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### COMMERCIAL CRIME IN CANADA

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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), 7 (Bribery and Corruption), 10 (Income Tax Evasion), 12 (Proceeds of Crime), and 14 (Fines, Forfeiture and Restitution-Obtained by Crime).

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## Case Highlights

Recent case law introduced with this release includes the following:

- **Criminal Fraud — Sentencing — Store Manager — Permanent Resident — Bogus Returns and Refunds—Use of Store Gift Cards — Net Losses of \$65,000 — Sentenced to 15 Months’ Imprisonment —Despite “Collateral Immigration Consequences”**— Where the accused store manager leveraged his enhanced level of access, responsibility and trust, which accompanied his management position, to process dozens of fraudulent return and refund transactions, resulting in net losses of approximately \$65,000, he received a sentence of 15 months’ imprisonment, despite the spectre of “collateral immigration consequences”. In this case, the accused, who was a permanent resident, occupied one of four management positions at Fredericton Staples. By virtue of being a manager, he was entrusted with keys to open and close Fredericton Staples and to access several restricted areas. The accused also had access to various computer systems and programs required to discharge the elevated functions of his leadership role at Fredericton Staples. The duties which accompanied the accused’s management position included opening and closing Fredericton Staples and distributing cash drawers to associates. He also handled various matters requiring managerial approval, including the direct oversight and authorization of returns and refunds which exceeded the modest authority set by Staples Canada for associates. Another responsibility specific to the accused’s role as sales support supervisor entailed managing inventory counts and reconciling inventory discrepancies. Between December 8th, 2021 and November 27th, 2022, the accused leveraged the enhanced level of access, responsibility and trust which accompanied his management position to process dozens of fraudulent return and refund transactions: *R. v. Swie*, 2025 CarswellNB 248, 2025 NBPC 7 (N.S. Prov. Ct.).
- **Income Tax Evasion — Search and Seizure — Unknown Persons Requirement (UPR) — Income Tax Act, Section 231.2(3) — Australian Tax Office Seeking UPR — Australian Customers of Shopify Inc.— Convention on Mutual Administrative Assistance in Tax Matters Not Incorporated into Section 231.2(3) — Application Denied** — Where the Australian Tax Office made a request, pursuant to the *Convention on Mutual Administrative Assistance in Tax Matters*, 2011, E.T.S. 1988, No. 127. to the CRA with respect to S Inc., asking Canada to provide information pertaining to all “merchants using S Inc.” who had customers with Australian billing addresses, in order to assist in engaging with relevant taxpayers with respect to their Australian tax obligations, the Minister’s application to issue to S Inc. an Unnamed Persons Requirement (UPR) was dismissed as the Convention had not been incorporated into s. 231.2(3) of the ITA, and did not impose an obligation to issue a UPR for the purpose of sharing information with Australia in the circumstances of this application. In this case, S Inc. was Canadian corporation offering subscription-based software platform to build and run independent stores across multiple digital and physical sales venues, including online businesses. Australia made “foreign exchange of information requests” to the CRA with respect to S Inc., asking Canada to provide information pertaining to all “merchants using S Inc.” who had customers with Australian billing addresses, in

order to assist in calculating, communicating, and engaging with relevant taxpayers with respect to their Australian tax obligations. The ATO made this request pursuant to the *Convention on Mutual Administrative Assistance in Tax Matters*, 2011, E.T.S. 1988, No. 127. On the requests from the Australian Taxation Office (ATO), the Minister sought the authorization under s. 231.2(3) of Income Tax Act (ITA) to issue S Inc. an Unnamed Persons Requirement (UPR). The Minister submitted that the UPR request met the statutory preconditions. S Inc. claimed that the Convention did not have the force of law because it was never the subject of domestic incorporation, and that the Minister could not meet the second precondition because Australia's request had nothing to do with verifying compliance with the Income Tax Act (ITA). The Convention had been incorporated into s. 231.2(1) of the ITA, but not s. 231.2(3). The Minister of National Revenue (Minister) sought to obtain any information or document from any person for any purposes related to the administration or enforcement of the ITA, and Part IX of the Excise Tax Act (ETA) or for the enforcement of a listed international agreement. The Minister's application was dismissed: *Canada (National Revenue) v. Shopify Inc.*, 2025 CarswellNat 2119, 2025 FC 968 (F.C.).