

An Empirical Glimpse of Manitoba Civil Forfeiture Regulation

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Civil forfeiture may be the most significant crime control development of the modern era because it permits the felling of wealth allegedly tainted by crime but does not require any convictions for any underlying offence. Pursuant to civil forfeiture law enacted in 2004, Manitoba has recovered prodigious amounts of property allegedly tainted by a link to crime. The coupling of a civil device with allegations of criminality, however, elicits controversy.

Using a random sample of 100 civil forfeiture actions examined at the Manitoba courthouse as a framework, this paper explores enforcement aspects of this civil strategy. It begins with a brief introduction to civil forfeiture law, followed by a delineation of the main structural attributes of the Manitoba model. It then draws upon the wider discourse to identify recurrent themes of concern. It proceeds to relate the findings derived from the 100 actions and then offers a provisional analysis of those findings framed by critiques of civil forfeiture law.

I. CIVIL FORFEITURE REGULATION

Provincial civil forfeiture laws occur as a part of contemporary crime control strategies aimed at suppressing crime by tackling its financial underpinnings. In the late early 1980s, global crime control policy began

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to focus on the link between crime and money, a focus largely precipitated by concern with the burgeoning global trade in illegal drugs. Prosperous criminal trades, thought dominated by large-scale criminal groups, were proving immune to control, a resistance blamed on the failure of regulation to sufficiently account for the financial aspect of crime.¹

In focusing on the relationship between crime and money, the global order pressed for the introduction of money laundering law – the criminalization of the act of attempting to dispose of, or otherwise conceal assets derived from crime – and for the implementation of criminal confiscation regimes, laws which facilitated the post-conviction removal of property linked to crime.² Canada criminalized money laundering and enabled the post-conviction forfeiture of resources tainted by crime.³ Later, most Canadian provinces enacted civil forfeiture regimes.⁴ Similar

¹ The modern strategy is the product of a web of international legal instruments, the first of which was a 1988 drug-control treaty. The strategy was expanded through a series of additional international agreements, and is more commonly known as global anti-money laundering, anti-terrorist finance regulation. In 1990, a group of nations created an organization, the Financial Action Task Force (FATF), to whom it consigned the task of overseeing the development and national implementation of anti-money laundering, anti-terrorist finance law. Through its work, the FATF became the principal standard-setter of global norms in this area, though much of the content it prescribes has its roots in international treaties. States, in implementing this strategy, commonly refer to the standards, known as the FATF Recommendations, rather than referencing discrete undertakings contained in international conventions. Despite the expansion of the strategy to include the financial aspects of a host of crimes—corruption, illegal arms and terrorism—the drug-crime connection remains a main concern: see generally, William Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, (Strasbourg: Council of Europe Publishing, 2011).

² Financial Action Task Force, *International Standard on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, February 2012, at Recommendations 3 and 4.

³ *Criminal Code*, RSC 1985, c C-46, Part XII.2 (Proceeds of Crime).

⁴ *Civil Forfeiture Act*, SBC 2005, c 29 [British Columbia]; *Victims Restitution and Compensation Payment Act*, SA 2001, c V-3.5 [Alberta]; *Seizure of Criminal Property Act*, SS 2005, c S-46.001 [Saskatchewan]; *Criminal Property Forfeiture Act*, CCSM 2004, c C306 [Manitoba]; *Civil Remedies Act*, SO 2001, c 28 [Ontario]; *Act Respecting the Forfeiture, Administration and Appropriation of Proceeds and Instruments of Unlawful Activity*, SQ 2007, c C-52.2 [Quebec]; *Civil Forfeiture Act*, SNB 2010, c C-4.5 [New Brunswick]; *Civil Forfeiture Act*, SNS 2007, c 27 [Nova Scotia]. Provincial legislators do not usually identify civil forfeiture law as part of the wider global assault on property

to federal law, the provincial devices target property linked to crime. Unlike the federal regime, civil forfeiture is not tied to criminal convictions. It is that particular distinction that makes the provincial approach controversial.

The Manitoba model, reasonably typical of the emerging provincial archetype, is the *Criminal Forfeiture of Property Act*.⁵ The Act empowers the province to bring an action to forfeit the proceeds of “unlawful activity” or to forfeit the “instruments of unlawful activity”.⁶ “Unlawful activity” comprises offenses defined under federal and provincial law.⁷ “Proceeds of unlawful activity” means property acquired as a result of unlawful activity as well as any increases in the value of property, or decrease in debt obligations that result from unlawful activity.⁸ An instrument of unlawful activity consists of property that has been used, or is likely to be used, to engage in unlawful activity that results in, or is likely to result in, the acquisition of property or has caused, or is likely to cause, serious bodily harm.⁹ Property liable to forfeiture includes both real and personal property and any interests in either.¹⁰

Manitoban civil forfeiture law permits the pre-trial seizure, without notice, of assets potentially liable to forfeiture.¹¹ Persons having some possible interest in the property liable to forfeiture are notified and the matter is perfected through a civil trial, a trial governed by the civil standard of proof.¹² The apparatus vitiates any requirement to demonstrate the property derives from a specific source or from a specific offence.¹³ To perfect the civil action, it must be shown that the property is

linked to criminal activity. Emergent global standards, however, make it lucidly clear that the pursuit of criminal resources through reliance on civil processes is an integral part of initiatives that attack the relationship between money and crime: see *supra* note 2 at Recommendation 4 (which specifically countenances reliance on non-conviction based forfeiture of assets linked to crime).

⁵ *Criminal Property Forfeiture Act* [Manitoba], *ibid*.

⁶ *Ibid*, s 3(1).

⁷ *Ibid*, s 1.

⁸ *Ibid*, s 1. The definition covers property acquired directly, or indirectly, in whole or in part and includes increases in the value of property.

⁹ *Ibid*, s 1.

¹⁰ *Ibid*, s 1.

¹¹ *Ibid*, s 7.

¹² *Ibid*, s 17.12.

¹³ *Ibid*, s 17.15(2).

the product of, or constituted the instrument used in the commission of, some crime.¹⁴

While the structure does not create any specific defenses to a civil forfeiture action, it does admit certain concessions. Manitoban law contains a discretionary “interests of justice” provision.¹⁵ A court may, in a civil forfeiture action, deny the forfeiture should it find that it is the “interests of justice” to do so. Second, the law accords some degree of protection for those who might unwittingly hold property that is subject to a forfeiture action. A protection order may issue if it can be proven that an entitlement arose before the unlawful activity or it can be otherwise shown that the forfeitable property is not linked a crime.¹⁶ In the context of the forfeiture of the instruments of crime, a protection order may issue if property owners can demonstrate that they did all they reasonably could to prevent their property from being co-opted into crime.¹⁷ Similarly, prior holders of registered interests in property — such as banks — are protected.¹⁸ These concessions tend to mediate against the harshness of the severance of interests in property upon proof, to the civil standard, that it is linked to some criminal undertaking.

II. CONTROVERSIAL ASPECTS OF REGULATION

An innovative approach to the financial dimensions of crime, civil forfeiture regulation evokes controversy. In the United States, the criticism is intense, a function in part of the ubiquity of contemporary enforcement, particularly in the context of the forfeitures of property linked to drug trafficking offences.¹⁹ Within Canada, the response has

¹⁴ In 2011, the law was amended to permit “administrative forfeitures.” When the property liable to forfeiture is less than \$75,000, if potential claimants do not respond to notice of the action, forfeiture automatically ensues, eliminating the need for a full trial or any fuller determination of the relationship between the property and the alleged crime; see *Ibid*, ss 17.1-17.9.

¹⁵ *Ibid*, s 14(1). Apart from this exception, the Court is compelled, if it concludes that the property constitutes the proceeds of crime, to order forfeiture.

¹⁶ *Ibid*, s 17(1).

¹⁷ *Ibid*, s 17(2).

¹⁸ *Ibid*, s 16.

¹⁹ The United States introduced modern forfeiture law in the 1970s as part of its war on drugs and drugs trafficking. Applauded by law enforcement as an essential tool with which to tackle criminal finance, forfeiture has been described as an egregious affront

been somewhat more tempered.²⁰ While the concerns are diverse, certain themes of contention tend to recur.

One area of controversy concerns the broad implications the civil strategy. Civil forfeiture law stands accused of privileging civil actions at the expense of criminal prosecutions or of otherwise distorting decisions related to the enforcement of criminal justice policy.²¹ In part, that distortion results from administrative arrangements that may underpin forfeiture law, notably the concept of “equitable sharing” wherein particular governmental departments, or law enforcement agencies, may receive some share of any forfeited property. Since forfeiture helps the

to rights or an otherwise illegitimate exercise of state power: see generally, Barclay Johnson, “Restoring Civility: The Civil Asset Forfeiture Reform Act of 2000: Baby Steps Towards a More Civilized Civil Forfeiture System” (2001) 35 *Ind L Rev* 1045; Tamara Piety, “Scorched Earth: How the Expansion of Civil Forfeiture Doctrine Has Laid Waste to Due Process” (1990) *U Miami L Rev* 911; David Ross, “Civil Forfeiture: A Fiction that Offends Due Process” (2000) 13 *Regent UL Rev* 259; John Worrall, “Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement” (2001) 29:3 *J Crim J* 171; Jack Yoskowitz, “The War on the Poor: Civil Forfeiture of Public Housing” (1991) 25 *Colum JL & Soc Probs* 567.

²⁰ Canadian incursions into forfeiture have attracted little academic interest: see, Kevin E Davis, “The Effects of Forfeiture on Third Parties” (2003) 48 *McGill LJ* 183; Joshua Alan Krane, *Forfeited: Civil Forfeiture and the Canadian Constitution* (LLM Thesis, University of Toronto Faculty of Law, 2010) [unpublished]. Moreover, despite the novel character of forfeiture law, it passed relatively unnoticed through most provincial legislatures. A notable exception is the Yukon which resisted civil forfeiture regulation outright: see, “Yukon shelves civil forfeiture act” *CBC News* (26 October 2010), online: <www.cbc.ca/news/canada/north/yukon-shelves-civil-forfeiture-act-1.902180>. Additionally, media coverage need to contribute to a negative perception of civil forfeiture law; for example, see Joseph Quesnel & Kathleen Canjar, “Civil Forfeiture Laws Erode Rights”, *Winnipeg Free Press* (23 March 2014), online: <<http://www.winnipegfreepress.com/opinion/analysis/Civil-forfeiture-laws-erode-rights-251790591.html>>; Sunny Dhillon, “BC Civil Forfeiture Office a Cash Cow, Former Attorney General Says”, *The Globe and Mail* (20 February 2014), online: <<http://www.theglobeandmail.com/news/british-columbia/bc-forfeiture-office-a-cash-cow-former-solicitor-general-says/article17016723/>>.

²¹ Eric Blumensien & Eva Nilsen, “Policing for Profit: The Drug War’s Hidden Economic Agenda” (1998) 65 *U Chicago L Rev* 35; Jefferson Holcomb, Tomislav Kovandzic, & Marian Williams, “Civil asset forfeiture, equitable sharing, and policing for profit in the United States” (2011) 39 *J Crim J* 273; Patrick Daley, “Civil Asset Forfeiture: An Economic Analysis of Ontario and British Columbia” (2015) 5 *Western Ont J Leg Stud* 3

state to capture enormous amounts of tainted wealth, the suspicion is that the strategy reflects the state interest in revenue-generation more so than the wider public interest in crime control.

A second troubling aspect relates to the consonance of civil forfeiture law with constitutional protections and other rights-based considerations. Although the constitutional tensions emerge in different ways, the origins of that tension arise principally from civil forfeiture's blurring of distinctions between the criminal and the civil law, with the former conventionally attracting a far more generous set of constitutional, or rights-based, protections than the latter. On several occasions, the United States Supreme Court has assessed the consistency of civil forfeiture regulation with elements of the United States constitution. The injunction against double jeopardy was held not to apply to defeat a civil forfeiture action derived from the very same circumstances that underlay a prior criminal prosecution.²² Previously, the same Court held that the constitutional protection against excessive fines governed civil forfeiture because it applied to both criminal and civil proceedings.²³ The Supreme Court of Canada has considered the correct constitutional character of this unique combination of criminal allegations and a civil process in the context of the constitutional division of powers analysis. There, the Court found that provincial civil law was not sufficiently criminal in character to collide with federal legislative competence over matters of criminal law.²⁴ Ontario's civil forfeiture apparatus created the property-based authority to seize assets and was mainly concerned with social evils and provincial costs associated with the effects of crime and not with the criminal sentencing.²⁵ In species, the Ontario model is similar to the Manitoban regime.

A third region of controversy provoked by the civil strategy involves the impact of forfeiture on third parties. In the United States, this proved particularly troublesome in the context of forfeiture laws that did not

²² *United States v Ursery*, 518 US 267 (1996).

²³ *Austin v United States*, 509 US 602 (1993).

²⁴ *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19, [2009] 1 SCR 624.

²⁵ Debates over the proper constitutional, or rights-based character of civil forfeiture echo concerns expressed elsewhere: Colin King, "'Hitting Back' at Organized Crime: The Adoption of Civil Forfeiture in Ireland" in Colin King & Clive Walker, eds, *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (England: Ashgate, 2014) 144; Anthony Gray, "Forfeiture Provisions and the Criminal/Civil Divide" (2012) 15:1 New Crim L Rev 32 (Australia).

provide any protection for property owners whose property was unwittingly used to commit crimes.²⁶ As noted earlier, provincial civil forfeiture law, including Manitoban law, provides some measure of protection for third parties, persons who have not been complicit in the criminal activities underlying the forfeiture. Registered lien owners are protected by the fact of registration. Others are protected provided they have done all that could reasonably be done in the circumstances to prevent the property from being used in unlawful activity. However, the protection imposes some obligation to police the use of property, the precise contours of which are uncertain.²⁷

Finally, perhaps the most pernicious concern posed by forfeiture law is the potential for a lack of proportionality between any alleged crimes and the scope of the forfeiture. Notably, this problem appears to relate to the forfeiture of the “instruments of crime” as opposed to the potential forfeiture of the “proceeds of crime”. Arguably, the forfeiture of resources derived from crime, the proceeds of crime, is commensurate, in scope, with the underlying crime. These constitute, in theory at least, the moneys earned from crime and are therefore on that basis proportionate to the alleged crimes.²⁸ Problems emerge when the subject of the civil action is the instruments of crime, the things used to commit offences.

²⁶ *Bennis v Michigan*, 516 US 442 (1996). In *Bennis*, a wife whose husband had unlawfully used their automobile to engage in criminal activity argued that its blunt forfeiture as an instrument of crime violated both her constitutional right to due process and her right not to be unjustly deprived of property without compensation. While she had no direct involvement with the crime, the Supreme Court determined that the concept of the taking of property used to facilitate a criminal offence was a long-held feature of American law and had long been held not to violate due process or the takings provision of the constitutional. However, the particular state statute under consideration did not afford any protection for innocent property owners.

²⁷ Ontario’s civil forfeiture regime appears to more fully define the contours of the obligation imposed on property owners to prevent the criminal use of their property. The law uses the language of “responsible owners” and defines a responsible ownership to include notifying law enforcement when the owner knows, or ought to have known, that the property has been, or is likely to be, used to engage in unlawful activity: *Civil Remedies Act*, SO 2001, c 28, s 7.

²⁸ An issue that has received scant attention is the distinction, if any, between the profits of crime, and the proceeds of crime. Arguably, it is only the profits of crime, the revenues minus the expenses, that is property constitutes the revenues derived from crime. However, few appear to be troubled by any distinctions between the forfeiture of the profits of crime and the proceeds of crime: but see, *United States v Santos*, 461 F

In the United States' decision dealing with the constitutional protection against excessive fines, the subject matter of the forfeiture action was the alleged instruments of crime: a mobile home, business premises, automobiles and other real estate arguably constituting instruments used to facilitate drugs trafficking.²⁹ This kind of forfeiture appears to bluntly sever proprietary interests upon proof that this interest can, on a balance of probabilities, be linked to some criminal offence. A consequence of that bluntness is a possible gross disparity between the consequences (forfeiture of valuable property) and the underlying offences. In applying the excessive fines constraint, the US Supreme Court was lucidly concerned the "dramatic variations" in the values of property liable to such forfeitures.³⁰

Provincial civil forfeiture law does not formally admit any space for the consideration of the proportionality between any alleged criminal wrongdoing and the value of the property liable to forfeiture. Emergent jurisprudence from the appellate courts suggests that they are, to a degree, attending to this criticism within the rubric of the "interests of justice" provision. Most provincial forfeiture law, including Manitoban law, requires that the court make forfeiture orders "unless it would clearly not be in the interests of justice".³¹ Although it is expressed in different ways, the exercise of that discretionary power often occurs when the forfeiture is disproportionate to the seriousness or extent of the underlying criminal allegations, or when the property is not substantially connected to the underlying allegations, or, in the context of allegedly innocent property owners, where the forfeiture may not be proportionate any attribution of personal responsibility for the co-optation of property into criminal pursuits.³²

3d 886 (2008) (acknowledging, in the context of criminal forfeitures, a distinction between the profits and the proceeds of crime).

²⁹ *Supra* note 23.

³⁰ *Ibid*, final 3 paragraphs.

³¹ *Supra* note 5 at s 14(1).

³² See, for example, *Ontario (Attorney General) v 20 Strike Avenue*, 2014 ONCA 395; *Ontario (Attorney General) v 8477 Darlington Crescent*, 2011 ONCA 363, 333 DLR (4th) 326; *Mihalyko (Re)*, 2012 SKCA 44; *British Columbia (Director of Civil Forfeiture) v Rai*, 2011 BCSC 186, [2011] BCJ No 241.

III.A GLIMPSE OF CIVIL FORFEITURE ACTIONS

In injecting an empirical glimpse onto the civil forfeiture discourse, 100 civil forfeiture actions were examined at the Manitoba courthouse.³³ Randomly selected from the years 2009 through 2014, each action commenced in a given calendar year.³⁴ Some were complete while others had different matters pending final determination. Some produced thick files, complete with statements of defense, diverse legal motions, and involved multiple parties and multiple properties; others were relatively thin.

To shed some light on controversial aspects of regulation, and to ensure some measure of consistency in extracting data from a diverse set of materials, the study focused on four recurrent kinds of information.³⁵ The first comprises the principal alleged criminal offences, a category that yields some indication of the contexts in which forfeiture is used and is relevant to discerning whether the principal target is profitable crime, the context that underscores the entire civil legal approach. The second category comprises the type and value of the property liable to forfeiture and the third comprises the kinds of evidence marshaled in support of the action. When connected to the first category, these give some indication of the relationship between property and the alleged offences, including an indication of the sufficiency of evidence proffered to sustain the civil action as well as perhaps some sense of proportionality. The fourth category comprises the outcomes, whether the province was successful in its application for forfeiture, a category that, on its own, explains the popularity of this strategy. Moreover, since most related to alleged drugs offences, in the context of drugs-related forfeitures, the examination took account of the type of drugs involved. In the context of forfeitures of cash, the nature of the currency, whether Canadian or foreign, was noted, given that this might hint at any international factors.

³³ Although 100 actions were identified, information was drawn from 98. One file was precluded because of its notoriety; another was transferred to a different judicial district. The files were examined in November 2013, April and May 2014, and December 2014.

³⁴ See Appendix 1 for a complete list.

³⁵ A preliminary sampling in November 2013 sought to discern the kinds of recurrent information readily available in the files.

A. The Findings

A majority of files involved allegations of offences related to illegal drugs including trafficking offences or the possession of the proceeds of crime related to drugs offences (87).³⁶ None appeared to exclusively involve possession of drugs for the purposes of personal consumption.³⁷ Many concerned drugs-related offences together with other alleged offences: the possession of illegal arms, the possession of weapons for a dangerous purpose, the possession of stolen goods, the association with a criminal organization, the unlawful sale of tobacco, credit card fraud and forgery, breach of probation, obstruction of a police officer, and the theft of electricity and water (33).

A modest set did not contain allegations related to drugs offences (11). A number involved various species of fraud, forgery, break and enter, trafficking in credit cards and the falsification of credit card data, the possession of property obtained from crime, possession of the proceeds of unlawful activity and the possession of illegal weapons (6). One concerned alleged offences related to the making and possession of child pornography, forcible confinement, and forms of sexual exploitation. Two concerned offences related to the illegal sale of tobacco products; another alleged violations of *Wildlife Act*³⁸ including using lights at night to hunt wildlife (1); another involved allegations of prostitution (1).

In the context of drugs-related forfeitures, the principal illegal substance was cannabis, commonly known as marijuana. The majority of actions concerned marijuana or marijuana together with other illegal substances (67). Of these, a portion concerned marijuana combined with other drugs, including cocaine, psilocybin, heroin, diazepam, steroids, Percocet, ecstasy and methamphetamines (11). Offences related to illegal substances exclusive of marijuana were fewer (21). In one case, the allegations related to drugs offences but the particular type of illegal substances was unclear.

With regard to the types of property seized and held liable to forfeiture, these actions included various kinds of personal property –

³⁶ Some of these also involved other allegations of criminal activity though the principal basis of the forfeiture action related to illegal drugs.

³⁷ While the possession of illegal substances was listed as an offence in a few cases, it was coupled with charges related to other offences.

³⁸ *Wildlife Act*, CCSM, c W130.

commonly sums of cash and automobiles – and real property – chiefly residential houses. Many involved some mix of forfeitable property, some combination of: cash and automobiles, cash and residential properties, or cash and other items of personal property.

Almost half of the files examined involved the forfeiture of real estate, principally residential homes allegedly used in the production of marijuana (40). One involved the potential forfeiture of multiple pieces of real estate. Sometimes, other property was also seized along with real property (8).

Most properties were subject to mortgages, with the financial institutions, holders of the mortgages, provided with notices of the pending actions. Although the registered property owners were named as respondents to the forfeiture actions, some of the properties appeared to be subject to rental arrangements or the file indicated that registered owner did not reside at the property or did not reside in the province (16). In some cases, ownership of the property liable to forfeiture was not entirely clear (2).

Roughly half of the files examined involved the seizure of cash currency, either on its own or in connection with other property (48). In one case, a significant sum of cash was seized (\$7,000) although it was not subject to forfeiture. Cash, together with other property, was occasionally seized and liable to forfeiture (8). Cash was exclusively seized on a number of occasions (4).

The amounts of cash liable to forfeiture varied widely, from modest amounts (less than \$1,000) to upwards of \$90,000. Only 3 actions involved in excess of \$40,000 in cash, with most ranging anywhere between \$5,000 and \$25,000.

Only a couple involved appreciable amount of foreign currency, the seizure of \$36,000 cash in United States dollars and \$14,000 in Jamaican currency.

A smattering of actions consisted of the seizure of automobiles together with other property (15), with a few actions concerned exclusively the forfeiture of automobiles (9). One involved the exclusive potential forfeiture of a motorcycle. A snowmobile and two recreational vehicles formed part of wider seizure efforts (3). Other property caught in forfeiture proceedings included the seizure of bank accounts (2), gold (2), and jewelry (2).

The principal evidence underlying the forfeiture action obviously differed with the alleged offenses although certain patterns of evidence, particularly in the context of forfeitures of real estate, did recur. In the context of the forfeitures of real estate related to the trading in cannabis substances, with a singular exception, all residential properties contained marijuana plants. The quantities of plants seized ranged from a minimum of 200 plants to upwards of 1400. All involved a mix of evidence of stolen electricity, excessive hydro use or tampering with hydro connection, and evidence of excessive water use or tampering with water supply. All involved equipment necessary for the interior cultivation of plants, the value of which equipment was estimated at anywhere from \$10,000 to \$25,000. Also commonly found, or associated with the real property, were scales, notes of figures and initials and plastic bags (some containing illegal drugs). Evidence also regularly included modest or trace amounts of other illegal drugs such as cocaine or methamphetamines. The street value of marijuana operations varied widely, anywhere from \$100,000 to over \$2 million.

In the context of non-marijuana related real estate civil actions, one involved 5 kilograms of methamphetamines with an alleged value of \$1 million.

With respect to stand-alone forfeitures of cash related to alleged drugs offences, with the exception of one action, each involved some mix of illegal drugs and evidence linked to drugs transactions. The quantities of illegal drugs ranged from a single gram to upwards of 200 grams. Scales, score sheets and bags also formed part of the evidential mix. Similar evidence accompanied stand-alone forfeitures of automobiles. Notably, in no case was an extremely modest of illegal drugs the sole basis of the forfeiture.

With regard to the few non-drug related civil forfeiture actions, the forfeiture of \$11,000 in cash was linked to ¼ million cigarettes that had not been stamped, or otherwise marked, for lawful sale in Canada. With regard to the alleged fraud, the action concerned the forfeiture of cash, valuable coins, bank accounts, and a vehicle. With regard to forfeiture related to allegations of theft, the evidence underlying the action included the stolen articles and prior convictions for theft.

Evidence of prior criminal convictions was periodically tendered, notably when those convictions were similar in species to the offences underpinning the forfeiture. On occasion, tax records formed some of

part the evidential basis. Typically, these appeared to be used to show a discrepancy between an individual's declared income and the resources subject to forfeiture. At times, too, the evidence included illegal weapons.

Obviously the outcomes of the provincial forfeiture bids were as varied as the evidence underlying the actions. Still, in almost all of the actions that were complete at the time of examination, the province was either partly, or wholly, successful in its forfeiture bid. A significant part of those successes resulted from default judgments (40). Claimants appeared to have failed to respond to initial notice of the pending forfeiture, or to have otherwise abandoned any claims.

The bulk of those actions to which individuals did respond related to the forfeiture of real estate. Many of these resulted in some portion, although usually a very modest portion, of the seized assets being returned to the claimant. Some involved real estate that was subject to a rental arrangement with property owners contending they had no knowledge of the alleged use of the property for the cultivation of illegal drugs. The relationship between the renters and the property owners was not always clear, although a few involved, or appeared to involve, familial relationships (3).

A significant number of the actions resulted in consent judgments (13) and a number of actions were discontinued (12).

With respect to process, without exception all the actions examined in this exercise involved the preliminary seizure of assets and the retention of control pending perfection of the forfeiture or some other resolution.

B. Provisional Analysis of the Findings

In overlaying the essence of the data mined from the 100 actions onto the broader framework of regulation discussed previously, it is possible to venture some provisional analysis of civil forfeiture law in Manitoba. Although the findings represent merely a glimpse of enforcement, they begin to offer a fuller appreciation of the narrative and provide a tentative and partial framework within which to consider some of the tensions involved in civil forfeiture actions.

Quite clearly, and consistent with the central thrust of the civil strategy, the dominant context of civil forfeiture law is criminal offences related to illegal drugs. The bulk of the civil actions involve the forfeiture of property derived from, or connected to, trafficking in illegal substances. Equally, the evidence marshaled in support of the actions suggests, for the

most part, that civil forfeiture applies in the context of significant drugs trafficking. The theft of electricity, the investments of upwards of \$20,000 in cultivation and drug production equipment, the seizure of large amounts of cash and the common seizure of hundreds of marijuana plants suggest some reasonably profitable business activity. Moreover, particularly in the context of the forfeitures of real estate, the forfeiture of property involved in extensive drugs production suggests some real and substantial link between the property and the underlying offence.

In Manitoba, in 2010 a case that achieved some notoriety concerned the civil forfeiture of property alleged implicated in the commission of crime of a sexual or violent nature.³⁹ The examination of 100 files reveals at least one incidence in which forfeiture was applied to an offence related to the *Wildlife Act*⁴⁰. Neither of these contexts involves any notion of profitable crime. The Manitoba experience suggests that civil forfeiture is mainly used in the context of profitable crime.⁴¹ This suggests that the notorious Manitoba case was an aberration, a deviation from the central premise of pursuing profitable crimes. However, there is nothing within the confines of the legislative regime that specifically confines civil forfeiture to the profitable crime context. A pattern of extending the strategy beyond that context would certainly give pause to re-assess its legitimacy.

The prevalence of drugs context introduces a curious consideration. Most crimes create potential liability to both criminal and civil actions, the first ordinarily the ambit of the state, the second the ambit of the victims of crime. Unlike offences such as fraud or theft, no one is easily poised to bring a civil action to recover the proceeds of drugs offences. Sometimes called victimless crimes, a description that ignores the consequences of protracted drug consumption and the violence regularly linked to the

³⁹ Gabrielle Giroday, "Province Targets Alleged Sex Offender's House", *Winnipeg Free Press* (30 December 2010), online: <<http://www.winnipegfreepress.com/local/province-targets-alleged-sex-offenders-home-112652209.html>>.

⁴⁰ *Supra* note 38.

⁴¹ Civil forfeiture may be beginning to migrate beyond the profitable crime context: Travis Lupick, "Environment and Wildlife New Areas for BC Civil Forfeitures", *The Georgia Straight* (11 March 2015), online: <<http://www.straight.com/news/407716/environment-and-wildlife-new-areas-bc-civil-forfeitures>>.

trade, there is no obvious civil claimant who might lay claim, through a civil action, to the proceeds of drug offences. These proceeds have not been stolen or illegally, or fraudulently, taken. In the rather unique setting of drugs offences, the civil forfeiture instrument has some persuasive appeal as it creates a civil vehicle through which to recover proceeds derived from offences, loosely functioning as a conventional civil action.

With respect to the privileging of different strategies, the success of the province in securing its forfeiture bid tends to confirm the popularity of this approach, at least in so far as any assumption that an ambition of civil forfeiture is to recover tainted assets, in addition to, or in contrast to, enforcing compliance with the norms of criminal law.⁴² Forfeiture certainly regularly succeeds in capturing resources. Whether such apparent success would be reflected in criminal proceedings, followed by the criminal forfeiture of property, is doubtful. Notable too, in this regard, is the frequency of default judgments, the failure of claimants to respond in any form to the forfeiture proceedings. Possibly, claimants prefer to surrender their property to the province rather than risk any further or related investigations that might result in some attribution of criminal liability.

Finally, the modest set of actions involving the forfeiture of property subject to a tenancy agreement, typically property allegedly used in drug production, suggests that forfeiture regulation imposes some positive obligation on property owners to adequately police the use of their property. In most cases, the owners of property subject to rental agreements, while allegedly not themselves the primary agents of criminal activity suffered some proprietary loss, a loss attributable to some assumption of responsibility for the property's association with crime. The study does not reveal a great deal in terms of the knowledge-based relationship between property owners and their tenants, particularly knowledge in the context of property used in the extensive cultivation of drug products. Still, the results suggest that some burden lies with property owners to visit, or occasionally inspect, premises subject to a lease arrangement so to prevent its co-optation into criminal pursuits.

⁴² The study did not track the relationship between particular forfeitures and related criminal prosecutions. Obviously, discerning the parameters of the relationship between civil actions and criminal prosecutions derived from the same circumstances would require a specific study.

IV. CONCLUSION

For the most part, the enforcement of civil forfeiture law remains true to its initial ambitions, deployed principally as an antidote to the illegal drugs trade, more particularly, to the trade's financial undercurrents. Should the strategy begin to stray beyond that context, this would arguably exacerbate existing anxieties and seriously undermine its legitimacy. And while the modest collection of actions can only begin to track the strategy's evolution, it is certainly an enforcement trajectory that should be watched.

APPENDIX 1

CI09-01-62631	THE DIRECTOR OF CRIMINAL PROPE VS DENG, GUO
CI09-01-62645	THE DIRECTOR OF CRIMINAL VS LIU, JIN
CI09-01-62933	DIR OF CRIMINAL PROPERTY VS FONG, KEN
CI09-01-62956	DIRECTOR OF CRIMINAL PROPERTY VS BIRKETT
CI09-01-64044	THE DIRECTOR OF CRIMINAL PROPERTY VS CLISBY, CHRISTOPHER
CI09-01-64103	THE DIRECTOR OF CRIMINAL VS HUANG, RUIYUN
CI09-01-64341	DIR. CRIM. PROP & FORFEITURE VS TRUONG, THIEN T.
CI09-01-64386	THE DIRECTOR OF CRIMINAL VS MCKENZIE, STEVEN E.
CI10-01-64662	THE DIRECTOR OF CRIMINAL PROPE VS PHAM, BAO
CI10-01-64971	DIR. CRIM. PROPERTY VS BRADBURY, WALTER
CI10-01-65096	DIRECTOR OF CRIMINAL PROPERTY VS FONTAINE, FRANKLIN, E.
CI10-01-65199	DIRECTOR OF CRIMINAL PROPERTY VS NGUYEN, TUYEN HONG
CI10-01-65292	THE DIRECTOR OF CRIMINAL PROPE VS MA, MY NGOC

CI10-01-65555	THE DIRECTORS OF CRIMINAL PR VS WEI XUAN HE
CI10-01-65654	DIRECTOR OF CRIMINAL PROPERTY VS NGO, HOA
CI10-01-65824	DIRECTOR OF CRIMINAL PROPERTY VS HOANG, LINDA
CI10-01-66008	DIRECTOR OF CRIMINAL PROPERTY VS NGUYEN, TUNG V
CI10-01-66026	DIR. OF CRIMINAL PROPERTY VS ADSETT, WENDY A
CI10-01-66343	THE DIRECTOR OF CRIMINAL PROPE VS NGUYEN, TRUONG LAM
CI10-01-66797	THE DIRECTOR OF CRIMINAL VS WEREMCHUK, ROBERT D
CI10-01-67547	DIRECTOR OF CRIMINAL PROPERTY VS BEAUCHEMIN, LEONARD
CI10-01-67664	THE DIRECTOR OF CRIMINAL PRO VS BILLINGTON, THOMAS
CI10-01-68480	DIRECTOR OF CRIMINAL PROPERTY VS ROBERTS, RANDAL
CI10-01-68510	DIRECTOR OF CRIMINAL PROPERTY VS CAMPBELL, JASON SCOTT
CI10-01-68547	THE DIRECTOR OF CRIMINAL PROP VS DUONG, CON DIEN
CI10-01-68556	DIR. OF CRIMINAL PROP AND FORF VS GENOV, IVAYLO

CI10-01-68560	THE DIRECTOR OF CRIMINAL PROP VS CHEUK, ANN
CI10-01-68775	THE DIRECTOR OF CRIMINAL VS MAC, THE T
CI10-01-69174	DIRECTOR OF CRIMINAL PROPERTY, VS CADGER, MICHELLE
CI10-01-69266	THE DIRECTOR OF CRIMINAL VS MURRAY, TODD
CI10-01-69278	DIR. OF CRIMINAL PROP & FORF VS HOANG, KHAU S.
CI10-01-69723	DIR OF CRIMINAL PROPERTY & FOR VS SKAVINSKY, STEPHEN T.
CI10-01-69741	DIRECTOR OF CRIMINAL PROPERTY VS CARSON, JAMES
CI11-01-69935	THE DIRECTOR OF CRIMINAL VS PHU, THANH
CI11-01-69936	THE DIRECTOR OF CRIMINAL VS NGUYEN, DUY N
CI11-01-72055	THE DIRECTOR OF CRIMINAL PROP VS BALONYK, ROBERT R
CI11-01-72056	THE DIRECTOR OF CRIMINAL PROP VS DANG, THU T M
CI11-01-72658	DIRECTOR OF CRIMINAL PROPERTY VS NGUYEN, TRANG MINH ET AL
CI11-01-73081	THE DIRECTOR CRIMINAL PROPER VS ON, ALYSSA L.

CI11-01-74067	THE DIRECTOR OF CRIMINAL PROPE VS PHAM, THI CHINH
CI11-01-74085	THE DIRECTOR OF CRIMINAL PROPE VS NGUYEN, VAN LUAN
CI11-01-74841	DIRECTOR OF CRIMINAL AND PROPE VS NGUYEN, NGUYET THI
CI11-01-74908	DIRECTOR OF CRIMINAL PROPERTY VS B.E.P.
CI11-01-74909	THE DIRECTOR OF CRIMINAL VS CLARKE, RANDY GEORGE
CI11-01-74924	DIRECTOR OF CRIMINAL PROPERTY VS DRITSAS, KOSMAS
CI11-01-75016	THE DIRECTOR OF CRIMINAL PROP VS PHAM, NGA NGOC
CI11-01-75033	THE DIRECTOR OF CRIMINAL VS JORDANOV, TYLER
CI11-01-75247	DIRECTOR OF CRIMINAL PROPERTY VS FRIESEN, LENA
CI11-01-75341	THE DIRECTOR OF CRIMINAL PROPE VS HIEBERT, ROBERT A.
CI11-01-75536	THE DIRECTOR OF CRIMINAL PROPE VS EDEL, CAL JAMES ET AL
CI11-01-75540	THE DIRECTOR OF CRIMINAL PROP VS VU, ANH TUAN ET AL
CI12-01-75598	THE DIRECTOR OF CRIMINAL PROPE VS MARTINSON, JEFFREY DOUGLAS ET

CI12-01-75686	DIRECTOR OF CRIMINAL PROPERTY VS THE ESTATE OF BALJINDER SIDHU
CI12-01-76020	THE DIRECTOR OF CRIMINAL PROPE VS GOODING, WILLY SOLOMON
CI12-01-76024	DIRECTOR OF CRIMINAL PROP V TRAVERSE
CI12-01-77001	DIRECTOR OF CRIMINAL PROPERTY VS SCOTT, TRAVIS MAGDALENA
CI12-01-77590	THE DIRECTOR OF CRIMINAL PROP VS LUANGPHASI, PHOULEK
CI12-01-77808	DIRECTOR OF CRIMINAL PROP V KUZYK
CI12-01-79077	DIRECTOR OF CRIMINAL VS DURACK, JONATHAN M.
CI12-01-79162	DIRECTOR OF CRIMINAL PROPERTY VS BACHEWICH
CI12-01-79412	DIRECTOR OF CRIMINAL PROP V CAMPBELL
CI12-01-80188	HARDY, JESSE G. VS DIRECTOR OF CRIMINAL PROPERTY
CI12-01-80599	DIRECTOR OF CRIMINAL PROPERTY VS KERR, ANDREW R. S.
CI12-01-81011	DIRECTOR OF CRIMINAL PROPERTY VS LIWANAG, JUSTIN P.
CI12-01-81013	DIRECTOR OF CRIMINAL PROPERTY, VS CHUNG, ALEJANDRO M.
CI12-01-81208	DIRECTOR OF CRIMINAL PROPERTY VS CERRATO, FABIO V.

CI12-01-812329	DIRECTOR OF CRIMINAL PROPERTY VS HARMS, TIMOTHY
CI12-01-81289	DIRECTOR OF CRIMINAL PROPERTY VS CLEGG, DUSTYN T.
CI12-01-81323	DIRECTOR OF CRIMINAL PROPERTY VS ACKMAN, DARRELL E.
CI13-01-81691	DIRECTOR OF CRIMINAL FORFEITURE VS SAWYERR-GREY
CI13-01-81864	THE DIRECTOR OF CRIMINAL PROP VS SAITO, TAKESHI M.
CI13-01-81867	DIRECTOR OF CRIMINAL PROPERTY V BLAIR
CI13-01-81928	DIRECTOR OF CRIMINAL PROPERTY VS GUIBOCHE, SANDRA G.
CI13-01-81853	DIRECTOR OF CRIMINAL PROPERTY VS NELSON, DANA L.
CI13-01-81997	THE DIRECTOR OF CRIMINAL VS BENNING, SHANGARA SINGH
CI13-01-82318	DIRECTOR OF CRIMINAL PROPERTY VS KLATT, NICKIE D.
CI13-01-82391	DIRECTOR OF CRIMINAL PROPERTY VS ARMSTRONG, RICHARD S.
CI13-01-82561	DIRECTOR OF CRIMINAL PROPERTY VS REID, KEENAN
CI13-01-82760	DIRECTOIR OF CRIMINAL PROPERTY VS LAMY, JERRY R.

CI13-01-83503	DIRECTOR OF CRIMINAL PROPERTY VS BERTIN, DONALD J.
CI13-01-83527	DIRECTOR OF CRIMINAL PROPERTY VS EVERETT, KYLE R. A.
CI13-01-83775	DIRECTOR OF CRIMINAL PROPERTY VS HAMILTON, MARLON G.
CI13-01-83862	THE DIRECTOR OF CRIMINAL PROPE VS LAFLAMME, ERIC H.
CI13-01-84362	DIRECTOR OF CRIMINAL PROPERTY, VS VENN, JAYANT DAVID
CI13-01-84728	DIRECTOR OF CRIMINAL PROPERTY VS MORRISSEAU, WADE K.
CI13-01-85966	THE DIRECTOR OF CRIMINAL PROPE VS PHAM, HONG THI TUYET
CI13-01-84729	DIRECTOR OF CRIMINAL PROPERTY VS HEINRICHS, SHERALD R.
CI14-01-87137	DIRECTOR OF CRIMINAL PROPERTY VS KUNZIE, PERRY RAYMOND
CI14-01-87138	DIRECTOR OF CRIMINAL PROPERTY VS HAYWOOD, KENNETH NOEL
CI14-01-87161	THE DIRECTOR OF CRIMINAL PROP VS WASSERMAN, JOSHUA
CI14-01-87461	DIRECTOR OF CRIMINAL PROPERTY VS MILINGITA, ALINOTI
CI14-01-87528	DIRECTOR OF CRIMINAL PROPERTY VS WOODS, JUSTIN

CI14-01-88036	DIRECTOR OF CRIMINAL PROPERTY VS LANGE, NORMAN N.
CI14-01-88446	DIRECTOR OF CRIMINAL PROPERTY VS EDWARDS, JANELLE BRITTANEY
CI14-01-88584	DIRECTOR OF CRIMINAL PROPERTY VS GENAILLE, LEO A. J.
CI14-01-88861	DIRECTOR OF CRIMINAL PROP VS GALLEGO-MONNOZ, ALEXANDER
CI14-01-89917	DIRECTOR OF CRIMINAL PROPERTY, VS PAUL, MARCEL A.
CI14-01-89918	DIRECTOR OF CRIMINAL PROPERTY VS EMCH, BRADLEY J.
CI14-01-90010	DIRECTOR OF CRIMINAL PROPERT VS BARKER, DUSTIN J.
CI14-01-90071	DIRECTOR OF CRIMINAL PROPERT VS BARKER, DUSTIN J.

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