

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Kelly*, 2018 NSCA 24

**Date:** 20180314

**Docket:** CAC 465709

**Registry:** Halifax

**Between:**

Rhonda Kelly

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** January 22, 2018, in Halifax, Nova Scotia

**Subject:** Criminal law: sentencing; stand-alone restitution orders

**Summary:** The appellant was the executive director of a community development organization (CRDA). She submitted forged documents, on eight occasions over three years, to the provincial Department of Economic and Rural Development and Tourism (ERDT). ERDT acted on the documents as if they were genuine and disbursed monies to the CRDA.

CRDA's accounting system made it difficult to know precisely where the money was spent, but none of it went to the personal benefit of the appellant. CRDA spent the money on either operations or on community projects.

ERDT declined to file a victim impact statement. Nonetheless, the Crown asked the trial judge to impose a stand-alone restitution order in the amount of \$97,000. The defence submitted many character references lauding the appellant's work on behalf of CRDA in pursuing and completing community projects, some of which were the

subject of the forged documentation. The appellant was unemployed and had just recently started a B&B business. Financial information demonstrated her inability to pay a stand-alone restitution order. Nonetheless, the trial judge imposed such an order for \$97,000, along with a 12-month conditional sentence order, plus probation.

**Issues:** Did the trial judge err in principle in imposing the stand-alone restitution order?

**Result:** Leave to appeal is granted and the appeal allowed. A restitution order under s. 738 of the *Criminal Code* is only available where property has been lost as a result of the commission of the offence. There was no evidence that the Province lost money by the commission of the offence of uttering forged documents. Furthermore, the trial judge dismissed the appellant's inability to pay such an order on the basis that paramount consideration could be given to the victim of the fraud. This also reflected error. Diminished consideration of the offender's seeming inability to pay is legitimate where the offence involved breach of trust or where monies obtained have not been accounted for. Neither principle applied. The effect of the order would be to have the appellant pay out of her own pocket, over her lifetime, for projects and initiatives that had benefitted the community.

*This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.*