

Publisher's Note

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Proceeds of Crime and Money Laundering

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 Update

This release features updates to case law and commentary in Chapter 16 (Money Laundering Legislation), Chapter 19 (Lawyers), and Chapter 21 (Civil Forfeiture). This release also updates legislation in Appendix D, Forfeiture of Offence-Related Property in the *Criminal Code*; Appendix E, Terrorist Financing and Freezing, Seizure, Restraint and Forfeiture of Terrorist Group Property in the *Criminal Code*; Appendix F, Regulations Establishing a List of Entities; Appendix K, Seized Property Management Act; Appendix O.2, Special Economic Measures Act; and Appendix Z.3, Regulations Implementing the United Nations Resolutions and Imposing Special Economic Measures on Libya.

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Legislation Updates Highlights

Updates to Appendix K, *Seized Property Management Act*, S.C. 1993, c. 37, include amendments by the federal *Cannabis Act*, S.C. 2018, c. 16, ss. 173–181, 191.

Appendix Z.3, *Regulations Implementing the United Nations Resolutions and Imposing Special Economic Measures on Libya*, is amended by SOR/2018-101: “The amendments to the *Regulations Implementing the United Nations Resolutions on Libya* implement the decisions of UNSC Resolutions 2146 (2014), 2174 (2014) and 2362 (2017) not already incorporated in Canadian domestic legislation.” REGULATORY IMPACT ANALYSIS STATEMENT, SOR/2018-101

Commentary and Case Law Highlights

Money Laundering Legislation — *Proceeds of Crime (Money Laundering) and Terrorist Financing Act — Reporting and Other Requirements* — A determination of what constitutes reasonable grounds to suspect will inevitably default to what is reasonable in the normal business practice of a particular industry. An example is found in *Bank of Montreal v. Asia Pacific International Inc.*, in which gold was purchased from the defendant currency dealer by an individual who had fraudulently obtained the purchase monies from the plaintiff bank. The Court noted that “the issue is not whether the surrounding circumstances were suspicious, but whether API had reasonable grounds to suspect that the gold purchase related to the commission of a money laundering offence.” This required “compelling or credible information that there was an illicit source of funds” and not simply process irregularities: *Bank of Montreal v. Asia Pacific International Inc.*, 2018 ONSC 4215, 2018 CarswellOnt 12043 (S.C.J.).

Civil Forfeiture — British Columbia — Application for forfeiture order — In *British Columbia (Director of Civil Forfeiture) v. 552888 BC Ltd.*, two defendants applied for an order that the audio recording of reasons given following a case planning conference be made available for transcription and publication. The conference had resulted in the presiding justice ordering the bifurcation of the action. It was argued that the release should be ordered “in part because, a civil forfeiture action is fraught with risk for defendants and the reasons for determining that some issue or issues ought to be tried before others has precedential value for other parties engaged in the same type of difficult proceeding.” Justice Affleck refused to make the order, noting that the case planning process was intended to be informal in nature and decisions emanating from it are not to be equated with reasons for judgment: *British Columbia (Director of Civil Forfeiture) v. 552888 BC Ltd.*, 2018 BCSC 1689, 2018 CarswellBC 2590.