

Publisher's Note

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Nightingale

Law of Fraud and Related Offences

This work examines the complexities of criminal fraud together with the full range of related offences, including frauds in relation to the stock market and securities, fraudulent conveyances, fraudulent concealment and welfare fraud. This work will assist defence counsel, Crown prosecutors and trial judges in applying the principles of fraud, and the doctrines of mistake, recklessness and wilful blindness to fraud cases being adjudicated.

This release features comprehensive updating of the sentencing digests pertaining to offences involving fraud.

Highlights

- **Sentencing Digests — Fraud over \$5,000** — The accused was convicted of fraud over \$5,000 after having lost, in a two-year period, over \$1 million of his clients' monies in a scheme involving his mortgage brokerage and private investment fund. The court found the accused's motivation to have been bolstering his successful reputation in the community as well as to turn a profit. The accused had a high school education, was married, had no criminal record, and demonstrated remorse. The effect of the fraud was devastating to many victims in the community. The court noted that penitentiary sentences were normal for breach of trust frauds involving more than a million dollars, and deterrence and denunciation were the primary sentencing principles to

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be applied. The court imposed a total sentence of 4.5 years' incarceration, and ordered restitution in the amount of \$1,029,000: *R. v. Macleod*, 2017 ABQB 722, 2017 CarswellAlta 2573 (Alta. Q.B.).

- **Sentencing Digests — Use, Trafficking or Possession of Forged Document** — The 48-year-old accused firefighter was found guilty after a jury trial of fraud over, attempted fraud over and seven counts of uttering forged documents. He had submitted fraudulent health and benefit forms with attached forged invoices to the administrator of his municipal employee benefit plan. The claims sought repayment for expenses never incurred for services never rendered. He submitted 23 false benefit claims with some three hundred false invoices, seeking repayment of approximately \$32,000, of which he received over \$23,000. He had two children, a criminal record for assaults and a history of drug abuse. The offences were carefully thought out and executed over the course of 51 months. The court found denunciation and deterrence to be the primary sentencing principles to apply for this abuse of his position of trust as a public employee, and imposed sentences of six months' incarceration for fraud over \$5,000, six months concurrent for attempted fraud over \$5,000, and one month concurrent for each count of uttering a forged document. In addition, the court imposed thirty-six months' probation and ordered restitution: *R. v. Evaschuk*, 2017 ONSC 4014, 2017 CarswellOnt 13211 (Ont. S.C.J.).