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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), 5 (Forgery), 6 (Securities Fraud and Market Manipulation), 11 (Modes of Criminal Participation), 12 (Proceeds of Crime) and 13 (Possession of Property Obtained by Crime).

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Case Highlights

Recent case law introduced with this release includes the following:

- **Criminal Fraud – Offence of Fraud – Identity Fraud – Identity Theft – Use of False Identity to Receive Medical Treatment – Admission of *Actus Reus* of Offences at Murder Trial – Transcript of Testimony Inadmissible – Charter Protection Against Self-Incrimination** – Where the accused was alleged to have used the driver’s licence of another person in order to obtain medical treatment for gunshot injuries as he was not entitled to publicly-funded medical services, and the Crown sought to tender transcripts from his murder trial where the accused admitted prior use of this false identity, the transcripts were ruled inadmissible under s. 13 of the Charter, and as a result, he was acquitted. In this case, the accused was charged in a two count Indictment with identity theft contrary to s. 402.2(1) and identity fraud contrary to s. 403(1) of the Criminal Code. Both counts related to the accused’s alleged use of the driver’s licence of II in order to obtain medical treatment at two hospitals in Toronto during a four month period in 2021. The accused had been shot multiple times in a gun fight. He was illegally in Canada at the time and was not entitled to publicly-funded medical services. The accused had been charged with murder in 2021, as a result of the gun fight. He was tried on that charge and was acquitted by a jury in 2023. At the current identity theft and fraud trial, the Crown sought to tender a number of the early remand transcripts in 2021 from the murder case, showing that the accused had appeared in court using the false “II” name. The Crown also sought to tender the transcript of the accused’s evidence-in-chief at the murder trial in 2023 in which he gave testimony explaining his admitted prior use of this false identity. The defence at the current trial opposed the admissibility of these transcripts, relying mainly on s. 13 of the Charter of Rights. The trial judge ruled that the transcripts were not admissible., As a result, the Crown presented no evidence, and the accused was acquitted of identity theft and identity fraud: *R. v. Thangarajah*, 2024 ONSC 710, 2024 CarswellOnt 1236 (Ont. S.C.J.).
- **Forgery – Offence of Forgery – Proof of Offence – Complex Disclosure – Trial Date Exceeding *Jordan* Ceiling – “Defence Delay” – Accused Seeking to Raise Restitution – “Pandemic Backlog” Being Exceptional Circumstance – Stay of Proceedings Denied** – Although the accused was charged with fraud, forgery and credit card offences that constituted a complex case involving a large amount of disclosure, the delay in the trial date in excess of the *Jordan* ceiling was justified as there was a significant “defence delay” in allowing the accused to raise restitution monies and negotiate a resolution agreement, and a further delay due to the “pandemic backlog”. Where there was delay In *R. v. Andrew*, 2024 ONSC 607, 2024 CarswellOnt 903 (Ont. S.C.J.), the accused was charged with fraud, forgery, and credit card offences. The accused was an employee of a company where she was responsible for payroll, bookkeeping, and payments to suppliers. It was alleged that she used a company credit card for personal expenses such as airplane and concert tickets. It was also alleged that she used the company payroll system to make unauthorized payments to herself, and that she forged documents to cover up these fraudulent

payments. This was a relatively complex case that involved a large amount of disclosure and necessitated counsel, who would likely require a substantial retainer. The charges were laid on August 7, 2020 and the scheduled trial in this court would not be completed until March 8, 2024. There was a total delay of 43 months that exceeded the presumptive 30 month ceiling set out in *R. v. Jordan*, 2016 SCC 27, 335 C.C.C. (3d) 403 (S.C.C.). Although the dates secured for trial were three months past the *Jordan* date, there were no requests for earlier trial dates by either party, and no concerns about the delay until 18 months after the date was set. The issue in dispute was whether the pandemic backlog “exceptional circumstance” caused any delay, and, if so, whether it was sufficient to justify a delay in excess of the *Jordan* ceiling. The accused applied for a stay of proceedings based on unreasonable delay. His application was dismissed: *Sharp v. Autorité des marchés financiers*, 2023 CSC 29, 2023 SCC 29, 2023 CarswellQue 15791, 2023 CarswellQue 15792 (S.C.C.), affirming 2021 QCCA 1364, 2021 CarswellQue 14741, 90 Admin. L.R. (6th) 25 (C.A. Que.), affirming 2019 QCCS 94, 2019 CarswellQue 257 (C.S. Que.).

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