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### COMMERCIAL CRIME IN CANADA

Michael Brent Henderson  
Release No. 6, June 2022

#### Publisher's Special Release Note 2021

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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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) and 12 (Proceeds of Crime).

### **Case Highlights**

Recent case law introduced with this release includes the following:

- **Fraud — Complexity — Unauthorized E-Transfer Transactions — Exchange of Text Messages Between Victim and Accused — Admission by Silence** — The accused responded to the complainant's request on Kijiji for a refrigerator, and she offered it and other items at discount prices as part of a purported estate sale. Ultimately, over the course of weeks of electronic and in-person communications, the complainant paid the accused \$8,950 and received nothing in return. The court found the entirety of the estate sale to have been a ruse and the items for sale never to have existed, and convicted the accused of fraud. Although the court had determined the accused's silence in relation to some of the questions posed by the investigating officer could not serve as evidence against her, the court held the accused's non-responses and silences, as well as her admissions, from the electronic communication between her and the complainant to be admissible as evidence against her: *R. v. Drake*, 2022 NSSC 91, 2022 CarswellNS 212 (N.S. S.C.).
- **Proceeds of Crime — Fine in Lieu of Forfeiture — Fine Equal to Value of Property Found to be Proceeds of Crime** — The accused stole maple syrup that had a market value of \$18,000,000, resold it for \$10,000,000, and claimed to have profited in the amount of \$1,000,000. The Court of Appeal, on appeal by the accused, reduced the fine imposed at trial, which was one reflective of the resale-value of the stolen property, effectively limiting the fine merely to the amount of the accused's profits. On Crown appeal, the Supreme Court of Canada found the appellate court to have erred in assuming a discretion it did not have — subsection 462.37(3) of the Criminal Code requires a fine equal to the value of the property that was in his possession or under his control, more so to replace the proceeds of crime than to punish the offender. Consequently, the Supreme Court of Canada restored the approximately \$10,000,000 fine imposed by the trial judge: *R. v. Vallières*, 2022 SCC 10 (S.C.C.), reversing 2020 QCCA 372, 2020 CarswellQue 1307 (Que. C.A.), setting aside in part, 2017 QCCS 1687, 2017 CarswellQue 3212 (Que. C.S.).

## **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages