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CIVIL ASSET FORFEITURE IN CANADA Jeffrey Simser Release No. 2022-1, March 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in November 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 November 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 may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

- The Cullen Commission's hearings in British Columbia are complete and the Attorney General has given an extension to May 2022 for the delivery of their report. There are valuable resources on the Commission's website (www.cullencommission.ca). For those interested, the site archives my expert witness testimony and a paper on civil forfeiture (December 14, 2020) as well as a co-authored paper on money laundering (April 9, 2021). Sadly, one of my co-authors, Professor Cockfield, passed away suddenly in January 2022.
- The Commission may choose to comment on a failed case in Ontario (discussed at 1.11 and 8.29). Despite the 112,998 documents filed by the Attorney General, nearly \$4 million in frozen assets were returned to the respondents. As powerful as an *in rem* process is, practitioners take cases as they find them and need to make strategic choices and offer the court knowledgeable advocacy. In this instance, the court rejected the civil forfeiture application in almost every respect, at one point referring to the Attorney General's "baseless and repugnant argument". There was clear money laundering in the transactions; the court was not willing to visit the consequences of that activity on the respondents, who had legitimate sources of funds and who claimed to be unaware of the source of the tainted funds. A portion of the money laundering was accomplished through an informal value transfer system that the court called a Hawala. Payments made into Chinese bank accounts were offset by corresponding payments into Canadian accounts. Some of the Canadian funds came from numbered companies in Alberta and British Columbia; electronic fund transfers had their provenance in illegal marihuana sales. Another tranche was laundered through a variant on the black-market peso exchange or BMPE (although this did not appear to be argued before the court). BMPE was used by Columbian cartels. An American purchaser of cocaine would buy goods in the United States (everything from consumer goods through to helicopters) and export them to Columbia to settle their account with the cartel. In the Ontario case, a Canadian grocery chain paid money to the respondents for groceries produced in China; the respondents made offsetting bank account deposits in China to pay the mainland wholesalers and manufacturers. Money laundering is best understood as a process to move value. The court was caught up on a process about "money" (observing, unhelpfully, that the cash never left China). Finally, the Attorney General did not appear to bring cases helpful cases from Australia on cuckoo smurfing to the attention of the court.

- The other unsuccessful Ontario case reported in this update involved the return of most the cash seized by Toronto's Guns and Gangs unit to the respondent (discussed at 8:39). The respondent stated that she had borrowed \$15,000 in cash from a friend and then secured it in her boyfriend's safe. The court thought that while this was foolish, it was not criminal. The money was returned.
- Finally, there is a cash seizure case out of Saskatchewan with a small but interesting wrinkle (discussed at 6.53 and 6.55). A traffic stop was instigated by an R.C.M.P. officer. He could smell vegetative marihuana in the vehicle and used a provincial statute, the Cannabis Control Act, to search the vehicle. The respondent's Charter claims failed and forfeiture was ordered.

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
- As with the print product, the front matter is in a different order than previously displayed
- 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
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

