



Civil Forfeiture Office
Ministry of Public Safety
and Solicitor General



Civil Asset Forfeiture Overview

CGA BC
Victoria, BC

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Agenda

- What is Civil Forfeiture?
- What are the key features of a civil forfeiture act?
- How does a civil forfeiture program work?
- Outcomes
- Questions/Discussion



What is Civil Forfeiture?

- Creation of a civil cause of action brought against illicitly acquired property.
- Based upon the civil law concepts dealing with unjust enrichment, property rights and compensation.
- Allows government, using civil court process, to seek the forfeiture of proceeds of unlawful activity.
- Completely separate from criminal law proceeds of crime provisions (Criminal Code).



Public Policy Goals

- Suppress crime by removing the working capital and tools of criminal enterprises.
- Attack the economic incentive to engage in unlawful activity.
- Allow for the recovery of the proceeds of unlawful activity.
- Disrupt organized crime.



Criminal Law vs. Civil Law

Criminal Law Elements:

- Intent is to denounce, stigmatize and punish.
- Offenders are punished for morally culpable acts
 - Intent (*mens rea*) is essential
- Deter commission of further offences
- High level of procedural protections
 - Proof beyond a reasonable doubt



Criminal Law vs. Civil Law

Civil Law Elements:

- Intent is remedial.
- Purpose is to restore the position of an injured party and/or compensate for injury inflicted, or determine property rights.
- Intent (*mens rea*) is not a central issue.
- Lower level of procedural protections.
 - Proof is on the balance of probabilities



Criminal Forfeiture vs. Civil Forfeiture

Criminal Forfeiture:

- Conviction based.
- Aimed at people.
- Part of the sentencing process.
- Can involve incarceration.
- Criminal procedure applies.
- Legal fees may be paid out of the seized proceeds.
- Charter applies.



Criminal Forfeiture vs. Civil Forfeiture

Civil Forfeiture:

- Aimed at property (*in rem*).
- Charges or convictions not required.
- No offences – no one is summonsed to court.
- No finding of guilt.
- No possibility of imprisonment or fines.
- Civil procedure applies.
- No access to property to pay legal fees (in BC)
- Charter does not necessarily apply.



Criminal Forfeiture vs. Civil Forfeiture

Criminal Forfeiture

Targets Individual
Follows conviction
Criminal process
Proof BRD
Charter applies
Formula for sharing \$

Civil Forfeiture

Targets Property (*in rem*)
No conviction/chrg's req'd
Civil process
Balance of probabilities
Charter concepts may apply
Funds go to province



Why Provincial Legislation?

- Powers are divided between the federal government and provinces.
- "Criminal Law" is exclusively federal jurisdiction.
- "Property and Civil Rights" are exclusive provincial jurisdiction.
- Civil forfeiture laws focus on property ownership rights – making these laws a provincial matter.



Civil Forfeiture Act (BC)

- Sets out the foundation for civil forfeiture actions
- Four critical definitions:
 - Property
 - Unlawful Activity
 - Proceeds
 - Instruments



Civil Forfeiture Act (BC)

“Property” – things that may be forfeited:

- Real property or tangible or intangible personal property.
(cash, bank accounts)
- Applies only to property or an interest in property located in British Columbia.



Civil Forfeiture Act (BC)

“Unlawful Activity” – conduct that may attract forfeiture:

- A federal or provincial offence at the time it took place; or
- an offence in the jurisdiction where it occurred outside of BC that would also have been an offence under federal or provincial legislation had it occurred here.
- Does not require charges or a conviction.
- Can apply where there has been an acquittal.



Civil Forfeiture Act (BC)

Forfeiture Orders:

- Act sets out that the “director” may apply for an order of forfeiture.
- All actions start in the Supreme Court of BC.
- Registered and beneficial owners must be named as parties.
- Notice must be served on holders of secured interests (banks).
- If there is a finding of proceeds or instrumentality the court MUST order forfeiture.



Civil Forfeiture Act (BC)

Exceptions to Forfeiture:

- a court may refuse to order forfeiture if its not in the interests of justice;
- a court may order partial forfeiture or otherwise limit the application of the order; and,
- with instruments, the court must protect the interests of “uninvolved interest holders”.



Civil Forfeiture Act (BC)

Interim Preservation Orders

- Property can be restrained/frozen pending trial.
- Notices may be filed on title and property registries.
- Receiver-managers may be appointed to manage property where required.
- Foreclosure and other civil proceedings against property can occur with the consent of the court.



Civil Forfeiture Act (BC)

Disposition of Forfeited Property

- All assets must be converted to cash.
- The Act creates a special account out of which the director may make payments for:
 - compensation of eligible victims
 - crime prevention activities
 - crime remediation activities
 - administration of the Act



Civil Forfeiture Act (BC)

Limitation Period

- The time limit for commencing an action is 10 years from the date the unlawful activity occurred.
- The Act applies to activities that took place before, on, or after the Act was proclaimed.



Civil Forfeiture Act (BC)

“Uninvolved Interest Holder” means:

- those who have an interest in property subject to forfeiture;
and,
 - have not directly or indirectly engaged in the unlawful activity.
- !! Knowingly allowing property to be used for an unlawful activity is defined as indirect involvement in that activity.



Program Operation

Civil Forfeiture:

- Is not a substitute for criminal forfeiture laws.
- Should be viewed as another tool or option.
- Is not suitable in all cases.



Program Operation

File Referrals – General:

- CFO has no independent investigative powers.
- The Act grants no investigative powers to police.
- Investigative work must be completed by referring agency.
- File referrals occur using information sharing agreements or protocols between the enforcement agency and the CFO.
- File briefing with CFO.
- “Go” – “No Go” decision.
- Information and records transfer.



Program Operation

File Referrals – Privacy Considerations:

- RCMP
 - Information sharing agreement in place between the RCMP and the government of BC.
 - The agreement is made under authority of federal and provincial privacy laws.



Program Operation

File Referrals – Privacy Considerations:

- Municipal Police
 - Information sharing agreement in place between all BC municipal police departments.
 - The agreements are made under authority of provincial privacy laws.



Outcomes

- 206 file referrals involving more than \$20M in assets.
- ~ \$7M in assets restrained under court order.
- 59 cases concluded (without trial).
- \$5.6M forfeited.
- \$500,000 returned to victims.
- \$725,000 in crime prevention/remediation grants.



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Questions?