

Publisher's Note

2015 — Release 3

Previous release was 2015-2

From Your Library:

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 updates to Chapters 4 (The Prohibited Consequences), 7 (Defining Mens Rea), 8 (Historic Appellate Approaches to the Law of Fraud – *new title*), 9 (The Supreme Court Approach to the Law of Fraud – *new title*), 10 (Fraudulent Intent), and 11 (Recklessness, Wilful Blindness, and Mistake), and also features updates to the Sentencing Digests.

Commentary Highlights

Updates to the commentary include the following:

- **The Mens Rea — Fraudulent Intent — The Definition of the Mens Rea of Fraud** — New commentary focuses upon the “colour of right” defence, and centers around *R. v. Kingsbury*, 2012 BCCA 462, 2012 CarswellBC 3656 (B.C. C.A.). Underlying that appellate-level decision, the accused took a trailer belonging to another person, but claimed that he believed he had owned 50% of it, after having advanced monies to

CARSWELL®

Customer Relations

Toronto 1-416-609-3800

Elsewhere in Canada/U.S. 1-800-387-5164 Fax 1-416-298-5082

www.carswell.com E-mail www.carswell.com/email

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

the trailer's owner for the purchase of the trailer — while the colour of right defence led to dismissal of theft charges against the accused, both the trial-level and appellate courts agreed that the accused's intention to deprive the owner of the trailer rendered him guilty of fraud over \$5,000, for which he was found guilty.

Updated Sentencing Digests include the following additions:

- **Fraud not exceeding \$5,000** — After charges against his client had been dropped, the lawyer approached the client's sister to advise her that he was making an “under the table” deal with the police and thus needed \$1,000 from her, lest the client be imprisoned for one year and then deported. Considering the serious and intended breach of trust by the lawyer and the significance of \$1,000 to the sister, the judge sentenced the lawyer to six months' incarceration followed by two years' probation, as well as 175 hours of community service: *R. v. Munir*, 2015 ONCJ 67, 2015 CarswellOnt 2171 (Ont. C.J.).
- **Fraud over \$5,000** — The accused defrauded her employer of over \$9,000, by using its fuel card, credit card and accounts at other businesses for her personal purposes, while using her signing authority to award herself unauthorized “advances” and other abuses by virtue of her employment. At the time of the offence, the accused was in the process of ending an abusive marriage, and she served as the primary custodial parent of their young son. She had also taken out loans in order to repay her employer. The trial judge imposed a one-year conditional sentence that included 80 hours of community service, to be followed by probation for one year. On the Crown's appeal, the Court of Appeal found this sentence to be demonstrably unfit for the offence, which sentence was not likely to satisfy the objectives of denunciation and deterrence, and sentenced the accused to a one-year conditional sentence without credit for time already served by the accused to that point: *R. v. Hatfield*, 2015 ABCA 124, 2015 CarswellAlta 559 (Alta. C.A.).