

# Court of King's Bench of Alberta

Citation: **Rex v Del Bianco, 2023 ABKB 430**



**Date:**  
**Docket:** 180473647Q1  
**Registry:** Calgary

Between:

**His Majesty the King**

Crown

- and -

**David Del Bianco**

Accused

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Reasons for Judgment  
of the  
Honourable Mr. Justice N.E. Devlin

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## **I. Overview**

[1] Between March 1 of 2010 and December 31 of 2014, a number of northern Albertans paid money to invest in a company run by the accused, operating under the name "Equal Rights". Each of these individuals was an unsophisticated investor. The company has never operated as they hoped and believed it would, if at all. None of the investors ever saw a penny of their money back.

[2] David Del Bianco stands accused of one count of fraud over \$5,000 pursuant to s 380(1) of the *Criminal Code* and one count of laundering the proceeds of crime pursuant to s 462.31(1)(a) of the *Criminal Code* for his alleged role in these investments. The Crown alleges that the entirety of the ER scheme was a fraud from which he siphoned funds for his own use and living expenses. Mr. Del Bianco denies any wrongdoing and defended himself throughout this trial, which proceeded over the course of more than a year.

[3] The following are my reasons for judgement in this matter.

## II. Facts

[4] For several decades, Mr. Del Bianco ran and promoted an investment purporting to be a legal services insurance company. He did so mostly under the name Equal Rights, but other registered names also appear to have been used, such as Equal Rights Legal Defence Alliance Inc., and Equal Rights Legal Defence Alliance USA. At times, Equal Rights Legal Defence Alliance Inc was described as Equal Rights Alliance Inc, which does not appear to be an actual corporate entity. Unless a distinction is warranted, I shall refer to the various Equal Rights entities as “Equal Rights” or “ER”. Additional entities of note in this action include Affordable Legal Plan (Canada) Inc. (“Affordable Legal”) and Magnum Cavalier Developments Ltd. (“Magnum”) each of which were incorporated and controlled by the defendant.

[5] Specifically, the corporate and banking records entered at trial demonstrate that Mr. Del Bianco was the sole director of the Canadian corporate entities in issue and was the sole signing authority on the bank account of Equal Rights Legal Defence Alliance Inc at all relevant times.

[6] Equal Rights was generally marketed as a “legal insurance plan” which witnesses said was described to them as a sort of “Blue Cross” or “AMA” for the payment of legal services/fees. The idea was that individuals or groups would be able to obtain legal insurance by signing up for a membership plan and paying monthly membership premiums. Informational pamphlets/brochures were produced by Mr. Del Bianco explaining the nature of the fund and the membership plan. The promotional material indicated that once your registration as a member has been approved, a membership card would be mailed to you. The materials also provide a toll-free number for potential registrants.

[7] It appears Mr. Del Bianco began promoting the opportunity to invest in Equal Rights in the late 1990’s to early 2000’s. The Court heard evidence from Mr. Del Bianco that he had attracted the attention of securities regulators (namely the Alberta Securities Commission) who took certain enforcement actions he considered to be the beginning of an improperly motivated vendetta against him and the enterprise. This is relevant only in so far as Mr. Del Bianco told the Court that he ceased promoting or selling securities in Alberta after some sort of agreement with the Courts in 2010, and relied repeatedly on this event as the line of demarcation defining the cessation of any conduct by him that would be covered by the indictment.

[8] To this end, I note that the record contains copies of a number of share certificates issued by Equal Rights Legal Defence Alliance (USA) Inc., to a number of the investors who testified. While these share certificates all pre-date the Indictment period, they are relevant as Mr. Del Bianco relied upon the issuance of share certificates as a part of his defence.

[9] The investor-witnesses called by the Crown testified that they put money into what they thought was Equal Rights between 2010 and 2014, the time period covered by the Indictment (the “Relevant Period”). A number of these investors began making investments with Mr. Del Bianco in the 2000’s, sometimes after seeing presentations he had made about the company. Others were new to the scheme and had been introduced to it through friends, family, or acquaintances who were also investors.

[10] Many of these purchases were made through a man named Ted Wylie, who was the most ardent promoter of the scheme during the relevant period. He also appears to have been the largest financial loser in the scheme.

[11] The investors had numerous things in common. They all lived and worked in northwestern Alberta, often in somewhat remote rural areas. They were all straightforward, hardworking, and trusting individuals. They were all financially unsophisticated. None appeared to have levels of wealth that would justify or support speculative private-placement investments. Many of them had very little money at all. Several testified that they viewed this investment as something that might make them rich, despite the quantum of their individual investments being relatively modest. All of these factors made them ripe for financial misadventure.

[12] Further similarities emerged. The complainants invested either directly through Mr. Del Bianco or, more commonly, through other investors who were also working as agents. Many borrowed or sold assets in order to obtain funds to invest. Those investors who dealt directly with Mr. Del Bianco were often told that Equal Rights was just on the cusp of crystalizing into a profitable business venture, and that just a little more capital was needed. Investors who asked pointed questions of Mr. Del Bianco did not receive informative responses. No return on investment, or any return of funds, has been realized by any of them.

[13] Given that the Relevant Period covers only March 1, 2010, to December 31, 2014, this necessarily means that the entire story of those who invested in ER cannot be captured here. However, some of the history of the investors' introduction to ER and to Mr. Del Bianco was led in evidence to conceptualize what occurred during the Relevant Period. In addition, Mr. Del Bianco relied upon certain historical happenings as a part of his defence.

[14] An exhaustive forensic financial analysis was conducted on ER, Mr. Del Bianco, and the related companies and accounts (the "Forensic Analysis") by Ms. Nicole Chute, a forensic accountant. This formed a key part of the Crown case, as it traced all of the funds given by the investors, from their input to ultimate use.

### **III. Position of the parties**

[15] The Crown argues that the Forensic Analysis, the financial documents tendered by the investor-witnesses, and the testimony of the investor-witnesses all establish that the money invested into ER was received by Mr. Del Bianco into accounts that he had solely controlled, and that Mr. Del Bianco made personal use of this money.

[16] The Crown alleges that the fraud existed not only with respect to Mr. Del Bianco's use of the investment money, but also in relation to the ER business itself, in that nothing about the business was legitimate or in any way operated as represented.

[17] The Crown also alleges that Mr. Del Bianco dealt with the money that he knowingly received as a result of his fraud, making him guilty of money laundering.

[18] Mr. Del Bianco did not contest certain of the banking activities captured as a part of the Forensic Analysis. Although he was inconsistent about the dates on which different accounts were operational, he acknowledged the movement of funds through the accounts identified. Rather, his defence is largely centred on his theory that while money may have moved through the accounts, he was not the individual moving it. He claims that he never received this money, nor did it ever come to his benefit. As such, if a fraud was perpetrated, it was not by him. He also maintained that ER was a real business, but that he did not conduct any of the allegedly fraudulent investment solicitations.

#### IV. General principles governing a criminal trial

[19] Mr. Del Bianco enters this trial presumed innocent and remains so unless the Crown proves his guilt on each element of the offence beyond a reasonable doubt. This level of proof lies much closer to absolute certainty than to satisfaction on a balance of probabilities. It is not sufficient that the Crown prove that the accused is likely guilty: *R v Star*, 2000 SCC 40 at paras 236 and 241-2. This very high level of proof applies to every element of the offence.

[20] A reasonable doubt is a doubt based on reason and common sense which must be logically derived from the evidence or a lack of evidence. A reasonable doubt must not be imaginary or frivolous, and cannot be based on sympathy or prejudice, nor do these form any part of the proof against an accused person: *R v Lifchus*, 1997 CanLII 319 (SCC), [1997] 3 SCR 320 at para 31.

[21] The onus of proving the accused's guilt beyond a reasonable doubt lies with the Crown throughout the trial and never shifts. Mr. Del Bianco does not have to prove anything and, in particular, does not have to prove his innocence or explain the suspicious circumstances advanced by the Crown. The presumption of innocence is displaced only when the evidence I do accept satisfies me beyond a reasonable doubt of all the elements of the offence. Where I am left with a reasonable doubt, whatever its source, I must acquit.

[22] Given where the onus lies, the accused does not have to testify. Nevertheless, Mr. Del Bianco elected to testify and provided evidence concerning his involvement in ER, certain other corporate entities, and with a number of investors. Again, some of his evidence went beyond the Relevant Period but informed his defence. The accused's evidence conflicted with the Crown's evidence on a number of fundamental points, and I have assessed all of the evidence in accordance with the instruction provided in *R v W(D)*, 1991 CanLII 93 (SCC), [1991] 1 SCR 742, as further explained by our Court of Appeal in *R v Ryon*, 2019 ABCA 36 and in *R v Achuil*, 2019 ABCA 299.

#### V. The law of fraud

[23] Fraud is defined in the *Criminal Code* as follows:

380(1) Fraud – Everyone who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person...of any property, money or valuable security...

(a) is guilty of an indictable offence...

[24] McLachlin J summarized the elements of fraud in *R v Zlatic*, 1993 CanLII 135 (SCC), [1993] 2 SCR 29, as follows at 43:

[T]he *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and

2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another ...

[25] The act of fraud therefore consists of both a *means* (using deceit, falsehood or other fraudulent means) and a *consequence* (defrauding any person of property). The crime of fraud further requires that an accused intentionally carry out the acts or transactions in question, knowing these actions would create a risk of loss.

[26] Fraud, in essence, is dishonest conduct resulting in a deprivation (or risk of deprivation) to the victim: *R v Olan*, 1978 CanLII 9 (SCC), [1978] 2 SCR 1175 at 1182; *R v Riesberry*, 2015 SCC 65 at para 17. A transaction is fraudulent if the accused knowingly puts his victims' financial interests at risk through dishonesty, irrespective of whether fraud or deprivation was the purpose of their scheme: *R v Th  roux*, 1993 CanLII 134 (SCC), [1993] 2 SCR 5 pp 18-19.

[27] Therefore, to succeed on an allegation of fraud, the Crown must prove beyond a reasonable doubt the existence of: (i) dishonesty; (ii) deprivation; and (iii) knowledge of the dishonesty and its consequences.

## VI. Analysis

### (i) The business of ER

[28] As noted above, ER was promoted as an insurance scheme whereby members would pay monthly into a fund which would then be used to provide legal representation for them if ever required. Mr. Del Bianco appears to have promoted the concept to (or otherwise communicated with) possible investors in person, at trade/investor shows, and over the telephone. He also used 'agent' investors who believed in the concept to go out and promote it locally.

### (ii) Review of the evidence

[29] The Crown suggests two pathways to fraud in this case, the first being the misuse of the investment funds and the second being the actual operation of the business, namely that it was not legitimate and was not being operating as Mr. Del Bianco represented.

[30] Given the nature of the proceeding, and Mr. Del Bianco's positions regarding the evidence and witnesses, a detailed review of the evidence is appropriate in this case.

[31] A series of Calgary Police and Alberta Security Commission ("ASC") witnesses introduced and authenticated the vast amounts of documents tendered. Outside of Ms. Nicole Chute, this group's evidence largely speaks for itself and does not require any in-depth scrutiny. Beyond Mr. Del Bianco's primary defence of essentially being sabotaged by outside forces, there were no issues concerning the validity of any of the production orders, nor of the authenticity of accounting information provided any of the banks involved (outside of Mr. Del Bianco's assertions that copies, not being original documents, may somehow be less reliable).

[32] At the time of his testimony, Cst. Francois Courtemanche had been an RCMP officer for 17 years and was the officer in charge of the Sensitive and International Investigations Unit. In 2015, he was assigned to the ASC, to work with the Commission to establish the Joint Serious Offences Team or "JSOT", which is a combined forces investigation unit between the ASC and the RCMP, tasked with looking into serious fraud within the Province of Alberta. At one point,

Cst. Courtemanche was assigned as the primary investigator on the Mr. Del Bianco/ER file, which had come to JSOT as a referral from the regulatory side of the ASC.

[33] Cst. Courtemanche authored the ITO's for two production orders on certain financial institutions used by Mr. Del Bianco/ER entities – namely the Canadian Western Bank (“CWB”) for the corporate account of Equal Rights Legal Defence Alliance Incorporated and the Toronto Dominion Canada Trust Bank (“TD”) for the personal accounts of Mr. Del Bianco and the corporate accounts of ER. The CWB account was closed and, as further discussed by Ms. Chute, this account was consolidated into the ER TD account. The documents produced pursuant to these orders were used as a part of the Forensic Analysis. There were no signature cards or opening documents included in the production for the CWB account. Cst. Courtemanche indicated his belief that further banking information was produced by Bank of Montreal and Royal Bank in relation to the corporate ER accounts. Evidence as to these two accounts was provided by Nicole Spencer, an RCMP officer who was seconded to JSOT in 2016 as an investigator for Criminal Code investigations.

[34] During cross-examination, Cst. Courtemanche confirmed that the matter was referred to him through two different channels. It was referred by Mr. Gus Gallucci who worked on the regulatory side of the ASC, and also through the RCMP, following complaints to the Grande Prairie RCMP. Mr. Gallucci is an individual who figures prominently in the accused's defence. Cst. Courtemanche indicated that the RCMP complaint was based on information provided by both the Wylies and the Renners, as described below.

[35] Mr. Lionel Busch is a former Calgary police officer who now works for the ASC. He became involved in the JSOT investigation into Mr. Del Bianco and ER in 2016. He was involved in interviewing witnesses, interviewing investors and seizing pertinent documents. He confirmed the receipt of a number of the original investor documents which were subsequently relied upon by the Crown in questioning the investor witnesses.

[36] During cross-examination Mr. Busch agreed that the signature purporting to be Mr. Del Bianco's appeared different on different documents, and was sometimes in a different colour of ink, although he provided a caveat that he was not qualified to opine on the authenticity of signatures in any way. He agreed it was possible for a document to be forged.

[37] A number of the exhibits related to individual investments were introduced through Sgt Michael Williamson of the Lethbridge Police Service. Sgt Williamson had spent a period of time with JSOT during which he conducted multiple interviews in relation of the investigation into ER. He received these documents during the course of his investigation. Sgt. Williamson explained his standard interview process used during the JSOT interviews. He denied influencing investors at any point during the interviews. Sgt. Williamson explained that he is not a handwriting expert and was unable to advise as to whether Mr. Del Bianco's signature on any of the Share Receipts was an original. Sgt. Williamson denied receiving any documentation, either from Mr. Dupuis or otherwise, that was not reflected in, or was different from, the documents entered into evidence.

[38] The next group of witnesses comprised the “investor-witnesses”.

[39] A number of investor witnesses provided critical evidence against Mr. Del Bianco. Given Mr. Del Bianco's position that much of this evidence cannot be trusted or relied upon, I critically examined their credibility.

[40] As discussed below, I accept the evidence of the investor witnesses. While certain of the witnesses could not recall some specific details of financial transactions that occurred years prior, each of them presented as forthright and tried their best to assist the Court in understanding what took place. They were all honest people who did their best to assist the Court in telling a painful and embarrassing story about their lives.

a. Ted Wylie

[41] Mr. Wylie is a pivotal figure in this case. He was a major investor in ER, as well as acting as an agent in soliciting for other investors. He was the direct contact for most of the investors who testified. He is the individual who explained the ER scheme and its need for funds, collected investor money, and provided receipts. He was thus the lynchpin of the fraud if there was one.

[42] Mr. Wylie testified that he met Mr. Del Bianco in approximately 2004 and that their business relationship ended in 2014. He was introduced to Mr. Del Bianco through an individual named Rick Musich. When they were first introduced, Mr. Wylie was working at World Financial Group selling insurance products. He is also a mason by trade and has his own company through which he performed masonry work, a trade to which he returned after the ER debacle. He lives in Alberta Beach, a village located northwest of Edmonton.

[43] Wylie testified that he first invested in ER in 2004. His family bought shares as well. He had become interested in the idea of legal insurance and received further promotional materials from Mr. Del Bianco explaining the concept. Mr. Wylie testified, and I accept, that all of the information he passed along to investors came by way of the brochures Mr. Del Bianco had provided him or from Mr. Del Bianco directly.

[44] Mr. Wylie understood that, to access this insurance, one had to hold a membership in ER. He stated that ER was not yet at the point where it was selling memberships. Rather, individual investors were looking for shares in the company, not memberships. They wanted to be able to receive profits in the form of dividends once people started buying memberships. Mr. Wylie believed that once ER was in a position to start selling memberships, the scheme would turn profitable.

[45] At times, Mr. Wylie's evidence appeared confused as to whether only members were able to access the legal insurance or if this benefit was extended to shareholders as well. I accept that the investors were told this was the case – namely that people were told that investing in ER brought the same benefits as buying the insurance – irrespective of the quantum of the investment.

[46] Mr. Wylie testified that, to his recollection, at some point prior to the Relevant Period, actual share certificates were being issued for investors. It became apparent during his cross examination that Mr. Del Bianco had been involved in certain hearings before the ASC and the courts which resulted in some form of order or agreement that ER not issue further share certificates. As a result, over the Relevant Period, investors actually received either a "Receipt for Shares in Equal Rights Alliance Inc." or a "Receipt for Unit/Shares in Equal Rights Legal Defence Alliance (USA) Inc." (the "Share Receipts") as opposed to an actual share certificate. The genesis and authenticity of these receipts forms a part of Mr. Del Bianco's defence.

[47] Mr. Wylie was involved in ER both as an investor and as an agent soliciting investments in 2004 and 2005. This appears to be when ER's Stony Plain office was developed. He indicated that he was involved in this venture until 2008. He then appears to have distanced himself from

ER and concentrated more on his masonry work. Although it was unclear from the evidence, it appears that the period during which Mr. Wylie became less involved in promoting ER corresponded roughly with Mr. Del Bianco's dealings with the ASC and the ensuing litigation.

[48] In any event, Mr. Wylie testified that, in 2010, Mr. Del Bianco informed him that there was a possibility of licensing ER in the United States. Mr. Wylie was unclear on exactly what this US licensing entailed, indicating that he "didn't ask too many questions about it" and that it "wasn't really in [his] league to know". He believed that if ER was licensed and sold, the shareholders would see a handsome return. Mr. Wylie described his role as being an individual at the "front end" who could help bring "the money flow to Mr. Del Bianco".

[49] After discussing this licensing opportunity with Mr. Del Bianco, Mr. Wylie once again began to solicit investments in ER. He also resumed investing personally. He stated that during this period he would meet up with Mr. Del Bianco approximately once or twice a month, during which time Mr. Del Bianco would sign the Share Receipts Mr. Wylie had prepared to give to individuals who had contributed money.

[50] Mr. Wylie stated that Mr. Del Bianco had explained the share purchase structure to him. Basically, a client would be offered an initial investment opportunity at four shares to the dollar. This would then be increased to 6 to 1 and then 8 to 1 as the investor made subsequent purchases. Mr. Wylie indicated that, when speaking to potential investors, he would explain the share structure as well as the concept of legal insurance. He would provide potential investors with brochures personally provided to him by Mr. Del Bianco. If investors had additional questions, he would seek answers from Mr. Del Bianco. Mr. Wylie confirmed that at no point did Mr. Del Bianco ever instruct him on how to make a sales pitch to potential investors.

[51] Mr. Wylie indicated that he received a 15% commission on the share purchases he facilitated. He agreed that he was paid cash for certain commissions or that he would receive additional shares in lieu of a cash payment. Mr. Wylie described himself as facilitating transactions through which other investors bought shares. It was unclear how Mr. Wylie drew the distinction between assisting people with buying shares versus selling them shares.

[52] Mr. Wylie estimated that he personally invested over \$100,000 in ER, and that he borrowed much of the money needed to do so. He imagined that, if things went well, he would make a few million dollars. He indicated that he based his belief on information provided by Mr. Del Bianco around 2010, which projected future share value at \$4-6 per share. Mr. Wylie said that he would share this possible projected return (should the licenses sell) with investors.

[53] While both an investor and a promoter, Mr. Wylie professed to know surprisingly little about the financial position of ER. He was unable to give a fulsome response to questions concerning how shares were purchased and issued, nor to how the ratios were set. He had no knowledge of ER's corporate structure, other than that the share certificates appeared to be issued out of Delaware. He had no timeline information as to the potential licensing, nor as to how long it would take to see the shares selling at \$4-\$6. He did not know the value of the company. He never saw a business plan laying out any projections as to when ER would potentially start becoming profitable. He did not appear to appreciate how the varying ratios or the number of shares issued would dilute a return on investment for existing investors.

[54] He also appeared to be unclear as to nature and origin of the Share Receipts. At times he called them shares. He did not know the origin of the Share Receipts, although he believed that



his wife may have made copies of some pre-existing version of a receipt. At times, Mr. Del Bianco's signature is on the Share Receipts as a witness, at other times, Mr. Wylie's signature is the only authorization. Mr. Wylie testified, and I accept, that at some point, Mr. Del Bianco told him that he could sign the receipts himself. Mr. Wylie believed that by imparting sole signing power, Mr. Del Bianco was increasing his authority, although he was unclear as to why this change had been made. In referencing those Share Receipts on which Mr. Del Bianco's signature is present, Mr. Wylie testified that these fully executed Share Receipts were "mostly" signed in front of him.

[55] Despite this lack of knowledge about ER's operations and corporate structure, Mr. Wylie testified that he believed that the ER concept and the investing scheme were sound. He stated that he had been informed by Mr. Del Bianco that members of the RCMP as well as lawyers had invested.

[56] Essentially, Mr. Wylie placed blind and highly uniformed faith in Mr. Del Bianco and in the concept of ER. He believed that once the licensing was realized, he would be able to thank himself for taking this risk. He indicated that he had read some form of "investment rags to riches" book and wanted to do the same. His philosophy was that:

You have to trust -- trust in what you're doing and trust the people that you're working with, and together, you start from zero and work your way up. And I wanted to be a part of that...

[57] Mr. Wylie indicated that he put his trust in Mr. Del Bianco. He did not question Mr. Del Bianco on where the funds were going or how they were being used. He did, however, indicate that in certain circumstances, funds would be raised for a specific purpose -- such as when Mr. Del Bianco mentioned that he needed to travel.

[58] He stated that his belief that ER was going to take off was based upon Mr. Del Bianco's information that the company was going to be licensed and that -- also based upon Mr. Del Bianco's information -- given the projected return on investment, he was going to get rich.

[59] In relation to the actual mechanics of his role, Mr. Wylie testified that he passed along all of the funds that he collected from investors to Mr. Del Bianco. It appeared that Mr. Wylie would transfer investment funds from his TD or CIBC account into Mr. Del Bianco's TD/"Equal Rights" account, using bank account information provided to him by the accused.

[60] Mr. Wylie testified, and I accept as a fact, that the funds he solicited or otherwise received from other investors were all transferred to Mr. Del Bianco using banking coordinates provided to him by Mr. Del Bianco.

[61] A copy of one of the promotional brochures was put to Mr. Wylie, which detailed various membership subscription options. Mr. Wylie admitted that he did sell a few actual subscriptions, because he believed that ER was in a position to do so. He indicated that his understanding of membership availability changed over time and that he was not "being smart" about selling the memberships. He stated that after being told to stop selling memberships, he did so. Mr. Wylie indicated that the phone numbers listed on the brochure were, to his knowledge, never active beyond a voice recording regarding membership wait times.

[62] Mr. Wylie confirmed that he never received a membership. He was never paid any dividends and never otherwise received a return on his investment. Simply put, he never got any of his money back.

[63] Mr. Wylie stated that he never even attempted to cash his Share Receipts because he had ultimately been told by Mr. Del Bianco in 2014 that they were not “worth the paper they were written on”. Mr. Wylie testified that, after making this statement, Mr. Del Bianco nonetheless signed a final batch of Share Receipts. Mr. Wylie indicated that Mr. Del Bianco made this statement “at the end” and that he did not press the accused further on this point. He testified that, notwithstanding this statement from the accused, he continued acting as agent for ER and continued taking money from investors. He indicated that he continued doing so because he was unsure whether Mr. Del Bianco’s statement was accurate, and he felt the best course was to “listen” and see if this was true.

[64] Mr. Wylie testified that, a couple of months after Mr. Del Bianco had made this comment, he attended at a meeting with Mr. Del Bianco and another individual named Francisco Schipperheijn. During that meeting, Mr. Schipperheijn told Mr. Del Bianco that he had “checked him out” and told Mr. Wylie that money that had been raised for ER was “used for something else besides what it was supposed to be”. Mr. Schipperheijn also indicated that he had seen Mr. Del Bianco in the Caribbean at the same point in time when funds had been raised to send Mr. Del Bianco to Europe. In addition, Mr. Wylie said that Mr. Schipperheijn informed him that the supposed ER computer hub did not exist.

[65] Mr. Wylie testified that he believed Mr. Schipperheijn to be a “straight shooter” and that there were “things that kind of added up in my brain, anyway, that something wasn't right”. Mr. Wylie cut off all contact with Mr. Del Bianco after that point.

[66] During cross-examination, it was suggested to Mr. Wylie that he had never forwarded any of the funds raised by investors on to Mr. Del Bianco. Indeed, it was suggested that Mr. Wylie could not have done so as the account in question had been closed. Mr. Wylie disagreed with these assertions. Mr. Wylie denied either forging Mr. Del Bianco’s signature on the Share Receipts or otherwise copying Mr. Del Bianco’s signature. He further denied Mr. Del Bianco’s many assertions that the paperwork was “bogus” or “tainted”.

[67] When questioned as to how he could transfer funds to a closed account, Mr. Wylie indicated that the information about the account being shut down “... blows me away because where did the money go when I transferred it?” No evidence was led during cross-examination that the crucial banking paperwork had been forged. Mr. Wylie further denied any knowledge of a PayPal account being hacked.

[68] During cross-examination it was put to Mr. Wylie that the unprofessional nature of the paperwork and the Share Receipts suggested that Mr. Del Bianco could not have been the individual behind any investor solicitation – and that someone – either Mr. Wylie or an unknown party – was running a scheme. When asked for a response to the suggestion that this “chicken coop” paperwork could not have emanated from Mr. Del Bianco, Mr. Wylie responded “well I guess I live in a chicken coop, but the rooster is telling me what to do.”

[69] It was further suggested to Mr. Wylie that he had been instructed by Mr. Del Bianco to stop selling any US stock in May of 2010. Mr. Wylie did not recall receiving these instructions. He also denied asking that his commission be paid-out off the top of funds he was receiving from investors. Mr. Wylie indicated that, at some point, he was told there would not be any further share certificates and that this is why the “Share Receipts” were put together, so that investors would have a document attesting to the shares owed to them.

[70] In general, Mr. Wylie resisted the numerous attempts made during cross-examination to suggest that he was somehow involved in forging any aspect of the Share Receipts or in somehow obtaining or providing shares absent a required subscription form. He was not presented with any evidence to the contrary, despite Mr. Del Bianco being repeatedly invited to do so.

[71] I have given close consideration to whether Mr. Wylie's evidence can be relied upon. As stated above, Mr. Wylie played a key role in soliciting funds from investors. There is no question that he personally received investment money. In addition, he was motivated by the opportunity to earn a commission on sales. Mr. Wylie also claims to have an almost astonishingly non-existent lack of information about the corporate workings of ER, how share valuation and offerings work, and how valuation and returns on investment are determined; this all coming from a witness who had been licenced to sell insurance products through brokerages for a number of different companies, including banks.

[72] For all these reasons, I have approached Mr. Wylie's evidence essentially as one would approach the evidence of a Vetrovec witness. Given his involvement in the scheme, and the allegations made against him during cross-examination, I treat the evidence of Mr. Wylie with great caution. Therefore, it is necessary to consider whether Mr. Wylie's evidence is supported or corroborated by other reliable evidence.

[73] Certain portions of Mr. Wylie's evidence were, at times, inconsistent or confusing. For example, Mr. Wylie's distinction between selling versus facilitating the sale of shares is unclear. He also provided inconsistent testimony about whether he was selling memberships in the ER plan, and therefore whether he understood the company to be in a position to do so. His evidence as to whether shareholders were also members by virtue of their shareholder status was also inconsistent. More importantly, his evidence that he sometimes received his commission by way of additional shares versus cash is at odds with Ms. Chute's analysis which shows he did receive a commission payment commensurate to 15 percent of the amount he invested. To the extent that Mr. Wylie's evidence conflicts with that of Ms. Chute, I prefer that of Ms. Chute.

[74] Furthermore, his evidence was that even after being told that the shares were worthless by Mr. Del Bianco, he took no action, asked no questions, and continued taking investor money.

[75] With the above in mind, I nonetheless conclude that I believe Mr. Wiley for a number of reasons. First and foremost, the banking records and Forensic Analysis entirely confirm his evidence. These objective, contemporaneous, third-party business records show that he transferred the investors' money directly to Mr. Del Bianco, exactly as he said he did. Ms. Chute's analysis provided equally compelling, objective evidence corroborating Mr. Wylie's version of what happened to the money.

[76] Mr. Wylie's evidence is also supported by Mr. Dupuis' evidence that, if he was told something by Mr. Wylie, he would confirm it with Mr. Del Bianco, and vice versa. Mr. Dupuis also testified that he personally witnessed both Mr. Wylie and Mr. Del Bianco witnessing the Share Receipts on occasion.

[77] Furthermore, Mr. Wylie's evidence that Mr. Del Bianco would often contact him for funds needed for a specific purpose – such as travel – is also supported by evidence of various other investor-witnesses who described similar requests made directly by Mr. Del Bianco.

[78] In addition, I am satisfied that Mr. Wylie displayed candour while testifying. While the above inconsistencies gave me pause, I find that Mr. Wylie's evidence on the whole revealed a naive and overly trusting individual as opposed to a dishonest or manipulative one. Put simply, I believe him. As such, notwithstanding the issues I have identified, I accept Mr. Wylie's evidence on certain key points, namely that he got his information concerning ER directly from Mr. Del Bianco and that he funnelled all of the funds he collected to Mr. Del Bianco.

[79] Mr. Wylie was very clear that he simply told potential investors what Mr. Del Bianco told him. I accept that evidence. Mr. Wylie presented as the opposite of the accused in many ways. He was straightforward, plain spoken, and unsophisticated. He was also trusting and obedient.

[80] Having seen and heard his evidence, and carefully analyzed it against the objective documentary record and the evidence of other believable witnesses, I have no doubt that Mr. Wylie was an honest dupe. He believed in the Equal Rights scheme and dreamed of getting rich through it. He put his own money where his mouth was, to the extent of over \$100,000, much of this acquired through high-interest loans. The shame and guilt he manifested in his evidence for having gotten the investors into the scheme on the strength of his own word spoke volumes.

[81] Mr. Wylie invested absent even the most basic knowledge of how ER was structured, what it was worth, or how value was potentially going to be realized. He did so because he wanted to see the scheme work and was under the impression that he could make millions and "be a hero". I find that this was a classic case of greed, hope, rose coloured glasses, and a lack of financial literacy rendering an unsophisticated individual very vulnerable. What happened in this case epitomizes why we have protective securities regulations.

[82] In sum, I accept Mr. Wylie's evidence on the following crucial points, much of which was corroborated by the hard evidence in the form of the banking records. Specifically, I find as a fact that Mr. Wylie (i) believed in the business; (ii) invested heavily; (iii) solicited others to invest with Mr. Del Bianco's knowledge and consent and based upon information provided by Mr. Del Bianco; (iv) passed on all the money he collected; and (v) gave the Share Receipts to Mr. Del Bianco and watched him sign them.

b. Doris Wylie

[83] Ted Wylie's wife Doris Wylie was called by the Court. She stated that she helped her husband with administrative duties, but that she was not involved in promoting ER. Ms. Wylie indicated that she was involved in setting up the Share Receipts template and that she also assisted in setting up spreadsheets: one for Mr. Del Bianco, a family investment spreadsheet, and ultimately another for the ASC.

[84] Ms. Wylie said that she and her husband invested approximately \$180,000 in ER. Her two adult children also put money in. She stated that they used lines of credit, credit cards and their existing home equity to obtain the investment funds and that Mr. Del Bianco indicated to them that they were going to be "rich".

[85] In specific relation to the Share Receipts, Ms. Wylie said that she would create blank Share Receipts on the computer for her husband to use. She testified that she never saw any pre-signed Share Receipts. According to Ms. Wylie, Mr. Del Bianco stated that issuing share certificates was too expensive and indicated that on a go-forward basis, investor funds should be accounted for by using the Share Receipts instead.

[86] During cross-examination, Ms. Wylie denied concocting her story, designing inaccurate spreadsheets, or otherwise taking steps against Mr. Del Bianco and ER due to any marital issues, problems present in her personal life, or a personal vendetta against Mr. Del Bianco. Ms. Wylie agreed that she was frustrated that her husband continued to invest with Mr. Del Bianco despite the fact that there were no financial statements indicating how ER was performing, no financial statements showing what Mr. Wylie was purportedly earning in commissions, no shareholder updates, and no share certificates. She further rejected any suggestion that she and her husband solicited funds and then kept them rather than turning them over to Mr. Del Bianco.

[87] No evidence to the contrary was put to Ms. Wylie. She was a clear, objective, straightforward witness. I accept her evidence.

c. Thomas Renner

[88] The other investor/agent who gave evidence was Mr. Thomas Renner. He first invested in ER in 2007, with his initial investment facilitated by Mr. Wylie. In 2009, he required the services of a lawyer and called Mr. Del Bianco, who procured a lawyer for him.

[89] The lawyer, a Mr. J. Ter Hart, appeared at a preliminary inquiry for Mr. Renner, following which he asked Mr. Renner for payment of his fees. Mr. Renner testified that he informed Mr. Ter Hart that he was a member of ER and that Mr. Del Bianco was meant to cover the fee. Mr. Ter Hart indicated that he would speak to Mr. Del Bianco concerning the fee. That was the last Mr. Renner heard from his counsel.

[90] Mr. Renner stated that after this experience he “believed 100% in the product”. He invested more money personally and he also assisted others in investing.

[91] I accept Mr. Renner’s evidence that he was not paid a commission, but rather was told by Mr. Del Bianco that once the memberships “got going” the investors would become “very wealthy”. Mr. Renner indicated that he was informed that investors would be paid monthly or quarterly, based on membership rates and earnings, according to how many shares they had.

[92] Mr. Renner stated that, over the years, he would try and assist Mr. Del Bianco where needed. For example, if Mr. Del Bianco needed a new laptop, needed to travel to England to promote ER, or had filing charges, Mr. Renner would forward him money. Mr. Renner stated that, while he did not keep fulsome receipts, the receipts that he did have totaled approximately \$20,000. He believed that he was going to receive shares in return for these “one-off” types of payment. He never did receive any Share Receipts for these payments, but rather said that Mr. Del Bianco told him he was keeping track of these payments and that he would be “taken care of”. Mr. Renner indicated that, for these types of expenses, he would transfer money into the ER bank account through his TD account. Mr. Renner told the Court that Mr. Del Bianco never said that he had not received the funds requested.

[93] Mr. Renner explained that, when he was assisting with sales, he would have investors meet him at the TD bank and he would deposit the money into a bank account using coordinates provided by Mr. Del Bianco. Mr. Renner would then take a photocopy of the deposit slip and would provide the investor with a Share Receipt generated by Mr. Del Bianco. Mr. Renner testified that he assisted in making these deposits in 2010 and 2011.

[94] Mr. Renner also said that Mr. Del Bianco told him that he was a member of ER and that all investors were members. He stated that he was told that “membership fees”, which were

otherwise payable, were waived for investors. He was not aware of any members who were not also investors because ER “hadn’t gone anywhere”.

[95] Mr. Renner indicated that his new wife told him that Mr. Del Bianco was a “thief” and that at some point in 2012 or 2013 he recorded a telephone conversation he had with Mr. Del Bianco. This recording was entered into evidence. Its genesis lay in Mr. Renner being sued by an individual who had invested in ER through him. During the recorded telephone conversation, Mr. Del Bianco says that he will take care of the lawsuit. Mr. Renner responded that, because all of the money from this investor had been sent to ER, Mr. Del Bianco should be paying for the lawsuit. Mr. Del Bianco did not disagree with this assertion during the call.

[96] While there is some uncertainty as to when this telephone call took place, a number of comments made by Mr. Del Bianco therein are noteworthy. First, he states that his “intention is to activate”. He then indicates that he is “going to sell” once he gets “across the pond” and that the company is “at the precipice”. These things, said in Mr. Del Bianco’s own voice, corroborate that the representations made to solicit money from the investors were made at his instigation and behest. This is so even if the recording was made outside of the Relevant Period. That said, I am entirely satisfied that Mr. Del Bianco made these types of representations during the Relevant Period.

[97] Mr. Renner recalled his last investment have been made in the summer of 2012. He stated that he stopped promoting the concept at this time as he began having doubts about seeing any return on investment. Specifically, he began to have doubts as to whether ER was going anywhere. He stated that he could see that “nothing was being done” and indicated that, every time he spoke to Mr. Del Bianco, the accused requested money to cover a new expense. Mr. Renner eventually concluded that ER was not “on the up and up”.

[98] On cross-examination, Mr. Renner denied that he was fabricating stories about providing any funding for “one-off” expenses. Mr. Renner also denied that the accused offered him stock to compensate for the lawsuit expenses. He further denied receiving any commission from Mr. Del Bianco or ER. He was not shaken in cross-examination and not shown a single document that contradicted his evidence. I accept his evidence, making allowance for some frailty on precise dates.

d. Shelia Renner

[99] Mr. Renner’s wife also gave evidence. She stated that she never invested in ER, nor did she personally meet with Mr. Del Bianco. Rather, she heard of Mr. Del Bianco and the investment opportunities through her husband. At some point in time, Mr. Del Bianco asked Ms. Renner to arrange a London mailing address for him which she refused to do. Ms. Renner indicated that she never trusted Mr. Del Bianco. She repeatedly tried to get her husband to get something in writing concerning the business dealings they had, but that this never materialized.

[100] Ms. Renner indicated that she listened-in during the recorded telephone call between Mr. Del Bianco and her husband. She stated that she had likely listened in to over 100 telephone conversations between her husband and Mr. Del Bianco over the years. She described Mr. Del Bianco as discussing ridiculous schemes and making excuses for why people were not getting their money. She stated that Mr. Del Bianco’s descriptions of “activating”, and his discussion of various plans and ideas, were tangential and confusing. She likened Mr. Del Bianco’s conversational style when asked pointed questions about ER to “verbal diarrhea”.

[101] Ms. Renner stated that, in general, Mr. Del Bianco would present ER as being near to fruition and always requiring just a little bit more money to get there. She stated that if her husband had potential investors who wanted to examine the accounts, Mr. Del Bianco would decline the investment opportunity. Ms. Renner estimated that her husband had provided Mr. Del Bianco with between \$20,000 - \$25,000. She indicated that her husband gave Mr. Del Bianco with another \$500 in 2013 and that she became upset.

[102] Ms. Renner testified that, in February of 2015, she spoke with Mr. Del Bianco over the phone and that Mr. Del Bianco threatened her during this conversation. Specifically, after Ms. Renner told Mr. Del Bianco to stop lying, Mr. Del Bianco told her to “shut her fucking mouth”, indicating that had Italian connections and would “get the Mafia on her” and that she did not want to be “found dead” and that “people die over things like this”.

[103] Mr. Renner confirmed during cross-examination that he heard this conversation, and that Mr. Del Bianco was “screaming and threatening” during the conversation. While this alleged phone call took place outside of the Relevant Period, Mr. Del Bianco raised this issue during his cross-examination of Ms. Renner, with his theory seeming to be that she was fabricating this call and that this fabrication was further evidence of her ongoing personal animus toward him.

[104] During cross-examination, Ms. Renner denied that she was fabricating the threatening telephone conversation. I believe her. Not that Mr. Del Bianco was planning to or could carry out the threat, but I find as a fact that he made it. This is relevant only in so far as being questioned about the *bona fides* of a business should, if the business is legitimate, attract a fulsome provision of information to assuage the concerns being expressed, not death threats against the person questioning the scheme.

[105] The evidence of the conversation between Mr. Del Bianco and Ms. Renner was consistent with a pattern evident in the trial in which Mr. Del Bianco would flatter those witnesses whose evidence was not particularly harmful, and savagely attack those who were critical of him. Mr. Del Bianco also repeatedly demeaned the evidence of female witnesses that he did not favour by calling them “girls” and his behaviour in this regard was reprimanded by the Court. This does not provide evidence of Mr. Del Bianco’s guilt, but rather manifested behaviour consistent with what Ms. Renner described in the death-threat phone call.

e. Randy Dupuis

[106] Mr. Dupuis was an investor/promoter in ER. He testified that he was looking to invest some funds and was introduced to Mr. Wylie through a mutual friend, given Mr. Wylie’s involvement in World Financial Group. Mr. Dupuis met Mr. Del Bianco at a meeting for potential investors in Peace River. He recalled that Mr. Del Bianco personally pitched the ER concept to him during this meeting.

[107] Mr. Dupuis invested money into ER between 2004 and 2014. He believed that he was buying shares in ER and that as a shareholder he was also a member. When asked who provided him with the information that led to his decision to invest, Mr. Dupuis indicated that it would have come from both Mr. Wylie and Mr. Del Bianco.

[108] Mr. Dupuis invested heavily in ER. He stated that Mr. Del Bianco provided various projections concerning possible share return value, ranging from \$3 per share to \$6.50 per share if subscriptions in England took off. Mr. Dupuis indicated that he was not bothered by any incremental share dilution because he believed that there were a fixed number of shares. He did

not recall how he arrived at that conclusion, but said that he predominantly spoke to Mr. Del Bianco, and that about 90% of these conversations happened over the phone. He further testified that he would confirm things that Mr. Wylie told him concerning ER directly with Mr. Del Bianco, and vice versa.

[109] Dr. Dupuis indicated that, early on, he received share certificates for his investments, but that these eventually stopped coming and instead he began receiving Share Recipes. He described receiving materials in brochure form directly from Mr. Del Bianco. He stated that he handed out additional brochures to friends in order to encourage them to invest, and that a number of his friends did in fact invest.

[110] Similar to other investor witnesses, Mr. Dupuis testified that Mr. Del Bianco would say that ER was getting close, that they were in the final push, and that he just needed funding for a couple of more strategic items to be put in place, following which Mr. Dupuis would transfer further cash. He stated that, when he responded to these requests for immediate funding, he would call Mr. Del Bianco on the phone and confirm receipt of the funds.

[111] Again, similar to other investor witnesses, Mr. Dupuis described being told that there would be a form of credit card that he would need to set up and that his return-on-investment income would be paid into this account. He did not set up that card, as by that point he had become suspicious. The letter containing instructions for the credit card was addressed to a residence in London, England. Mr. Dupuis confirmed that he has never lived in the UK.

[112] Mr. Dupuis testified that he was physically present when both Mr. Wylie and Mr. Del Bianco signed them a number of the Share Receipts he received.

[113] Mr. Dupuis testified that his trust in Mr. Del Bianco ended with a telephone call with him in 2014. He learned that certain funds he believed were going to flow through Mr. Del Bianco to another individual for a separate investment opportunity had not been received by that individual. Mr. Dupuis indicated that following this discovery he attempted to "prod" Mr. Del Bianco for further information but, when this was not forthcoming, realized that he had "been had" and ceased contact with Mr. Del Bianco. Mr. Dupuis indicated that over the entire course he invested over \$100,000 in ER and lost it all.

[114] During cross-examination, Mr. Dupuis agreed that he was well-informed concerning the ER concept and what the service was going to offer prior to deciding to invest. He resisted various suggestions put to him during cross examination that certain of the Share Receipts were "bogus"/fraudulent or that they had in fact been drafted by Mr. Dupuis himself. Rather, Mr. Dupuis maintained that the documents in issue had been received directly from Mr. Del Bianco, and to the extent certain documents referenced entities other than ER, these were corporate entities owed by Mr. Del Bianco. Mr. Dupuis also contested assertions made during cross-examination that he was not financially in a position to invest at the level he had testified to.

[115] Mr. Dupuis was subject to the same aggressive cross-examination style as was seen with Ms. Renner and Ms. Wylie. Despite this, Mr. Dupuis' evidence remained consistent. When he could not recall something, he admitted this freely and he was up-front about the source of some of the funds he had used in his earlier investments. I accept his evidence.



[116] Ms. Tracie Craig testified that she met Mr. Wylie after her husband Shawn attended an ER information meeting in Peace River at some point in approximately 2007. Both she and her husband invested in ER. While Ms. Craig did not ever personally meet with Mr. Del Bianco, she testified that she spoke with him over the phone on a handful of occasions. She believed that while she did not have a membership, as an investor, she would still have access to a lawyer under the ER program. She stated that, over the years, she and her husband invested between \$35,000 - \$40,000. She believed that both Mr. Wylie and Mr. Del Bianco informed her that she would be seeing quarterly payments, and that the return would be very profitable.

[117] Ms. Craig testified that, during telephone conversations, Mr. Del Bianco would assure her how well everything was going. He told her that the RCMP unions wanted to invest, as did various unions in the United Kingdom. He would consistently stress that the company was just about to take off and then would ask for additional investment funding to take the final steps (such as travel) to secure the concept. He would also pressure her to invest any additional funds before the opportunity to do so no longer existed.

[118] At some point Ms. Craig was told that she would receive credits on a pre-paid credit card as a form of dividend payment, but this never took place.

[119] Ms. Craig was under the impression, based on information received from either Mr. Wylie or Mr. Del Bianco, that with increased investment she would receive a more favourable share ratio. She testified that she never received any return on investment or any dividend payment.

[120] Ms. Craig testified that she and her husband made a series of investments during a period predating the Relevant Period. They received share certificates for certain of these early investments. Following a fairly lengthy break, they were contacted again by Mr. Wylie in 2014, who informed them that things were looking good and were about to get finalized. Based upon this information, they sold livestock and farming equipment and began investing again. Based upon Exhibit 8, it appears that the Craigs invested more than \$31,000 in 2014.

[121] Ms. Craig had a number of bank receipts evidencing debits from her bank account and eventual transfers into a "Equal Rights" account. Ms. Craig indicated that she spoke with Mr. Del Bianco over the telephone inquiring as to why no share certificates had been issued for their 2014 investments and was assured that they were coming. She stated Mr. Del Bianco never suggested that he had not received the funds the Craigs had sent and were inquiring about.

[122] Ms. Craig indicated that, with no dividends or returns on investments forthcoming, she and her husband eventually resigned themselves to the fact that "it was a scam". She indicated that, the last time she spoke to Mr. Del Bianco, he had phoned her to invest in a "gold pyramid scheme". At this point, she decided to cut all ties with Mr. Del Bianco. She was a credible witness and I accept her evidence.

g. Carol Fielding

[123] Ms. Carol May Fielding is 85 years old. She met Mr. Wylie through his brother Brian Wylie in 2007. She indicated that she only met Mr. Wylie four or five times and that she has never met nor spoken to Mr. Del Bianco. Ms. Fielding indicated that she would have been told about ER initially through Brian, and that she would have then met Mr. Wylie personally at his home for a more fulsome explanation. She stated that while at his home, she was shown a big brochure and decided to invest. She invested through e-transfers made to Ted and, initially she

received share certificates in return as security. She made a number of investments in 2007 and did not invest again until 2014. She recalled that, in 2014, one of the Wylie brothers may have contacted her and told her it was a good idea to start investing again, although she was unclear on this point.

[124] Similar to the other investor witnesses, Ms. Fielding received a credit card that she believed she could receive payouts on. She also believed that she received Share Receipts in the mail. Ms. Fielding had some issues with recollecting details but, in general, was an impressive witness who stated that she believed that ER was a sound investment and that she understood that Mr. Del Bianco was the person in charge of the company. I accept her evidence.

h. Sebastien and Jean Fortin

[125] Mr. Sebastien Fortin testified that he first learned about ER from Mr. Wylie in 2008 while he was attending high school in northern Alberta. Mr. Fortin's brother had invested at that time and Mr. Fortin invested in 2014. He believed that he was receiving shares on a 6 to 1 ratio. He explained that Mr. Wylie represented that Mr. Fortin's rate of return would be double. When shown a January 27, 2014, Share Receipt, Mr. Fortin could not recall whether the signature blocks had already been executed when he received it.

[126] On cross-examination Mr. Fortin indicated that Mr. Wylie informed him that proper share certificates would be sent in the mail. He thought he recalled receiving a certificate but could not locate it. I accept his evidence but find that he was mistaken about receiving a certificate.

[127] Sebastien Fortin's mother, Jeannette also testified. Ms. Fortin indicated that she learned about the ER opportunity from Mr. Wylie, who had come to her house, and by attending a public information meeting at which both Mr. Wylie and Mr. Del Bianco were present. Ms. Fortin purchased shares in 2008 through Mr. Wylie. She stated that, following this initial purchase, Mr. Del Bianco phoned her on one further occasion to encourage her further invest, but that she declined. It was unclear from her evidence when this occurred.

[128] I accept both of the Fortins' evidence, though it touches only lightly on the Relevant Period.

i. Katharina and David Martens

[129] Ms. Katharina Martens and her husband Mr. David Martens both testified. Both are residents of Fort Vermillion, a settlement approximately 7 hours north of Edmonton, and both put money into ER. They were unsophisticated investors and had never been involved in a share purchase before. They had little knowledge of what ER was or what it was meant to provide. They invested through Mr. Wylie, although Mr. Martens spoke to Mr. Del Bianco on the phone a couple of times. During cross-examination, it was suggested to Mr. Martens that he only ever spoke to Mr. Wylie on the phone. Mr. Martens disagreed, indicating that the accused had called him and that he recognized the accused's voice.

[130] Mr. Martens testified that, the last time he spoke on the phone to Mr. Del Bianco, the accused had requested further funds into something called "Sysco" and that around this time Mr. Wylie told him that he was looking into something and that they should not invest any more.

[131] Troublingly, Mr. Martens said that their family "went without" personally, in order to be able to invest. While both Mr. and Ms. Martens referred to the accused by the wrong name (Dave

Del Blanco, or something similar), owing perhaps to English not being their primary language, I am satisfied that they were talking about the accused.

[132] Ms. Martens testified that they invested in 2006, 2013 and 2014, and that Mr. Wylie would provide signed receipts indicating that the funds had gone through. Ms. Martens indicated that she did not understand what a share ratio meant or how it was determined. Mr. Martens did not know what a prospectus was. Ms. Martens indicated that Mr. Wylie had advised the couple that the investment would be short-term, and that the more they paid in, the more they would get out. Mr. Martens indicated that he was informed by Mr. Wylie that their investment would double or triple.

[133] Similar to other investors, the Martens received a credit card which was going to be used to receive divided payments. Ms. Martens stated that Mr. Wylie informed them about the card, but that they never activated it because they were never told that it was operational. During cross-examination, it was suggested that the card was a membership card as opposed to any banking card. Mr. Martens denied ever having received a card of any type. Rather, he stated that a photo of the card had arrived, but no physical card had been delivered.

[134] The Martens' invested approximately \$39,000 in ER during Relevant Period. They went to the police after Mr. Wylie expressed his concerns to them at some point in 2014. At one point, Mr. Martens indicated that Mr. Del Bianco's signature was already on the Share Receipts at the time he saw Mr. Wylie add his signature for the cash Mr. Martens provided. However, during his cross-examination, Mr. Martens indicated that Mr. Wylie took the Share Receipts with him to be executed and then returned them after Mr. Del Bianco had signed them.

[135] Somewhat ironically, while cross-examining Ms. Martens the accused put to her the following:

People up north are very trustful. If you say something to them, they believe what you say.

[136] Ms. Martens agreed with this statement. She also agreed that she could not recall whether any signatures were already present on the Share Receipts at the time she would provide cash to Mr. Wylie. She further agreed that she never personally witnessed Mr. Del Bianco sign anything.

[137] During cross-examination it was suggested that the Martens provided the funds to Mr. Wylie, but that it was never transferred forward. Ms. Martens agreed that they did provide all of the cash to Mr. Wylie but stated that he always assured them that it was then invested and provided them with Share Receipts. While the Martens appeared to favour cash, there was also evidence of a wire transfer to ER with a Victoria, BC address. I accept the Martens' evidence.

[138] A number of "non-investor witnesses" also testified for the Crown. These individuals each had dealings with Mr. Del Bianco/ER. Like the investor-witnesses, I find that this group of witnesses also presented as credible and believable. They answered questions to the best of their recollection, though Mr. Wilson was visibly reluctant to say anything bad about Mr. Del Bianco.

j. Douglas Wilson

[139] Douglas Wilson works in computer support and website design. Mr. Wilson indicated that he worked with Mr. Del Bianco over an approximately 10 to 14-year period. He developed various websites and also developed an office space with a number of computers which was meant to serve as a call centre for ER.

[140] In the early 2000's, he and Mr. Del Bianco discussed setting up a full file server through which ER members could connect with lawyers that Mr. Del Bianco was going to place on retainer. Mr. Wilson indicated that this was never done, as Mr. Del Bianco underestimated the amount of programming that would be required to successfully set such a system up. Mr. Wilson estimated that setting this type of system up would cost approximately \$50,000-\$60,000. He intimated that Mr. Del Bianco did not appear to truly grasp the complexities involved in setting up this system. He said that, by the end of his relationship with Mr. Del Bianco, there was no physical call center, which lead him believe that the company was "less ready" to go forward.

[141] Mr. Wilson said that in approximately 2012, Mr. Del Bianco contacted him to set up a PayPal type system to accept billing through credit. Mr. Wilson expressed some surprise at this request, as he believed that the infrastructure to support anything large scale was not yet in place. He stated that Mr. Del Bianco informed him that he had some lawyers on retainer.

[142] Mr. Wilson testified that, to his knowledge, no server was ever set up to host the ER insurance scheme, and that no related programming ever occurred. Mr. Wilson did some work on setting up a pre-paid credit card, but never completed it. He stated this his engagement with ER ended in around 2015. Mr. Wilson indicated that he was familiar with an individual named Jason Ostopchuk and believed that Mr. Ostopchuk was assisting Mr. Del Bianco with some website work.

[143] Of note, Mr. Wilson testified that, in 2003, he accompanied Mr. Del Bianco to a board meeting in Canmore. His evidence was that, while he did have a discussion with Mr. Del Bianco about joining the board, nothing formal such as a nomination ever occurred. Mr. Wilson stated that, each time Mr. Del Bianco queried whether he would be interested in assuming a board role as a financial officer, he responded that he was interested "but once your company gets to the position that there is a board that can be filled out and a management group, and a more....functional company". He stated that he never agreed to participate as a member of the ER board, implying that ER never reached this point.

[144] Mr. Wilson testified that he was later informed that he had been named treasurer of ER. He did not know this had happened. He was unequivocal that he did not know he was purportedly in this position and that he never participated in any of ER's business as an officer. He testified that Mr. Del Bianco had gifted him approximately 200,000-300,000 shares, without his knowledge. When asked what he believed these gifts were worth, Mr. Wilson provided the following salient, if generous, response:

Well, I didn't view them as worth anything until – I mean, while it appeared that David was hustling and trying to make something happen, it was – it was still a very small venture with lots of big goals, and I – I never saw it progress much more than that. There were lots of times where he came and said, Oh we're – we're this close to this and I'm this close to this, and I'm going to go get on a plane and – and these guys are going to do this, but for whatever reason they...didn't pan out, so I didn't view them as more than – than just kind of the value of the paper that they were on.

[145] Mr. Wilson said that he did not think the company or its shares were worth much, as there was still a large amount of work to complete. He indicated that "that's not to say the work couldn't get done in my mind. It just – it wasn't there at that time", by which he meant 2015-2016, when he parted ways with Mr. Del Bianco.

[146] During cross-examination, much was put to Mr. Wilson that he could not personally verify, other than largely to state that he had been told peripheral information about the workings of ER by Mr. Del Bianco himself. He could not verify the accuracy of any of these statements. He was able to confirm that Mr. Del Bianco opened up offices in various locations and that some offices had computers in them. He did confirm during cross examination that at some point he designed some graphics for Mr. Del Bianco specifically for the RCMP.

[147] Mr. Wilson further agreed that he never witnessed Mr. Del Bianco abuse any funds coming in and that his “scam meter” never went off. Rather, he described Mr. Del Bianco as an autocrat who was “driving a car which was barely running”. Mr. Wilson indicated that, because Mr. Del Bianco had spent funds acquiring computer hardware, he believed that ER could be a viable entity in the future. Mr. Wilson said that Mr. Del Bianco spent approximately \$35,000-\$40,000 between 2003-2009 on computer hardware.

k. John Wilcox

[148] John Robert Wilcox is a commercial realtor. He testified to having been involved in leasing three separate office spaces for Mr. Del Bianco and ER. He estimated that the final lease was secured in approximately 2000. Mr. Wilcox was also an investor in ER in the late 1990’s, receiving shares for his investments. He indicated that he had never attended an ER Board of Directors meeting, nor was he involved with ER’s “Executive Administration Team”. Further, he said that he never provided permission to be held out as a part of ER’s management team.

[149] Mr. Wilcox acknowledged that he was listed in ER promotional materials as a Director, Officer, and Shareholder, and at another point as Director, Officer, and Secretary. However, he stated that he was unaware that these documents existed until approximately 2018, when he spoke with the RCMP at the ASC. Mr. Wilcox testified that he questioned Mr. Del Bianco about how his name came to be listed a Board member, but he never received a “satisfactory answer” as to how this occurred.

[150] During cross-examination it was suggested to Mr. Wilcox that the documents naming him as a Board member were only shown to him to see if he was interested in such a position, and that when he declined, they were destroyed. Mr. Wilcox agreed that he had verbally been asked if he wanted to “come aboard” and that he declined.

l. Francisco Schipperheijn

[151] Mr. Schipperheijn also testified for the Crown. He described himself as an inventor. He first met Mr. Del Bianco at a form of religious educational gathering in 2009 or 2010. In either 2010 or 2011, Mr. Schipperheijn met again with Mr. Del Bianco in order to discuss the central portal and software requirements of ER. Mr. Wylie was also present at this meeting. He indicated that when he first reviewed ER from a technological basis there did not appear to be anything actually going on in that there was no specific or registered domain name, but rather only a subdirectory URL. Mr. Schipperheijn found this concerning because, given his understanding of the ER enterprise, it required much more control than could be done with what ER had.

[152] Mr. Schipperheijn said that he expressed his concerns to Mr. Del Bianco, who then asked if he would be interested in helping ER develop something that would facilitate what was actually required. He agreed and a further meeting was held in Edmonton with Mr. Del Bianco as well as an individual that Mr. Schipperheijn identified as Mr. Del Bianco’s “technical guy”, who

he subsequently identified as being Jason Ostopchuk. They talked about the subdirectory issue as well as discussing a credit card technology being developed by Mr. Schipperheijn.

[153] Mr. Schipperheijn explained that his second meeting was to discuss what would be required from an IT standpoint to make the ER system workable. He indicated that such a system would be complicated, and that the existing subdirectory system was barely a destination. He described ER's internet portal as "bare bones" having no interface. He was clear that he regarded ER as having, essentially, nothing capable of hosting the business presence of something akin to what it purported to be.

[154] Mr. Schipperheijn said that he met Mr. Del Bianco as well as Mr. Wylie on a third and final occasion in Red Deer, and that this meeting was focused on a credit card system.

[155] According to Mr. Schipperheijn, he had suspicions about the ER enterprise. Mr. Schipperheijn testified that a number of factors caused increasing concern, including seeing what ER was using as a portal to run its operation, observing that nothing concrete had been accomplished since the previous meeting, and noting that an individual who was meant to attend the meeting simply did not show up. He indicated that he was suspicious even before the third meeting but he "wanted to see how far things went".

[156] Mr. Schipperheijn testified that, following this meeting, he spoke to Mr. Wylie in order to voice his concerns. He stated that he did so because he understood that Mr. Wylie had been involved in raising money and he would "hate to see anybody get taken advantage of". Mr. Schipperheijn stated that, because he has run a public company, he was aware of the regulations and rules and that in his mind "things weren't adding up".

[157] Mr. Schipperheijn indicated that he had no further communications with Mr. Del Bianco after this conversation with Mr. Wylie, and he expected that Mr. Del Bianco was aware of the fact that he had blown the whistle on the operation. Mr. Schipperheijn indicated that he did speak to Mr. Wylie on two subsequent occasions following this discussion.

[158] To the extent that it was suggested during cross-examination that Mr. Schipperheijn was fabricating his evidence due to the fact that he was unhappy about not having the use of his credit card technology further pursued by Mr. Del Bianco, I reject this theory outright. Mr. Schipperheijn presented as a very credible and impartial witness who did the right thing by advising investors about something he believed was inappropriate before walking away from the situation.

m. Nicole Chute

[159] I turn finally to the expert evidence called by the Crown. As noted above, a very detailed Financial Analysis was performed on ER, Mr. Del Bianco, and the related companies and accounts by the Crown's expert, Ms. Chute. I found her to be very credible and highly persuasive. Her opinion remained consistent in the face of an aggressive cross-examination by the accused. To the extent that the figures in her Forensic Analysis differs from any of the figures put forward by the investor-witnesses or by the accused, I accept the numbers used by Ms. Chute.

[160] Ms. Nicole Chute was qualified as an expert in source and use of funds analysis. Ms. Chute is a Chartered Accountant/Chartered Professional Accountant with a Bachelor of Commerce from the University of Saskatchewan. She has worked for the ASC for 20 years and currently holds the title of senior advisor and forensic accountant, investigations. In 2012 she

qualified as a Certified Fraud Examiner and in 2014 she became certified in financial forensics. Ms. Chute indicated that, although she has never been previously qualified as an expert, she has testified in front of courts or commissions on approximately seven or eight occasions concerning: (i) evidence on the source of use of funds, and (ii) distribution/disclosure investigations.

[161] Ms. Chute became aware of ER while she was a member of JSOT with the Commission. She acted primarily as a forensic accountant, performing a source and use of funds analysis of four bank accounts associated with ER and the accused. She analyzed bank records obtained via production orders by JSOT, documents provided by investor witnesses, and reports from the other investigators on file.

[162] Overall, I was satisfied under the *White Burgess* test that Ms. Chute was properly qualified to give evidence within the scope noted above: *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23. The academic qualifications on her CV highlight her in-depth education in this area. This is an area in which the Court requires assistance in understanding the flow of investor and other funds. More importantly, despite working for the ASC, I was satisfied that Ms. Chute understood and honored her duty to act as an independent, objective, unbiased, and impartial witness for the Court.

[163] Ms. Chute provided a global accounting analysis on Excel consolidating Equal Rights and Equal Rights Legal Defence alliance Inc.'s Canadian Western Bank and Toronto Dominion bank accounts, as well as Mr. Del Bianco's personal bank account at TD. There was also a spreadsheet created for the Bank of Montreal account in relation to Magnum Cavalier Developments Ltd. Ms. Chute also obtained and reviewed financial documents for the Affordable Legal account (TD 6853) but did not perform an analysis of this account as the fund flow-through was not significant enough to warrant such an analysis.

[164] Of note, Ms. Chute's materials (exhibit 24) included documents evidencing the opening of the ER TD corporate account (TD 3468) and the ER (USA) TD (TD 0962). These documents show that the ER TD 3468 account was opened in August of 2010. Again, there was a consolidation from the prior CWB account. The ER TD 3468 account evidence only one authorized signature – that of Mr. Del Bianco. In addition, the TD "Business Banking and Services Agreement" dated August 24, 2010, contained in this exhibit indicates that the TD 3468 account is a corporate account. While the agreement contemplates more than one signing authority, it states that any such authority must be identified by the signatory to the agreement, who is Mr. Del Bianco. No such further identification has been provided or shown to exist.

[165] The opening documents of the ER TD 3468 account contains an accompanying corporate resolution of Equal Rights Legal Defence Alliance Inc., also dated August 24, 2010. It states that "...the officers, directors and employees of the Corporation listed hereafter as authorized representatives for and on behalf of the Corporation...are also authorized to conduct all aspects of the Corporation's banking relationship with the Bank...". The sole signing officer indicated is Mr. Del Bianco, who executed the document in his capacity as ER's Director.

[166] In addition to the Excel spreadsheets, Ms. Chute also provided i2 charts for each of the Magnum account (BMO 7240), Equal Rights account (the consolidation of CWB 9801 and TD 3468), Mr. Del Bianco's personal account (TD 9241) and "point in time" investor deposit analyses for January 27, 2014 -February 20, 2014 and April 30, 2014 to May 7, 2014. The i2 Charts were entered as exhibits 17-21. These are essentially pictorial summaries of the cash flow

through for each of the accounts mentioned above, backed by data and analysis from the Excel spreadsheets and supported by pivot tables which allowed for fund analysis over a specified time period. For ease of reference, the global analysis is referred to as the Forensic Analysis.

[167] In analyzing the consolidated CWB/TD account, Ms. Chute indicated that she classified investors into three types. "Confirmed" investors were comprised of investments confirmed by a source document such as a cheque, an itemized bank draft or share certificate evidencing some fund source. "Confirmed with Statement" investors also had source documents, with the distinction being that these documents had been independently provided to JSOT. "Probable" investors included those individuals who did not provide direct evidence of investing, outside of the pattern of deposits made. Ms. Chute agreed that the \$112,000 sourced from "probable" could not be correlated to known investors, but that it could be correlated to individuals and no other explanation for the incoming funds existed. The funds deposited into the consolidated CWB/TD Equal Rights account from these two groups of investors totaled \$524,832.50. Including funds from Probable investors, this grew to \$637,607.50.

[168] Investments funds received through Mr. Wylie were marked as such on the spreadsheet. Ms. Chute indicated that she could trace a 15% commission going back to Mr. Wylie on each of the deposits he brokered, although the commission could not always be tracked back to a specific individual, given the nature of the deposits. While she indicated that the 15% commission was not always exact, it was extremely close. She indicated that \$16,667.50 had been paid to Mr. Wylie in commissions from the ER consolidated account.

[169] In analyzing ER's consolidated account (March 1, 2010 to December 31, 2014) Ms. Chute demonstrated that \$637,607.50 in investor funds were received and that \$231,709.29 worth of other deposits were also made to the accounts.

[170] Of note, Ms. Chute indicated that she could not see any stream of revenue/income coming in through ER's account. For ease of reference, I shall refer to ER's consolidated accounts as ER TD 3468.

[171] The largest influx of deposit income was through bank drafts (\$123,604.93) and cash (\$43,360). Of the total cash influx into TD ER 3468 (\$869,316.79), approximately one-third (\$255,724.58) of this amount was withdrawn, with the money going to: cash (\$91,748.80); foreign currency (\$46,281.83); Magnum's BMO account (\$71,652) Mr. Del Bianco's personal account TD 9241 (\$17,043.27) and Equal Rights American account TD 0962 (\$5,067.83). Approximately \$24,000 was attributed to miscellaneous withdrawals, being other-sourced withdrawals amounting to less than \$5,000. Given that Mr. Del Bianco's personal bank account also made deposits into the consolidated account, his net gain from withdrawals totaled \$6,803.40.

[172] Ms. Chute confirmed that Canadian and US dollars as well as British pounds were traceable through TE ER 3468. Ms. Chute stated that the large amount of cash withdrawals (including cheques made out to cash) would not typically be something she would see associated with ER's business model and that cash withdrawals of this scope would raise a red flag.

[173] Approximately two-thirds (\$618,221) of the deposits into ER TD 3468 was dispersed in various forms of payment.



[174] Ms. Chute indicated that some of the payments (approximately \$102,000) were linked to IT services connected to Mr. Ostopchuk and the setting up of certain software. She further noted that \$2,500 went to Mr. Ter Hart for “subscriber/investor defence”.

[175] However, for a number of the headings analyzed – such as rent, travel, automobile, telecommunications etc., she could not ascertain whether these expenses were business or personal. Of the approximate \$33,000 in “professional fees”, Ms. Chute indicated that this was comprised of cheques made out to “cash”, but which had a professional/consulting fee designation in the memo field.

[176] She noted that some of the funds (\$15,000) were used for “religious organizational travel” such as Learning Through Travel and Azurite Press. Certain of the funds (\$30,000) were identified as “personal”, including bookstore purchases, Shoppers Drug Mart purchases and movie theatre purchases. Ms. Chute indicated that this heading captured transactions that she would not consider in any way to be related to the business.

[177] Ms. Chute indicated that she uncovered a small payment for accounting services but that this amount would not be enough to provide for full audit services. She stated that she has never seen audited financial statements in relation to ER.

[178] Ms. Chute spent some time explaining the flow-through of funds in the Magnum BMO account. As noted above, \$71,652 was deposited in the Magnum BMO account from ER TD 3468. Of this amount, \$25,600 was injected back into the consolidated account, leaving a net transfer from ER consolidated into Magnum of \$46,052.

[179] The i2 chart for Magnum BMO 7240 (covering transactions between November 16, 2012 to December 31, 2014) indicated that of the \$194,235.76 deposited into the account, the majority of these funds came from ER TD 3468 as well as from two law firms, one of which was Masuch Alberta LLP. Of the \$150,324.96 payments from this account the bulk (\$75,494.45) went to mortgage payments. Ms. Chute indicated that JLM Management Inc is owed \$115,000, secured by a mortgage on Mr. Del Bianco’s home, and that JLM has the same address as Masuch Albert LLP, which suggested a payment of mortgage proceeds. I accept her evidence on this point.

[180] In examining Mr. Del Bianco’s personal account (TD 9241), Ms. Chute indicated that Mr. Del Bianco received \$11,600 from investors and received \$39,033.15 from deposits which included cash deposits (\$10,305) as well as a net deposit from ER TD 3468 of \$2,447.27.

[181] Ms. Chute also went through an i2 Chart prepared in relation to four specific investors, including Mr. Dupuis and Mr. Fortin (Investor Deposit Analysis January 27, 2014 to February 20 2014) which showed total investment capital of \$21,500 being paid into ER’s TD 3468 account. Payments out of this account included, *inter alia*, funds going to the Magnum BMO account, a business expense for Prime Strategies LLC, cash withdrawals, withdrawals to Mr. Del Bianco’s personal account and payment to a clothing store.

[182] Finally, Ms. Chute prepared an i2 Chart in specific relation to three sets of investors including Mr. and Ms. Craig and Mr. and Ms. Martens (Investor Deposit Analysis April 30, 2014 to May 7, 2014) showing total investment capital of \$8,500 into the consolidated ER TD 3468 account. Of these deposits \$7,213.27 was withdrawn as cash (Canadian, US and UK Pound currency). Payments to a grocery store, a convenience store and a drug store were also tracked on the chart as withdrawals.

[183] During cross-examination, Ms. Chute indicated that, in relation to the i2 Chart for ER TD 3468 she found cash withdrawals, and the transfers to Magnum BMO. Ms. Chute indicated that she was aware that Magnum was the owner of Mr. Del Bianco's Arbour Lake property, and that Magnum took out three different mortgages on that property. Ms. Chute confirmed that the i2 Charts reflected an analysis of what flowed through the various bank accounts.

[184] In response to a question concerning the accuracy of the Magnum BMO account flow through, Ms. Chute indicated that her information was based upon a transaction list and source documents provided from the Bank of Montreal pursuant to a production order.

[185] Ms. Chute resisted suggestions that she had erred in her calculations by reversing cash flows or by misinterpreting cash withdrawals or that she was relying on documents which reflected the wrong time frame. In further response to the suggestion during cross-examination that her flow through analysis failed to disclose any offence, Ms. Chute indicated that she believed her analysis demonstrated fraud in that the investor funds were not spent in a manner consistent with what they were told their capital would be used for, and that this misuse was supported by the bank records. I do not rely on this opinion, as it is for the Court to find fraud, but Mr. Del Bianco elicited this evidence and it made explicit what was implicit in her report.

[186] Mr. Del Bianco was very aggressive and at times disrespectful toward Ms. Chute. She remained professional and objective throughout. I find that she clearly addressed any perceived flaws concerning the Forensic Analysis during cross-examination. Her opinions as to why she disagreed with Mr. Del Bianco's suggestions were founded on the financial documents used in her analysis and her opinion as to the flow-through of investor funds was never materially challenged.

[187] I spot-checked her analysis in many places against the available documents. It proved accurate in each instance. I find as a fact that Ms. Chute's work and resulting opinion were professional, thorough, objective, and accurate. I accept her evidence in its entirety.

## **VII. Evidence of Mr. Del Bianco**

[188] Mr. Del Bianco called one witness. He also testified in his own defence. As discussed above, the principles of *W(D)* apply. If I accept Mr. Del Bianco's exculpatory evidence – or any exculpatory evidence – I must acquit. Even if I do not accept his evidence, I must still consider whether it leaves me with a reasonable doubt on any element of the charges he faces. If Mr. Del Bianco's evidence does not leave me with a reasonable doubt, that does not mean that the Crown's version of the case must be true, nor does that disbelief assist the Crown in meeting its burden of proof. Rather, I can only find Mr. Del Bianco guilty when the evidence that I do accept, proves each element of the charges against Mr. Del Bianco beyond a reasonable doubt.

[189] As I cautioned Mr. Del Bianco many times during the trial, his declarations and assertions from counsel table did not constitute evidence, only that which he chose to tell me under oath in the witness box. Conversely, none of his statements, assertions, or behaviour during the conduct of his defence constitute evidence against him in any way, and no part of that, challenging as it was at times for the efficient and courteous conduct of this trial, forms part of the case against him.

[190] Similarly, Mr. Del Bianco made a number of exculpatory statements while he was cross-examining the Crown's witnesses. Again, I continuously reminded him that as he was not sworn,

he was not giving evidence. His cross-examinations largely consisted of him “informing” the Court what had really occurred and challenging the credibility of the witness before him. Such challenges were not supported by any evidence to the contrary outside of Mr. Del Bianco’s bare allegations. That said, even if I were to accept the exculpatory statements made by Mr. Del Bianco during any of his assertions from counsel table or his statements made during his cross-examination of witnesses as evidence, for the reasons below, it would not alter my analysis.

[191] In sum, Mr. Del Bianco provided a number of different explanations for the fund flow-through demonstrated in the Forensic Analysis. His numerous theories were unsupported by any relevant evidence.

[192] First, he suggested that Ms. Chute relied on inaccurate banking information, notwithstanding that the financial documents underlying the Forensic Analysis were provided by Mr. Del Bianco’s various financial institutions pursuant to production orders. Mr. Del Bianco asserted that his TD accounts were closed in 2012 and that as such, Ms. Chute was not basing her analysis on any actual ER transactions. His initial evidence was “everything up to 2012, everything stands. Anything thereafter is all made up”.

[193] To this end, Mr. Del Bianco produced selective bank records (exhibits 38 and 39) which were really apropos of nothing. One of the documents in exhibit 39 references account 0226 which Mr. Del Bianco represented as being the Affordable Legal account. This document indicates that the account closed in 2019. It also contradicts Ms. Chute’s analysis which indicates that the Affordable Legal account is 6853. Page three of his exhibit does reference Mr. Del Bianco’s personal account (TD 9241) and similarly shows the account was closed in 2019. This closure clearly post-dated the Relevant Period. I note that this page is labelled page 164 out of 164, and that the other 163 pages were not introduced by Mr. Del Bianco,

[194] Notwithstanding that Mr. Del Bianco would have been aware of the Crown’s disclosure for years by this point, he testified that he had just attended at the bank and that the bank would not give him other records, for accounts of which he was the only holder. This assertion runs contrary to both common sense and common banking practices. Of note, at one point Mr. Del Bianco claimed not to recognize any of these accounts, including his personal TD 9241 account. At another point, he indicated that the TD 9241 account was the Affordable Legal account.

[195] Despite the above documents which seem to contradict Mr. Del Bianco’s position, he steadfastly testified — on the first day of his evidence — that he had closed all of his TD accounts in 2012. At one point, he testified that ER stopped doing business completely after 2012. He attempted to buttress this position by asserting that the account at some point would have been frozen in any event, due to a PayPal hack which affected the account and apparently took 2-3 years to sort out.

[196] He indicated that Mr. Ostopchuk would be able to speak to this but did not call him as a witness. Mr. Del Bianco also took the position that any funds traced into his account actually came from the valuation/mortgaging of his Arbour Lake home, which Mr. Del Bianco then personally invested back into ER.

[197] Mr. Del Bianco was confronted by various documents which suggested that the ER account had not been closed in 2012 as he claimed. For example, a transfer from ER TD 3468 into Mr. Del Bianco’s personal TD 9241 account in the amount of \$300 was put to him (document 0140 of exhibit 2). Mr. Del Bianco acknowledged that this banking slip bears his

signature and is dated February 21, 2014. By way of explanation, Mr. Del Bianco first tried to assert that the TD 9241 account was actually the Affordable Legal account. He then stated that, notwithstanding the 2012 closure of ER TD account 3468, the bank allowed him to make “clean-up” transfers beyond the date the account was closed. That assertion was nonsensical.

[198] The “2012 account closure” argument problematic in at least three regards. First, as noted above, it contradicts Ms. Chute’s objective and accounting-based assessment based upon fulsome financial disclosure provided by the banks. To the extent that Mr. Del Bianco’s financial statements run contrary to that of the various banks who provided court-ordered production to Ms. Chute, I prefer the evidence of the latter as clearly being more objective and reliable.

[199] Second, Mr. Del Bianco’s argument appears to miss the point that, even if his financial disclosure suggests that his TD accounts were closed in 2012 (which no documentary evidence supported), banking activity during this time period constitutes part of the Relevant Period. As such, any fraudulent activities taking place during this period could still result in a finding of guilt, although it would effect the quantum of the fraud. In so stating, I do note that Mr. Del Bianco appeared to take the position that any fraudulent action began in 2013 after the accounts were “closed”.

[200] Most significantly, on his final day of testimony, Mr. Del Bianco resiled from his initial position that all banking activities had ceased in 2012. Seeming to have finally actually looked at some of the records provided to him many years earlier, Mr. Del Bianco changed his evidence that the company did no business in 2014 to say it had. While his initial evidence of the 2012 closure made no sense and ran contrary to all documentary evidence, this last-minute about-face served only to further damage Mr. Del Bianco’s credibility.

[201] Nothing Mr. Del Bianco said about the ER accounts he controlled being closed during the Relevant Period is believable in the least, and I reject this evidence absolutely. It does not leave me with an iota of doubt.

[202] As noted at the outset, Mr. Del Bianco’s position was essentially twofold. First, he stated that no fraud had been committed. He appeared to base his defence largely on the 2012 account closing date. This defence became largely non-viable after Mr. Del Bianco’s eleventh-hour admission that the ER TD account was operational in 2014.

[203] This leads to the second prong of his defence, which is, to the extent that the Crown has established fraud occurred, it was not perpetrated by him.

[204] Mr. Del Bianco’s “it wasn’t me” defence was outlined in a document he submitted as exhibit 41. This document contains a “synopsis of events” covering from 1997 to 2019. Again, the events outside of the Relevant Period are relevant only to the extent that Mr. Del Bianco relies upon them as context for what occurred between 2010-2014. The “it wasn’t me” defence appears to be a multi-faceted defence, and I will briefly address each point raised.

[205] First, and to some degree foremost, Mr. Del Bianco relied upon his prior dealings with the ASC and the subsequent litigation as evidence that the actions complained of could not have been committed by him. While the facts of these historical matters were not before the Court, Mr. Del Bianco repeatedly referred to a “deal” he reached with the Courts whereby he agreed to “clean up” the manner in which ER was operating as a corporation. As a part of this “deal”, Mr. Del Bianco was apparently ordered to cease issuing any further share certificates or stock. Mr. Del Bianco testified that he instructed Mr. Wylie to stop selling shares. At times he stated this

was limited to all shares and at other times he indicated this was only in relation to foreign shares. Either way, he stressed that there was no way an individual could become a stockholder in any Canadian-based version of ER.

[206] In any event, whether foreign or domestic, Mr. Del Bianco's evidence was that no shares were issued after 2010. Mr. Del Bianco explained the process whereby a preferred certificate would first be converted to a common certificate and then sent to a transfer agent who would then issue stock to the investor. His evidence appears to be that, because ER could no longer issue shares after this date, it therefore could not have solicited investments. This of course is not the case. The absence of legitimizing paperwork does not diminish the possibility of a fraud.

[207] This line of reasoning also runs contrary to the evidence given by the investor-witnesses that they continued to invest in ER even after they ceased receiving any share certificates. It also runs contrary to the Forensic Analysis which clearly shows Confirmed/Confirmed Statement and Possible investor funds coming into ER's TD 3468 account. Finally, it runs contrary to the evidence of Mr. Wylie, who clearly testified that when shares certificates were no longer issued, the use of Share Receipts began as a way to keep track of investors funds.

[208] Another facet of this defence is tied to the quality of documentation evidencing receipt of investors' funds. Mr. Del Bianco strenuously argued that he ran a "first class" operation and that a company of this standing would never resort to a bespoke type of record keeping. Again, while the idea of the Share Receipts may not have originated with Mr. Del Bianco, I find that he was clearly aware of them, and knew they were being provided to investors during the Relevant Period.

[209] Tied to this argument is Mr. Del Bianco's evidence and assertions that his signature on the Share Receipts was forged or were somehow otherwise duplicated and that the Share Receipts were "bogus" or "phoney baloney". While I accept that a number of witnesses could neither confirm nor deny that Mr. Del Bianco's apparent signature on the Share Receipts was, in fact, his actual signature, I find that Mr. Del Bianco did personally witness a number of the Share Receipts in evidence.

[210] This finding is supported by the evidence of Mr. Wylie, who stated that during the Relevant Period he would meet up with Mr. Del Bianco for lunch during which time the accused would execute the Share Receipts in his presence. It is also supported by Mr. Dupuis who testified that he personally witnessed both Mr. Wylie and Mr. Del Bianco signing the Share Receipts.

[211] In any event, while the Share Receipts constituted documentary evidence, the investor witnesses also provided evidence as to what they believed they were receiving in exchange for their money. Outside of the "one-off" types of funding provided, the investor-witnesses indicated that they believed that they were receiving a share interest in ER in exchange for their investments. In this way, the physical Share Receipts are supportive - but not essential - evidence as to the investors' beliefs.

[212] Moreover, the Share Receipts were not the sole record of investment funds provided to ER. These Receipts were often exhibited alongside corresponding bank receipts evidencing a transfer into ER's TD 3468 account. The amounts exhibited on the Share Receipts were accounted for in the Forensic Analysis.

[213] Bizarrely, Mr. Del Bianco continued to assert his position that the only evidence that the Crown had against him were the Share Receipts, and the sole proof against him were these “little notes” or “little stubs”. This, of course, completely ignores the other evidence given by investors, the Forensic Analysis, and the evidence of the non-investor witnesses as to the status of ER as viable or operational company.

[214] Mr. Del Bianco also questioned the timing of the investments made by the investor-witnesses, suggesting that the period of dormancy from between when the actual share certificates were being issued (which pre-dates the Relevant Period) to when investments picked up again — this time with the use of the Share Receipts, was suspicious, especially given that he was busy dealing with his aging father for much of this time. He suggested that the investment had been “reactivated” by someone. I note that this “break” also seems to largely accord with the time frame during which Mr. Del Bianco was involved in the ASC and subsequent litigation matters.

[215] A further facet of the “it wasn’t me defence”, as referred to in exhibit 41, was Mr. Del Bianco’s assertion that he was being framed, either by individual investors (or groups of investors working together) or by other entities including the ASC, JSOT and ultimately the Crown prosecutor.

[216] Under this branch of his defence, Mr. Del Bianco took the position that the investor-witnesses who testified against him each did so because of a personal axe they had to grind. He took the position that Ms. Renner did not have “standing” to be a witness and could not give evidence and that she acted as her husband’s “mouthpiece”. Mr. Renner was angry about his lawsuit and was “lying through his teeth”. He indicated that Mr. Dupuis was boldly lying because he had been essentially fired by Mr. Del Bianco for alleged criminal activity. He stated that Mr. Schipperheijn was bitter because his card technology was ultimately not used by Mr. Del Bianco/ER. Mr. Del Bianco referred to this group of witnesses as “fabricators and notorious liars”.

[217] Mr. Del Bianco also testified that these individuals did not have the funds available in the amounts shown in the banking records, and that they were being given the money from a third party to frame him. This ignores the bank records that show those witnesses transferring real funds, and their evidence that many of them borrowed money or sold assets to invest.

[218] Mr. Del Bianco further testified that the Wylies had somehow set up a “phantom” ER account for their personal gain and that they raised and kept all of the funds that went into the ER TD 3468 account through the fraudulent use of the Share Receipts. He suggested that the Wylies were involved in a scheme whereby they would invest funds into the ER TD 3468 account that they had somehow resurrected and would then turn around and immediately take the funds back out.

[219] Mr. Del Bianco could not explain how Mr. Wylie – or any other individual - would have had authority to withdraw on this account, nor why Ms. Chute’s analysis did not find these forms of transaction. It also begs the clear question of why someone would go through the trouble of investing and then immediately withdrawing their own funds from an illicit account.

[220] Once again, Mr. Del Bianco’s testimony does not accord with the documentary evidence. For example, exhibit 24 demonstrates a transfer from ER TD 3468 to Mr. Del Bianco’s personal account TD 9241 dated May 29, 2014, in an amount of \$300. This (and other) evidence

contradicts Mr. Del Bianco's claims that the Wylies' used the ER name to create an account for themselves. If this was in fact the case, it would seem counterintuitive for the Wylies to transfer portions of these illicit gains directly into Mr. Del Bianco's personal account.

[221] In further support of this facet of his defence, Mr. Del Bianco appeared to take the position that if the investor claims were legitimate, they would have done something else to see the return of their lost funds. He suggested that they would have asked for shares or asked for their money back, or otherwise taken further steps against him, including calling the police.

[222] This ignores the evidence of certain witnesses such as Ms. Fielding who asked where her money was and why she could not get it back during her cross-examination. It also ignores the fact that many witnesses testified that they eventually realized that they were never going to see a return on their investment and that the money was simply gone. Finally, it ignores the evidence of it Cst. Courtemanche was also testified that the Del Bianco matter had been referred to JSOT through the RCMP, following complaints by investor-witnesses to the Grande Prairie RCMP.

[223] In relation to the framing/conspiracy involving the ASC/JSOT, Mr. Del Bianco gave evidence that his troubles with the Commission all began when the Law Society of Alberta took a number of his files from his former lawyer's office. Mr. Del Bianco's theory appeared to be that following this initial theft, the ASC became interested in ER and "stole" more files. Apparently, after the ASC failed to obtain initial satisfactory results or due to some personal vendetta, it worked alongside Mr. Wylie to create the appearance of a massive fraud.

[224] In support of this argument, Mr. Del Bianco called Ms. Judith Measor as a witness. Ms. Measor was involved in a law society complaint against Mr. Del Bianco's former lawyer, Mr. Harrison. Ms. Measor stated that she had personal knowledge of Mr. Del Bianco having files with Mr. Harrison, as well as knowledge that the Law Society seized some of Mr. Harrison's files. She was unable to speak to which files were seized or why, although she personally witnessed files being removed.

[225] Mr. Del Bianco provided no evidence in support of his conspiracy theories. As noted above, a number of witnesses related to the JSOT investigation relayed receiving documents through the lawful execution of various production orders. There was no evidence of an ASC "vendetta" against Mr. Del Bianco, outside of the fact that the regulatory arm of the Commission referred the matter to the investigative arm.

[226] In sum, I have identified a number of terminally problematic issues with Mr. Del Bianco's evidence (or lack thereof) and his overall defence that no fraud occurred, but even if it did, he was not involved. While the specifics have been highlighted above, I make a number of general observations concerning his evidence and his theory of the case.

[227] My first observation is one shared by a number of the investor-witnesses; when asked a question he does not wish to answer, Mr. Del Bianco refuses to provide any meaningful answer. From the standpoint of testimonial factors, Mr. Del Bianco was non-responsive in the extreme, he either would not or could not engage with the simplest of questions. Rather, he would circle around in a torrent of words and tangential points or engage in what the Crown described as "bafflegab". He would often come back to why ER was a sound insurance concept without ever squarely addressing the question put to him.

[228] Moreover, both his theory of the case and his evidence in support changed repeatedly. First, ER had its TD accounts closed in 2012 and did not operate past this point. Then ER was

doing business in 2014. At one point Mr. Del Bianco stated that ER ceased doing business in 2012. He subsequently stated that ER remained a going concern and that he is considering approaching Canada's Minister of Finance to roll out the concept in a manner similar to Canada's health care system. Various individuals at various times appeared to be working either alone or in concert to "sabotage" or frame him.

[229] In particular, he offered no evidence to demonstrate how someone other than him — the only signing authority on the accounts into which the ER investment funds ultimately flowed — could have accessed or controlled those funds.

[230] Further, I find it belies common sense to accept that an institution such as the ASC would itself engage in criminal acts in order to frame Mr. Del Bianco. There was not a shred of evidence that it did or had any reason to do so.

[231] Mr. Del Bianco had no evidence beyond his baseless allegations and the testimony of one witness that his files were being stored in the office of a lawyer who seemingly had some materials removed by the Law Society of Alberta.

[232] Mr. Del Bianco was clearly desperate and grasping at straws, at one point even attempting to implicate the Crown prosecutor personally in the "sabotage".

[233] Even if I were to accept a working theory that the investor witnesses were dishonest in their testimony, this completely ignores the Forensic Analysis which was objectively performed based on third party documentary evidence from a variety of financial institutions. Despite being repeatedly invited to provide any available evidence or explanation accounting for how these records could be at such variance from his version of reality, Mr. Del Bianco could offer nothing of substance. Mr. Del Bianco's bare denials contradicted clear third-party banking records produced by TD and other financial institutions. These records showed that the investors' money was deposited directly into, or transferred to, accounts under his exclusive personal control.

[234] While Mr. Del Bianco had no obligation to prove anything at this trial, his failure to provide any objective evidence to support his evidence and allegations of a mass-scale conspiracy to subvert financial transaction to frame him is highly relevant to an analysis of his credibility.

[235] Mr. Del Bianco also led no evidence on certain incriminating points. For example, Mr. Wilcox gave evidence that he was never on ER's board of directors. Mr. Del Bianco did not avail himself of the chance to present any documentation whatsoever evidencing that Mr. Wilcox agreed to act in this role. Such documents would have been under his control.

[236] Notwithstanding Mr. Wilcox's unchallenged testimony on this point and the lack of any documentary evidence to the contrary, Mr. Del Bianco continued to assert that Mr. Wilcox was indeed on the board. He explained this by indicating that while Mr. Wilcox may not have attended at any AGM's, he attended for lunch meetings. He later indicated that Mr. Wilcox may have been a director "in name only" and that this was seemingly acceptable because Mr. Wilcox "never suffered any losses" and loved the ER concept.

[237] The above demonstrates, in my view, not only a further example of Mr. Del Bianco's complete lack of credibility, but also a complete lack of understanding of how companies work. This was further demonstrated when Mr. Del Bianco gave evidence about share distribution and value. When asked what the difference was between an offering at a 4-1 ratio versus an 8-1 ratio, Mr. Del Bianco could not provide a straight response, other than the 8-1 ratio was a preferential



offering and that “everyone gained”. He could not explain how this ratio reflected any monetary figure.

[238] In my view this lack of understanding is further reflected in Mr. Wilson’s evidence (which I accept) that at some point, Mr. Del Bianco had gifted him between 200,000 and 300,000 shares. Given the Share Receipts in evidence, this act does not seem to reflect any appreciation of the resulting dilution of share value, and strongly suggests that he knew the shares were worthless.

[239] I conclude that Mr. Del Bianco’s evidence was both internally and externally inconsistent. Internally, his own testimony concerning the theory of the case literally changed from day to day. His evidence was also externally inconsistent, denying absolutely the correctness of the most reliable form of business records, which had been confirmed by other witnesses and forensically traced and cross-referenced by Ms. Chute,

[240] Nothing about Mr. Del Bianco’s testimony is believable in the least and I reject it absolutely. I neither believe it nor have any doubt arising from it.

[241] As such, based on the evidence which I do accept, I must determine whether the Crown has established beyond a reasonable doubt that Mr. Del Bianco has committed the act of fraud.

#### VIII. **Have the elements of the offence of fraud been established?**

[242] As mentioned above, to succeed on an allegation of fraud, the Crown must prove beyond a reasonable doubt the existence of: (i) dishonesty; (ii) deprivation, and; (iii) knowledge of the dishonesty and its consequences. I turn now to each of these elements.

##### (i) Dishonesty

[243] “Dishonesty” encapsulates the prohibited conduct underlying the fraud. Statutorily, it consists of the use of: (i) deceit; (ii) falsehood, or; (iii) other fraudulent means.

[244] The distinction between a “deceit” and a “falsehood” is essentially that a falsehood consists of a deliberate lie, whereas a deceit involves representing or leading someone to believe something is true when the deceiver knows it is not: *R v Cameron*, 2017 ABQB 217 para 35. In dealing with fraud by deceit or falsehood, all that need be determined is whether the accused as a matter of fact, represented that a situation was of a certain nature or character, when in reality it was not: *Théroux* at 17.

[245] When the prohibited act consists of “other fraudulent means” the Crown must establish that a reasonable person would consider the conduct in question to be dishonest: *Riesberry* at para 23. The above are factual determinations: *R v Iyer*, 2020 ABCA 439 paras 72-73; *R v Breitzkreutz*, 2022 ABQB 449 at para 19.

[246] The key element of fraud is that of dishonesty. In this case, the Crown points to numerous interrelated untruths about ER that were promulgated to investors, making the promotion of its stock fraudulent. I have broken what I find to be Mr. Del Bianco’s acts of fraud down into three sometimes overlapping categories: (i) fraudulent statements; (ii) fraud relating to whether ER was a real business, and; (iii) fraud related to the use of investor funds.

[247] In undergoing this analysis, I find the evidence has clearly established that Mr. Del Bianco was the self-described “boss” of ER. The corporate documents clearly establish this, and

I accept as findings of fact that a several investor-witnesses had this directly or indirectly communicated to them from Mr. Del Bianco. To the extent that decisions concerning corporate governance, leadership and direction or any other business decisions were made over the Relevant Period, I find as a fact that they were made exclusively by Mr. Del Bianco.

a. Fraud related to the statements made

[248] Accepting, as I do, the testimony of the investor-witnesses, the non-investor witnesses, and the Forensic Analysis, I have little difficulty concluding that Mr. Del Bianco was highly dishonest in his dealings with investors in relation to how he promoted or otherwise characterized ER.

[249] First, I find that, during the Relevant Period, the investors believed that they were purchasing shares in ER when Mr. Del Bianco never intended to issue share certificates of any sort.

[250] The evidence overwhelmingly establishes that Mr. Del Bianco was aware of the Share Receipts, signed many of them personally, and knew that the Share Receipts were viewed as investors essentially as a “placeholder” for eventual share certificates. Many of the investor-witnesses had received actual share certificates in the period preceding the Relevant Period.

[251] Whether the Share Receipt template originated with Mr. Del Bianco or not is largely irrelevant. Mr. Del Bianco knew they were being used, knew they were being given to investors as a sort of voucher for future shares, and knew that they were being issued in exchange for investment funds.

[252] Even when funding was provided to Mr. Del Bianco by way of the “one-off” types of payment, shares were promised in return, although no Share Receipts were issued for these types of transactions. I specifically accept Mr. Renner’s evidence on this issue, and I further accept that shares were promised personally to Mr. Renner by Mr. Del Bianco in exchange for his continuing “one-off” form of funding.

[253] I find that Mr. Del Bianco knew that investors believed they were buying shares in ER during a time when he had no intention of issuing any shares. On Mr. Del Bianco’s own evidence, he had reached some form of “deal” with the courts whereby he agreed to cease issuing any shares or stock. Indeed, Mr. Del Bianco’s assertion that shares could no longer be issued formed a major aspect of his defence. Having found that the investments all occurred with his knowledge and to his benefit, his own evidence makes their underlying premise a fraud.

[254] I further find that Mr. Del Bianco dishonestly induced individuals to invest in ER through false statements about the status of the company and the uses to which the investments were to be put.

[255] A prime example of this is the licensing issue. I accept Mr. Wylie’s evidence that, at the beginning of the Relevant period, Mr. Del Bianco informed him about the possibility of licensing ER abroad. The licensing opportunity was painted as potentially lucrative and a reason to put in more money. Mr. Wylie began soliciting investments again because of these representations. Mr. Wylie was led to believe that ER was going to “take off” if the licensing venture was successful and that the company was in the final push toward becoming immensely profitable. I accept Mr. Wylie’s evidence that Mr. Del Bianco indicated that if the licensing venture was successful, the projected future value of the shares would be between \$4-6 per share and that Mr. Wylie shared

this estimation when soliciting investments. This was a lie devised by Mr. Del Bianco and spread at his instigation.

[256] Similarly, Mr. Del Bianco (either personally or through Mr. Wylie) made this or other forms of a “final push” pitch to other investors. I accept Mr. Dupuis’ evidence on this point and that of Ms. Craig. Mr. Renner also testified that Mr. Del Bianco represented that ER was just on the cusp of becoming lucrative, as did Ms. Renner. I believe both of them and find as a fact that this happened. Common sense supports the conclusion that people put in money that they really couldn’t bear to lose because they were told it would make them rich.

[257] I find as a fact that Mr. Del Bianco made representations that ER was ‘almost there’ and just needed another injection of funds to get past the goalpost of being a real, operating, lucrative company. Indeed, I find that all of the sales pitch driving the investments during the Relevant Period originated from Mr. Del Bianco and were disseminated directly by him or with his knowledge and approval.

[258] These explanations for why the funds were needed were false on their face. The licensing suggestion was clearly not something that ER could even engage in. There is no intellectual property in basic idea of ER, which is really all it was, an idea. Mr. Del Bianco’s statements about ER making lucrative licensing arrangements were not grounded in reality.

[259] I find that Mr. Del Bianco’s other representations about requiring funding for some form of “final push” as made to other investors were equally false. There is no evidence that ER was even coming close to selling memberships or was otherwise on the cusp of becoming operational. In fact, as discussed below, the only evidence I accept was that ER had little or no real tangible existence during the relevant period, much less the capital or infrastructure to market and administer a large-scale insurance scheme. Ironically, Mr. Del Bianco at times relied on ER being inactive as one strand of his defence.

[260] A further falsehood or deceitful representation was the quantum of likely returns on investment. I accept Mr. Wylie’s evidence that Mr. Del Bianco provided an estimated return of between \$4-\$6 dollars per share, and that Mr. Wylie shared this projection with certain investor-witnesses. I accept that Mr. Del Bianco told Mr. Dupuis that he would see a return of between \$3-\$6.50 per share if subscriptions in the UK took off. Mr. Fortin was told his investment would double and the Martens were told their investment would double or triple. I accept that all of these representations were made, came from or through Mr. Del Bianco, and were dishonest.

[261] Other investors testified that Mr. Del Bianco would speak more generally about profitability. For example, Ms. Craig testified, and I accept, that Mr. Del Bianco told her that their return would be “very profitable”. Mr. Renner was told he would be “very wealthy”. A number of investor-witnesses described being told about quarterly payments. The investor witnesses were unsophisticated, and their evidence demonstrates that they put great (and unquestioning) faith in what they were told. These false assurances of a favourable return induced their ill-fated investments.

[262] Again, I find that Mr. Del Bianco was dishonest in providing these projected rates of return. There was no evidence upon which any such rate of return – indeed, any return at all – might have been calculated. Rather, I find that Mr. Del Bianco was simply pulling these figures out of the air. They had no connection to any valuation of the business nor to the number of shares issued and outstanding. Depending on the ratios on which the supposed shares were

issued, the represented rates of return amounted to upwards of 5,200 times their original value. I find that Mr. Del Bianco derived these figures from the ether and provided them to the investors. These representations become particularly problematic when one considers Mr. Del Bianco's evidence that shares were never even going to be issued.

[263] As such, I find that the Crown has established, beyond a reasonable doubt that Mr. Del Bianco engaged in various acts of dishonesty with investors including: deceiving them into believing that they were purchasing shares when they were not; making false claims that ER was on the cusp of licensing when there was nothing to licence, and making false claims about the value of shares when there was no real basis upon which the value of the company could even remotely be assessed.

b. fraud relating to whether ER was a real business

[264] I also find that the Crown has established that Mr. Del Bianco committed the offence of fraud by representing that the business of ER was a going concern, when in fact it was not.

[265] In support of this conclusion, I find that, during the Relevant Period, the materials of Equal Rights listed Mr. Wilson and Mr. Wilcox as directors. Both men testified that they knew of Mr. Del Bianco but were not ever, to their knowledge, directors of ER or otherwise involved in the company's investment or its business activities.

[266] In his evidence, Mr. Del Bianco struggled to explain how this could be. His attempts to answer simple questions about it resulted in streams of non-responsive nonsense, as discussed above. I have no hesitation finding as a fact that both Mr. Wilson and Mr. Wilcox were held out as directors of Equal Rights for the benefit of association with them as established and credible members of the business community and that this was done without their knowledge or consent. I accept their evidence on this and reject Mr. Del Bianco's feeble protestations to the contrary. This is a clear badge of fraudulence.

[267] While I find there is insufficient evidence to conclude that this deceit contributed to the deprivation of the investors, I do rely on it in support of my finding that ER did not exist as a viable business entity during any of the Relevant Period. While Mr. Del Bianco represented that ER was essentially on the cusp of crystalizing into a profitable company, I find that in reality it amounted to little more than a stack of glossy promotional materials, some underdeveloped office space, and a lot of hot air.

[268] In reaching this conclusion I rely in part upon the evidence provided by Mr. Wilson. Mr. Wilson essentially stated that Mr. Del Bianco did not understand the complexities involved in setting up a server through which individuals with ER memberships could connect with lawyers on ER's retainer. He stated that the infrastructure required for the things Mr. Del Bianco wanted to do was non-existent.

[269] Accepting Mr. Wilson's evidence – which was rather charitable to the accused – ER was not at, and nowhere near, a functional stage. He never saw ER progress beyond Mr. Del Bianco trying to make something happen. While I acknowledge that Mr. Wilson's "scam meter" never went off, his evidence was essentially that while it was possible that ER might one day progress to an operational level, it was simply "not there" at the relevant time.

[270] Mr. Schipperheijn's "scam meter" did, however, go off. I accept his evidence that, when he first reviewed ER from a technical basis, there was nothing really there to review because nothing was going on outside of an inadequate subdirectory URL. He stated that this was

insufficient given what ER's operational requirements would have been. I fully accept Mr. Schipperheijn's description of ER's IT functionality as amounting to, in essence, "nothing".

[271] Mr. Wilson's and Mr. Schipperheijn's evidence is at direct odds with what the investor-witnesses were told – namely that ER was in its final stage of development. What the investors were told concerning the nature of the investment (secured versus speculative, existing versus conceptual) is significant to determining the existence of a fraud: *Breitkreutz*, para 69.

[272] Again, while a number of the investor-witnesses believed that they were members of ER and entitled to the insurance fund by virtue of their status as shareholders, there was little evidence as to the purchase of any memberships, outside of Mr. Del Bianco's repetitive assertions that the RCMP was interested in getting some form of tailor-made membership, and that the members included lawyers. At one point, Mr. Del Bianco referred to the investor-witnesses as members and stated that the "membership scenario" stopped in 2012. Mr. Del Bianco indicated at one point that ER had over 1,040 members, including RCMP members and lawyers, but provided no evidence of their existence, or of any membership documentation outside of his verbal assertions. To the extent that Mr. Del Bianco was referring to investors as members, this was also at odds with his assurances that once memberships started selling, shareholders would start seeing a profit.

[273] The accounts of ER also show neither a working company receiving revenue for its product, nor uses of capital for a real business. The accounts of the business, as traced to the dollar, show relatively minimal outflows of cash that could be attributed to the operation of a legitimate business of any scale.

[274] I also rely on the experience of Mr. Renner in concluding that, at the end of the day, there was no business to invest in. His ostensibly ER-funded lawyer asking him for payment puts the lie to the scheme.

[275] Put simply, the evidence before me shows an entity that was nowhere near amounting to a legitimate business operation, nor having any possibility of delivering the outcome promised. I find beyond doubt that Equal Rights was, by the period of 2010 onwards, nothing but a name under which Mr. Del Bianco collected money.

[276] I therefore conclude that the Crown has established on the criminal standard that the entire Equal Rights scheme was a fraud in that no real underlying business existed. There was no business enterprise operating or materializing, and no chance that this would come to fruition.

c. Fraudulent use of investor funds

[277] Finally, I find that Mr. Del Bianco committed the offence of fraud by using investor funds for personal, as opposed to company, purposes.

[278] The law is clear that the phrase "other fraudulent means" includes the personal use of corporate funds: *Théroux* at p 16; *Zlatic* at p 44.

[279] I find that the Forensic Audit proves conclusively that the money given over by the investors, whether through Mr. Wylie or directly to Mr. Del Bianco, ended up in accounts that Mr. Del Bianco exercised exclusive control over. I find as a fact, and am satisfied to an absolute certainty, that the funds the investor witnesses said they sent directly to Mr. Del Bianco, or gave to Mr. Wylie as his intermediary, for the purported purchase of ER shares, all ended up in the exclusive possession and control of Mr. Del Bianco.

[280] I also find as a fact that Mr. Del Bianco made use of the money for non-business purposes and that he essentially treated the ER TD 3468 as his personal bank account. Indeed, at times investor funds were deposited directly into his personal bank account. The money investors paid as capital to build ER was not being used to achieve ER's business aims. Rather, on the financial evidence before me, there is no doubt that Mr. Del Bianco pervasively appropriated the funds invested in Equal Rights for his own uses unconnected to the company. He used these naive people as a piggy bank to fund his daily living. That is fraud.

[281] The immediate taking and using of investor funds for his personal purposes is perhaps best demonstrated in exhibits 20 and 21 (the two i2 charts showing "point in time" individual investor use-of-fund analyses). I find that these charts establish that specifically tagged investor funds were used for obvious personal purposes such as grocery store, drug store, clothing store, and convenience store purposes. Large quantities of cash/currency withdrawals were made which I find were unconnected to any legitimate business purpose. Transfers were made which allowed Mr. Del Bianco to make mortgage payments on his house through Magnum.

[282] In addition, I find that i2 chart for TD 9241 (exhibit 19) demonstrates that \$11,600 of investor funds were deposited directly into Mr. Del Bianco's personal bank account. The transfer of funds between the ER TD 3468 account, Mr. Del Bianco's personal TD 9241 account, and Magnum's BMO account is recounted in some detail above and need not be repeated here. Ms. Chute was able to determine the net amounts deposited into, withdrawn from and paid out of each account. I find that her analysis demonstrates beyond a reasonable doubt that investor funds were used for personal purposes, as clearly demonstrated in the i2 chart for ER TD 3468 (exhibit 17).

[283] It is clear that Mr. Del Bianco spent investment funds for purposes other than those related to the value of the investment. The diversion/use of the investment monies for personal purposes served Mr. Del Bianco's own ends and bore absolutely no relation to a *bona fides* business purpose, to the extent that ER could be classified as a 'business'. In soliciting investment funds, Mr. Del Bianco did not have an unrestricted right to use these monies as he pleased.

[284] I note finally that there was no evidence that Mr. Del Bianco ever set up a corporate structure nor that he implemented any bookkeeping/record system to ensure that the funds coming into ER were being properly allocated and accounted for. While he personally took from the ER TD 3468 account, there was no evidence of his actual salary.

[285] Mr. Del Bianco bore no onus to prove anything in this case. However, I have carefully considered whether there was evidence that ER, in any of its various forms, was a 'real' operating company, and found none. The Crown's evidence satisfies me that this was a scam through-and-through, and I found no evidence to leave the flame of reasonable doubt flickering.

[286] The question of whether someone has committed fraud through "other fraudulent means" is measured against the standard of whether the act is one which a reasonable person would view as dishonest: *Théroux* p 25. I find that the accused took investor funds and used them as he saw fit, and not for legitimate business purposes. I have no doubt that a reasonable person would view such taking as dishonest.

(ii) Deprivation

[287] The investors in ER have lost of all of their money. The second element of the act of fraud has thus also been established beyond a reasonable doubt.

[288] While the definition of fraud does not require proof of an economic loss, but rather an imperilling of an economic interest, I find that the Crown has established an economic loss in this instance. Indeed, this fact is acknowledged by the accused, although he maintains that he is not the individual who deprived the investors. As such, there is no need to address whether there was any “risk of deprivation”. The financial loss (deprivation) has been established beyond a reasonable doubt, as quantified by Ms. Chute. Even apart from the Forensic Audit, the investor witnesses demonstrated their losses over the Relevant Period through the use of their personal financial documents.

[289] The investors’ deprivation was caused by the prohibited fraudulent acts which I have discussed above.

(iii) Knowledge

[290] The knowledge element for the crime of fraud is comprised of two related elements: the accused knowing about the fraudulent dishonesty and knowing that it could result in a loss or risk of a loss.

[291] The Crown must establish that Mr. Del Bianco knew he was being dishonest with the investors, using lies or other forms of deceit, and that he knew that others (chiefly Mr. Wylie) were likewise doing so on his behalf.

[292] Based on my above analysis I have no difficulty concluding that Mr. Del Bianco knew he was being dishonest with investors and that he was feeding Mr. Wylie dishonest information that was fed to potential investors to induce them to hand over money.

[293] I find that Mr. Del Bianco was clearly aware that he was being dishonest during the Relevant Period when he personally provided (or transmitted through Mr. Wylie) information that: (i) investors were purchasing shares, when he knew no shares would/could be issued; (ii) ER was on the cusp of a licensing deal when there was nothing about the company which could even be licenced; (iii) ER was in the “final push” of some form of activation/otherwise becoming profitable, when it was nowhere near this point; (iv) shares in ER would be worth a specific value when he had no financial data on which such projections might be made and when his evidence was that no shares would/could be issued over the Relevant Period, and; (v) ER was a viable business entity when he knew it was – at best – conceptual.

[294] I find that the Crown has established that Mr. Del Bianco knew he was lying to investors about the nature of their investment. As the mastermind and prime mover of this scheme, he had full knowledge of it.

[295] Finally, I have no difficulty concluding that Mr. Del Bianco knew he was using the investors funds for personal purposes or for purposes which were not in way related to the company. Mr. Del Bianco was solely in charge of all relevant bank accounts and was the individual who made use of the funds. Mr. Del Bianco knew that these funds were primarily not being used in furtherance of ER’s business aims.

[296] I find that Mr. Del Bianco knew that everything he said to Mr. Wylie and the other investors was part of a lengthy and protracted campaign to create a ‘business aura’ of a sure and lucrative opportunity targeting unsophisticated individuals. The evidence proves that Mr. Del Bianco knew he was deceiving investors.

[297] In addition to the above, the Crown must also establish that Mr. Del Bianco knew that these fraudulent acts could result in a deprivation. I find that this, too, has been demonstrated on the evidence beyond any reasonable doubt.

[298] In so finding I note that an individual is not saved from a conviction of fraud simply because they believe that there is nothing wrong with what they are doing. Rather, the issue is whether the accused subjectively appreciated that certain consequences would follow from their actions. The accused need not be desirous of these consequences: *Théroux* at pp 18 – 19. It is similarly unnecessary to prove that the defrauding party profit from their fraud in order for the Crown to obtain a conviction; *Zlatic* at p 48, though in this case Mr. Del Bianco could not have missed that he was using investor money for his own living and travel purposes.

[299] First, to the extent that shares in ER may have represented some form of security, Mr. Del Bianco was aware that no shares or actual security would be issued. He thus knew that — and indeed I find that he intended — that the people giving him money would have little to show for it, thus putting it at risk. While the subsequent Share Receipts diluted this aim somewhat, Mr. Del Bianco knew investors were getting less than they bargained for, thus imperilling their funds.

[300] Mr. Del Bianco was also well aware of the actual state of ER as a viable business. While he still appears to believe that it may one day get off the ground, he knew it is not on the cusp of “activation”. There was zero evidence suggesting otherwise. I find that Mr. Del Bianco knew that soliciting investor funds based upon core misrepresentations about the nature of the business could result in investors being exposed to a level and nature of risk they did not appreciate, and inevitably in deprivation of their investment.

[301] Moreover, the Forensic Analysis unequivocally demonstrates that Mr. Del Bianco diverted investment funds to his personal account and used them for non-business purposes. Using funds in a manner inconsistent with any business purpose necessarily means that these funds stand no chance of being put toward anything that might benefit the business. By definition, taking from the business creates a risk that investors will be deprived of the benefit that the proper use of these funds may have imported upon the business. Mr. Del Bianco knew that the personal use of these funds deprived individuals of their investment.

[302] To the extent that Mr. Del Bianco believes that nothing was wrong with how he promoted ER to investors and how he sold “the deal”, this is immaterial: *Breitkreutz*, para 119. Despite his protests to the contrary, I conclude beyond any doubt that Mr. Del Bianco subjectively understood that these above actions put investors at risk of deprivations and chose to willfully cause that deprivation.

## **IX. Conclusion on fraud**

[303] Equal Rights may have been a real start-up venture at some point in the distant past, but by the time of this Indictment it was nothing more than false words peddled to good, simple, trusting people, in exchange for money few of them could stand to lose. I am satisfied beyond any doubt that Mr. Del Bianco, both personally and through Mr. Wylie, shamelessly took funds



from the victims in this case, fully knowing that there was no business, no shares of any value would issue, and instead he would use the money for himself. Every representation made about the state of the business and the use for the funds solicited was false.

[304] This was a fraud in its entirety that preyed upon people's dreams of financial freedom in order to support Mr. Del Bianco's day to day living. It was a shameful and cruel deception. On count 1, fraud over \$5,000, I find Mr. Del Bianco guilty as charged.

## X. Quantum

[305] Where the value of the subject-matter of the offence exceeds \$5,000 section 380(1)(a) of the Criminal Code provides that an offender is liable to a term of imprisonment not exceeding 14 years.

[306] Ms. Chute's analysis indicates that if I were to accept the investor amounts classified as "confirmed" or "confirmed with statement" the amount invested as established in the Forensic Audit totals \$523,832.50. I accept this amount as proven. Ms. Chute confirmed that the funds from "probable" investors could be linked to persons outside of the known investors and, critically, that no other explanation for these funds existed. No evidence was introduced to call this into question.

[307] Simply put, every penny that went into ER from an investor was part of a fraud.

[308] I therefore find that the Crown has proven that no less than \$523,832.50 was lost by investors during the period covered by the indictment, and thus the element of the fraud exceeding \$5,000 has been proven beyond a reasonable doubt.

## XI. Laundering the Proceeds of Crime

[309] In addition to fraud, Mr. Del Bianco has also been charged with laundering the proceeds of crime under s 462.31 of the *Criminal Code* which (then) read as follows:

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; ...

[310] To establish the offence of money laundering the Crown must prove each of the following elements beyond a reasonable doubt: that Mr. Del Bianco dealt with property that he knew or believed was obtained by crime, and that he intended to conceal or convert this property: *R v Bailey*, 2014 ABPC 103 para 454. Specifically, the *actus reus* of this offence is the use of the property and the *mens rea* of the offence is the knowledge that the property was derived from a designated criminal offence and that the accused intended to conceal or convert this property: *R v Daoust*, 2004 SCC 6 at para 56.

[311] Here, the property in question is the investors funds. Given my above analysis, the Crown has established that Mr. Del Bianco dealt with this property. The Forensic Analysis shows how the property (money) was dealt with. Mr. Del Bianco used some of the money to purchase

personal items, he transferred portions of the property into other accounts, he sent some of the money to other individuals, he used the money to pay off part of his mortgage and he converted other portions of the property into cash, including British and US currency.

[312] Following my above analysis, the Crown has already established that these funds were obtained by crime, in this case, fraudulent acts committed by Mr. Del Bianco.

[313] The above analysis also demonstrates, on the criminal standard, that Mr. Del Bianco knew the money had been obtained by fraud. Indeed, Mr. Del Bianco personally made fraudulent representations to investors in order to get them to invest funds into ER. Mr. Del Bianco was “the boss” of ER, he knew what was said to investors (either directly or indirectly), he knew the true status of the company and he knew that ER was not issuing shares. As such, he knew that the money ER received was obtained as a result of an offence, namely fraud, which is a designated offence under s 462.3(1): *R v Neilson*, 2020 ABQB 433 at para 214. I find on the evidence that Mr. Del Bianco actually knew that the property he dealt with had been obtained through this own fraudulent actions.

[314] Finally, I find that the Crown’s evidence, and in particular the Forensic Audit, established that Mr. Del Bianco intended to conceal or convert this property. The phrase “intended to conceal or convert” was addressed by the Court in *Daoust* at para 63. There, the Court held that the *mens rea* concerning the term “convert” does not require an intent to conceal. The words “conceal” and “convert” are distinct terms with distinct meanings; they should not be read together. It stated that the term “convert” must be given its ordinary, literal meaning. It held that the choice of words in s 462.31 is indicative of its intention to forbid “conversion”, thereby ensuring that those who convert property they know or believe to have illicit origins, regardless of whether they try to conceal it or not, do not profit from it.

[315] I find on the evidence, and again in relying on the Forensic Analysis, that Mr. Del Bianco intended to – and in fact did – convert the money. This is evidenced in part by his various currency exchanges. Mr. Del Bianco also changed or transformed the investment funds into various personal items, including clothing, putting the funds toward his mortgage payment and making payments to various individuals. Mr. Del Bianco was the sole individual with access to the various bank accounts in play and there is no evidence of any sort of accidental transfer or use of the funds. These investor deposits were converted by way of transfers any payments out of these accounts: *Neilson* at para 219.

[316] I also find on the evidence that some of the investor funds were concealed. Namely, the funds withdrawn as cash in Canadian, British, and American currencies. These transfers involved sometimes significant amount of cash and they were transferred out the accounts for unknown reasons: *Neilson*, at para 220.

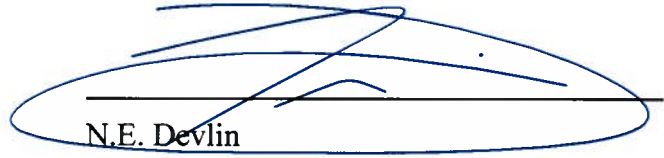
[317] I therefore conclude that Mr. Del Bianco knowingly converted and/or concealed the investment funds which he had obtained through fraud. I find him guilty of Count 2 of the indictment.

## **Conclusion**

[318] The Crown has proven Mr. Del Bianco guilty beyond a reasonable doubt on both charges, I find him guilty as charged on both, and convictions will be entered.

Heard on March 28-31, April 1, 4, 5-8, 11, 13, 19, June 15, June 23, July 7, August 5, 19, 29, September 29, 2022 and February 21-23, 2023.

Dated at the City of Calgary, Alberta this 28<sup>th</sup> day of July, 2023.



N.E. Devlin  
J.C.K.B.A.

Appearances:

Steven Johnson  
For the Crown

David Del Bianco  
Self-Represented Accused