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CIVIL ASSET FORFEITURE IN CANADA

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What's New in this Update:

- In December 2018, a small but important amendment to Ontario's *Civil Remedies Act* was passed to resolve uncertainty about the ability to settle and resolve civil forfeiture cases (see 8:20.120).
- The Ontario Court of Appeal has upheld the forfeiture of an outlaw motorcycle gang clubhouse (HAMC - Niagara): *Ontario (Attorney General) v. 855 Darby Road, Welland (In Rem)* (2019), 300 A.C.W.S. (3d) 550, 2019 CarswellOnt 574, 2019 ONCA 31 (Ont. C.A.).
- A court in British Columbia denied an interim preservation order as a result of "material non-disclosure" during the *ex parte* hearing; the court acknowledged that such a denial would rarely be granted and

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only where the non-disclosure would offend the community's sense of fairness (see 4:30.10, 4:70.10 and 4:80.20).

- There is judicial disagreement in Alberta around the mandatory *ex parte* requirement in the Alberta statute: one judge has refused to issue restraint orders in at least two cases and another jurist, the Chief Justice, took a different view in another case (see 5:30.30).
- The House of Commons Standing Committee on Finance issued a report on money laundering and terrorist financing in November 2018 with 32 recommendations. The first recommendation might be of interest to some civil asset forfeiture practitioners: the report urges the federal government to work with provinces on a beneficial ownership registry for all legal persons and entities. Unpacking private company and trust ownership can be a challenging issue in Canada. First steps have been taken though. Bill C-86 received Royal Assent on December 13, 2018 and starting in June 2019, private Canada Business Corporations Act companies will be required to maintain a register of individuals with significant control over shares of the corporation (which would include those with direct and indirect control). The register will not be public but the Director of Corporations can request access as can other shareholders and creditors. Detailed regulations are anticipated to flesh out how this will work.
- In the last update, I noted for readers the excellent report written by Dr. Peter German on money laundering and gaming in British Columbia. There is a related proceeding that will be worth watching. Prosecutors withdrew charges on a major case, E-Pirate, allegedly involving high-level money launderers. If news reports are to be believed, prosecutors withdrew following the inadvertent disclosure of confidential informant information. A civil forfeiture proceeding has followed. E-Pirate and the resultant proceeding is a great example of the utility, importance and potential of civil forfeiture.
- Significant amendments to Saskatchewan's law have been proposed but not passed at the time of writing.