

MANITOBA ASSOCIATION OF CHIEFS OF POLICE

Leadership Bulletin

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CRIMINAL PROPERTY FORFEITURE BRANCH

In 2009 Manitoba's civil forfeiture legislation, *The Criminal Property Forfeiture Act* (CPFA) came into force. Since then, the civil forfeiture regime has become a critical tool in the fight against organized crime as a means to disgorge wealth and prosperity derived from unlawful activity. Civil forfeiture is governed by provincial civil forfeiture laws and encompasses any property proven to be an instrument or proceeds of unlawful activity including real property (homes, cottages, businesses), personal property such as vehicles and jewelry as well as cash and bank accounts.

The Criminal Property Forfeiture branch (CPF) is led by Executive Director, Melinda Murray and Assistant Director Phil Siatecki. CPF responsibilities include the review of all Manitoba law enforcement agencies' file referrals to determine whether forfeiture proceedings should be initiated against any property it believes is derived from unlawful activity while also balancing the interests of justice.

The purpose of CPFA is to provide civil remedies that will prevent individuals who engage in unlawful activities from keeping property and assets which were acquired as a result of unlawful activity and secondly to recover property used to facilitate unlawful activity. The goal is to ultimately return those profits to Manitobans through funding of initiatives focused on reducing and preventing crime, promoting safer communities and supporting programs and services that benefit victims of crime.



Civil forfeiture is a critical tool in the fight against organized crime. The goal of CPF is to ensure criminals do not profit from their unlawful activity. Very recent amendments to the legislation will assist in that fight. Those profits are forfeited and then distributed to programs and initiatives focused on reducing and preventing crime, promoting safer communities and supporting services that benefit victims of crime.

Differences between civil and criminal forfeiture :

Canada has both criminal and civil (in rem) forfeiture. Criminal forfeiture is governed by the *Criminal Code* which occurs only after a criminal court has convicted an offender of a crime and only involves assets seized by police. Civil forfeiture is governed by provincial civil forfeiture laws and can encompass any property proven to be an instrument or proceeds of unlawful activity.

The following is a simple side-by-side analysis of the two processes:

<u>Criminal Forfeiture</u>	<u>Civil Forfeiture</u>
Criminal process	Civil process
Targets Individual	Targets Property
Part of Sentencing Process	No conviction or charges required
Proof Beyond Reasonable Doubt	Balance of probabilities
Charter applies	Charter narrowly applies
Formula for Federal/ Provincial sharing	Funds injected back to Province for victims and public safety initiatives

CPF has two procedural streams:

- A judicial court process which is initiated by filing an application or a statement of claim in superior court. Unlike the criminal process, the standard of proof is based on a balance of probabilities as opposed to the criminal standard – beyond a reasonable doubt. An owner of the property and anyone else with an interest in the property can defend against the claim. As with most civil cases, the litigation process can be lengthy and expensive;
- The Administrative forfeiture procedure is streamlined. It provides CPF with the ability to initiate and potentially conclude the forfeiture of assets outside of civil court. It begins by sending a notice of administrative forfeiture to the owner or anyone else with an interest in the property. The onus then shifts to the defendants to declare an intention to challenge the forfeiture or not. If there is no challenge the property is automatically forfeited after a specific time period has elapsed. If there is a challenge to the forfeiture, there is an established process whereby CPF determines whether to initiate a court process or abandon the proceedings. This process is applicable only to personal property with a value of \$75,000 or less.

Recent amendments to the Manitoba CPFA received Royal Assent in May 2021. Some of the key changes involve improving and enhancing the legal information-gathering tools and authority to identify

and secure unlawful money before it is untraceable and disappears. A significant amendment involves the ability of the director to request information from financial institutions within a specified time frame to ascertain bank account balances and banking activity of specific individuals. The director must have reasonable grounds to suspect the property is proceeds or an instrument of unlawful activity and that the owner of the property has dealt with a financial institution. Financial institutions are required to comply with these requests or face possible charges under the CPFA. This information is then utilized to determine whether to seek preservation or “freezing orders” from the court to safeguard those funds. This is a significant step forward in allowing the CPF branch the ability to move more quickly to avoid the dissipation of funds. The ultimate goal is to forfeit property which is derived from unlawful activity.

Further significant amendments involve the ability of the CPF branch to obtain a Preliminary Disclosure Order authorized by a superior court (otherwise referred to in other jurisdictions outside of Canada as an Unexplained Wealth Order) to order an individual provide information relating to his/her assets and property which clearly exceed his/her legitimate income where there is suspicion of unlawful activity. This information will allow the CPF branch to review and investigate the alleged illegitimate income and its origins with a view to possible civil forfeiture proceedings. If there is a legitimate explanation and evidence for the assets and property the CPF would not proceed to forfeiture. If however, the evidence does not indicate legitimate income the CPF would consider initiating forfeiture proceedings, taking into consideration all relevant factors including the interests of justice.

Finally, CPF will be expanding in the near future to employ Money Laundering Investigators and a Senior Accountant who will be responsible for creating and developing the anti-money laundering initiative within the province.

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