

November 22, 2006

## CIVIL ASSET FORFEITURE

The Remedies for Organized Crime and Other Unlawful Activities Act (Civil Remedies Act) enables the attorney general to ask the court for an order forfeiting the proceeds or instruments of unlawful activity to the Crown. A proceed is property acquired as a result of unlawful activity. An instrument is property that is likely to be used to engage in unlawful activity. The law permits a court, at the request of the attorney general, to freeze, seize and forfeit to the Crown assets that are determined to be the proceeds or instruments of unlawful activity.

Under the legislation, the court can grant an interim order to freeze assets pending the outcome of the forfeiture proceeding. Government lawyers go to court, and if they can prove that the assets in question are the proceeds or instruments of unlawful activity, the court can issue orders forfeiting the assets to the Crown. The act enables victims of the unlawful activity that leads to forfeiture to submit a claim for compensation against the forfeited proceeds.

In addition to forfeiture provisions, the act allows the court to grant an order for damages or any order necessary to prevent or reduce the risk of injury to the public, where the court finds a conspiracy to engage in unlawful activity that has or likely will cause injury to the public.

Civil asset forfeiture focuses solely on the connection between property and unlawful activity, and is not dependant on any criminal charges or convictions. The standard of proof required for civil forfeiture is the same as it is in all civil suits — a balance of probabilities. The Civil Remedies Act is civil legislation that deals with property either obtained as a result of unlawful activity or that is an instrument of unlawful activity. Unlawful activity is not limited to activities covered by the Criminal Code. For example, it could include contraventions of environmental or commercial laws.

The process for civil asset forfeiture under the Civil Remedies Act begins when a designated institution, such as a police service or government ministry, submits a case to the reviewing authority, an independent Crown counsel in the Ministry of the Attorney General. That counsel decides whether statutory criteria in the Civil Remedies Act have been met. Once that is confirmed, the information is forwarded to the ministry's Civil Remedies for Illicit Activities (CRIA) Office, which is responsible for enforcing the act. Forfeited assets are normally liquidated and deposited into a special purpose account.

The legislation enables direct victims of the unlawful activity, the Crown, municipal corporations and prescribed public bodies to submit a claim for compensation or cost recovery against the forfeited assets. Remaining funds may be disbursed for grants to assist victims or prevent victimization.

Ontario's Civil Remedies for Illicit Activities office is recognized nationally and internationally for its precedent-setting work. CRIA has successfully argued and forfeited assets on 58 cases to date.

### **13 Beaconsfield Drive, Hamilton and Assets**

The property at 13 Beaconsfield Drive is in a residential part of Hamilton. Evidence seized by the police when they executed a search warrant on September 14, 2006, suggested that the property was used for the possession, sale and use of crack cocaine. The temporarily frozen assets — cash, cheques and one gold ring — were found during searches of vehicles associated with the property stopped by police between August and October 2006. Cheques and bundled cash, totalling \$19,377.69 (cash — \$11,558.85; cheques — \$7,818.84) have been temporarily frozen as proceeds and instruments of unlawful activity.

The court has granted the Crown temporary control of the building. The attorney general intends to seek the extension of the preservation order on the property, then bring proceedings to seek forfeiture under the Civil Remedies Act. These allegations must still be proven in court.

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