

## Publisher's Note

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<b>PROCEEDS OF CRIME AND MONEY LAUNDERING</b> <b>Peter M. German</b> <b>Release No. 2, May 2022</b>
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### Publisher's Special Release Note 2021

The pages in this work were reissued in Release 2021-3, July 2021, and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This practical guide comprehensively and clearly describes the law and legislative framework relating to the forfeiture of the proceeds of crime. Money laundering, terrorist financing, special search warrants, restraint orders, forfeitures after conviction and without conviction, tracing, the review and expiry of warrants and orders, the use of income tax information, the requirement to keep records, and international co-operation are among the important topics addressed.

### **What's New in this Release**

This release features the eighth Annual Survey of Developments in Proceeds of Crime, Money Laundering and Civil Forfeiture, a review of developments in Canada's law respecting proceeds of crime, money laundering, and civil forfeiture which overviews statutory changes and provides a representative sample of cases decided in courts across Canada during 2021.

### **Highlights**

- **Annual Survey of Developments in Proceeds of Crime, Money Laundering and Civil Forfeiture, 2021 — Introduction** — There are typically few statutory amendments to Part XII.2 of the *Criminal Code*, as most provisions have already been interpreted and appear to fulfill the purpose for which they were created by Parliament. However, what began in 1989 as a relatively narrow field of law continues to expand exponentially with money laundering and provincial civil forfeiture laws. During the past year, the Commission of Inquiry into Money Laundering in British Columbia (the Cullen Commission) continued its work, entering upon a wide-ranging exploration of the issue in various segments of society, including a retrospective analysis of money laundering in British Columbia's casino industry, and an attempt to quantify money laundering. Its work follows upon various reports into the matter. The Commission's Interim Report was issued in November 2020, with a final report expected in mid-2022.
- **Annual Survey of Developments in Proceeds of Crime, Money Laundering and Civil Forfeiture, 2021 — Money Laundering** — Despite the three stages of money laundering being widely accepted and fundamental to an understanding of this area of law, it is doubtful that a court will take judicial notice of them, thereby necessitating expert evidence. The applicant contested a finding by the Minister's delegate that he was inadmissible to Canada for engaging in money laundering. The CBSA inadmissibility report provided "red flags" of money laundering, including transferring large sums of money, and purchasing real estate, allegedly as part of the integration stage of money laundering. The Federal Court could not discern from the evidence "how transferring money or purchasing a home constitute integration". This contributed to the court finding the inadmissibility decision to be unreasonable: *Zhang v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 746, 2021 CarswellNat 5432, 2021 CarswellNat 2743.

- **Annual Survey of Developments in Proceeds of Crime, Money Laundering and Civil Forfeiture, 2021 — Proceeds of Crime — Forfeiture — Fine in Lieu — Charter** — By imposing maximum and minimum periods in default, the question becomes, do the mandatory minimum sentences in default violate the *Charter of Rights and Freedoms*, specifically section 7 (fundamental justice) and section 12 (cruel and unusual punishment)? The Ontario Court of Appeal considered an appeal involving this issue. The trial court dismissed the application, finding that Parliament’s intention was not to punish but to ensure that crime does not pay, by encouraging the disgorgement of illegal gains: *R. v. Chung*, 2021 ONCA 188, 2021 CarswellOnt 4434, 402 C.C.C. (3d) 145, 484 C.R.R. (2d) 182.
- **Annual Survey of Developments in Proceeds of Crime, Money Laundering and Civil Forfeiture, 2021 — Civil Forfeiture — Alberta** — Paragraph 19.93(1)(a) places an onus on the Minister to establish that restrained property is an instrument of illegal activity. Paragraph 19.93(1)(b) places an onus on the respondent to establish an interest in the property, as well as that the respondent did not participate in, know, or be expected to know that the property was acquired by illegal means, or was used to carry out an illegal act. The standard of proof for both the Minister and the respondent is a balance of probabilities, which the Alberta Court of Queen’s Bench described as “a common-sense view of the situation”. The Director must demonstrate that it is “more likely than not” that the property was an instrument of illegal activity. The documentary evidence “is viewed through the lens of what is sufficiently clear, convincing and cogent to satisfy the balance of probabilities.” Where evidence is “after-the-fact and self-serving” it must be viewed with caution. The fact that no criminal prosecution was brought against the respondent is of no consequence. In the same case, involving an application for the forfeiture of a vehicle, the Alberta Court of Queen’s Bench noted that a vehicle’s registration creates a rebuttable presumption of ownership: *Alberta (Justice and Solicitor General) v. Berezovich*, 2021 ABQB 585, 2021 CarswellAlta 1774.

## ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
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