

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
LESLIE WILLIAM MacDONALD (Appellant)	- and -	HER MAJESTY THE QUEEN (Respondent)
STEWART HILL MacPHERSON (Appellant)	- and -	HER MAJESTY THE QUEEN (Respondent)
CAC 164689 CAC 164690	Halifax, N.S.	CROMWELL, J.A.

[Cite as: **R. v. MacDonald, 2001 NSCA 26**]

APPEAL HEARD: January 26th, 2001

JUDGMENT DELIVERED: February 7th, 2001

SUBJECT: **Criminal Law - Sentencing - Restitution Order**

SUMMARY: The appellants pleaded guilty to theft over \$5,000.00. Over a three year period, they had received additional money on their pay cheques for overtime not worked and had been told by the paymaster not to worry about the irregularity and to give him one-half of the money. Crown and defence advanced a joint sentencing recommendation for two years probation and restitution of one-half of the amount of the fraud. The recommendation with respect to restitution was based on the fact that the appellants had only retained one-half of the total amount of the over payment because they had been required to give the other half to the paymaster. The joint recommendation was the culmination of a process of plea negotiation. The sentencing judge accepted the joint recommendation for probation but ordered restitution of the full amount. The appellants sought leave to appeal that aspect of his order.

RESULT: Appeal allowed. The Crown conceded that the appeal should be allowed, being unwilling to make submissions on appeal which might be interpreted as a repudiation of an agreement which resulted from a process of plea negotiation. The Court accepted the Crown's concession noting that while the agreement reached between counsel was not binding on the judge, the joint recommendation made to him was a fit sentence and in the circumstances there was no sound reason for departing from it.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.</p>
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