

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

YULIK RAFILOVICH

Appellant
(Respondent)

- and -

HER MAJESTY THE QUEEN

Respondent
(Appellant)

- and -

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CANADIAN LIBERTIES ASSOCIATION,
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PART I: OVERVIEW AND STATEMENT OF FACTS

1. Section 462.34 of the *Criminal Code* provides the only mechanism by which counsel can lawfully receive payment for their services from proceeds of crime. While the likelihood or probability that the restrained or seized asset is the proceeds of crime is not a bar to an application to release funds to pay legal fees, the application court must balance the accused's needs against the possibility that the property will turn out to be the proceeds of crime. The ability to impose a fine in lieu of forfeiture in respect of that property – should it, in the end, turn out to be proceeds of crime – is essential to achieving that balance. Whether or not the offender has benefitted from the use of those funds is irrelevant in deciding whether to engage the limited discretion not to impose a fine in lieu of forfeiture, even when that use has been judicially authorized. What matters is that the offender, at some point in time, possessed or controlled the proceeds of his or her crime. Without the teeth of the fine in lieu, a s. 462.34 order gives disproportionate emphasis to the interests of the accused, ignores the fundamental principle that an offender should not profit from his or her crime, and, in many cases, will further harm victims of crime who would otherwise be compensated indirectly from payments made towards the fine in lieu of forfeiture.
2. The Attorney General for Ontario takes no position on the facts of this case.

PART II: POINTS IN ISSUE

3. The Attorney General for Ontario advances three points in this appeal:
 - a) The ability to order a fine in lieu of forfeiture is integral to achieving the balance required to satisfy a s. 462.34 order releasing seized funds for the payment of legal fees. That balance requires the application judge to weigh the applicant's need for legal assistance against the possibility that the property will be proven to be proceeds of crime.
 - b) The conditions precedent for a fine in lieu of forfeiture are satisfied at the point an offender is in possession or control of the proceeds of crime. What an offender subsequently chose to do with the proceeds of crime, and whether or not he

received an actual 'benefit', is of no consequence in the sentencing court's decision to impose a fine in lieu of forfeiture.

- c) The legislative priority given to victim compensation in Parts XII.2 and XXIII of the *Criminal Code* will be negatively impacted if the release of funds for payment of legal fees from proceeds of crime is not subject to a fine in lieu of forfeiture on conviction.

PART III: BRIEF OF ARGUMENT

A. THE ABILITY TO ORDER A FINE IN LIEU OF FORFEITURE IS INTEGRAL TO ACHIEVING THE BALANCE REQUIRED TO SATISFY A S. 462.34 ORDER

4. The legal fees exemption reflects Parliament's desire to preserve an accused person's constitutional right to a fair trial by securing access to counsel, or counsel of choice, when necessary. However, the use of potential proceeds of crime to fund an accused person's defence is inimical to the objectives of forfeiture which aim to deprive criminals of the proceeds of their crimes and to deter future criminal conduct. In applications for the release of these funds, judges must navigate this inherent tension between the goals of forfeiture and the accused's right to a fair trial. In *R. v. Wilson*, the Court of Appeal for Ontario spoke of the balancing act involved:¹

In the case of an application under s.462.34, the judge must balance the applicant's need for legal assistance against the possibility that property which will turn out to be the proceeds of crime will be used to benefit a person who may be shown to have acquired the property through the commission of a criminal offence.

5. The ability to order a fine in lieu of forfeiture in respect of these funds is central to striking this balance and providing comfort to courts as they order what may likely be proceeds of crime to pay for an accused person's legal expenses. In *R. v. Wilson*, the Court of Appeal for Ontario considered this to be integral to satisfying both the objectives of forfeiture and the constitutional rights of the accused:²

¹ *R. v. Wilson*, [1993] O.J. No. 2523 (Ont. C.A.) at para. 48.

² *R. v. Wilson*, *supra* at para. 49 [emphasis added].

If a person on whose behalf funds were released to pay reasonable legal expenses is found guilty of an enterprise crime, and if the other criteria for forfeiture are met, then the entirety of the seized property *including that which has been released for payment of legal fees*, will be subject to forfeiture under s. 462.37. The part of the property that has been transferred to the offender's lawyer for the payment of legal fees, would, however, no longer be available for forfeiture. *The sentencing judge could then turn to s. 462.37(3), and if appropriate, impose a fine on the offender in an amount equal to the fees paid to his or her lawyers. In this way the ultimate purpose of Part XII.2 would be served, while at the same time allowing the accused access to the seized property for the purposes of paying reasonable legal expenses.*

6. In *R. v. Ro*, for example, the court was moved to allow an application under s. 462.34(4) for funds to be released for the payment of legal fees *precisely because* the court believed those funds could become the subject of a fine in lieu of forfeiture:³

I note that the regime set up by the Parliament of Canada in the *Criminal Code* provides an even greater balance, accomplishing the deterrent aspect most certainly. If in fact funds that have been seized subject to a restraining order are used to pay legal fees, then those funds still may be subject to an order for forfeiture if the funds themselves are not available to be forfeited. In accordance with Section 462.37(4) the court has full authority to direct a fine be paid by the accused that is the equivalent of the funds that would have been forfeited but are not available for forfeiture. Failing payment of such fine, one presumes within a reasonable period of time, then the accused is subject to mandatory periods of incarceration of significant duration. In all candor those periods of incarceration would be viewed by any reasonable person as a very significant deterrent and a clear compensation, as [counsel for the applicant] would say, for the loss of the opportunity to directly deprive the accused person of the funds themselves.

7. As this Court stated in *R. v. Lavigne*, the discretion not to order a fine in lieu of forfeiture must be exercised in a manner “that is consistent with the spirit of the whole of the provisions in question”.⁴ This accords with the basic approach to statutory interpretation where this Court held, in *Rizzo & Rizzo Shoes Ltd.*, that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”.⁵ Standing alone, the legal fees exemption would seem to fly in the face of the objective of the very forfeiture provisions of which it is a part. It

³ *R. v. Ro*, [2006] O.J. No. 3347 (Sup Ct) at para. 22.

⁴ *R. v. Lavigne*, [2006 SCC 10](#) at para. 28.

⁵ *Rizzo & Rizzo Shoes Ltd., Re*, [\[1998\] 1 S.C.R. 27](#) at para. 21.

would present application judges with a stark choice in which one objective can only be satisfied at the expense of the other. This could have a chilling effect on the ability of applicants to secure these orders in the first place, as judges fall back on their discomfit with releasing potential proceeds of crime without any recourse for recovery. In *R. v. Alves*, for example, the court was concerned that if the money ordered released to pay for legal expenses is subsequently determined to have been proceeds of crime, “then it may also turn out to have been, in essence, judicially laundered for use as legal fees”.⁶ The persuasive weight of the applicant’s fair trial interests may also end up playing second fiddle to the state’s right of forfeiture because the application itself, often brought early in proceedings, does not actually contemplate and, therefore, will not necessarily determine the full extent of the applicant’s constitutional jeopardy should the judge refuse the request.

8. The constitutional mandate of the legal fees exemption does not insulate it from the broader objectives of the provisions of which it is a part. Part XII.2 offers, in the form of the fine in lieu of forfeiture, the balancing mechanism by which to achieve both objectives. Prohibiting resort to a fine in lieu of forfeiture in respect of proceeds of crime that have been used to pay for legal expenses will frustrate the objectives of forfeiture and embolden would-be criminals to commit property-related offences knowing that, if they are caught, they can use the proceeds to fund their own defence.

B. Possession or control of proceeds of crime is the benefit

9. The Attorney General for Ontario agrees with the respondent that the appellant received a benefit by having his legal fees paid with the proceeds of his criminal activity. However, the Attorney General for Ontario respectfully submits that whether or not this Court characterizes the payment of legal fees from proceeds of crime as a ‘benefit’ is of no consequence to a sentencing court deciding whether to impose a fine in lieu of forfeiture equal to the amount ordered released under s. 462.34. Rather, the sentencing court need only be concerned as to whether the offender possessed or controlled the proceeds of crime at some point in time, which is a condition precedent to a successful s. 462.34 application.

⁶ *R. v. Alves*, [2015 ONSC 4489](#) at para. 21.

10. Where the preconditions for forfeiture are satisfied, the discretion afforded to sentencing courts to *not* impose a fine in lieu of forfeiture is limited to circumstances where none of the objectives of Part XII.2 would be furthered or frustrated by the exercise of that discretion. The objectives are to deprive offenders of the proceeds of their crimes and to deter potential offenders and criminal organizations. Mindful of these objectives, sentencing courts have repeatedly held that when an offender has received or exerted control over proceeds of crime, crime has paid, the offender has benefited, and what the offender subsequently chose to do with the proceeds is irrelevant in deciding whether to engage the limited discretion not to impose a fine in lieu of forfeiture.⁷

11. The above cases, following this Court's finding in *Lavigne* that the mere fact that property has been used cannot justify exercising the discretion not to impose a fine in lieu of forfeiture, demonstrate that any consideration of 'benefit' must cease upon the sentencing court's finding that an offender possessed or controlled the proceeds of crime.⁸ It is at the point of possession or control that the offender has benefitted, and the objectives of Part XII.2 are engaged to ensure that crime does not pay. As such, any obligation on a sentencing court to consider the benefit that may or may not have accrued from what an offender subsequently chose to do with the proceeds of his or her crime would clearly frustrate the objectives of Part XII.2. Moreover, post-possession decisions made by offenders should not be subject to the court's moralistic assessment of the particular use of property which has already been found to be proceeds of crime.

C. Victim compensation

12. In many cases – especially financial crime cases prosecuted by the Attorney General for Ontario – property that is forfeited to the Crown under the *Criminal Code* provisions concerning proceeds of crime is earmarked for compensation to victims of the crime that gave rise to the

⁷ *R. v. A.S.*, [2010 ONCA 441](#) at paras. 12-15; *R. v. Toozhy (appeal by Siddiqi)*, [2015 ONCA 374](#) at para. 6; *R. v. Piccinini*, [2015 ONCA 446](#) at para. 19; *R. v. Dow*, [2014 NBCA 15](#) at paras. 36-37; *R. v. Dieckmann*, [2017 ONCA 575](#) at para. 100; *R. v. Way*, [2017 ONCA 754](#) at paras. 7-8; *R. v. Kazman*, [2018 ONSC 2332](#) at paras. 291-294, 311.

⁸ *R. v. Lavigne*, *supra* at paras. 28, 30-32.

proceeds. The Attorney General for Ontario submits that should this court accede to the appellant's position that the judicially authorized payment of legal fees from proceeds of crime should relieve an offender from an otherwise appropriate fine in lieu of forfeiture, the undesirable incidental impact will be the further harm to victims of crime who would otherwise be compensated indirectly from payments made towards fines in lieu of forfeiture.

13. It is well settled that the sentencing provisions in Part XXIII of the *Criminal Code* are concerned with the punishment of offenders for crimes committed while the forfeiture provisions in Part XII.2 are not concerned with punishment but, rather, with depriving the offender or criminal organization of the proceeds of their crime and deterring them from committing future crimes. While the distinction ensures that sentencing factors not compatible with the objectives of forfeiture are removed from considerations of forfeiture, the general sentencing provisions are applicable in forfeiture proceedings to the extent they are compatible with the specific provisions of Part XII.2.⁹

14. The provisions in Part XII.1 and XXIII of the *Criminal Code* suggest that the objective of sentencing that seeks to compensate victims of crime *is* compatible with the objective of forfeiture that seeks to deprive offenders of the proceeds of their crimes. For example, both speak to the priority of victim compensation over forfeiture:

Section 462.49(2) gives priority over the property of an offender to victims of crime:

The property of an offender may be used to satisfy the operation of a provision of this or any other Act of Parliament respecting the forfeiture of property only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting the restitution to or compensation of a person affected by the commission of offences.

Section 718(e) provides a specific sentencing objective in relation to victim compensation:

to provide reparations for harm done to victims or to the community

⁹ *R. v. Lavigne*, *supra* at paras. 6, 39, 52; *R. v. Angelis*, [2016 ONCA 675](#) at para. 42.

Section 740 gives priority to restitution over forfeiture:

Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to an offender, an order of restitution under section 738 or 739, and

- a) an order of forfeiture under this or any other Act of Parliament may be made in respect of property that is the same as property in respect of which the order of restitution may be made, or
- b) the court is considering ordering the offender to pay a fine and it appears to the court that the offender would not have the means or ability to comply with both the order of restitution and the order to pay the fine,

the court shall first make the order of restitution and shall then consider whether and to what extent an order of forfeiture or an order to pay a fine is appropriate in the circumstances.

15. The courts, at least in Ontario, appreciate that concurrent restitution and fine in lieu orders enhance the sentencing objective of victim reparation by giving teeth in the form of an order with real consequences, which may be the only hope that victims have to recover their losses. Sentencing judges, for example, routinely impose corresponding fine in lieu and restitution orders on the understanding that if payment is made towards one, it is credited towards the other.¹⁰¹¹

¹⁰ *R. v. Khatchatourov*, [2014 ONCA 464](#) at paras. 53-61; *R. v. Waxman*, [2011 ONSC 6207](#) at paras. 78-97; [2015 ONCA 256](#) at para. 30; *R. v. Dhanaswar*, [2016 ONCA 229](#) at para. 11; *R. v. Kazman*, *supra* at para. 568; *R. v. Angelis*, *supra* at paras. 61, 74-76.

¹¹ See paragraph 11 of Affidavit of Howard Leibovich sworn November 6, 2018 (Attorney General for Ontario's application to intervene): In Ontario, some 100 fines in lieu have been ordered in amounts totaling approximately \$70,800,000.00. There are concurrent restitution orders totaling over \$80,000,000.00, representing that in the majority of cases prosecuted by the Attorney General for Ontario where a fine in lieu is ordered there are identifiable victims and thus a significant interest in compensating victims.

16. While the 462.34 application judge must be satisfied that no one other than the applicant appears to be lawfully entitled to the subject funds, there is no certainty that the application will fail in every case where there are identifiable victims. Many victims may not have the ability to establish their lawful entitlement to the restrained or seized funds that are the subject of the s. 462.34 application. For instance, in *R. v. Granger*, Justice Fuerst of the Ontario Superior Court of Justice accepted a victim's entitlement to the restrained funds where the victim's counsel appeared on the application, made submissions, and relied on evidence demonstrating entitlement to possession. Justice Fuerst, however, declined to make any finding in relation to two other victims identified by the Crown but who did not appear and make submissions on the application.¹²

17. One can imagine other scenarios that may give the court concern about entitlement to the seized funds. For example, the case of a large scale fraud with many victims, such as an online investment or telemarketing fraud where there may be hundreds or thousands of victims with individual losses ranging from mere dollars to thousands of dollars. Victims could be located anywhere in the world, perhaps even none in Canada. In such a situation, it is reasonable to expect that victims would not be able to attend on a legal fees application due to location and expense, or that the police would still be identifying victims, or that only a handful of victims would be able to attend, accounting for a small portion of the seized monies. Similarly, even where a victim attends on the application, the victim may not be able to establish more than a tenuous link to the property in issue and thus not satisfy the court regarding entitlement, even though the victim has clearly suffered a financial loss.

18. Ultimately, in cases where there are identifiable victims, but it is not possible to demonstrate legal entitlement to possession or where it is not pursued, it is not beyond the realm of possibility that a court may well release monies for legal fees. If no fine in lieu of forfeiture is ordered upon conviction for the proceeds of crime released to pay the offender's legal fees, then not only will the offender unjustly benefit from crime but the refusal to impose the fine in

¹² *R. v. Granger*, [2012 ONSC 6169](#) at paras. 45-49.

lieu will cause irreparable prejudice to victims who will have little, if any, chance of recovering their losses.

PART IV: SUBMISSIONS AS TO COSTS

19. The Attorney General for Ontario asks that no costs order be made against it as an intervener.

PART V: ORDER SOUGHT

20. The Attorney General for Ontario respectfully requests that the Court take the above submissions into account in deciding whether discretion to refuse to impose a fine in lieu of forfeiture because of the judicially authorized payment of legal fees from proceeds of crime is consistent with the spirit of the whole of Part XII.2 of the *Criminal Code*.

ALL OF WHICH is respectfully submitted by:

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DATED this 2nd day of January, 2019.

PART VI: TABLE OF AUTHORITIES

Cases	Para. No(s):
<i>R. v. A.S.</i> , 2010 ONCA 441	10
<i>R. v. Alves</i> , 2015 ONSC 4489	6
<i>R. v. Angelis</i> , 2016 ONCA 675	13, 15
<i>R. v. Dhanaswar</i> , 2016 ONCA 229	11, 15
<i>R. v. Dieckmann</i> , 2017 ONCA 575	10
<i>R. v. Dow</i> , 2014 NBCA 15	10
<i>R. v. Granger</i> , 2012 ONSC 6169	16
<i>R. v. Kazman</i> , 2018 ONSC 2332	10, 15
<i>R. v. Khatchatourov</i> , 2014 ONCA 464	15
<i>R. v. Lavigne</i> , 2006 SCC 10	7, 11, 13
<i>R. v. Piccinini</i> , 2015 ONCA 446	10
<i>Rizzo & Rizzo Shoes Ltd., Re.</i> , [1998] 1 S.C.R. 27	6
<i>R. v. Ro</i> , [2006] O.J. No. 3347 (Sup. Ct.)	6
<i>R. v. Toozhy (appeal by Siddiqi)</i> , 2015 ONCA 374	10
<i>R. v. Waxman</i> , 2011 ONSC 6207 ; 2015 ONCA 256	15
<i>R. v. Way</i> , 2017 ONCA 754	10
<i>R. v. Wilson</i> , [1993] O.J. No. 2523 (Ont. C.A.)	4, 5

PART VII: STATUTORY PROVISIONS

Order of restoration of property or revocation or variation of order [paras. 1, 3, 6, 9, 16]

462.34(4) On an application made to a judge under paragraph (1)(a) in respect of any property and after hearing the applicant and the Attorney General and any other person to whom notice was given pursuant to paragraph (2)(b), the judge may order that the property or a part thereof be returned to the applicant or, in the case of a restraint order made under subsection 462.33(3), revoke the order, vary the order to exclude the property or any interest in the property or part thereof from the application of the order or make the order subject to such reasonable conditions as the judge thinks fit,

(a) if the applicant enters into a recognizance before the judge, with or without sureties, in such amount and with such conditions, if any, as the judge directs and, where the judge considers it appropriate, deposits with the judge such sum of money or other valuable security as the judge directs;

(b) if the conditions referred to in subsection (6) are satisfied; or

(c) for the purpose of

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the judge, has a valid interest in the property and of the dependants of that person,

(ii) meeting the reasonable business and legal expenses of a person referred to in subparagraph (i), or

(iii) permitting the use of the property in order to enter into a recognizance under Part XVI,

if the judge is satisfied that the applicant has no other assets or means available for the purposes set out in this paragraph and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property.

Restitution ou modification de l'ordonnance de blocage

462.34(4) Le juge saisi d'une demande d'ordonnance présentée en vertu du paragraphe (1) peut, après avoir entendu le demandeur, le procureur général et, éventuellement, les personnes à qui le préavis mentionné au paragraphe (2) a été remis, ordonner que les biens soient restitués en tout ou en partie au demandeur, annuler ou modifier l'ordonnance de blocage rendue en vertu du [paragraphe 462.33\(3\)](#) de façon à soustraire, en totalité ou en partie, ces biens ou un droit sur ceux-ci à son application, selon le cas, ou rendre l'ordonnance de blocage sujette aux conditions qu'il estime indiquées dans les cas suivants :

a) le demandeur contracte devant le juge un engagement, avec ou sans caution, d'un montant que celui-ci fixe ou estime indiqué et, si le juge l'estime indiqué, dépose auprès du juge la somme d'argent ou l'autre valeur que celui-ci fixe;

b) les conditions mentionnées au paragraphe (6) sont remplies;

c) afin de permettre :

(i) au détenteur des biens bloqués ou saisis — ou à toute autre personne qui, de l'avis du juge, a un droit valable sur ces biens — de prélever, sur les biens ou certains de ceux-ci, les sommes raisonnables pour ses dépenses courantes et celles des personnes à sa charge,

(ii) à l'une des personnes mentionnées au sous-alinéa (i) de faire face à ses dépenses commerciales courantes et de payer ses frais juridiques dans la mesure où ces dépenses et frais sont raisonnables,

(iii) à une personne d'utiliser ces biens pour contracter un engagement sous le régime de la partie XVI,

lorsque le juge est convaincu que l'auteur de la demande ne possède pas d'autres biens ou moyens pour ce faire et que nulle autre personne ne semble être le propriétaire légitime de ces biens ou avoir droit à leur possession légitime.

Fine instead of forfeiture [paras. 1, 5]

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.

Amende

462.37(3) Le tribunal qui est convaincu qu'une ordonnance de confiscation devrait être rendue à l'égard d'un bien — d'une partie d'un bien ou d'un droit sur celui-ci — d'un contrevenant peut, en remplacement de l'ordonnance, infliger au contrevenant une amende égale à la valeur du bien s'il est convaincu que le bien ne peut pas faire l'objet d'une telle ordonnance et notamment dans les cas suivants :

- a) impossibilité, malgré des efforts en ce sens, de retrouver le bien;
- b) remise à un tiers;
- c) situation du bien à l'extérieur du Canada;
- d) diminution importante de valeur;
- e) fusion avec un autre bien qu'il est par ailleurs difficile de diviser.

Specific forfeiture provisions unaffected by this Part [para. 14]

462.49 (1) This Part does not affect the operation of any other provision of this or any other Act of Parliament respecting the forfeiture of property.

Priority for restitution to victims of crime

(2) The property of an offender may be used to satisfy the operation of a provision of this or any other Act of Parliament respecting the forfeiture of property only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting restitution to or compensation of persons affected by the commission of offences.

Maintien des dispositions spécifiques

462.49 (1) La présente partie ne porte pas atteinte aux autres dispositions de la présente loi ou de toute autre loi fédérale qui visent la confiscation de biens.

Priorité aux victimes

(2) Les biens d'un contrevenant ne peuvent être affectés à l'exécution d'une disposition de la présente loi ou d'une autre loi fédérale en matière de confiscation que dans la mesure où ils ne sont pas requis dans le cadre d'une autre disposition de la présente loi ou d'une autre loi fédérale en matière de restitution aux victimes d'infractions criminelles ou de leur dédommagement.

Purpose [para. 14]

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

Objectif

718 Le prononcé des peines a pour objectif essentiel de protéger la société et de contribuer, parallèlement à d'autres initiatives de prévention du crime, au respect de la loi et au maintien d'une société juste, paisible et sûre par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants :

- a) dénoncer le comportement illégal et le tort causé par celui-ci aux victimes ou à la collectivité;
- b) dissuader les délinquants, et quiconque, de commettre des infractions;
- c) isoler, au besoin, les délinquants du reste de la société;
- d) favoriser la réinsertion sociale des délinquants;
- e) assurer la réparation des torts causés aux victimes ou à la collectivité;
- f) susciter la conscience de leurs responsabilités chez les délinquants, notamment par la reconnaissance du tort qu'ils ont causé aux victimes ou à la collectivité.

Priority to restitution [para. 14]

740 Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to an offender, an order of restitution under section 738 or 739, and

- **(a)** an order of forfeiture under this or any other Act of Parliament may be made in respect of property that is the same as property in respect of which the order of restitution may be made, or
- **(b)** the court is considering ordering the offender to pay a fine and it appears to the court that the offender would not have the means or ability to comply with both the order of restitution and the order to pay the fine,

the court shall first make the order of restitution and shall then consider whether and to what extent an order of forfeiture or an order to pay a fine is appropriate in the circumstances.

Priorité au dédommagement

740 Le tribunal estimant que les circonstances justifient l'ordonnance de dédommagement prévue aux articles 738 ou 739 à l'égard d'un délinquant rend d'abord cette ordonnance et étudie ensuite la possibilité, compte tenu des circonstances :

- **a)** soit de rendre une ordonnance de confiscation prévue par la présente loi ou une autre loi fédérale à l'égard des biens visés par l'ordonnance de dédommagement;
- **b)** soit d'infliger une amende au délinquant s'il estime que celui-ci a les moyens, à la fois, de se conformer à l'ordonnance de dédommagement et de payer l'amende.

TAB A: *R. v. Ro*, [2006] O.J. No. 3347 (Sup. Ct.)