

No. 125795-1
Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE D.I. SMYTH)

Vancouver, B.C.
August 17, 2001

REGINA

v

STARNET COMMUNICATIONS INTERNATIONAL INC.

PROCEEDINGS AT PLEA AND SENTENCE

APPEARANCES:

P. DONALD	for the Crown
L. DOUST	for the Defence
T. TURNER	Court Recorder
M. WALKER	Transcriber

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4 MS. DONALD: Your Honour, my name is Patricia Donald, D-o-
5 n-a-l-d. I appear on behalf of the Attorney General
6 of British Columbia and I wish to call the matter of
7 Starnet Communications International Inc., number 57
8 on Your Honour's list.
9 THE COURT: Yes.
10 MR. DOUST: Good afternoon, Your Honour. My name is Doust,
11 D-o-u-s-t, initials L.T. I appear on behalf of the
12 defendant company, and I appear not only as their
13 counsel but I appear today as their agent for purposes
14 of entering a plea, Your Honour. Subject to your
15 approval, Your Honour, I have had the opportunity to
16 review the charge and I'm prepared to waive the formal
17 reading of the charge and advise you that I'm
18 instructed as agent to enter a plea of guilty to count
19 1 as it stands in the Information, Your Honour.
20 THE COURT: Thank you, then.
21 MR. DOUST: Thank you.
22 MS. DONALD: Your Honour, Mr. Doust and I have an agreed
23 statement of facts. Mr. Doust and I have both signed
24 it. I would like to file that statement of facts at
25 this time.
26 THE COURT: Yes. Can you tell me whether it's changed in
27 any way from the draft that I was sent this morning?
28 MS. DONALD: No, it has not, other than one small
29 formatting error that I noted on page 10. One of the
30 alpha headings should be (d) rather than (b). There
31 are no other changes other than that. Now, I'm in
32 Your Honour's hands as to how you would like me to
33 proceed. I presume you don't want me to read in the
34 statement of facts --
35 THE COURT: No.
36 MS. DONALD: -- into the record, and I'm content to
37 highlight a few areas, or --
38 THE COURT: Well, perhaps you should do that. I've read
39 the agreed statement of facts in draft form. I think
40 I have a pretty good idea of what this is about, but
41 perhaps some highlights to sort of encapsulate the
42 facts underlying the offence would be useful.
43 MS. DONALD: I'd like firstly to make a comment about the
44 offence. Section 202 of the *Criminal Code* is a
45 section creating indictable offences prohibiting a
46 variety of illicit gaming activities. The specific
47 section to which this company has pleaded guilty, s.

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1 202(1)(b), deals with machines or devices used for
2 recording or registering bets and devices used for
3 gambling or betting. The reference to devices used
4 for gambling or betting has been part of this
5 subsection since 1913.

6 Now, in addition, s. 202 is subject to the
7 provisions of Part XII.2 of the *Criminal Code*. The
8 present scheme contained in Part XII.2 mandates that
9 the proceeds of certain enumerated offences are liable
10 to forfeiture, specifically s. 462.3, which is the
11 definition section in that Part, defines enterprise
12 crime offence, this meaning an offence against various
13 provisions of the *Criminal Code* and certain other
14 Federal statutes. Section 202 is one of the *Criminal*
15 *Code* offences listed there, and according to the
16 scheme in Part XII.2, proceeds from enterprise crime
17 offences are liable to forfeiture under certain
18 circumstances. Section 462.37 provides that where an
19 offender has been convicted of an enterprise crime
20 offence, the Attorney General at the time of
21 sentencing may make an application to have proceeds
22 from the enterprise crime of which the offender was
23 convicted forfeited.

24 Now, with respect to the facts, Starnet
25 Communications International Inc. has pleaded guilty
26 to one count of keeping a device for gambling or
27 betting, contrary to s. 202(1)(b) of the *Criminal*
28 *Code*. The keeping of the device occurred between May
29 1, 1997, and August 20, 1999. The keeping occurred
30 here in the City of Vancouver and in the Caribbean
31 nation of Antigua and Barbuda. As I stated in my
32 introductory remarks with respect to the section
33 itself, as it relates to the keeping of a device for
34 gambling or betting, this part of that section has
35 been part of the *Criminal Code* since 1913. A
36 prosecution under this section, therefore, is not
37 particularly unusual. However, what makes this
38 particular case unusual, or even unique, is that the
39 device itself consists of computer services and
40 computer applications, operating on computer systems
41 which when accessed by the internet enable persons to
42 engage in gambling or betting. I believe that this
43 case marks the first time that anyone has been charged
44 in Canada in connection with offering gambling
45 services to internet users.

46 The corporate defendant was incorporated in
47 Delaware in March 1997. It was actually as a result

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1 of a merger of two companies. The police during their
2 investigation determined that through a number of
3 wholly owned subsidiary companies, Starnet conducted
4 an extensive internet gaming and betting operation
5 from the premises at 425 Carrall Street here in
6 Vancouver.

7 Now, the wholly owned subsidiary companies are
8 listed on the first page of the statement of facts in
9 paragraph 2. Those companies are Starnet
10 Communications Canada Inc., which is a British
11 Columbia incorporated company. Its incorporation
12 actually preceded the incorporation of the defendant,
13 Starnet, and it was only subsequently that Starnet
14 became the parent company, if you like, of Starnet
15 Communications Canada, and for ease I'll refer to the
16 defendant as Starnet and this company as Starnet
17 Canada. A second company, which is integral to this
18 enterprise was Softech (phonetic) Systems Caribbean
19 Inc., incorporated in Antigua in October 1997. It has
20 since changed its name but I'll continue to call, or
21 refer to the company as Softech. A third company,
22 World Gaming Services Inc., incorporated in Antigua in
23 June 1997. Finally, there were a group of companies
24 which I'll refer to the EFS Caribbean -- excuse me,
25 the EFS group of companies, and these companies were
26 formed to facilitate the deposit and withdrawal of
27 monies by gamblers, using their credit cards.

28 Now, the first company in this group, Starnet
29 Canada, was, as I have noted in paragraph 2, it was
30 initially incorporated as a numbered company. It
31 subsequent changed its name to Starnet Communications
32 Canada Inc. in August 1996. The initial business of
33 this company was the offering of adult entertainment
34 by the internet; however, sometime in the fall of
35 1996, the directors of Starnet Canada made the
36 decision to become involved in internet gaming.
37 Further to this decision, Starnet, through its
38 subsidiaries, developed internet on-line electronic
39 facilities for the purposes of offering casino games
40 and sports book wagering to internet users. It was
41 initially anticipated, Your Honour, that all aspects
42 of the gaming would be done in an Antigua, as it was
43 known that gaming licenses could be obtained from the
44 Antiguan government; consequently, World Gaming
45 Services Inc. was incorporated there in June '97.
46 World Gaming Services Inc. held the necessary licenses
47 from Antigua and offered gaming services to persons

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1 who resided outside of Canada and the United States.
2 Eventually, though, Starnet through Softech began to
3 sell licenses for the gaming and wagering products,
4 offering a comprehensive package of software,
5 assistance with website development, technical,
6 customer and accounting support. As of August 19,
7 1999, Softech had entered into 60 license agreements,
8 and of course that's basically the end date of the
9 charge in the Information.

10 I might say that this investigation began as an
11 investigation being conducted by the Coordinated Law
12 Enforcement Unit. The investigation began in the fall
13 of 1998 and the police executed search warrants at the
14 premises of Starnet at 425 Carrall Street on August
15 20, 1999. I note also that the investigation was
16 subsequently assumed by the newly created, or fairly
17 newly created organization, the Organized Crime Agency
18 of British Columbia. In any event, the role of
19 Starnet Canada, which was the original company, was
20 pivotal in this enterprise. Most of the people
21 employed at the premises of 425 Carrall Street, and
22 that was approximately 100 by the time of the search
23 by the police on August 20, 1999, were Starnet Canada
24 employees. Starnet Canada developed server and client
25 software packages which enabled internet patrons to
26 engage in on-line gambling of various types. Further,
27 they were responsible for the ongoing administration
28 of the sophisticated services, applications and
29 computer systems.

30 Now, I think it would be useful to refer to how a
31 person participates in on-line gambling, and I'll
32 refer to a portion of the written statement of facts
33 in paragraph 6, beginning with the third sentence.
34 World Gaming Services Inc., which was the initial
35 company offering these services, operated an on-line
36 casino and betting service in competition with other
37 licensees of the gambling software. In order to
38 participate in the on-line casino, or to engage in
39 sports book betting, patrons first opened an account
40 with the licensee, into which money was deposited,
41 generally by using a credit card. The funds on
42 account could then be converted into virtual chips,
43 referred to as V chips, and then through the interface
44 provided on the home page of the particular licensee,
45 the patrons enter the casino and place bet on various
46 electronic games of chance or made wagers on sporting
47 events, using their V chips. Casino and sports book

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1 operators charged on-line bets against each patron's
2 accounts. Winnings were credited to the patron's
3 account. When the patron wished to withdraw the
4 winnings, they were either credited to the patron's
5 credit card up to the amount of the original wager, or
6 paid out by cheque sent to the patron.

7 Now, in the course of the investigation, the
8 police themselves, using covert identities and covert
9 credit cards, engaged in on-line gambling offered by
10 some of Softech's licensees. They weren't able to
11 access the World Gaming and Services Inc. site because
12 Canadians and Americans could not access that site,
13 but certainly the licensee's sites were accessible
14 from Canada. And I think it's useful also to
15 summarize what the investigators did and what they
16 found out. I refer Your Honour, therefore, to
17 paragraph 9 on page 3. These investigators, after
18 opening the necessary accounts with the licensees,
19 made deposits using covert credit cards and placed
20 wagers in both the casino software and web based
21 sports book environments. They also video recorded
22 these gaming sessions and used specialized computer
23 software that identified various aspects of the gaming
24 process controlled by the computers at Starnet's
25 Vancouver offices, including the routing of the
26 internet traffic and the hosting of websites for the
27 various gaming sites.

28 During the 10 months prior to the execution of
29 the search warrants in August 1999, the investigators
30 placed bets and wagers of a total of 444 times on 36
31 days spread out relatively evenly during this period.
32 The investigators determined as a result of engaging
33 in this process that in order to engage in internet
34 casino games offered by the Softech licensees, it was
35 first necessary to download onto their computers the
36 requisite casino gaming software via the internet.
37 Once the software was downloaded and installed on the
38 gaming patron's computer, the patron could engage in
39 the various casino games offered by the licensee. In
40 the alternative, a gaming patron could order a compact
41 disk containing the software from the licensee and
42 load it onto his own computer. To engage in sports
43 book betting, it was not necessary to download
44 specialized software; rather, patrons merely accessed
45 the site of a particular licensee by using their web
46 browser and placed their bets, assuming they had
47 opened an account.

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1 As a result of gambling in the casino and sports
2 book areas of the Softech licensees, the investigators
3 from time to time withdrew winnings resulting from
4 successful wagers. These winnings were received in
5 the form of credits to the covert credit cards and
6 cheques processed through the EFS system, and the
7 cheques received by the investigators were drawn on
8 several accounts, including accounts of EFS USA, EFS
9 Caribbean, and a third company, Electronic Financial
10 Services. Some of these cheques were signed by
11 Starnet officers in Vancouver and actually mailed from
12 Starnet's Vancouver offices.

13 In Canadian law, corporate criminal liability is
14 established pursuant to the identification, or the
15 alter ego theory, and our courts have identified the
16 corporation with a senior official who acts as the
17 corporation's directing mind, and have attributed the
18 alter mental element of that person to the corporation
19 for the purpose of determining the corporation's
20 liability for a criminal offence. With respect to
21 this corporate defendant, Your Honour, the key
22 individuals in the Starnet group of companies are
23 identified in paragraph 16 of the statement of facts,
24 and they are Mark Dolan (phonetic), John Carley
25 (phonetic), Christopher Zacharias (phonetic), and Paul
26 Giles (phonetic). Each of these individuals held
27 multiple positions in the various companies that made
28 up the Starnet group. I've listed the various
29 positions that they held in this group of companies,
30 and I think it's fair to say that these people were
31 the corporation's directing mind in the various
32 aspects of this enterprise.

33 Now, Starnet has pled guilty to a count of
34 keeping a gaming or betting device in Vancouver, and
35 in Antigua and Barbuda, and the devices described
36 generally in the charge, in part (f) of the statement
37 of facts which is on page 21 -- sorry, it's part (e),
38 I'm sorry, and it's page 18, in paragraph 84, I've
39 attempted to set out to describe the components of the
40 gambling portion of this device. I mean, this
41 device's computer system on which these computer
42 services and computer applications operate, and I want
43 to say that there certainly was an aspect of this,
44 I'll just call it a system, that operated in Antigua,
45 but a large part of this system operated here in
46 Vancouver, and what I've done is tried to separate the
47 components of the gambling portion of the device as

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1 opposed to the betting portion of the device, although
2 clearly there's considerable overlap.

3 To summarize, then, the components that were
4 present in Vancouver, and I'm referring to paragraph
5 84, the servers located at 425 Carrall Street were the
6 physical location that internet users accessing any of
7 the web pages located at Starnet Canada offices would
8 need to access first. The gaming websites were
9 developed by Starnet employees and many of those sites
10 were physically located on the ray (phonetic) storage
11 devices at Starnet's Vancouver offices. Without
12 initial access to these web pages, a customer
13 interested in wagering could not do so. It was
14 essential that interested customers access and
15 download the client's side casino software via these
16 game sites, or order the same from web pages hosted on
17 these same computers at Starnet. The server's side
18 software and the modification of this software to
19 allow the client's software to function when installed
20 on the customer's computer was in Vancouver. The
21 registration and control of the domain name servers
22 from many of the licensee web pages was in Vancouver.
23 These sites were controlled and physically located on
24 Starnet's Vancouver computers at 425 Carrall Street.
25 For access and downloading of the casino software or
26 the ordering of the CDs, the websites for the licensee
27 needed to be accessed.

28 In many cases, the licensee's website was hosted
29 as identified in subparagraph (a) of this paragraph.
30 The location on Starnet Canada computers in Vancouver
31 from where the updated patches. These were software
32 upgrades to the client's side software, were
33 downloaded to the customer's computer. These were in
34 Vancouver. The control and physical hosting of a
35 dispatch server on computers in Vancouver that
36 connected and rerouted the customer's client side
37 software to the gaming servers in Antigua, another
38 component of this system. It was only after
39 contacting these servers that the customer could be
40 forwarded to the gaming servers in Antigua for gaming
41 activities. Another component, the gaming servers
42 created in Vancouver and later installed Antigua,
43 interacted with the licensees' web pages to allow
44 access to the gaming sites. Those web pages,
45 depending upon the licensee, were physically situated
46 in Vancouver. I won't review all of these components,
47 but I think it gives Your Honour some idea of the

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1 complexity of this system and where and how it was
2 situated.

3 Now, I'll go back to part (b) in the statement of
4 facts on page 5. I'm not going to review that in any
5 great detail other than to note that it deals with the
6 initial stages in the development of the internet
7 gaming enterprise, the establishment of the corporate
8 structure, the establishment of the parent company,
9 the corporate reorganization by which the Starnet
10 Canada, which had been the original company became a
11 wholly owned subsidiary of the parent company, and
12 then the incorporation of Softech, which was to be the
13 licensing arm, the incorporation of World Gaming
14 Services Inc., which was Starnet's own gaming company,
15 and the incorporation of EFS Caribbean, which was the
16 first of the EFS companies.

17 Part (c) of the statement of facts, at page 8,
18 deals with the software license agreements. I'll
19 direct Your Honour's attention to paragraph 38 on page
20 8. Starnet, through its subsidiary, Softech, offered
21 prospective licensees so-called turnkey casino and
22 sports book packages. Option 1, which is described in
23 paragraph 38, the so-called full licensee package,
24 consisted of a fully customized gaming website created
25 for the client, customized casino software, including
26 an on-line casino, a uniquely designed CD version,
27 over two dozen casino games, 24-hour customer and
28 technical support for the licensee and the customer,
29 secure on-line transaction processing and detailed
30 revenue reporting, all band with changes, on-line
31 sports book, betting lines from leading odds makers in
32 Las Vegas and Europe, all upgrades of future gaming
33 software and products in one-on-one marketing
34 consultation to the licensee. The licensee was
35 required to hold an internet gaming permit from
36 Antigua or a similar jurisdiction that regulates
37 internet gaming, and Softech representatives were
38 available to assist the licensee in this process, that
39 is of getting a gaming permit, which was described as
40 taking 30 days, and also they would assist in credit
41 card merchant numbers which they would make available
42 through the EFS companies to those who did not already
43 have one.

44 The cost of a license typically was, started with
45 a base fee of \$100,000 in United States dollars, which
46 covered the cost of setting up the licensee's website,
47 design and programming. Any website changes required

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1 thereafter would be made by Softech and charged to the
2 licensee at market rates. In addition to the base
3 fee, Softech received a percentage of each licensee's
4 monthly net revenue. The percentage payable to
5 Softech ranged from 40 percent on monthly net revenues
6 up to \$100,000, to 15 percent of revenues, 15 percent
7 of revenues between 5 million and \$10 million. And as
8 I've already noted, Softech provided merchant account
9 facilities to the majority of its licensees through
10 the EFS group of companies, which in turn charged
11 licensees which used its merchant accounts fees for
12 processing gaming transactions. As I understand it,
13 most of the licensee packages sold were option 1 as
14 opposed to option 2, which is described in paragraphs
15 40 and 41.

16 I've made reference to the fact that there were
17 60 license agreements signed all together as of the
18 time that the police searched the Starnet premises.
19 The first of the 60 license agreements, and I'm
20 referring to paragraph 45, was signed on December 31,
21 1997, and that licensee accepted its first wagers on
22 February 28, 1998.

23 In paragraphs 48 and 49, I addressed, firstly in
24 48, the issue of the payouts on these casino games
25 that were created by Starnet Canada and then licensed
26 by Softech. I think simply the point is that
27 basically the payouts were in conformity to what
28 payouts are in Nevada. In terms of sports book
29 profits, which are based on what is called Vigorish
30 (phonetic), these were usually in the six to eight
31 percent range, and that is typical of sports book
32 betting where it is allowed. A report was prepared by
33 Nesbitt Burns in 1999 as to the total number of
34 customers for Softech licensees and referenced them to
35 country of origin, and as of April 30, 1999, which was
36 the end of the fiscal year for Softech, approximately
37 four percent of the total, almost 148,000 customers
38 were in Canada and the balance were in various
39 countries from around the world.

40 In part (d) of the statement of facts, I'm not
41 going to refer to that, but this is a description of
42 the ongoing support services provided to the licensee,
43 including sports book line feeds, EFS financial
44 processing functions, accounting support and other
45 customer service support.

46 Part (f) of the statement of facts addresses the
47 issue of the proceeds from the gaming operations.

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1 Paragraph 87, I state that it was actually an
2 accountant with the Organized Crime Agency of B.C.
3 that determined that as of August 19, 1999, Starnet
4 subsidiaries received a total of approximately 7.6
5 million in United States dollars, either directly by
6 way of transfers to Softech and the EFS group of
7 company's bank accounts, or indirectly by way of
8 deductions from the licensees' funds held in the EFS
9 group of companies merchants' accounts, and the
10 breakdown is listed there as to the source of the
11 funds. They came from licensee start up fees. A
12 small, relatively small amount from gaming license re-
13 sell fees, royalties refers to royalties from the
14 gaming activities of the licensees, and that would be
15 that range of percentages that I referred to. A
16 relatively small amount from other services provided
17 to licensees. That could be in connection with
18 further website development. There were fees in
19 connection with the merchants' accounts, discounts and
20 other fees. And then finally, World Gaming Services
21 Inc.'s operations produced something under a half a
22 million dollars in revenues.

23 Now, the final section of the statement of facts
24 addresses the fact that in 1999 Starnet management
25 firstly had some concerns about their licensees
26 accepting wagers from Canadians and through Mr. Dolan
27 the licensees were instructed to cease accepting
28 wagers from Canadians and to contact Starnet Canada to
29 determine how to filter Canadians out. Apparently a
30 Starnet programmer had determined how many Canadian
31 customers the Softech licensees had, and he apparently
32 had also figured out a way to grandfather these
33 customers while preventing any new Canadian customers
34 accessing Softech licensees. There was a decision
35 made to allow the current customers to continue
36 gambling from Canada and that was apparently made by
37 Mr. Carley. During the summer of 1999, the
38 investigators observed that a number of their covert
39 accounts were disabled, but that some, however,
40 remained operational and allowed for the continued
41 betting and gaming in those sites.

42 In June of 1999, at a special meeting of the
43 Board of Directors of Starnet, there was some
44 discussion about shifting operations to Antigua, and
45 further to that, discussion about two members of what
46 I'll call the management team, or the executive team,
47 Paul Giles and Mr. Carley, relocating to Antigua.

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1 Apparently their move was to take place no later than
2 September 1, and indeed those two individuals did
3 leave Canada. However, as of August 20, 1999, the day
4 of the search, the components of the systems that
5 enable persons to engage in gambling or betting that
6 were located in Vancouver, as I've described
7 previously in the statement of facts, were still
8 present in Vancouver, so at that point not a great
9 deal had changed.

10 Now, subject to any questions Your Honour has, I
11 don't intend to make any other comments on the facts
12 in this case.

13 THE COURT: I have it, I think, Ms. Donald, thanks.

14 MS. DONALD: I can proceed to make the Crown submission on
15 sentence, or --

16 THE COURT: Go ahead.

17 MS. DONALD: The Crown and the defence come before this
18 court today to make essentially a joint submission on
19 sentence. Starnet, through its guilty plea,
20 acknowledges that it violated Canadian laws with
21 respect to the operation of its internet gambling
22 business. It's the Crown's submission that of the
23 principles of sentencing set out in s. 718 of the
24 **Criminal Code**, the paramount principle in this case
25 which must be satisfied is that of general deterrence.
26 The Crown submits that a significant fine would
27 satisfy the principle of general deterrence. The
28 position of the Crown is that as the gaming enterprise
29 was an extensive operation, a significant monetary
30 penalty is required; therefore, the Crown seeks a fine
31 of \$100,000.

32 Further, as s. 202 is an enterprise crime
33 offence, it is subject to the provisions of the Part
34 XII.2, as I indicated at the outset of my remarks.
35 Shortly after the premises of Starnet were searched,
36 the police identified two company bank accounts at the
37 branch of the Canadian Imperial Bank of Commerce
38 located at 400 Burrard Street in Vancouver. One
39 account was in the name of the corporate defendant,
40 Starnet Communications International Inc.; the other
41 was in the name of Softech Systems Caribbean Inc.
42 Both accounts are United States dollar accounts. The
43 Supreme Court of British Columbia issued a restraint
44 order pursuant to s. 462.33 of the **Criminal Code** on
45 August 25, 1999. That restraint order remains in
46 effect. Substantial funds are on deposit in the
47 Starnet account. The Crown, with the concurrence of

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1 Mr. Doust, therefore seeks a forfeiture order with
2 respect to funds in Starnet's account in the amount of
3 \$3,925,000 in United States dollars.
4 In the event that this court should impose a
5 fine, there is of course the issue of the mandatory
6 victim surcharge of 15 percent of any fine imposed.
7 THE COURT: I'm sorry -- oh, you're back to the \$100,000
8 now, are you?
9 MS. DONALD: Yes.
10 THE COURT: Okay.
11 MS. DONALD: Okay. And I'd state that the Crown does not
12 seek an amount exceeding the 15 percent. It is the
13 submission of the Crown that should such a fine be
14 imposed, as the Crown is submitting is appropriate,
15 and should the forfeiture order be made, and the
16 victim surcharge, that the totality of this would
17 represent a significant sanction against Starnet, and
18 in the Crown's submission, would satisfy the principle
19 of general deterrence. And I have no other remarks at
20 this time.
21 THE COURT: Is the \$3.9 million you've referred to, is that
22 the entire contents of these two accounts?
23 MS. DONALD: No, it's not. The account that's in the name
24 of Starnet is the larger of the two accounts, and the
25 Crown will seek the forfeiture of the \$3.925 million
26 from that account. There would be a balance and the
27 balance would -- it would have to be a Supreme Court
28 order because it's the Supreme Court that issues the
29 restraint order. An application would be made to the
30 Supreme Court to revoke the restraint order on the
31 balance of the account and direct that it be returned
32 to Starnet.
33 THE COURT: All right.
34 MR. DOUST: If it please, Your Honour, I ask first of all
35 for your indulgence, Your Honour. I'm operating under
36 a little bit of a temporary disability in that I've
37 had some injuries to my ribs and so I may pause from
38 time to time to catch my breath.
39 THE COURT: Yes.
40 MR. DOUST: And I also would like to take the liberty of
41 thanking Your Honour for making yourself available to
42 hear this matter on a Friday afternoon on very short
43 notice, and I assure you that was a direct product of
44 my disability for the past three weeks; otherwise, my
45 friend and I would have given you a lot more notice
46 than we did, and thank you for that.
47 I start, Your Honour, by first of all quickly

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1 assuring you that, as my friend points out, we have,
2 and I may say after considerable negotiations and an
3 awful lot of effort expended by both the investigating
4 officers and my learned friend and my clients and I,
5 come to a meeting of the minds in connection with this
6 matter in terms of the joint submission on the precise
7 terms outlined by my learned friend, namely that there
8 be a fine in the amount of \$100,000, a \$15,000 victim
9 surcharge, and a forfeiture with the consent of my
10 clients from the funds as the subject matter of the
11 restraint order in the Starnet International Account
12 in the amount of \$3,925,000 U.S. funds. So I want to
13 be clear that my friend is quite right in that regard,
14 Your Honour.

15 So far as the facts are concerned, of course I
16 have signed the statement of agreed facts, and it must
17 be apparent to Your Honour that this was not something
18 that happened overnight, this was the result of some
19 protracted efforts, again, on our part, and
20 particularly that of my learned friend, and I have
21 only one thing to add to what's in there. If I may
22 please ask you to turn to paragraph 69. It's a minor
23 point, but I just want to make it very clear for the
24 record. Paragraph 69 is on page 14, at the bottom of
25 the page.

26 THE COURT: Yes.

27 MR. DOUST: It says:

28
29 During the search of Starnet's offices
30 in August of 1999, the investigators
31 seized 3,933 EFS USA cancelled cheques.
32 Of these cheques, some were for
33 Canadian gamblers. The number were 114
34 for Canadian gamblers.

35
36 I just make the point because it does illustrate that
37 their worldwide operation was substantial, the
38 Canadian was by no means the substantial portion of
39 the operation.

40 Now, Your Honour, it's significant to note at the
41 outset, in my submission, that the four individuals
42 who have been identified in the statement of facts and
43 that my friend adverted to as being so closely
44 associated with the origination, the management and
45 the control of the companies in question are no longer
46 involved in any way in the management or the control
47 of these companies, and needless to say, I do not

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1 represent them; I represent the company which is under
2 completely new management. Those gentlemen are
3 absolutely outside the management group, and they're
4 the persons who are referred to in paragraph 16,
5 namely Messrs. Dolan, Carley, Zacharias and Giles.
6 There has, since the searches were done, Your Honour,
7 been a significant restructuring, a change of control
8 in management, and a physical move out of Canada to a
9 location where the enterprise is quite legitimate and
10 legal. However, looking back, even bearing in mind
11 that it was a different management and control group,
12 it is apparent that from the outset, the founders of
13 the internet gambling enterprise did have in mind the
14 making of some efforts to avoid transgressing the law
15 of Canada. Obviously in the end they were simply not
16 successful, but one can see, for example, the fact
17 that they originally endeavoured to locate parts of
18 the operation in Antigua where it was legal, was a
19 part of that effort; the whole of that was the attempt
20 to legitimize the operation.

21 They did obtain, as I understand it, and my
22 information in this regard is limited, but they did
23 obtain, I'm told, some limited legal advice, but it
24 was not sufficient or thorough enough, and they did
25 not follow it up in a significant or thorough manner.
26 Unfortunately in the end, as a result of their zeal to
27 proceed and their desire to remain physically both
28 management and staff in Canada, and in particular in
29 British Columbia, they lapsed into a method of
30 carrying on their business that involved the impugned
31 conduct in this matter, i.e., they did things from
32 their Canadian office in Vancouver that attracted,
33 unfortunately for them, criminal liability. They did
34 try from time to time to avoid this, again by moving
35 or proposing to move parts of the operation out of
36 Canada. As my learned friend for the Crown said, they
37 initially anticipated doing everything in Antigua, but
38 of course they didn't follow that through.

39 I do, as well, want to point just for a moment to
40 a couple of paragraphs that go some way towards
41 evidencing that, Your Honour, for example, paragraph
42 number 81 at page 17. You see here it says, and I
43 quote:

44
45 As early as July of 1998, Mark Dolan
46 advised other officers of Starnet,
47 including Carley, Giles and others,

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1 that they should launch customer
2 service from Antigua within 30 days.
3 The issue was raised again in a
4 managers' meeting about six months
5 later in October of '98 as being of
6 some priority, but it was not until the
7 3rd of August of 1999 --
8
9 This was in the same month as the searches occurred.
10
11 -- however, that Starnet Canada staff
12 were even beginning the process of
13 transferring the customer service
14 department to Antigua. However, the
15 customer service department services
16 still existed in Vancouver on August
17 the 20th of '99.
18
19 That is to say at the time of the searches.
20 So you can see, they had the idea, but they were
21 less than diligent, to say the least, Your Honour, in
22 attempting to get themselves extricated from exposure
23 to criminal liability.
24 Again, at paragraph number 68 for a moment, Your
25 Honour, please, and that's at page 14. In 1999, and
26 this again, Your Honour, is early in '99, prior to the
27 searches in August, some EFS, these are the financial
28 recording systems, Your Honour, processes, were
29 transferred to Antigua. The reason for this, and the
30 movement of other functions to Antigua, was that
31 Starnet officers and directors had legal concerns and
32 felt it was safer to operate the system outside of
33 North America, i.e., where it was clearly legal. Two
34 computer programmers went to Antigua to set up systems
35 at that location. Distinctions were created in the
36 naming of the equipment to identify its location. You
37 see the database names, some in Vancouver, one located
38 in Antigua. The Players Only, and Players Only was a
39 licensee, database was identified at Players SO1.
40 Until this time there had been only one database for
41 all licensees before they were split due to the volume
42 from the Players Only licensee, and it was located in
43 Vancouver. So they were moving some of it, but not
44 near enough and not fast enough. The World Gaming
45 Services Inc. database, another licensee, was moved to
46 Antigua as a result of splitting the databases in two.
47 The movement of the contents of the World Gaming

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1 Services Inc. database to Antigua was done by
2 electronic transfer which took several days to
3 accomplish, and shortly after that, if I may say, the
4 searches occurred.

5 Again, at paragraph 88, please, Your Honour, and
6 that's at page 21, I think my friend may have referred
7 to this, but I want to emphasize it.

8

9 On January the 28th of 1999 --

10

11 This is again early in the year of the searches.

12

13 -- Dolan advised many of Softech's
14 licensees that Softech has conducted a
15 legal review --

16

17 A little bit late to be having done it, however.

18

19 -- and had identified risk to the
20 licensee and Softech of possible **Criminal**
21 **Code** charges if wagers were accepted from
22 Canadians. Dolan instructed these
23 licensees to cease accepting wagers from
24 Canadians and to contact Starnet Canada
25 to determine how to filter the Canadians
26 out.

27

28 And then there's a list of the licensees.

29

30 However, Dolan's instruction was not
31 fully carried out. A Starnet Canada
32 programmer had determined how many
33 Canadian customers the Softech licensees
34 had and a method to grandfather these
35 customers while preventing any new
36 Canadian customers from accessing Softech
37 licensees.

38

39 One wonders how you could ever conclude that if you
40 can't deal with Canadians, how can you justify
41 grandfathering some and saying, well, we won't take
42 any new ones. You're still going to have a problem,
43 as they did.

44

45 The decision to allow current customers
46 to continue gambling from Canada was
47 made by Jack Carley.

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1 Well, I pause here to say, this was a very bad mistake
2 by Mr. Carley, to try to salvage some of the Canadian
3 business. That should never have happened.

4
5 During the summer of 1999, the
6 investigators observed that a number of
7 their covert accounts were disabled but
8 some remained operational and allowed
9 for the continued betting and gaming in
10 those sites, the Canadian ones.

11
12 So some of theirs got cut off, but some of theirs
13 remained as well.

14 And then finally, Your Honour, at paragraph 36,
15 please, paragraph 36 at page 8.

16
17 Starting its own gaming operation, in
18 effect its own licensee, World Gaming
19 Services Inc. was set up not to accept
20 wagers from residents of Canada and the
21 united States. The decision not to
22 accept wagers from Canadian and
23 Americans was made as a consequence of
24 Starnet International's position as a
25 publicly traded company and concerns
26 over the legality of internet gaming in
27 Canada and the United States.

28
29 So they were mindful of the problem from the outset,
30 they took some steps, but they were grossly deficient,
31 Your Honour, in terms of trying to ensure that they
32 avoided attracting criminal liability here in Canada.

33 The problem is, of course, that the efforts to
34 comply with the laws of Canada under the former
35 management team did not succeed and they were
36 overridden by the lapse in that regard and the zeal of
37 the former management team to succeed in their
38 business. I pause to say, too, Your Honour, there's
39 no suggestion that the system was usurious in terms of
40 its customers and I just make mention of the fact that
41 my friend adverted to paragraph 48 wherein she noted
42 that the rates charged were in entire coincidence with
43 the payouts in Las Vegas.

44 As I said, there has been a restructuring. The
45 companies are now under the umbrella of a British
46 holding company. All management is new and is
47 committed to engaging in strictly legal operations.

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1 In fact, there is absolutely no suggestion that the
2 present operations are anything but legal. All
3 aspects of the gaming operations are now offshore, as
4 they should have been in the first place. A new
5 company called Starnet Systems now virtually operates
6 the gambling operations from Antigua. It has 70 to 80
7 full time employees there. It is a full service
8 operation. It does all of the licensee support, the
9 cheque processing, the credit card processing, the
10 customer service, the licensee relations, all of the
11 day-to-day gaming activities and all of the financial
12 activities. There is a management committee in
13 Antigua which of course did not exist in 1999.

14 And if I can ask you again to turn just very
15 briefly to paragraph 90, which is right at the end of
16 the statement of agreed facts, the concluding
17 paragraph, which says:

18
19 The investigators determined that as of
20 August 20, 1999, what I'll refer to as
21 the components of the systems that
22 enable persons to engage in gambling or
23 betting that were located in Vancouver
24 as described above were still present
25 in Vancouver.

26
27 They are not any longer, Your Honour. There is one
28 slim element of the enterprise left in Canada, and
29 that's a very constructive legal and legitimate
30 enterprise. It's a company called Infinity, which is
31 a software development company. It produces software
32 for use offshore in countries where such gambling is
33 legal. It's like manufacturing roulette tables for
34 Las Vegas. That's all there is in terms of operations
35 in Canada, and there is no question of the legality of
36 that conduct. That's a viable operating company that
37 provides employment to people here in British
38 Columbia. The new management has consistently been, I
39 think it's fair to say, reasonably cooperative with
40 the investigators and is most concerned about doing
41 what is proper and what is legitimate. This of course
42 includes accepting fully the corporate responsibility
43 for the conduct generated by former management. I
44 would be the last to suggest that the company can
45 avoid responsibility by standing before you and
46 saying, "Well, the fellows who are in charge of this
47 are now gone, so gosh, you know, it's not going to

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1 happen again." The company remains responsible and
2 the current management completely understand that.
3 The wish on their part is to properly accept the
4 company's responsibility and then put the errors of
5 the former management behind them.

6 This plea and the acknowledgement it carries of
7 this responsibility and the acceptance of the very
8 substantial fine and the forfeiture of the utmost of
9 significance, in my submission, all speak to those
10 good intentions. They're not mere words, Your Honour.
11 As to the amount of the fine, the company's position
12 is that such an amount is not necessary to deter them
13 under new management, or to rehabilitate them in any
14 way, or to protect the public from them, but on the
15 other hand, they do accept without hesitation the
16 Crown's position that it is necessary to properly
17 engage the principle of deterrence to others, or
18 general deterrence, and therefore we agree with the
19 Crown's position that a fine of \$100,000 with the
20 surcharge of 15,000 is appropriate. And we agree as
21 well in terms of the forfeiture. It has taken
22 considerable time and effort on the part of my friend
23 and I to come to a meeting of the minds in that
24 regard, as I'm sure you can appreciate. I would add
25 that I have had many discussions with senior
26 management of the company and with the company's house
27 counsel, who is present here today, and I can assure
28 you, Your Honour, that this company and its management
29 and its counsel take this matter very, very seriously.
30 They want the court to be fully aware of that.

31 Finally, if I may be so bold, Your Honour, I
32 encourage you to give the most utmost serious of
33 consideration to accepting the joint submission.
34 Certainly it remains for Your Honour to make the
35 decision and my friend and I are more than mindful of
36 that, but we suggest with the greatest of respect that
37 that submission is appropriate in all the
38 circumstances. We recognize, ask you to recognize
39 that it is the result of a great deal of, as I say,
40 combined effort by the Crown and the defence to try
41 and find an appropriate solution to the matter that
42 satisfies the principles of sentence on the one hand
43 and that saves the public and the company both very
44 substantial time and expense in terms of needless
45 litigation. So I ask Your Honour to give the utmost
46 of consideration to the efforts that we have put into
47 this in bringing it before you on the basis of a joint

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1 submission.
2 Thank you, Your Honour.
3 THE COURT: Thank you.
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Sentence (Smyth, D.I., P.C.J.)

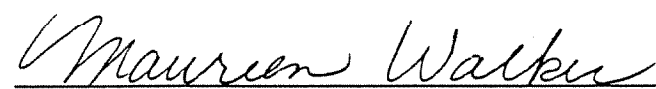
1 THE COURT: Well, counsel were good enough to provide me
2 with a proposed agreed statement of facts in draft
3 form earlier today, so I've had the advantage and head
4 start, so to speak, of reading them, and I don't for
5 the purpose of imposing sentence intend to reiterate
6 the somewhat complex facts that were summarized by Ms.
7 Donald. It seems to me in all the circumstances that
8 the resolution of this proposed by both counsel in its
9 cumulative result, both fine and forfeiture, is
10 consistent, reasonably so, with the appropriate
11 sentencing principles, and there will, accordingly, be
12 a fine of \$100,000, together with a victim fine
13 surcharge of 15 percent of that amount. I do also
14 make an order of forfeiture pursuant to s. 462.37 of
15 the *Criminal Code* of the sum of \$3,925,000 U.S. to be
16 forfeited to Her Majesty the Queen.
17 Could you prepare an order in written form to
18 that effect, Ms. Donald?
19 MS. DONALD: Yes, I'll --
20 MR. DOUST: Time to pay. If it please, Your Honour, may we
21 have 30 days?
22 THE COURT: Yes, all right. Time to pay then to September
23 the 28th.
24 MR. DOUST: Thank you.
25 MS. DONALD: Is Your Honour available on Monday for the
26 signing of the order?
27 THE COURT: Yes.
28 MS. DONALD: All right.
29 THE COURT: All right. Thank you very much.
30 MR. DOUST: Thank you, Your Honour.

31
32 (PROCEEDINGS CONCLUDED)
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40 _____
41 Smyth, D.I., P.C.J.
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"I hereby certify the foregoing to be
a true and accurate transcript of the
evidence recorded on a sound recording
apparatus transcribed to the best of
my skill and ability."


Maureen Walker