR. NASSER: Yeah.

12 THE COURT: So I don't buy that.

13 MR. NASSER: Yeah, you're absolutely right. That's in  
14 respect to what the probation officer had to say about  
15 me from Windsor. Over the last six months, I think  
16 I've gone through such a major transition in my life,  
17 and I know for someone to hear that coming from me that  
18 they obviously wouldn't understand because you have to  
19 see something, like actions speak a lot louder than  
20 words, but I kind of -- I wrote down a few things that  
21 really, you know, have embedded into my mind.

22 I've learned the fruits of labour are far more  
23 satisfying when acquired through hard work and  
24 dedication. I have a really good full-time job right



1 now and most of my company are all, like, older people,  
2 maybe around 25, 30 years old, even older than that. A  
3 lot of them have families. And these are the people I  
4 work full time with. I work about 48, 50 hours a week,  
5 just to satisfy, you know, the lawyer payments and  
6 everything, all the debt I have. And, you know, like,  
7 I'm really enjoying this and I wish I would have  
8 learned this a lot sooner, but I feel like I'm finally  
9 somewhere where I know I'll succeed.

10 Number two is I'm more -- what I've learned is I've  
11 learned a more effective way of succeeding is by  
12 helping rather than hindering others. Like -- like my  
13 manager said, in my employment training class, I was  
14 helping the class. I was -- almost became like an  
15 assistant teacher to him. I -- I want to be a role  
16 model for people. I want to -- I enjoy teaching. I  
17 enjoy -- it's just a field that I really do enjoy, and  
18 I want to get my degree eventually, soon, and I want  
19 to, you know, take what I've learned in all my life  
20 experiences and in my education and actually teach and  
21 preach to others, because I've had so much experience  
22 with all this and I want to (stray ?) anyone from  
23 following the same path as -- and I think I could do  
24 the best job at that because of everything I have been

1 through.

2 And the third thing I've learned is that the law is to  
3 be respected because it is in place to protect me and  
4 also everyone around me, and this is something which  
5 many people around the world aren't fortunate to have.

6 We have an amazing justice system and it's sad that I  
7 have to be a part of it in this way rather than be  
8 sitting at that table, you know, as a Crown attorney or  
9 as a prosecutor of some sort. You know, like, that's  
10 -- that's where I want -- that's where I want to be,  
11 and this is all going to, you know, obviously hinder my  
12 success, but I really do -- I really do regret  
13 everything, and I really do feel remorseful.

14 THE COURT: Thank you. Have a seat. All right. We  
15 come to the end of the portion of the sentencing  
16 hearing where counsel has had an opportunity to make  
17 argument. As I indicated earlier in the day, I will  
18 require an opportunity to review some of the materials  
19 that came to me at a rather late date. The statement  
20 of facts, for instance, that arrived just before court  
21 this morning and is fairly lengthy, I want to take a  
22 look at that in more detail. And as well, I think it's  
23 useful to go back and examine these cases that have  
24 been provided by counsel now that I have the framework

1 of the facts before me, and as well the comments of  
2 counsel with respect to the cases that have been  
3 presented, and certainly portions of those cases have  
4 been highlighted. So I am going to take some time with  
5 this matter. It's not the kind of case that we  
6 commonly see before the courts. In fact, I don't  
7 recall any case that I've dealt with of this nature  
8 before. So I trust that counsel, and in particular,  
9 Mr. Nasser, you can be patient as I work my way through  
10 the materials that have been provided and the lengthy  
11 submissions that I've heard here this morning and  
12 further this afternoon.

13 The next difficulty I have is trying to find a spot in  
14 the docket, bearing in mind things are rather  
15 overbooked, partly because of vacation schedules and so  
16 forth. My inclination would be perhaps to put this  
17 over into the arraignment month. Does that pose any  
18 difficulties, Mr. Pink...

19 MR. PINK: No, Your Honour.

20 THE COURT: ...or Mr. O'Leary? I know it's a bit of a  
21 stretch, but I'm going to be away for several weeks so  
22 it might be sensible to do that. Is that agreeable?

23 MR. PINK: Yes, Your Honour.

24 MR. O'LEARY: Is the arraignment month September, Your

1 Honour?

2 THE COURT: Pardon me?

3 MR. O'LEARY: Is the arraignment month September?

4 THE COURT: Yes. I'm going to suggest that we return  
5 to this matter on September the 9th at 2:00.

6 MR. PINK: That'll be fine.

7 MR. O'LEARY: That's fine, Your Honour.

8 THE COURT: All right. Mr. Nasser, let me just remind  
9 you that the release conditions that are in place  
10 continue until the time you return to this court on  
11 September 9th, so you'll be obliged to follow them.  
12 Anything further with respect...

13 THE CLERK: No, Your Honour.

14 THE COURT: All right. I'm going to be here for a  
15 moment, so you can close court.

16 **COURT ADJOURNED**

1 September 9, 2005

2 **MATTER CALLED**

3 THE COURT: Mr. Pink, your client can take a seat  
4 beside you. This may take some time for us to go  
5 through this afternoon.

6 I do want to remind the Crown that there are two  
7 informations before the Court and I want to be sure  
8 that the one that has not been dealt with is dealt with  
9 before the conclusion of the matter, so I'll just  
10 remind you of that at this point.

11 MR. O'LEARY: Thank you, Your Honour.

1 BEACH, J.P.C. (Orally):

2       Between January 5th, 2005, and January 9th, 2005, Mr.  
3       Nasser committed two offences involving counterfeit  
4       money. On April 19th, 2005, he entered early guilty  
5       pleas to both charges and sentencing was set over to  
6       July 7th, 2005, at which time I heard lengthy  
7       submissions by both Crown and defence. I have heard  
8       evidence presented by both Crown and defence witnesses  
9       and I have been presented with and have reviewed  
10      numerous case precedents with respect to the  
11      appropriate range of sentence for cases of this type.  
12      I have now had an opportunity to consider all the above  
13      in the context of the provisions of s. 718 of the  
14      **Criminal Code** which sets out the considerations for the  
15      Court in imposing sentence. The purpose and objectives  
16      of sentencing and the principles to be considered are  
17      set out in s. 718. The purpose is as follows:

18     "The fundamental purpose of sentencing is to  
19         contribute, along with crime prevention  
20         initiatives, to respect for the law and  
21         maintenance of a just, peaceful and safe  
22         society by imposing just sanctions that have  
23         one or more of the following objectives: to  
24         denounce unlawful conduct; to deter the

**DECISION**

1           offender and other persons from committing  
2           offences; to separate offenders from society  
3           where necessary; to assist in rehabilitating  
4           offenders; to provide reparation for harm  
5           done to victims or to the community; to  
6           promote a sense responsibility in offenders  
7           and acknowledgement of the harm done to the  
8           victims and to the community."

9       718.1 indicates the fundamental principle:

10       "A sentence must be proportionate to the gravity of the  
11           offence and the degree of responsibility of  
12           the offender."

13       Further, at 718.2, other sentencing principles are set out,  
14           and it is directed by virtue of that section that the  
15           Court take into consider the following principles:

16       "A sentence should be increased or reduced to account  
17           for any relevant aggravating or mitigating  
18           circumstances relating to the offence or the  
19           offender; a sentence should be similar to the  
20           sentence imposed on similar offenders for  
21           similar offences committed in similar  
22           circumstances; where consecutive sentences  
23           are imposed, the combined sentence should not  
24           be unduly long or harsh; an offender should

**DECISION**

1 not be deprived of liberty if less  
2 restrictive sanctions may be appropriate in  
3 the circumstances; and all available  
4 sanctions other than imprisonment that are  
5 reasonable in the circumstances should be  
6 considered for all offenders, with particular  
7 attention to the circumstances of aboriginal  
8 offenders."

9 So that is the template that overlays all matters involving  
10 sentencing that come before the Court. I'm going to  
11 move along now to the agreed statement of facts  
12 presented to the Court, and to ensure that the record  
13 is complete, I'm going to take a few minutes to read  
14 those facts. I had initially gone through them with  
15 the hope that I could reduce them but, given that they  
16 were presented to the Court as agreed facts, I thought  
17 it best at this point just to include those in my  
18 comments this afternoon.

19 Mr. Haroon, date of birth April 22nd, 1983, Mr. Jaffer,  
20 date of birth January 1st, 1984, and Mr. Nasser, date  
21 of birth December 26, 1985, were students at the  
22 University of Windsor in Ontario at the time of the  
23 offences. The three accused flew to Halifax on January  
24 6th, 2005, on Westjet flight #661. They sat beside



**DECISION**

1           each other in seats 9A, B and C. The tickets for the  
2           flight were purchased using a Mastercard registered to  
3           Mr. Jaffer on December 25th, 2004. They were scheduled  
4           to fly back to Toronto on January 16th, 2005.

5           During the early morning hours of January 8th, '05,  
6           Messrs. Haroon, Nasser and Jaffer were at the New  
7           Palace Cabaret located on Brunswick Street in Halifax.

8           The Palace is a place where Melissa Song worked as a  
9           bartender. Two of the accused purchased drinks from  
10          her and they gave her a \$10 bill. She scanned the bill  
11          under the UV light scanner. Under that light scanner,  
12          a genuine bill has fibres that are illuminated.

13          The bill appeared to be counterfeit. She put the bill  
14          aside. She then got the attention of Michael Jones, a  
15          doorman at the Palace. She was able to point out the  
16          two accused who passed her the counterfeit \$10 bill to  
17          Mike Jones.

18          Mr. Jones then approached the two accused, who were now  
19          on the Palace dance floor. He asked them to accompany  
20          him to the front door of the Palace. At the front  
21          door, he could see money, 10s and 20s, in one of the  
22          males' jeans pocket. Palace staff had the two accused  
23          empty their pockets.

24          Mike Gionet, another doorman at the Palace, was

**DECISION**

1           approached by the third accused at about this time.  
2           Mr. Gionet remembered Haroon, Jaffer and Nasser  
3           entering the bar together with a female. He had asked  
4           all of them to provide identification when they entered  
5           the bar. The third accused asked where his two friends  
6           were. He brought the third accused over to where the  
7           two other accused were and he asked him to empty his  
8           pockets as well. All three had various bills in their  
9           pockets.

10          The Palace staff turned Messrs. Haroon, Nasser and  
11          Jaffer over to Sgt. Ken Bennett, Cst. Charles Bruce and  
12          Cst. Craig Young of the HRM Police force. The officers  
13          were already at the Palace investigating the report  
14          regarding the counterfeit \$10 bill. A regular Palace  
15          customer had passed a counterfeit \$10 bill to Palace  
16          staff. Police released him because there was no other  
17          evidence to indicate he knew the bill was counterfeit.

18          Cst. Bruce noted that Haroon, Jaffer and Nasser had  
19          emptied their pockets and had money visible in their  
20          hands. It was approximately 2:20 a.m. when they were  
21          handed to the police.

22          Cst. Bruce and the other officers at the Palace  
23          believed the money that Haroon, Jaffer and Nasser had  
24          in their possession was suspicious.

**DECISION**

1           During questioning, Nasser attempted to discard  
2           counterfeit money by throwing it on the ground. He  
3           also attempted to discard counterfeit money by dropping  
4           it to the ground while being placed in the police wagon  
5           with Haroon and Jaffer.

6           Cst. Bruce entered the Palace and, assisted by the  
7           Palace manager, Peter Martell, scanned the money found  
8           on Haroon, Jaffer and Nasser under the UV light  
9           scanner. Haroon had one counterfeit \$10 bill, \$23.50  
10          in coins and eight genuine \$5 bills on his person.  
11          Nasser had ten counterfeit \$10 bills, seven genuine \$5  
12          bills, two genuine \$10 bills, two genuine \$20 bills,  
13          and \$6.50 in coin on his person. Jaffer had one and a  
14          half counterfeit \$10 bills, one and a half counterfeit  
15          \$20 bills, twelve and a half genuine \$5 bills, two  
16          genuine \$10 bills, one genuine \$20 bill, and \$19.65 in  
17          coin on his person. Jaffer also had in his possession  
18          a Palace coatcheck tag with the number 339 on it. The  
19          coat was located at the Palace coatcheck. It was  
20          searched, and in the pockets of the jacket were found  
21          twenty-three counterfeit \$10 bills and six counterfeit  
22          \$20 bills.

23          The police were approached by witnesses outside of the  
24          Palace. Chris Green and Ashley Ivany overheard the

**DECISION**

1 police discussing counterfeit money. Green identified  
2 Nasser as having approached him and exchanging a  
3 counterfeit \$10 bill for a \$5 bill in Green's  
4 possession.

5 Kutobe Tshabang also approached the police. He  
6 identified Nasser as having approached him and given  
7 him a counterfeit \$10 bill in exchange for a \$5 bill  
8 that Tshabang had received. This occurred when  
9 Tshabang had given him some change after buying a  
10 drink. Tshabang unknowingly used the counterfeit bill  
11 to buy another drink at the Palace. The bill was  
12 seized by bar staff.

13 Peter Martell turned over to the police five additional  
14 counterfeit \$10 bills which had been found at the  
15 Palace on the night in question. Haroon, Jaffer and  
16 Nasser were transported to the police station after  
17 being Chartered and warned.

18 A car key for a rented vehicle was found in Nasser's  
19 possession when he was arrested. Police determined  
20 that the vehicle had been rented from Dollar Thrifty  
21 Canada Incorporated at the Halifax International  
22 Airport. It was rented on January 7th, 2005, by  
23 Jaffer. The vehicle was a 2004 grey or silver Chrysler  
24 Sebring. Jaffer told the police that the car was

**DECISION**

1 located in the South Street or South Park Street area  
2 of Halifax. The police located the car.

3 A search warrant was obtained. A search of the car  
4 revealed 50 counterfeit \$10 bills and one counterfeit  
5 \$5 bill located in the vehicle console between the  
6 front seats. In the glovebox of the car was 130  
7 Canadian dollars in genuine Canadian currency.

8 Also located in the vehicle were several bags of newly  
9 purchased items from several stores in the MicMac Mall.

10 The receipts for the items were still in the bags.  
11 The items were purchased in at least eight different  
12 stores in the MicMac Mall. There was no luggage  
13 located in the vehicle. The rental agreement entered  
14 into by Jaffer showed that the car was to be returned  
15 on January 16th, '05.

16 Cautioned statements were obtained from Haroon and  
17 Nasser. They indicated they were staying with Farah  
18 Daya while they were in Halifax. Ms. Daya is a cousin  
19 to both Jaffer and Nasser. She resided at apartment  
20 1703, 5599 Fenwick Street, in Halifax.

21 The police attended at Ms. Daya's apartment. She  
22 informed them Haroon, Jaffer and Nasser had arrived in  
23 Halifax on the evening of January 6th, 2005. They  
24 spent the night at her apartment. She believed they

**DECISION**

1 had obtained a hotel room in the Dartmouth area.

2 Police determined that a room had been rented to Nasser  
3 at the Quality Inn located at #313 Prince Albert Road,  
4 Dartmouth. The police attended the Quality Inn and  
5 interviewed Steven MacLaughlin, the hotel desk manager.

6 MacLaughlin indicated that Haroon, Jaffer and Nasser  
7 arrived on the morning of January 7th at 1:35 a.m. He  
8 remembered them pulling up in a silver or grey car. He  
9 saw them unload their luggage. Nasser approached him  
10 and indicated he had a reservation. Nasser presented  
11 an employee discount card in order to obtain the  
12 employee rate at the Quality Inn. He indicated he was  
13 from Birmingham, England. Nasser provided his  
14 Mastercard when checking in. However, he indicated  
15 that the credit card may be maxed out and he would be  
16 paying cash on departure. The checkout date for the  
17 room was January 11th, 2005. They were provided room  
18 #112.

19 The police obtained a search warrant for the room. A  
20 search was conducted, and police located six pieces of  
21 luggage, identification documents for Haroon, Jaffer  
22 and Nasser. They also found over \$14,000 in  
23 counterfeit money. The counterfeit money consisted  
24 primarily of \$10 bills with some \$20 bills. There were

**DECISION**

1 16 different serial numbers for the bills.

2 The six pieces of luggage all had Westjet luggage claim  
3 tags affixed to them. A search warrant was obtained to  
4 search Westjet records. The six pieces of luggage were  
5 checked on Westjet flight 661, the same flight Haroon,  
6 Jaffer and Nasser took from Toronto to Halifax.

7 Nasser checked two pieces of luggage at 16:41:09 on  
8 January 6th, 2005. Haroon checked two pieces of  
9 luggage at 16:41:48 on January 6th, '05. Jaffer  
10 checked two pieces of luggage at 18:41:23 on January  
11 6th, '05.

12 One of the bags checked by Haroon and found in the  
13 hotel room was a briefcase that had his name on the  
14 side. There was a textbook in the bag. Within the  
15 pages of the textbook, there was over \$14,300 in  
16 counterfeit money. One of bags checked by Jaffer and  
17 found in the hotel room was an Old Navy carry bag.  
18 Police found over \$4,700 in counterfeit money in the  
19 bag. His Canadian passport also had over \$200 in  
20 counterfeit bills placed between its pages. A black  
21 Clairol bag checked by Nasser and found in the hotel  
22 room contained four sealed envelopes under the bottom  
23 panel of the bag. Each envelope contained \$1,000 in  
24 counterfeit money for a total of \$4,000.

**DECISION**

1 The police had seized a cell phone from one of the  
2 three accused. There were text messages on the cell  
3 phone indicating that checked luggage was not searched  
4 like carry-on luggage. Police also found in the hotel  
5 room a handwritten note indicating in part everything  
6 was, quote, "going to plan," end of quote.

7 As a result of finding the receipts in the rented  
8 vehicle, police conducted an investigation at the mall  
9 beginning on January 8th, 2005. The mall video  
10 security system showed Haroon, Jaffer and Nasser going  
11 into various mall stores on January 7th, 2005. Police  
12 compared the mall security video with receipts from the  
13 rented vehicle and which mall stores still had  
14 counterfeit money in their possession on January 8th to  
15 investigate which stores Haroon, Jaffer and Nasser  
16 uttered counterfeit money in.

17 On January 7th, Nasser purchased a CD walkman from a  
18 Sony Store located at the mall. He paid for it using  
19 counterfeit \$10 bills. The price of the CD walkman was  
20 \$91.99.

21 On January 7th, Jaffer made a purchase at the Foot  
22 Locker located at the mall. The value of the purchase  
23 was \$68.99 and he paid using counterfeit \$10 bills.

24 On January 7th, Haroon, Jaffer and Nasser all made



**DECISION**

1 purchases at The Bay store located at the mall. The  
2 value of the purchases was \$328.31. They paid using  
3 counterfeit \$10 bills.

4 There were receipts found in the rented vehicle for  
5 purchases that Haroon, Jaffer and Nasser made from the  
6 other stores at the mall on January 7th. The police  
7 were not able to locate counterfeit money at these  
8 stores when they began their investigation on January  
9 8th.

10 Det. Cst. Dana Drover has investigated over 1,700  
11 counterfeit money complaints. His resume is attached  
12 to the statement of facts. He is an expert with  
13 respect to the identification, manufacturing and  
14 distribution of counterfeit money. He viewed and  
15 handled the counterfeit money in question. He is of  
16 the opinion the counterfeit money was of high visual  
17 quality and would require a high degree of  
18 sophistication to produce.

19 In total, the police recovered \$15,890 in counterfeit  
20 money. Haroon, Jaffer and Nasser did knowingly possess  
21 this counterfeit money between January 5th, '05, and  
22 January 9th, '05. They had no lawful justification or  
23 excuse to possess the counterfeit money. They acted  
24 together as parties when they uttered the counterfeit

**DECISION**

1 money at the Palace and the various stores within the  
2 mall.

3 The statement of facts makes reference to Cst. Dana  
4 Drover. I heard evidence presented by the Crown from  
5 Cst. Drover, who, as the statement of facts indicates,  
6 has been engaged in the investigation of counterfeit  
7 money cases and has done close to 2,000 investigations  
8 of that nature. His evidence highlighted the  
9 following: The quality of the counterfeit money in  
10 this case was at the high end with sophisticated  
11 features. Counterfeit money is easily produced using  
12 inkjet printers and colour copiers. There has been a  
13 dramatic rise in Canada over the past 12 years in the  
14 number of counterfeit notes passed. Victims range from  
15 individuals to small and large retailers; essentially,  
16 businesses of all kinds. The use of counterfeit money  
17 erodes public confidence in the money supply system.  
18 There are increased costs to banks from counterfeiting  
19 which end up being paid by everyone who uses the  
20 services of the banks.

21 Both Crown and defence agree that the appropriate  
22 sentence in this case is a period of provincial time.  
23 The Crown argues that a period of 18 to 24 months  
24 should be imposed, while the defence seeks a period

**DECISION**

1           considerably lower, in the range of 10 months.

2           The most contentious issue in this case is whether Mr.  
3           Nasser should be permitted to serve his sentence in the  
4           community by way of conditional sentence. This is  
5           opposed by the Crown for the following reasons: This  
6           is a crime committed by Mr. Nasser which finds its  
7           roots in his own sense of greed. The amount of  
8           counterfeit money is a significant amount and the crime  
9           required premeditation and planning. What is  
10          particularly aggravating, Mr. Nasser, is the fact that  
11          you were on probation at the time that these offences  
12          took place, on probation in relation to a youth matter.

13          You became involved in this matter, showing an utter  
14          lack of respect for your responsibility with the  
15          probation.

16          The Crown suggests an argument that, in spite of an  
17          early guilty plea and the fact that you were young, Mr.  
18          Nasser, 19 at the time, still 19, I believe, that the  
19          Court should emphasize here deterrence and  
20          denunciation, and that those considerations can only be  
21          realized by putting you in jail in a real sense, behind  
22          bars. In support of a recommendation of what I will  
23          call real jail time, the Crown has submitted a number  
24          of cases which I have considered, and I will refer to

**DECISION**

1 several of them.

2 In R. v. Le from the British Columbia Court of Appeal,  
3 a 1993 decision, the accused was a 30 year old who had  
4 no record and dependents. A sentence of nine months  
5 imprisonment was not regarded as unfit and was upheld  
6 in part because it reflected that the accused had given  
7 three or more different versions of how he came into  
8 possession of the bills.

9 In R. v. Haldane, a decision rendered by the Ontario  
10 Superior Court of Justice in 2001, it involved an  
11 accused who was 50 years of age, considerably older  
12 than Mr. Nasser, who engaged in and was convicted of  
13 making counterfeit money. Mr. Haldane went to trial  
14 before a jury. He had a record and was described as  
15 having a lifetime of involvement in criminal offences.

16 The Court in that case indicated the possibility of a  
17 conditional sentence was lost because Mr. Haldane  
18 failed to show up for court, and the accused received a  
19 sentence of 30 months.

20 In R. v. Dunn, decided by the Ontario Court of Appeal  
21 in 1998 -- and the citations for all of these cases are  
22 available -- that case involved a 22 year old, a little  
23 closer to Mr. Nasser's age, who was convicted of making  
24 counterfeit money and conspiracy to make such money and

**DECISION**

1           possessing a machine intended for use in making such  
2           money. Mr. Dunn went to trial and was convicted. He  
3           was sentenced to 30 months concurrent on each count.  
4           He was no threat to society. He had the confidence of  
5           his family, friends and coworkers. The forgery  
6           involved a small amount of money and the bills produced  
7           were of an amateur quality. The trial judge imposed a  
8           sentence of 30 months, which was overturned on appeal  
9           by the Ontario Court of Appeal and reduced to 21  
10          months. A conditional sentence was imposed. The Court  
11          cited the appellant's age, positive character, and the  
12          fact that he was unlikely to reoffend, as well as the  
13          low end participation in the offences. These were all  
14          reasons the Court felt a conditional sentence was fit  
15          and proper. The Court did, however, in that case  
16          acknowledge the importance of general deterrence.

17          In R. v. Mankoo, the accused was apprehended entering  
18          Canada from the United States with \$300,000 in  
19          counterfeit traveller's cheques, forged identification  
20          papers and embossing plates. He initially pled guilty  
21          but subsequently unsuccessfully tried to withdraw the  
22          plea. He had a criminal record, was on probation, and  
23          a sentence of 23.5 months was upheld.

24          Again, in R. v. Rashid and R. v. Christopherson, jail

**DECISION**

1 time was imposed, and I don't intend to review all the  
2 cases referred to by counsel. I think it's fair to say  
3 that each case varies on its own facts and with respect  
4 to the circumstances of the accused. It is clear that  
5 in every case offences of counterfeiting have been, and  
6 no doubt will continue to be, regarded as serious  
7 offences. These are cases where deterrence is regarded  
8 as the paramount consideration in determining the  
9 appropriate sentence. These are not cases where fines  
10 or suspended sentences are routinely imposed. Far from  
11 it. These are serious offences warranting custodial  
12 terms in most instances.

13 The Crown submits, quite accurately from my reading of  
14 the cases, that real jail time is most often imposed  
15 for offences of this nature. Given Mr. Nasser's age --  
16 he's 19 and was at the time the offence took place --  
17 and the fact that he has no adult record, it is not  
18 surprising that the defence is urging the Court to  
19 consider a conditional sentence, allowing the time  
20 imposed to be served in the community.

21 I listened very closely to the evidence of Diamond  
22 Nasser. I thought he was an impressive witness. He  
23 was honest and candid. Mr. Nasser gave some history of  
24 his son within the family dynamic. While his son was

**DECISION**

1 in the home, he indicated that he wouldn't obey the  
2 rules, which, of course, is not an uncommon experience  
3 for parents of teenagers. Mr. Nasser explained his  
4 rules with respect to curfew, drinking and drugs, and  
5 told the Court how his son had left his home and went  
6 to live with his sister, and that's when he ended up  
7 getting in trouble. During that period, he was  
8 arrested for break and enter and received probation.  
9 He was a youth at the time.

10 Diamond Nasser brought his son home following this  
11 incident and his son abided by the house rules. His  
12 marks improved and he graduated as an Ontario scholar  
13 and went off to university. Diamond Nasser says that  
14 his son wasn't mature enough, in his opinion, to be  
15 independent or handle his newfound freedom and he made  
16 poor choices with respect to his friends.

17 When his son was arrested in January of this year, he  
18 said he would only come to Halifax if his son agreed to  
19 once again follow his rules. His son went home to  
20 Ontario after his appearance in court early this year,  
21 where he has been closely supervised by Diamond Nasser.

22 He obtained employment and he is required to abide by  
23 a court imposed curfew of 9 p.m., as well as one  
24 imposed on him by his father. He must help in the

**DECISION**

1 house, again, follow the rules, go to mosque. Since  
2 his son's release from custody, Diamond Nasser has been  
3 vigilant in keeping track of his son and his  
4 associates. He is clearly a man who believes in rules  
5 and regulations.

6 I have also received and reviewed and considered the  
7 documentation provided by the defence. I'm going to  
8 refer first of all to a letter from David Altbaum. Mr.  
9 Altbaum has known Mr. Nasser for his whole life and  
10 this is what he says in his letter of October 30th,  
11 2003, which would have been prepared, I'm assuming, for  
12 the youth matter. He says:

13 "He has worked for me during a number of summers. I  
14 found his work to be exemplary. He is always  
15 asking to help others and if someone  
16 requested assistance he was the first one  
17 there. He is a person of very high moral  
18 character. There have been numerous times  
19 when he would ask to learn more. When I was  
20 made aware of his problem with the law I was  
21 very surprised. This is not the Alkarim I  
22 know. As a matter of fact, after he had his  
23 run-in, I proceeded to hire him for the  
24 summer and once again found him to be a



**DECISION**

1           wonderful employee. I have no hesitation to  
2           continue to help and support him in the  
3           future."

4 I'll just make reference briefly to the letter from Stephanie  
5 Critch. This letter was written in June of 2005 and  
6 confirming employment, and I will refer to a letter  
7 from Matt Dubin momentarily.

8 I'm just going to refer to the presentence report,  
9 which I think in many respects mirrors much of what  
10 Diamond Nasser has stated in his evidence. Mr. Nasser  
11 is the product of a positive home environment. His  
12 behaviour with respect to getting involved in the  
13 criminal justice system is described as extremely  
14 uncharacteristic within these family circles. He began  
15 to display some behaviour problems at age 13 and was  
16 less respectful at home. He did poorly at school. His  
17 parents didn't approve of his friends. The family  
18 engaged in family counselling sessions without success.

19 The parents tried private school. And as I've already  
20 referred to, the only other contact with the law was at  
21 the age of 17.

22 Since January of 2005, he has resided with his parents,  
23 where he has been under strict house rules which he has  
24 been following, and the parents continue to support

**DECISION**

1           their son in his education, providing he maintains a  
2           serious attitude towards his scholastic endeavours. At  
3           present, Mr. Nasser appears to have a positive peer  
4           group. He is described as bright, a capable individual  
5           with a lot of potential.

6           When Mr. Nasser was placed on probation as a youth, his  
7           reporting was poor. He appeared to have a defiant  
8           attitude. He was less than honest with his probation  
9           officer with respect to this offence. Although he did  
10          complete community service and he did pay restitution,  
11          it was not without some resistance on his part.

12          At the present time, he is employed full time. I have  
13          the correspondence dated June 13th, 2005, from Matt  
14          Dubin, and he indicates that Mr. Nasser has shown an  
15          outstanding work ethic and a great deal of interest in  
16          the material being covered, applies himself fully when  
17          there is a group exercise or individual task assigned.

18          He is excelling in his progress, has shown strong  
19          leadership qualities throughout the course. He  
20          finishes assigned tasks well before the allotted time  
21          to complete and began assisting others in his extra  
22          time early on in the course. He is a fine example of a  
23          dedicated and motivated individual, genuinely  
24          interested in assisting others to realize their

**DECISION**

1 success.

2 I should also take note of the fact and mention in  
3 these comments that Mr. Nasser did have a brief  
4 experience in jail at the time of his arrest.

5 It does appear to me that since the commission of this  
6 offence there has been a fairly steady improvement in  
7 Mr. Nasser's behaviour, which is reflected in the  
8 comments of his parents. The only concern I have is  
9 with respect to what seems to be his dishonesty with  
10 his probation officer with respect to his involvement  
11 in these matters.

12 The defence has presented in argument a number of cases  
13 where sentences imposed were considerably less than  
14 what the Crown has recommended in this case. Reference  
15 has been made as well to paragraph 35 of R. v.  
16 Christopherson and it reads as follows, quote:

17 "My review of these cases leads me to the conclusion  
18 that deterrence is an important sentencing  
19 objective in counterfeit offences. The  
20 degree of deterrence will vary with the  
21 degree of responsibility of the offender  
22 involved. Printers of the counterfeit bills  
23 and other persons who take a lead role in  
24 such counterfeiting operations should be

**DECISION**

1           generally sentenced more severely than those  
2           who merely distribute. Counterfeiting can  
3           have an effect on the local economy, and in  
4           some cases involving large operations upon  
5           the economy of the country. The degree of  
6           sophistication of the product and prevalence  
7           of the distribution are also to be taken into  
8           account."

9   That's the end of that quote. While these cases illustrate  
10   that general deterrence is an important factor in  
11   sentencing for this type of offence, the Court, of  
12   course, must always consider the circumstances in each  
13   case and each offender, and I have referred to this  
14   earlier in my comments.

15   Mr. Nasser, you're obviously a person with a great deal  
16   of potential to achieve positive things in your life.  
17   Not everyone who appears in the criminal courts has  
18   your intellect or a supportive family. In fact, Mr.  
19   Nasser, you may find it surprising, but every day in  
20   this courtroom I see young men your age seated in the  
21   court being sentenced for serious offences and there  
22   isn't a person in the world who cares about what's  
23   happening to them. You, on the other hand, have an  
24   extremely supportive family who care a great deal about

**DECISION**

1           your future.

2           There is no question here that you've let down your  
3           community, you've let down your family, but most of all  
4           you've let yourself down. You know right from wrong  
5           and you gave in to greed. As a result, future plans  
6           will need to be put on hold and you will lose the  
7           freedom to come and go, the freedom that other people  
8           your age enjoy.

9           In my view, the appropriate sentence in this case is a  
10          period of two years less one day on each count to be  
11          served concurrently, but I am going to allow you to  
12          serve this sentence in the community under very strict  
13          rules. I do this knowing that your father and mother  
14          will immediately report any violation of this sentence  
15          to your supervisor. There will really in this case be  
16          two levels of supervision and I'm confident of that.  
17          There will be the community sentence supervisor and  
18          there will be your parents, and I have no doubt from  
19          listening to what your father said as a witness in this  
20          courtroom that he will make very certain that you abide  
21          by each and every condition.

22          I do not regard this sentence to be significantly more  
23          lenient than what the Crown has recommended because of  
24          the personal circumstances within your home. You are

**DECISION**

1 young. I listened to your comments when you addressed  
2 the Court. You are not a danger to the community.  
3 S. 718.2(d) provides that an offender should not be  
4 deprived of liberty if less restrictive sanctions may  
5 be appropriate in the circumstances, and 718.2(e)  
6 provides that all available sanctions other than  
7 imprisonment that are reasonable in the circumstances  
8 should be considered for all offenders. A lengthy  
9 conditional sentence with restrictive conditions is, in  
10 my view, consistent with the fundamental purpose and  
11 principles of sentencing, even for offences of this  
12 nature, in some cases.

13 In quoting the case of R. v. Proulx, which, of course,  
14 counsel is very familiar with and the leading authority  
15 with respect to conditional sentences, I reference, at  
16 page 25, paragraphs 99 and 100.

17 "The conditional sentence facilitates the achievement  
18 of both of Parliament's objectives. It  
19 affords the sentencing judge the opportunity  
20 to craft a sentence with appropriate  
21 conditions that can lead to the  
22 rehabilitation of the offender, reparation to  
23 the community, and the promotion of a sense  
24 of responsibility in ways that jail cannot.

**DECISION**

1           However, it is also a punitive sanction.  
2           Indeed, it is the punitive aspect of the  
3           conditional sentence that distinguishes it  
4           from probation. As discussed above, it was  
5           not Parliament's intention that offenders who  
6           would otherwise have gone to jail for up to  
7           two years less a day now be given probation  
8           or some equivalent thereof. Thus, a  
9           conditional sentence can achieve both  
10          punitive and restorative objectives. To the  
11          extent that both punitive and restorative  
12          objectives can be achieved in a given case, a  
13          conditional sentence is likely a better  
14          sanction than incarceration. Where the need  
15          for punishment is particularly pressing and  
16          there is little opportunity to achieve any  
17          restorative objectives, incarceration will  
18          likely be the more attractive sanction.  
19          However, even where restorative objectives  
20          cannot be readily satisfied, a conditional  
21          sentence will be preferable to incarceration  
22          in cases where a conditional sentence can  
23          achieve the objectives of denunciation and  
24          deterrence as effectively as incarceration.

**DECISION**

1           This follows from the principle of restraint  
2           in s. 718.2(d) and (e) which militates in  
3           favour of alternatives to incarceration where  
4           appropriate in the circumstances."

5   And further, at page 28, paragraphs 114 and 115:

6   "Where punitive objectives such as denunciation and  
7           deterrence are particularly pressing, such as  
8           cases in which there are aggravating  
9           circumstances, incarceration will generally  
10          be the preferable sanction. This may be so  
11          notwithstanding the fact that restorative  
12          goals might be achieved by a conditional  
13          sentence. Conversely, a conditional sentence  
14          may provide sufficient denunciation and  
15          deterrence, even in cases in which  
16          restorative objectives are of a diminished  
17          importance, depending on the nature of the  
18          conditions imposed, the duration of the  
19          conditional sentence, and the circumstances  
20          of the offender and the community in which  
21          the conditional sentence is to be served.  
22          Finally, it bears pointing out that a  
23          conditional sentence may be imposed even in  
24          circumstances where there are aggravating



**DECISION**

1           circumstances relating to the offence or the  
2           offender.     Aggravating circumstances will  
3           obviously increase the need for denunciation  
4           and deterrence.     However, it would be a  
5           mistake to rule out the possibility of a  
6           conditional sentence ab initio simply because  
7           aggravating factors are present.     I repeat  
8           that each case must be considered  
9           individually."

10    In my opinion, there is nothing lenient about a sentence that  
11       requires a 19 year old to relinquish his freedom for a  
12       period of two years.     For anyone who even momentarily  
13       thinks that Mr. Nasser is getting off easy, one need  
14       only consider how one spent one's time at the age of 19  
15       or 20.     Mr. Nasser, with all the restrictions that will  
16       be placed upon him as a result of this conditional  
17       sentence, will be visible in his community, and the  
18       deterrent sanction of the Court, in my view, will be  
19       very much alive.

20       Mr. Nasser, this is a sentence of two years less one  
21       day.     I am satisfied that you can serve this sentence  
22       in the community and that you will not endanger its  
23       safety and that the sentence is consistent with the  
24       fundamental purpose and principles of sentencing.

**DECISION**

1           You will keep the peace and be of good behaviour and  
2           appear before the Court when required to do so. You  
3           will report to a supervisor within, I'm going to say,  
4           by September 15th, 2005. You'll remain in the Province  
5           of Nova Scotia unless written permission is obtained,  
6           and you'll notify promptly of any change of name,  
7           address, employment or occupation. You will not take  
8           or consume a controlled substance as defined by the  
9           **Controlled Drugs and Substances Act** except in  
10          accordance with a medical prescription. You'll  
11          complete 150 hours of community service work. You'll  
12          attend for assessment, counselling or program as  
13          directed by your supervisor. You'll participate in and  
14          cooperate with any assessment, counselling or program  
15          directed by your supervisor. You'll not associate with  
16          or be in the company of anyone who you know to have a  
17          criminal or Youth Court record. You'll make reasonable  
18          efforts to locate or maintain employment or an  
19          education program as directed by your sentence  
20          supervisor. You'll make restitution through the clerk  
21          of the court by December 31st, 2005, in the amounts of  
22          \$91.99 to the Sony Store at MicMac Mall, and to The Bay  
23          at MicMac Mall in the amount of \$109.44. You'll remain  
24          in your residence at all times once you have returned

**DECISION**

1 to the Province of Ontario. Until then, you will at  
2 all times be in the company of Diamond Nasser.

3 The only exceptions to your house arrest will be the  
4 following: When you're at regularly scheduled  
5 employment which your supervisor knows about or when  
6 you're travelling to and from that employment by a  
7 direct route or when you're attending a regularly  
8 scheduled education program which your supervisor knows  
9 about or at a school or educational activity supervised  
10 by the principal or teacher and travelling to or from  
11 the educational program or activity by a direct route;  
12 when you're dealing with a medical emergency; when  
13 you're attending a scheduled appointment with your  
14 lawyer or supervisor and travelling to or from by a  
15 direct route; when you're attending a counselling  
16 appointment or a treatment program at the direction of  
17 or with the supervisor and travelling to and from the  
18 appointment, program or meeting by a direct route.

19 The other exceptions will be whenever you are in the  
20 company of a parent, whenever you have obtained  
21 permission from your supervisor, or when you're  
22 completing your community service hours and travelling  
23 to and from that destination by a direct route.

24 You'll also be required from time to time to prove

**DECISION**

1 compliance, which means present yourself at the door of  
2 your house or take the phone when your supervisor calls  
3 to check up on your house arrest.

4  
5  
6  
7  
8

---

Beach, J.P.C.

1 THE COURT: I did not include, Mr. Pink, for the  
2 purposes of attending a religious service. I'm  
3 assuming that can be done in the company of his father.

4 MR. PINK: That is correct.

5 THE COURT: Is there anything further on the  
6 conditional sentence that Crown or defence wish to  
7 address at this time?

8 MR. O'LEARY: I don't believe so, Your Honour.

9 MR. PINK: The three hours that's normally given to  
10 attend to personal needs, Your Honour, I take it that  
11 will be done in the company of his parent?

12 THE COURT: Yes.

13 MR. PINK: Fine, Your Honour.

14 THE COURT: I didn't add that.

15 MR. PINK: No.

16 THE COURT: I didn't put that condition in. Obviously,  
17 these conditions, things like that, if they don't work  
18 out for some reason, the order can be revisited, but  
19 this is not intended to be a conditional sentence order  
20 that has a great deal of flexibility. It's to be one  
21 where essentially Mr. Nasser is under house arrest  
22 except when he's going to work or doing something else  
23 that his supervisor tells him to do.

24 MR. PINK: That'll be fine, Your Honour.

25 THE COURT: All right. Can we deal with that

1 outstanding information?

2 MR. O'LEARY: Yes, Your Honour. With respect to the  
3 eight count information with the three co-accused, the  
4 Crown's withdrawing the information with respect to Mr.  
5 Nasser only.

6 THE COURT: Thank you.

7 MR. PINK: Thank you, Your Honour.

8 MR. O'LEARY: Thank you, Your Honour. That's my only  
9 matter.

10 THE COURT: Thank you. You might just tell the officer  
11 involved in that matter that he should -- you know, if  
12 he's going to sit through the sentencing, he doesn't  
13 need to just kind of rush out as soon as he knows the  
14 bottom line. I find that rather disrespectful.

15 MR. O'LEARY: I'll let him know. I see we're still on  
16 the record. I'm just wondering, I know the other two  
17 still have the matter outstanding. I'm just wondering  
18 if perhaps we should have -- I'm just wondering about a  
19 publication of the facts since they're out there now,  
20 if that's an issue.

21 THE COURT: I won't deal -- I don't think it's  
22 appropriate for me to deal with the sentencing of the  
23 other individuals in the event that there's any dispute  
24 on the facts.

25 MR. O'LEARY: Thank you, Your Honour.

1 THE COURT: I think that's probably the fairest way  
2 to...

3 MR. O'LEARY: To deal with that. Thank you.

4 THE COURT: Counsel may have a different idea. They  
5 come back when?

6 MR. O'LEARY: The 15th.

7 THE COURT: Okay.

8 MR. O'LEARY: Have a good weekend.

9 THE COURT: You too.

10 **MATTER CONCLUDED**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

CERTIFICATE OF COURT REPORTER

I, **Janice Kelly**, Court Reporter, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of the evidence given in this matter, taken by way of electronic audio recording.

---

Janice Kelly, Certified Court Reporter

November 28, 2005, at Halifax, Nova Scotia