

R. v. Vallières, 2022 SCC 10 – sentencing – fine in lieu of property forfeiture

Facts:

In 2011, Richard Vallières and Avik Caron planned to steal and sell large amounts of maple syrup on the black market. Caron's spouse owned a warehouse where the Fédération des producteurs acéricoles du Québec (the trade union responsible for the production, marketing, and selling of maple syrup in Québec) stored barrels of maple syrup. Caron and his accomplices transferred maple syrup into new barrels. They refilled the Fédération's barrels with water. Vallières bought the syrup from Caron, and resold it outside Québec without paying required duties to the Fédération. Vallières used the proceeds to pay the accomplices who had transported the syrup.

This scheme lasted for about a year and led to the largest stolen property investigation in the history of Québec's provincial police service. The investigation found that more than half of the barrels in the warehouse had been emptied. The stolen barrels contained nearly six million pounds of syrup, with a market value of over \$18 million. Vallières admitted earning \$10 million from reselling the syrup. Nearly \$1 million was personal profit.

At trial, Vallières was found guilty of theft, fraud, and trafficking in property obtained by crime. He was sentenced to 8 years in prison. He was also ordered to pay back the \$10 million. Roughly \$606,000 was to be paid back as restitution. Roughly \$9.4 million was to be paid as a fine under section 462.37(3) of the *Criminal Code*, since the stolen syrup could not be recovered.

Vallières appealed, saying that the trial judge had improperly used his discretion in ordering such a high fine. The Québec Court of Appeal found that a fine was appropriate. However, they said the trial judge had discretion to order the fine in any amount he found just. The Court of Appeal was concerned that this fine would create a situation of "double recovery", since some of Vallières' accomplices had already been convicted and ordered to pay fines. The court reduced the fine from \$10 million to \$1 million (the amount of Vallières' personal profits). The Crown appealed to the Supreme Court of Canada.

The Decision:

The Supreme Court of Canada reversed the Court of Appeal's decision and reinstated the original fine of \$10 million.

Under section 462.37 of the *Criminal Code*, any property obtained by an accused person while committing a criminal offence can be forfeited to the Crown once the accused has been convicted or discharged of the offence. Subsection (3) allows the court to order a fine instead of property forfeiture under certain circumstances (for example, if the property is outside of Canada, cannot be found, or has been destroyed).

Discussion Questions:

- 1) Do you think judges should have discretion to lower the amounts for these types of fines? Why or why not?
- 2) Can you think of other situations where it would be appropriate to order a fine instead of forfeiture?

Relevant Law:

The Criminal Code of Canada, section 462.37(3)

Resources:

You can read the entire case at:

<https://canlii.ca/t/jnflw>

You can find the *Criminal Code* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

The Court found that the language of section 462.37(3) was clear. The amount of this fine must be equal to the value of the property. Parliament intended these fines to be severe to discourage organized criminal activities. This type of fine is not meant to be a punishment in itself. It is meant to be instead of the return of stolen goods, in situations when the stolen goods cannot actually be returned.

Judges have some discretion with these fines. First, they can decide whether or not to order the fine at all. For example, if a convicted person did not actually benefit from the offence, or if it was an isolated incident, it may not be in the interests of justice to order a fine. Secondly, a judge has the discretion to determine what the value of the property is, based on evidence. However, if a fine is ordered, it must be ordered in an amount equal to the property's value. Because this was an ongoing scheme that lasted about a year, and because the evidence showed that Vallières had nearly \$10 million in his possession from the offences, the fine of nearly \$10 million was appropriate.

Crimes where there are co-accused people create the risk of double recovery. This is when multiple people involved in the same criminal offence are given high fines that total an amount higher than the actual value of the property. Judges should be careful to avoid double recovery, since this goes against the goal of the legislation. After all, property can only be forfeited once, and the fine is meant to be equivalent to forfeiture. The Court found that to avoid double recovery, judges have the discretion to split up the fine between co-accused, and the Crown should seek fines from offenders in amounts proportionate to the offenders' earnings from the offence. However, the burden is ultimately on the offender to request splitting the fine and to prove that it is appropriate. In this case, the Court found there was little risk of double recovery, since the total amount of the fines imposed on Vallières and his accomplices was still well below the \$18 million value of the stolen syrup.

Relevant Law:

The Criminal Code of Canada:

462.37(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
 - (b) has been transferred to a third party;
 - (c) is located outside Canada;
 - (d) has been substantially diminished in value or rendered worthless;
- or
- (e) has been commingled with other property that cannot be divided without difficulty.