

Publisher's Note

2019 — Release 3

Previous release was 2019-2

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Michael Brent Henderson

Commercial Crime in Canada

This practical service compiles information regarding criminal liability arising from white collar crime in Canada. For each offence the full text of the specific legislation is provided together with an analysis of the important case law, the form of charge and cross-references to related legislation. There is detailed coverage of modes of criminal participation and the means available for pursuing proceeds of crime and restitution.

What's New in this Release

This release features updates to the case law and commentary in the following chapters: 2 (Criminal Fraud), 3 (Theft), 5 (Forgery), 6 (Securities Fraud and Market Manipulation), 11 (Modes of Criminal Participation), 12 (Proceeds of Crime), and 14 (Fines, Forfeiture and Restitution).

Case Highlights

Recent case law introduced with this release includes the following:

- **Criminal Fraud — *Mens Rea* of Fraud** — Where the accused financial advisor received funds from his clients to pay premiums on life insurance proceeds, and retained the funds without his clients' knowledge, he was guilty of fraud for his deceitful conduct, although the funds were ultimately returned to his clients. The trial judge found that the Crown had proved the requisite *mens rea* beyond a reasonable doubt. The accused's deceitful conduct was intentional, continued

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over a period of weeks, and placed his clients' pecuniary interests at risk: *R. v. Saucier*, 2018 ONSC 7266, 2018 CarswellOnt 21590 (Ont. S.C.J.).

- **Fraud — Special Sentencing for Fraud — Restitution Orders** — Although the accused president and general manager pleaded guilty to defrauding his organization of a certain sum of money, and although the proceeds of crime (or part of them) were reimbursed to the victim prior to sentencing, the sentencing judge must consider the amount of this reimbursement when making the restitution order or a fine in lieu of forfeiture. The accused appealed the amount of the fine in lieu of forfeiture, and his appeal was allowed in part. The fine was reduced to \$28,555. The trial judge erred in being wedded to the idea that the fraud of \$710,941, for which the accused had admitted his guilt, was the only measure of quantification of the restitution, and fine in lieu of forfeiture: *Dagenais c. R.*, 2019 QCCA 5 (C.A. Que.).
- **Proceeds of Crime — Laundering the Proceeds of Crime — Actus Reus** — The *actus reus* was made out when the accused picked up the bank draft, took it to the payday lender, and twice tried to convert it to cash. As the trial judge found, this conduct not only established the *actus reus* of the offence, but also a necessary element of the *mens rea* of the offence. The trial judge's finding that the accused was wilfully blind to the fact that the bank draft was obtained by fraud was amply supported by the record. The trial judge was entitled to reject the accused's evidence in reaching this conclusion: *R. v. Barna*, 2014 CarswellOnt 6715, affirmed 2018 CarswellOnt 21170, 2018 ONCA 1034 (Ont. C.A.).