Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor, 20 Queen Street West, Toronto ON M5H 3S8
CP 55, 19e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF

FIRESTAR CAPITAL MANAGEMENT CORP., KAMPOSSE FINANCIAL CORP., FIRESTAR INVESTMENT MANAGEMENT GROUP INC., MICHAEL CIAVARELLA AND MICHAEL MITTON

SETTLEMENT AGREEMENT BETWEEN MICHAEL MITTON and STAFF OF THE ONTARIO SECURITIES COMMISSION

PART I - INTRODUCTION

1. By Notice of Hearing dated December 7, 2011, the Commission announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order approving the settlement agreement entered into between Staff of the Commission and Michael Mitton (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated December 21, 2004 against the Respondent (the "Proceeding") in accordance with the terms and conditions set out below. The Respondent consents to the making of an order in the form attached as Schedule "A", based on the facts set out below. The facts giving rise to the proceedings occurred from approximately July of 2004 until December of 2004 (the "Material Time").

PART III - AGREED FACTS

(a) Background

3. On March 22, 2007 before Justice Then of Superior Court of Justice (Ontario), the Respondent pled guilty to one count of fraud on the public market contrary to s.380(2) of the *Criminal Code of Canada* and one count of laundering proceeds of crime contrary to s.462.31 of the *Criminal Code of Canada.*

4. The transcript underlying the March 22, 2007 pleas of guilty and the agreed facts is attached hereto as Exhibit "A".

5. The Respondent is an individual who resides in British Columbia and/or Ontario. Prior to this matter, the Respondent had been convicted of at least 103 counts of fraud, many of which have involved securities fraud. He is currently subject to a 20 year cease trade order in British Columbia.

6. Kamposse Financial Corp. ("Kamposse") is a corporation incorporated in Ontario with its head office in Richmond Hill, Ontario.

7. Michael Ciavarella ("Ciavarella") was an officer and director of Firestar Capital Management Corp. ("Firestar Capital").

8. Pender International Inc. ("Pender") is a company incorporated in Ontario with its head office in Thornhill, Ontario. Pender traded on the National Association of Securities Dealers Over the Counter Bulletin Board.

9. Pender had the same address and phone number as Kamposse.

10. Armistice Resources Ltd. ("Armistice") is a corporation incorporated in Ontario with its head office in Ontario.

11. In July of 2004, Pender completed a private placement of $1.6 million U.S. at $0.50 U.S. per share. By press release dated October 27, 2004, Pender announced that those funds were used to acquire IMM Investments Inc. ("IMM"), a private company, which became a wholly owned subsidiary of Pender. IMM owns approximately 30% of Armistice with rights to purchase up to 55%.

12. Pender acquired IMM from KJ Holding Inc. ("KJ Holding"), an Ontario corporation. As a result of the acquisition, KJ Holding acquired 36.5% of Pender's issued and outstanding common stock. KJ Holding is wholly owned by the father of K. J.

13. The only asset of Armistice and Pender was a mine in northern Ontario near Kirkland Lake. The mine is currently flooded with water. The financial statements of Armistice for the three month period ending September 30, 2004 reveal a deficit of $29,598,630.

14. By press release dated October 27, 2004, Pender announced that it would be engaging Atlas Dewatering to dewater the mine, and it was expected that the dewatering would be completed in 4-6 weeks.

15. Pender did not release any further information about efforts to dewater the mine.

16. The only other substantive press release during the period June to November 2004 was the announcement that Pender, on October 25, 2004, had appointed Ciavarella as President and Director of Pender, and had appointed a new Board of Directors.

(b) The Accounts

17. Firestar Capital maintained accounts at HSBC Securities (Canada) Inc. ("HSBC Securities") and HSBC Bank Canada ("HSBC Bank"). Ciavarella had trading authority over the Firestar Capital account at HSBC Securities. Ciavarella was the only principal of the

Firestar Capital account at HSBC Bank and K. J. also had signing authorization over the account.

18. Ciavarella maintained accounts in his own name at HSBC Securities, Desjardins Securities Inc. ("Desjardins") and TD Waterhouse Canada Inc. ("TD Waterhouse").

19. Kamposse maintained accounts at HSBC Bank, RBC Dominion Securities Inc. ("RBC DS") and CIBC World Markets. Ciavarella referred Kamposse to RBC DS. K. L. and G. J. were the principals of the Kamposse account at HSBC Bank. K. L. and G. J. had trading authority over the Kamposse account at RBC DS. K. L., Ciavarella and G. J. had trading authority over the account at CIBC World Markets.

20. All of the above accounts (which will be referred to collectively as the "Accounts") are related to each other and/or related to insiders of Pender.

(c) Trading in Pender

21. In July of 2004, Pender was trading at approximately $0.08 U.S. per share. Prior to October 14, 2004, there had been no trading in the shares of Pender for some time. On October 14, 2004, the shares opened at $0.30 U.S. and closed at the same price on a volume of 12,000 shares traded. Over the next 35 trading days, the shares traded as high as $11.35 U.S. on a volume of over 2 million shares trading. This represents an increase in price of the shares of Pender of 3,783%.

22. During the Material Time, none of the news releases issued by Pender were intended to cause the dramatic increase in the price and volume of Pender shares traded. Even if the news releases did have a marginal effect on the price, Pender did not release any news after October 28, 2004. There is therefore nothing to explain the rise in the share price after that date.

23. The increase in the share price of Pender was artificial and was caused by trading that was arranged between the Accounts and orchestrated by the Respondent.

24. This was achieved by the Respondent and others conspiring to acquire all or almost all of the free-trading shares of Pender which would then enable them to trade those shares in a circular pattern at ever increasing volume and prices.

25. This type of trading activity, known as a “pump and dump”, artificially inflated the Pender share with the intention of defrauding unsuspecting investors.

26. In the summer of 2004, the Respondent orchestrated the purchase of shares of Pender by K. J. and others through a complex series of transactions using funds from private investors.

27. K. J. used about $900,000 to purchase almost all of the then outstanding shares of Pender and IMM used approximately $2,000,000 to purchase a 14.4% interest in Armistice. IMM and its interest in Armistice were subsequently vended to Pender in exchange for Pender shares. The Respondent was not involved in the gathering of these funds and did not have direct knowledge of the particulars of these investments.

28. As a result, K. J. and others acquired control over almost all of the free-trading shares in Pender, Pender acquired a 14.4% interest in Armistice and the private investors acquired shares in Pender.

29. However, the Respondent was aware that $890,000 was used to purchase almost all of the outstanding shares of Pender and approximately $2,000,000 was used to purchase a 14.4% interest in Armistice. This interest in Armistice was subsequently assigned to Pender in exchange for Pender shares.

30. As a result, the Respondent and others acquired control over almost all of the free-trading shares in Pender, Pender acquired a 14.4% interest in Armistice and the private investors acquired shares in Pender.

31. In the middle of October of 2004, having acquired almost all of the free-trading shares of Pender, the Respondent and his associates orchestrated the trading in Pender shares thus manipulating the share price of Pender. Towards the end of 2004, the Respondent also caused false and misleading information about Pender to be released to the public which affected the market price of Pender shares and created a risk of deprivation of those who had acquired Pender shares.

32. This circular trading in Pender shares was conducted by the Respondent using certain of the Accounts over which the Respondent had legal authority or through other accounts held by nominee account holders whom the Respondent directed or controlled. Given the Respondent's notoriety, none of the Accounts were in his name.

33. The trading was conducted by the Respondent at ever increasing prices and volumes in order to artificially inflate the Pender share price and distorted the normal market forces as they related to the trading of Pender shares. The sophisticated trading in which the Respondent engaged in is indicative of a pump and dump scheme.

34. Over the following weeks, the price of Pender shares rose from $0.30 U.S. per share to approximately $11.35 U.S. per share on November 18, 2004.

35. Given concerns regarding the Accounts, the brokerage firms where the Accounts were located commenced internal investigations and discovered that the principal purchases of the Pender shares were also the principal sellers. As a result, these brokerages froze the accounts used by the Respondent and others on suspicion that the share price of Pender had been manipulated.

36. In November of 2004, the HSBC Bank had an outstanding debt of about $2,600,000 U.S. due to the purchase of Pender shares in accounts controlled by the Respondent and Ciavarella that had not been settled. This debt was never settled and the HSBC Bank did not sell the Pender shares into the public market as this would further perpetuate the fraud on the market. As a result, the HSBC Bank incurred a loss of at least $2,625,000 U.S. It has subsequently obtained a default judgment against Ciavarella for its losses.

37. On November 18, 2004, the Accounts largely stopped trading shares of Pender. When the Accounts stopped trading the shares of Pender, the share price of Pender dropped dramatically, causing losses to investors.

38. By the end of December 2004, the price had dropped to $6.00 U.S. and by the end of February 2005 the share price had fallen to $0.34 U.S.

39. On December 10, 2004, the Commission issued directions freezing certain accounts and issued temporary cease trade orders preventing the Respondent, Ciavarella and others from trading shares of Pender.

40. Although all of the Accounts traded and/or funded the purchase of Pender stock, the main purchasing account was the Firestar Capital account at HSBC Securities and the main selling account was the Kamposse account at RBC DS. Funds from Kamposse were transferred to the Firestar Capital account at HSBC Securities in order to finance the purchase of Pender shares.

41. As at September 30, 2004, the Kamposse account at RBC DS contained 318,000 shares of Pender with a market value of $26,087.61 CDN. During October and November of 2004, those shares were sold and total funds of $953,378 U.S. and $1,603,000 CDN were withdrawn from the account.

42. In November of 2004, the Firestar Capital account at HSBC Securities purchased 392,000 shares of Pender, of which it sold 17,500, at a net cost of $3,557,343.37 U.S. It also deposited 200,000 shares of Pender into the same account. Four cheques totalling $2,324,000 U.S. that were deposited to the Firestar Capital account at HSBC Securities to pay for the purchases of the Pender shares were subsequently returned unpaid. As at November 30, 2004, the Firestar Capital U.S. dollar account at HSBC was in a debit position of $2,822,700.75 U.S., which was offset by a credit position in the Firestar Capital CDN dollar account of $293,590 CDN.

(d) The Involvement of the Respondent

43. The Respondent was permitted to provide trading instructions for the Firestar Capital account at HSBC Securities. The Respondent was present when the Kamposse account at RBC DS was opened. The Respondent claimed that the Kamposse account at HSBC Bank was his account.

44. The Firestar Capital account was funded, in part, with cheques drawn on the account of Kamposse at HSBC Bank. The Respondent was involved in the movement of funds from other sources into the Firestar Capital account but did not place his own funds into that account.

45. When dealing with the Firestar Capital account at HSBC Securities and the Kamposse account at RBC DS, the Respondent took steps to conceal his true identity, including using the alias “Michael Douglas”.

46. Profits from the RBC DS account were deposited into Kamposse’s bank account. Several payments were made from Kamposse’s bank account to J. M., wife of the Respondent.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

47. The above conduct of the Respondent was contrary to Ontario securities law and contrary to the public interest in that, during the material time, trading in the shares of Pender was dominated by trading that was orchestrated by the Respondent and was arranged between the Accounts in a way that created a misleading appearance of trading activity and artificially increased the share price of Pender.

PART V - MITIGATING FACTORS

48. The Respondent pled guilty to the charges under the *Criminal Code of Canada* and has not contested Staff's allegations. On March 22, 2007, the Respondent was sentenced in the Superior Court of Justice (Ontario) to a period of incarceration for seven years in relation to the criminal charges.

PART VI - TERMS OF SETTLEMENT

49. The Respondent agrees to the following terms of settlement, to be set out in an order by the Commission pursuant to subsections 37(1) and 127(1) of the Act, as follows:

a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondent cease permanently from the date of the approval of this Settlement Agreement;

b) pursuant to clause 2.1 of section 127(1) of the Act, the acquisition of any securities by the Respondent is prohibited permanently from the date of the approval of the Settlement Agreement;

c) pursuant to clause 3 of subsection 127(1), any exemptions contained in Ontario securities law do not apply to the Respondent permanently from the date of the approval of the Settlement Agreement;

d) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1), that the Respondent resign any position he may hold as an officer or director of any public corporation, private corporation, registrant or investment fund manager;

e) pursuant to clauses 8 and 8.4 of subsection 127(1), that the Respondent be prohibited permanently from becoming or acting as a director or officer of any public

corporation, reporting issuer or investment fund manager from the date of the approval of the Settlement Agreement;

f) pursuant to clause 8.5 of subsection 127(1), that the Respondent be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter from the date of the approval of this Settlement Agreement; and

g) pursuant to subsection 37(1), the Respondent cease permanently, from the date of the approval of the Settlement Agreement, to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

PART VII - STAFF COMMITMENT

50. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondent in relation to the facts set out in Part III herein, subject to the provisions of paragraph 51 below.

51. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondent fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondent based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

52. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondent for the scheduling of the hearing to consider the Settlement Agreement.

53. Staff and the Respondent agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding the

Respondent's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

54. If this Settlement Agreement is approved by the Commission, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

55. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

56. Whether or not this Settlement Agreement is approved by the Commission, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

57. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondent leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Respondent ; and

b) Staff and the Respondent shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

58. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Respondent and Staff or as may be required by law.

PART IX. - EXECUTION OF SETTLEMENT AGREEMENT

59. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

60. A facsimile copy of any signature will be as effective as an original signature.

Dated this 6th day of December, 2011

"Jacqueleen Mitton"

Witness

"Michael Mitton"

Michael Mitton

Dated this 6th day of December, 2011

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"

Tom Atkinson
Director, Enforcement Branch

Schedule A

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

AND

MICHAEL MITTON

ORDER
(Sections 37 and 127(1))

WHEREAS on , the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37 and 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Michael Mitton ("Mitton");

AND WHEREAS Mitton entered into a Settlement Agreement with Staff of the Commission dated , 2011 (the "Settlement Agreement") in which Mitton agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from Mitton and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Mitton cease permanently;

(c) pursuant to clause 2.1 of section 127(1) of the Act, Mitton is prohibited permanently from the acquisition of any securities;

(d) pursuant to clause 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mitton permanently;

(e) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1), Mitton resign any position he may hold as an officer or director of an issuer or registrant or investment fund manager;

(f) pursuant to clauses 8 and 8.4 of subsection 127(1), Mitton be prohibited permanently from becoming or acting as a director or officer of any issuer or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1), Mitton be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) pursuant to subsection 37(1), Mitton cease permanently to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

DATED AT TORONTO this day of , 2011.

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

MICHAEL MITTON

Accused

--- Before THE HONOURABLE MR. JUSTICE THEN, without a jury, at the Metropolitan Toronto Court House; commencing on Thursday, March 22, 2007.

GUILTY PLEA, SUBMISSIONS
SENTENCING

A P P E A R A N C E S:

R. SCHWARTZ, Esq.) for the Crown
A. WHEELER, Ms.)

F. ADDARIO, Esq.) for the Accused

THURSDAY, MARCH 22, 2007

THE COURT: I do apologize to counsel. I thought we would be a very short time with the matter that brings you here, but as you can see, sometimes that's not possible. Do you wish to have Mr. Mitten brought up, or is it better for us to take a break at this point?

MR. ADDARIO: I think -- good afternoon, Your Honour. Frank Addario. I think it would be useful, and I understand from Mr. Schwartz and Ms. Wheeler that they agree it would make sense to have a -- to continue our judicial pre-trial.

THE COURT: Yes. All right. Okay. Very well. Thank you. I will meet with counsel, then, shortly. We might as well take the afternoon break, then.

MR. ADDARIO: Do you want us to come afterwards?

THE COURT: Sure.

MR. ADDARIO: Sure. Thank you.

--- COURT RECESSED AT 3:30 p.m.

--- UPON RESUMING AT 4:00 p.m.

MR. ADDARIO: Good afternoon, Your Honour. It's Frank Addario, I appear for Mr. Mitten and he's here before you.

THE COURT: All right. Very well.

MR. SCHWARTZ: Good afternoon, Your Honour, Schwartz initial R appearing for the Crown, with my colleague, Ms. Wheeler.

As you know, Your Honour, this matter has been pre-tried before you with counsel. Mr. Mitten appears before you today to plead guilty to the two counts set out in the indictment before you and to be sentenced in relation to those counts. So to that end, I would ask that he be arraigned on both counts, please.

THE COURT: Yes. Please, Madam Registrar.

THE REGISTRAR OF THE COURT: Michael Mitten, you stand charged that you unlawfully did, between the 1st day of May, 2004 and the 31st day of July, 2005, both dates inclusive, at the City of Toronto in the said Region; and

elsewhere in the Province of Ontario, and elsewhere in Canada, and in the United States of America, and elsewhere, did by deceit, falsehood or other fraudulent means, with intent to defraud, affect the public market price of shares of Pender International Inc., contrary to section 380(2) of the *Criminal Code of Canada*.

And that you, between the 1st day of November, 2004, and the 31st day of December, 2004, both dates inclusive, at the City of Toronto in the said Region, and elsewhere in the Province of Ontario, and elsewhere in Canada, did transfer the possession of, send or deliver, transport, transmit, alter or dispose of property, to wit: USD$243,991.39, with intent to conceal or convert that property, knowing or believing that all or a part of that property was obtained or derived directly or indirectly as a result of the commission in Canada of a designated

offence, contrary to section 462.31 of the *Criminal Code of Canada*.

How do you plead to Count 1?

THE ACCUSED: Guilty.

THE REGISTRAR OF THE COURT: How do you plead to Count 2?

THE ACCUSED: Guilty, Your Honour.

THE REGISTRAR OF THE COURT: Thank you.

THE COURT: Is there a necessity of a re-election or anything of that order at this stage? I am not sure what the election was.

MR. ADDARIO: No. We waive a re-election if there was a judge and jury election. Unfortunately, none of us were there at Old City Hall. My colleague did it with Ms. Wheeler's colleague.

THE COURT: All right. Well, then, I think perhaps out of an abundance of caution, it may not be necessary, but why don't we, if counsel are prepared to do that, sign the re-election form just so that there isn't any question about the jurisdiction.

MR. ADDARIO: All right. Certainly Mr. Mitton elects to be tried by Your Honour alone this afternoon.

THE COURT: All right. Very well. Yes, Mr. Schwartz.

MR. SCHWARTZ: Thank you, Your Honour.

With respect to the facts, the Crown has prepared a written Agreed Statement of Fact, which I propose to file as an exhibit in the proceedings, and then read into the record. So I will pass that up to the court now.

THE COURT: Thank you.

MR. SCHWARTZ: The Agreed Statement of Facts is as follows:

[1] Over a period of approximately 14 months between the summer of 2004 and the summer of 2005, Michael Mitton was involved in a sophisticated, large-scale fraud that artificially inflated the price of shares of Pender International Inc., or "Pender".

Facts Read in
(Schwartz)

[2] Pender was a dormant "shell" company incorporated in the State of Delaware. Pender did not own any assets prior to the events giving rise to charges in this case, and it did not carry on any active business.

[3] Pender shares were quoted and traded on the Over-the Counter Bulletin Board in the United States, (or OTC.BB). The OTC.BB is a regulated quotation service for securities that are generally not listed on NASDAQ or a national securities exchange such as the New York Stock Exchange or the TSX. Trading in OTC.BB securities is reported to the public *via* volume and price charts published by media such as Reuters, Bloomberg and Yahoo Finance. Trading that artificially inflates the volume of trading in OTCC.BB securities, or trading at artificial prices of OTC.BB securities, may distort normal market forces and may affect the public market price of the securities because such trading artificially affects the volume and price charts that are made available to members of the public.

[4] In the summer of 2004, Mr. Mitton and others conspired to acquire all or almost all of the free-

trading shares of Pender, which would enable them to then trade those shares amongst themselves in a circular pattern at ever increasing volume and prices, to artificially inflate the share price and defraud investors. This type of fraud is sometimes referred to as a "pump and dump" stock manipulation.

[5] The Crown alleges that Mr. Mitton conspired with Aniello (Neil) Peluso and Michael Ciavarella to manipulate the share price of Pender. Mr. Peluso and Mr. Ciavarella also face charges in connection with these allegations, but they have not yet been tried.

[6] The acquisition of Pender shares was accomplished through a complex set of transactions whereby funds were obtained from several private investors, many of whom were unsophisticated, totalling approximately $2,900,000 Canadian. Mr. Mitton was not directly involved in the accumulation of these funds and does not have direct knowledge of the particulars of these investments. However, Mr. Mitton does have direct knowledge of the following. A portion of the funds, approximately $890,000 Canadian, was used to purchase almost all of the

outstanding shares of Pender. The remaining $2,000,000 Canadian was pooled together and used to purchase a 14.4% interest in an exploratory, non-producing gold mining project in Northern Ontario called Armistice Resources Limited, or "Armistice". The 14.4% interest in Armistice was subsequently assigned, through another transaction, to Pender, in exchange for Pender shares. The overall effect of these transactions was that, a) Mr. Mitton and other co-conspirators acquired control over almost all of the free-trading shares of Pender, b) Pender acquired a 14.4% interest in Armistice, and c) the private investors acquired Pender shares in exchange for their investments.

[7] As described in more detail below, in the months that followed, Mr. Mitton engaged in manipulative trading of Pender shares and issued false and misleading information relating to Pender, thereby affecting the public market price of Pender shares and creating a risk of deprivation for the private investors who had acquired Pender shares in exchange for their investments. In addition, as a result of the manipulation, the price of Pender shares ultimately dropped, resulting in actual

losses for some of the private investors. The losses suffered by the private investors are difficult to quantify. Some private investors sold their Pender shares and recovered their investments; some private investors were repaid by a third party after the price of Pender shares dropped; and some private investors continue to hold Pender shares and suffered losses through the fall of Pender's share price.

[8] By the fall of 2004, Mr. Mitton and the co-conspirators had succeeded in acquiring almost all of the free-trading shares of Pender, so the manipulation of the share price was set to take place. Trading in the shares of Pender commenced in the middle of October 2004. Over the next month or so, the price of Pender shares rose by a factor of more than 3.700% from $0.30 per share expressed to U.S. dollars to $11.25 per share, expressed in U.S. dollars.

[9] Banking and brokerage documents have been seized from Canada and the United States. These records have been analyzed by experts. The expert analysis confirms that much of the trading in Pender in October and

November, 2004 was conducted by Mr. Mitton and Mr. Ciavarella, trading in a circular pattern amongst themselves or companies they controlled, or through accounts over which they held trading authority, or through accounts held by nominee account holders whom they directed or controlled (none of the accounts were held in Mr. Mitton's personal name, which is notorious within the securities industry). The trading was conducted at ever increasing prices and volume in order to artificially inflate the public market price of Pender shares and distort normal market forces.

[10] Mr. Mitton was the architect of the scheme; he was the co-conspirator with sufficient expertise in the capital markets to orchestrate the manipulation. The scheme was sophisticated. In many instances, the trading conducted by Mr. Mitton involved significant up-ticking (placing a bid at a price that is higher than the price of the preceding trade), high closing (making the final trade of the day at a higher price than the price of previous trades in order to create an artificial closing price for the day), ramping up (moving the price up through regular

buying at increasingly higher prices), matched trading (placing pre-arranged buy and sell orders at nearly the same time, price and volume), wash trading (trading that does not involve a change in actual beneficial ownership), and recycling funds (moving funds from one account to another to cover the settlement of trades). These trading techniques are indicative of a "pump and dump" stock manipulation scheme. Mr. Mitton used these techniques in the many corporate and personal accounts over which he exercised control or authority. Mr. Mitton also used a technique of settling trades by cheque rather than funds transfer. This delayed settlement and facilitated the recycling of funds used to finance the manipulative trading.

[11] Trading in Pender slowed in November 2004 when one or more brokerage firms became concerned about increasing debits in the accounts controlled by Mr. Mitton and Mr. Ciavarella. Those debits were not being settled as required. The brokerage firms conducted internal investigations and discovered that the principal purchasers of Pender were related to the principal sellers

of Pender. They also investigated the rapid escalation of price and concluded that there was no legitimate explanation that could account for that pricing. As a result, they froze accounts held or controlled by Mr. Mitton, Mr. Ciavarella and others.

[12] One brokerage firm became concerned in part because a Pender share certificate for approximately 3,400,000 shares had been deposited which, given the inflated market price of Pender shares, was worth approximately $34,000,000 U.S. dollars. The certificate was deposited in an account held by a nominee account holder directed or controlled by Mr. Mitton. This gives an indication of the potential value of the manipulation.

[13] By the middle of November 2004, HSBC Securities Canada had an outstanding debit of approximately $2,600,000 U.S. dollars. This debit was caused by purchases of Pender shares in accounts held at HSBC Securities Canada that had not been settled. Mr. Mitton and Mr. Ciavarella traded in and exercised control over these accounts. In an effort to obtain payment to cover this debit, the investment advisor for the accounts

met with Mr. Mitton. Mr. Mitton told the investment advisor that he would wire transfer approximately $2,600,000 (USD) from Barclays Bank in the Cayman Islands to cover the debit, but only on the condition that he would be able to get the money out later. Mr. Mitton told the investment advisor that this was his own money.

[14] Ultimately, HSBC Securities Canada did not receive payment to cover the debit. In the ordinary course, HSBC Securities Canada would have liquidated the securities held in the accounts in order to cover the debit (the artificially inflated value of Pender shares held in the accounts was more than sufficient to settle the accounts). However, by mid November 2004, HSBC Securities Canada had concluded that the price of Pender shares had been manipulated and that the accounts controlled by Mr. Mitton and Mr. Ciavarella were involved in the manipulation. In order to avoid visiting this fraud on the investing public by selling the Pender shares into the public market, HSBC Securities Canada refused to sell the shares and instead incurred a loss in these accounts in an amount of at least $2,625,000 U.S. dollars.

[15] The loss suffered by HSBC Securities Canada in this case has affected the way HSBC Securities Canada deals with customers who trade in speculative securities. In particular, after incurring this loss, HSBC Securities Canada changed its settlement rules respecting thinly traded stocks, such that customers are now required to settle trades immediately upon their execution, as opposed to the ordinarily applicable three-day settlement period.

[16] As brokerage firms started to freeze accounts operated by parties trading in Pender, Mr. Ciavarella emptied accounts that were not yet frozen of roughly $250,000 U.S. dollars. These funds were, in whole or in part, proceeds of the offence of fraud. Mr. Ciavarella then transferred those funds to the trust account of a law office. The funds were then transferred from the trust account to Mr. Mitton, and subsequently from Mr. Mitton to his wife. From there they were dispersed and depleted in various ways. These transfers form the basis of count two in the indictment, a charge of laundering property obtained by crime. There is no

allegation that the law office was engaged in wrongdoing in respect of these transfers.

[17] After the accounts were frozen, the volume of trading in Pender shares and the price of Pender shares decreased dramatically. The share price of Pender dropped to $6.00 U.S. dollars by the end of December 2004, to $1.86 U.S. dollars by the end of January 2005 and to $0.34 U.S. dollars by the end of February 2005.

[18] On or about December 10, 2004, the Ontario Securities Commission issued directions and cease trade orders freezing the suspect accounts and ordering that Mr. Mitton, Mr. Ciavarella and others cease trading in Pender shares. On or about December 17, 2004, the cease trade order directed at Mr. Mitton was subsequently broadened to prohibit trading in any securities.

[19] Notwithstanding these orders, by early 2005 Mr. Mitton had recommenced trading in securities, including Pender. Mr. Mitton set up accounts in British Columbia and in the United States held by nominee account holders. Mr. Mitton directed trading in those accounts from Ontario in violation of the OSC cease trade orders.

In addition, by directing trading in an account in British Columbia, Mr. Mitton was in violation of another cease trade order in effect in that province. The net proceeds of sales of Pender shares in the U.S. accounts totalled approximately $1,218,000 U.S. dollars.

[20] Between the summer of 2004 and the summer of 2005, various press releases were issued and SEC documents were filed respecting Pender and its alleged business ventures with other parties. Many of these publicly available documents were written by Mr. Mitton. To Mr. Mitton's knowledge, these documents contained false or misleading information favourable to Pender. Between July 14, 2004 and April 21, 2005, no fewer than 18 press releases and SEC filings were issued that contained false or misleading information favourable to Pender. The release of these documents was designed to artificially inflate the public market price of Pender shares and distort normal market forces.

[21] While conducting Pender business, Mr. Mitton used names including "Michael Milton", "Michael Hennessey", and "Michael Douglas". His use of aliases was

successful in that many people were not, at the time, aware of Mr. Mitton's true identity. Given that Mr. Mitton's true name is notorious within the securities industry, his successful use of aliases was integral to his ability to orchestrate and carry out the fraud in this case.

[22] As a result of his participation in these offences, Mr. Mitton received payments and benefits of various kinds, including: payments and transfers of monies to Mr. Mitton and/or his wife; a portion of the proceeds of sales of Pender shares in U.S. accounts (as detailed above at paragraph 19); the use of credit cards and payments of credit cards balances; payments of hotel bills; residential lease payments; and automobile lease payments. For the purpose of this guilty plea, the Crown alleges, and Mr. Mitton agrees, that the sum of the benefits and payments that flowed directly to Mr. Mitton and/or his wife is no less than $580,000 Canadian. The offences also generated other profits that flowed to other parties, and Mr. Mitton had control over proceeds far greater than this amount.

Those are the facts.

THE COURT: All right. Thank you, Mr. Schwartz. Mr. Addario, on behalf of Mr. Mitton, are the facts substantially correct?

MR. ADDARIO: Your Honour, Mr. Mitton has had an opportunity to review the Agreed Statement of Facts in writing and he's instructed me that they are substantially correct.

THE COURT: All right. Thank you very much. Well, then, on the basis of those facts, there shall be a finding of guilt with respect to both counts.

MR. SCHWARTZ: Thank you, Your Honour. Now, as you know, counsel come before you today with a joint submission; namely, that a sentence of seven years imprisonment is an appropriate disposition in this case having regard to the circumstances of the offences and Mr. Mitton's history.

As to pre-sentence custody, Mr. Mitton has been in pre-sentence custody for approximately eight weeks commencing on January 26th 2007, the date of his arrest,

and he obviously deserves credit for that, which I admit should be calculated on a two for one basis, resulting in 16 weeks credit for pre-sentence custody. What that is, subtracted from the seven-year sentence counsel urge you to impose, the result is a net sentence as of today's date of 6 years and 8 months. Which is the sentence we urge you to impose.

In addition, the Crown asks you to impose a restitution order payable to HSBC Securities Canada in the amount of $2,625,000 U.S. dollars, and I understand that Mr. Mitton does not oppose the imposition of that order.

Now, I have brief submissions to make in support of the joint submission. In support of the joint submission, the Crown essentially asks you to consider three sets of factors. First, those factors relating to the circumstances of the offences I have just reviewed. In my submission, the facts of the offences disclose a number of aggravating factors that amply justify a lengthy penitentiary sentence in this case. This was obviously a sophisticated large-scale fraud that resulted in substantial losses to HSBC Securities, and resulted in the

risk of significant losses to the investing public as a whole. The fraud continued for over one year and involved a variety of dishonest acts. So this was not simply an isolated event. The fraud included sophisticated manipulative trading and the dissemination of false and misleading press releases and SCC filings. The potential windfall for Mr. Mitton and the co-conspirators had this fraud successfully run its course was extraordinary. At the very least, tens of millions of dollars. So, this kind of fraud clearly undermines public confidence in the capital markets and, therefore, there was a strong element of general deterrence at play. So, there are a number of aggravating factors associated with the offences themselves.

The second set of factors I ask you to consider relate to the circumstances of the offender, Mr. Mitton, and in particular, his lengthy history of committing criminal and regulatory offences. To give you a sense of Mr. Mitton's history, the Crown has prepared a tab volume of material relating to his history, which I

propose to file with the court now. I have provided a copy to Mr. Addario. So I'll pass that up now.

THE COURT: Thank you.

MR. SCHWARTZ: And I will be asking that that volume be marked as the second exhibit to these proceedings. I don't propose to review this document in detail, in my submissions today, but when you review the volume, you will see that it contains in its various tabs Mr. Mitton's criminal record, a BCC Securities Commission decision, which is predicated on an agreement made by Mr. Mitton as to the facts surrounding a previous set of offences. You will see it contains another BCC Securities Commission decision, and I am now referring to the document at Tab 3 which sets -- it's a lengthy document which provides a review of other fraudulent conduct and regulatory offences committed by Mr. Mitton. And finally at Tab 4, you will find reasons for sentence from the Supreme Court of British Columbia from December 2000 relating to Mr. Mitton's most recent criminal convictions. And when you review those reasons for sentence, you will

see detailed discussion of his offences committed by Mr. Mitton.

In order to assist you to navigate through that volume, the Crown has prepared a chart, which I propose to pass up to you now, which essentially summarizes the materials, and the chart will act as the Crown's submissions in respect of those materials.

MR. ADDARIO: That's the coloured chart.

MR. SCHWARTZ: That's the coloured chart. When you review that chart, Your Honour, you will see that commencing at page 1 there is also reference to some historical convictions. Proceeding on to page 2 there is reference to a number of additional convictions, in the early 80s. On to page 3 there is reference to some additional criminal convictions and also facts relating to regulatory offences from 1988. Turning to page 4 you will find facts relating to additional regulatory offences and criminal offences throughout the 90's. Page 5, additional regulatory offences in the mid to late 90s, and at the bottom of page 5 the criminal convictions I referred to a moment ago from December, 2000, Mr. Mitton's most recent

criminal convictions, which resulted in a four-year sentence imposed in December, 2000. Without reviewing those materials in detail, I may just say this in my submissions today, when you review the volume I have passed up and when you review the chart that I have provided to you, you will see, in my submission, that like the offences presently before the court, Mr. Mitton's history also exhibits a number of aggravating factors relevant to the imposition of sentence today. If you count up his criminal convictions, they total 103 in number. All of them fraud related, spanning some 30 years. You will also see that Mr. Mitton has received substantial terms of imprisonment for fraud in the past, including at least three penitentiary sentences, including a six-year penitentiary sentence for fraud related offences. You will see that Mr. Mitton has been found guilty of numerous offences which are very similar to the conduct arising in the present case, that is offences involving the manipulation of the public market price of shares using aliases to disguise his identity in order to perpetrate fraud, establishing nominee accounts for

trading, obviously to confound the authorities, and engaging in conduct causing huge losses to brokerage and brokerage firms. And, indeed, when you review his history you will see that he committed the present offences while on parole for the last set of offences, and that in committing these offences, he violated cease trade orders in effect in Ontario and British Columbia.

So those are a few of the aggravating features of this case that emerge to a review of Mr. Mitton's history.

That brings us to the third set of factors I ask you to consider; namely, the mitigating factors that the Crown submits justify the joint submissions advanced today. First and foremost, Mr. Mitton obviously deserves the credit for his early guilty pleas. These are very early guilty pleas in lengthy complex proceedings, so they ought to be taken as a true acknowledgement of responsibility by Mr. Mitton for which he deserves substantial credit. In addition, as part of the resolution in this case, Mr. Mitton has made concessions that will facilitate the ongoing prosecution of the

remaining two accused, Mr. Peluso and Mr. Ciavarella, and which will ensure that court resources are used efficiently in those proceedings. First, Mr. Mitton has agreed to waive any claim of solicitor/client privilege that he may otherwise have had in relation to the monies transferred through the trust account of the law office, which formed the basis of the money laundering count Mr. Mitton has pleaded guilty to. By waiving this claim of privilege, Mr. Mitton has facilitated the ongoing prosecution of Mr. Ciavarella in particular, who is also charged with money laundering in relation to those transfers. In addition, Mr. Mitton has agreed not to litigate potential claims available to him under the *Charter of Rights and Freedoms*, which if litigated, would have consumed court resources and lengthened the court proceedings in this case. And from the Crown's perspective in the context of this case, that is a significant mitigating factor that justifies a reduction in the sentence that would otherwise have been appropriate in view of the seriousness of these offences and his history. So, having regard to those factors, I urge you

to accept the joint submission of counsel and to impose a seven-year sentence, less credit for pre-sentence custody and to impose the restitution order payable to HSBC Securities Canada.

As to how this sentence ought to be broken down between the two counts, I haven't spoken to my friend, Mr. Addario, about that issue, but in my submission, the leading count is Count 1, fraud, which itself calls for a seven-year sentence. I would submit that a three-year concurrent sentence ought to be imposed in relation to Count 2.

Subject to any questions, those are the Crown's submissions.

THE COURT: Thank you, Mr. Schwartz. I think that's very thorough. Mr. Addario.

MR. ADDARIO: Thank you, Your Honour. Mr. Mitton is 48 years old and it's quite true that he has a lengthy criminal record and it's that record which supports the joint submission. The sentence proposed is stiff. It doesn't reflect, in my submission, so much the nature of the offence as it does the antecedents of the

offender. It's unknowable whether the restitution order can be honoured through honest means, but Mr. Mitton has instructed me not to oppose its imposition. He has a wife and three children who are partially dependant on him and would be most pleased to have him on the right side of the law at the expiration of the sentence. It's true that he was arrested on January 26th and instructed me to initiate discussions respecting a guilty plea within one week of his arrest. His early pleas have saved the Crown and the administration of justice an enormous amount of time, energy, expense and paper. The preliminary inquiry alone was expected to last several long weeks in the Court of Justice, and a time-consuming trial is certain to follow.

Were Your Honour to be exposed to the evidence in this case, you would learn that he was encouraged to join this scheme by someone else that he was brought out of retirement or a self-imposed withdrawal from participation in this kind of scheme. His personal benefit was relatively small compared to the overall scheme, but the punishment has been severe and swift. So I am urging you to accede to the joint submission.

I make one comment on mitigating factors that Mr. Schwartz listed and it simply relates to that issue of solicitor/client privilege and I wish to say on the record that Mr. Mitton waived it for reasons of his own relating to his understanding of his rights and his position in there and not to facilitate the prosecution of anyone. That's not his goal.

Thank you very much.

THE COURT: Very well, then. Is there anything further, Mr. Schwartz, that you wish to say?

MR. SCHWARTZ: I just wish to confirm, I have passed up three documents to the court: the Agreed Statement of Facts, which I'd ask be marked as Exhibit 1 today, the sentencing proceedings; the volume of materials which I would ask is marked as Exhibit 2. The remaining document is a chart prepared by the Crown, really in the nature of submissions. I am not sure if you have a view whether that ought to be marked as a lettered exhibit, perhaps, to ensure it remain in the file, or if you have taken another view.

THE COURT: Well, it's a summary of some of the things, why not make it an exhibit. I think it doesn't really matter what I think that since it's been tendered on the sentencing, why not make it Exhibit number 3 then. What I propose to do then is very briefly to retire so that I can consider the submissions of counsel. I shouldn't be particularly long. I would hope I can come back say in about 20 minutes, if that's satisfactory.

MR. SCHWARTZ: Thank you.

--- COURT RECESSED AT 4:45 p.m.

--- UPON RESUMING AT 5:05 p.m.

ORAL REASONS FOR SENTENCE

[1] THE COURT: With respect to the matter of the Queen and Michael Mitton; Mr. Schwartz and Ms. Wheeler for the Crown, Mr. Addario for Mr. Mitton.

[2] Mr. Mitton has pled guilty to two counts of an indictment, Count 1 outlining a fraud involving stock market manipulation and Count 2, money laundering.

[3] The facts pertinent to these offences have been thoroughly discussed by the Crown, Mr. Schwartz, in the Agreed Statement of Facts, which is Exhibit 1 on this proceeding. Although he may have been coaxed out of retirement, Mr. Mitton nevertheless has admitted to being the architect of a stock market manipulation involving the shares of Pender International Inc. wherein he utilized his considerable expertise, acquired, no doubt, from other stock market frauds for which Mr. Mitton has been convicted as well as sanctioned by stock market regulators

in British Columbia, Alberta, and Ontario in order to commit another in a series of sophisticated frauds.

[3] The techniques utilized to achieve this "pump and dump" stock market manipulation include, as paragraph 10 of the Agreed Statement of Facts outlines, such things as up ticking, high closing, ramping up, wash trading, and recycling funds, amongst others.

[4] As a result, while it is difficult to quantify the precise losses to the public, it is possible to quantify a loss of $2,600,00 U.S. to HSBC Securities Canada.

[5] The fraud was further facilitated by press releases and public filings authored by Mr. Mitton as well as the use of aliases because of his reputation in the financial community. As a result of his participation, his own profit or benefit from this fraud is, by his admission, no less than $580,000 Canadian, excluding the profits of others.

[6] With respect to the substance of Count 2, along with a co-conspirator, one Mr. Ciavarella, he caused funds, which were the proceeds of the fraud, to be

transferred to the trust account of a law firm and thereafter to Mr. Mitton himself and finally to his wife. In this regard, however, Mr. Mitton has waived solicitor/client privilege with respect to his dealings with the law firm, and as his counsel has pointed out, he has done that for his own reasons.

[7] Section 718 of the *Criminal Code* specifies, amongst other principles of sentencing, the principle of general and specific deterrence as well as that of denunciation. Those principles, in my view, and I think with the agreement of counsel, are the over-arching principles which are applicable in this case.

[8] In this case, there is a joint submission by very experienced counsel that seven years in the penitentiary is the appropriate sentence, minus the time served of some 16 weeks (which represents 8 weeks since the arrest, multiplied by the accepted factor of two with respect to pre-trial custody). Counsel submit that that term of imprisonment is sufficiently substantial to strike the appropriate balance with respect to the principles of specific and general deterrence as well and denunciation

as well as the rehabilitation of the offender and thereby ultimately to achieve the goal of protecting society.

[9] As Mr. Schwartz has indicated, there are several aggravating factors in this matter. He has divided these into three categories: the first having to do with the nature of the offence; that is to say that this is a sophisticated, large-scale fraud. There are substantial losses and in particular to the brokerage firm. There certainly has been a risk of loss to the public, and in that respect it is difficult to ascertain with precision the extent of that loss. It is also the case that this scheme has lasted for approximately one year and that there were a variety of sophisticated techniques at play utilized by Mr. Mitton to achieve his purposes.

[10] It is no doubt true that in any case in which stock market manipulation occurs, there is a substantial risk to the integrity of the capital markets not only of this province, but of this country and thereby some threat to economic prosperity.

[11] The other category of factors which are said to be aggravating are those that pertain to Mr. Mitton as an offender. I think it is safe to say that in viewing those factors that perhaps it can be truly be said of Mr. Mitton that he is the worst offender. He has a criminal record in which he has been convicted of 103 fraud related offences. Several of these offences have to do with various forms of stock manipulation, some of which have in turn attracted penitentiary terms.

[12] It was said by Madam Justice Bennett in the year 2000 on Mr. Mitton's prior conviction for stock market manipulation that he was not yet incorrigible. It is perhaps fair to say that in committing this offence, he has not only crossed the line, but perhaps has gone beyond it by some distance.

[13] While there are some serious aggravating factors, there are also, as has been pointed out quite fairly by both counsel, mitigating factors. First, there has been a very early plea, and I think it is fair to say and to Mr. Mitton's credit that he has accepted his responsibility by doing so. He has also saved the

administration of justice valuable resources, which no doubt would have been required to prosecute this complex fraud. He has also waived solicitor/client privilege with respect to his dealings with the trust account of the law firm and I accept that while he had no intention in facilitating the prosecution of others that may, in fact, have been an indirect result and that, too, as the Crown has conceded, is a mitigated factor which has informed the joint submission.

[14] Having regard to the principles of sentencing and to the joint submission of experienced counsel, I am prepared to accept that the joint submission of 7 years in the penitentiary is an appropriate sentence. Minus the time served of 8 weeks, on the two for one basis, totalling 16 weeks, so that the effective sentence will be one of 6 years and 8 months.

[15] For Mr. Mitton, this is yet another serious crime involving stock market manipulation which requires a substantial penitentiary sentence in order to attempt to effect specific deterrence because clearly other penitentiary sentences of 4 and 6 years have not done so,

nor have any number of regulatory orders. Were it not for his prompt guilty plea and his assumption of responsibility, the sentence would have been much greater as his extensive record for 103 frauds, including specific convictions for stock market manipulation, would have warranted such a disposition. It would seem to me that insofar as Mr. Mitton's record is concerned, Madam Justice Bennett was not far off the mark where during the course of her sentencing of Mr. Mitton in the year 2000 she referred to Mr. Mitton, unfortunately but perhaps accurately, as a professional swindler. I would only add that the court has the duty of protecting the integrity of our financial markets in order to ensure the economic health of this country and this factor in turn also requires that a penitentiary term be imposed, given Mr. Mitton's conviction for the two offences before the court.

[16] Having regard to the joint submission of experienced counsel, as I have stated, I agree that 7 years is a substantial sentence which, along with the restitution that is to be ordered, will strike the appropriate balance between the need for specific and

general deterrence as well as the denunciation and which will also give the appropriate effect to the mitigating factors which have been cited.

[17] Mr. Mitton, if you would please stand. I am sentencing you to 7 years in the penitentiary, and from that will be subtracted the 8 weeks of pre-trial custody on a two for one basis, so that the total effect of sentence will be 6 years and 8 months. And I am also ordering restitution in the amount of $2,600,000 U.S. to HSBC Securities Canada. I wish only to say that if it is true as Mr. Addario has mentioned that you were coaxed out of retirement, I would urge you that at the completion of this sentence to actually go into retirement, because it would seem to me that if there is another conviction, it will be very difficult for any court to impose a sentence that does not involve double digits. Please, if you could refrain now, I think it would be very much in your benefit to do so.

Thank you. Those are the reasons of the court.

MR. ADDARIO: Did Your Honour want to continue with the night court list?

THE COURT: Well, I would if I could, but I think we are done.

MR. ADDARIO: Thanks very much.

THE COURT: I apologize for keeping everyone. This had an unexpected delay and I apologize for that. I should mention, too, that I am going to accede to the Crown's suggestion that the sentence of 7 years be imposed on Count 1 and that there be a 3-year concurrent sentence on Count 2.

MR. SCHWARTZ: Your Honour, if the court requires the address of HSBC Securities Canada for the purpose of the restitution order, may I provide that to Madam Clerk?

THE COURT: Yes.

MR. SCHWARTZ: After court adjourns this afternoon or --

THE COURT: Well, I think, yes, if you don't mind. She is making up the papers right now and that would be helpful.

MR. SCHWARTZ: Thank you.

THE COURT: I think we have endorsed the indictment, hopefully, correctly. If you would just give me the sheet, please.

Convictions are registered on Counts 1 and 2. The sentence of 7 years on Count 1, 3 years concurrent on Count 2. There will be subtracted from the 7 years on Count 1, 16 weeks of pre-trial custody. There is to be restitution of $2,600,000 U.S. to HSBC Securities Canada and I will ask Madam Clerk to simply incorporate the address of that institution on the indictment.

Certified correct

LUANNE DUBE, C.S.R.
OFFICIAL COURT REPORTER
SUPERIOR COURT OF JUSTICE