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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), Chapter 5 (Forgery), Chapter 6 (Securities Fraud and Market Manipulations), 13 (Possession of Property Obtained by Crime, and 14 (Fines, Forfeiture and Restitution).

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## Case Highlights

Recent case law introduced with this release includes the following:

- **Criminal Fraud—Offence of Fraud—Proof of Offence—Actus Reus—Accused Bookkeeper Transferring Money to Personal Account—Accused Claiming Compensation for Overtime Work—Employer Aware of Overtime Services—Accused Having Reasonable Expectation of Compensation Based on Meeting With Owner-Operator—Impugned Transfer Authorized**—Where the accused bookkeeper transferred money from his employer’s bank account to his personal account, allegedly without authorization, the accused was acquitted of fraud, when on an objective basis, the court determined the transfer was compensation for the accused’s overtime work that was authorized by the owner-operator of the employer. In this case, the accused was hired by the complainant company as a bookkeeper/financial manager in September of 2022. The accused was an employee of the company, not an independent contractor, and received a salary. The accused was alleged to have transferred the sum of \$5000 from the company’s bank account to his personal account on July 21, 2023, without authorization, permission, or entitlement from the company, with the intent to deprive the company of the said \$5000. The accused was also alleged to be in possession of the said \$5000 that was the foundation for the allegation of possession of the stolen property. The accused was charged with one count of fraud under \$5000, and one count of possession of stolen property under \$5000: *R. v. Dougan*, 2025 CarswellAlta 3085, 2025 ABCJ 225 (Alta. C.J.).
- **Securities Fraud and Market Manipulation—Alberta Securities Act—Sentencing—Accused Misleading Investors Through Offering Memoranda—Accused Diverting Investment Funds—Accused Convicted of Fraud and Making Misleading Statement Under Securities Act —Global Sentence of Four Years’ Imprisonment—Sentence Allocated Between Offences— Kienapple Principle Not Applying**—Where the accused mislead investors through the Offering Memoranda exemption under the Alberta Securities Act, RSA 2000, c S-4, as the investment funds were not used for their stated purpose, but were diverted for other unrelated and riskier projects, the accused was sentenced to a global sentence of four years imprisonment apportioned between the general fraud provisions, and the misleading statement provisions of the Act, with the *Kienapple* principle not applying. In this case, the accused was convicted of two offences under the Alberta Securities Act, RSA 2000, c S-4 (ASA). The accused was sentenced on one count of making misleading statements in Offering Memoranda, contrary to s. 92(4.1) of the Act, and one count of perpetrating a fraud relating to a security, contrary to s. 93(b) of the Act. The trial judge imposed a global penitentiary sentence of four years. The sentence was apportioned 39 months for breach of s. 93(1) (general fraud provision), and 9 months consecutive for making misleading statements in Offering Memoranda, contrary to s. 92(4.1) of the Act (reduced to 40 months on the globality principle). On this appeal, the accused acknowledges that the length of the sentence was not out of line with the authorities. He raised only one ground of appeal, namely that the misrepresentation conviction should be stayed leaving only the fraud

conviction in place for sentencing: *R v. Aitkens*, 2026 CarswellAlta 293, 2026 ABKB 95 (Alta. K.B.), affirming 2024 CarswellAlta 2120, 2024 ABCJ 169 (Alta. C.J.).