

The Regional Municipality of York

Police Services Board

Public Board Meeting
May 26, 2021

Report of the Chief of Police

Forfeited Offence-Related Property/Proceeds of Crime/Civil Remedies for Illicit Activities (CRIA)

1. Recommendation

That the Board receive this report for its information.

2. Summary

This report outlines the methods available to law enforcement and government to seize cash and assets that are used or gained by criminals through their involvement in illicit activities. It describes how the seized assets are managed, converted to cash and distributed to the Federal and Provincial Governments in accordance with the Forfeited Property Sharing Regulations and the *Civil Remedies Act*.

- The amount of cash and assets turned over to the Seized Property Management Directorate (SPMD), Police Services Board (PSB) and the Ontario Ministry of the Attorney General (MAG) by York Regional Police (YRP) for the provincial fiscal year ending March 31, 2021, was \$1,088,795
- Between April 1, 2020 to March 31, 2021, YRP received \$300,000 from the Proceeds of Crime Grant Program for the following initiatives:
 - \$100,000 for operating costs of lawful access equipment

- \$100,000 for Project Uriel for human trafficking related crime prevention
- \$100,000 for Project Infantry to support front-line officers in combatting gun and gang violence

3. Background

PROCEEDS OF CRIME VS OFFENCE RELATED PROPERTY

Criminal organizations pose a significant threat to the safety and security of our communities. One of the primary motivators of crime is profit. Depriving criminals of wealth acquired through crime and property utilized to facilitate crime is an effective crime reduction strategy. This strategy has evolved as an essential element of police efforts to investigate, disrupt and dismantle criminal organizations.

The Proceeds of Crime legislation in Canada has been designated to combat organized and serious crime by giving the judicial system the ability to seize and forfeit property used to facilitate the activities of these organized crime groups and their related criminal activities (offence-related property). It also allows for the seizure and forfeiture of assets derived from the commission of crimes (proceeds of crime). Similarly, the Province of Ontario introduced legislation with the implementation of the *Ontario Civil Remedies Act (2001)*, details of which are provided later in this report.

Offence-related property is defined in the *Criminal Code* as any property, within or outside of Canada:

- By means or in respect of which an indictable offence under this Act is committed;
- That is used in any manner in connection with the commission of an indictable offence under this Act; or,
- That is intended for use for the purpose of committing an indictable offence under the Act

Proceeds of Crime is defined in the *Criminal Code* as any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of:

- The commission in Canada of a designated offence; or,
- An act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence

The following steps outline the investigative and court process that result in offence-related property and proceeds of crime being forfeited to the SPMD:

- Offence-related property and proceeds of crime are seized incident to arrest or under the authority of a special search warrant. Police then obtain a management order or a restraint order authorized by a judge or justice

- Custody of seized assets is then turned over to the SPMD who engages the appropriate professionals to manage, maintain and safeguard the assets seized or restrained under specific sections of the *Criminal Code*, the *Controlled Drugs and Substances Act*, the *Proceeds of Crime and Terrorist Financing Act* until the legal proceedings are concluded
- If the accused is found guilty, sentencing may include the forfeiture of the seized assets. If there are no appeals, SPMD begins the process of disposing of the assets. Normally, SPMD utilizes public sales and auctions to ensure market value is obtained. Proceeds of these funds are then distributed by the Attorney General of Canada to the Federal and Provincial Governments in accordance with the Forfeited Property Sharing Regulations

For federal proceeds of crime funds, monies returned to the Province of Ontario are split. The Ministry of Community Safety and Correctional Services (MCSCS) receives 75 percent and the Ministry of the Attorney General (MAG) receives 25 percent. For successful provincial proceeds of crime prosecutions, MCSCS receives 60 percent and MAG 40 percent.

No portion of these funds are distributed directly to YRP or to any other police service involved in the seizure of the goods. YRP can only access these funds through Provincial Government grant opportunities.

Offence-related property and proceeds of crime seized by YRP in recent years include cash, residences used for the storage and/or production of illicit drugs and vehicles used during the commission of a *Criminal Code* offence including impaired driving, robbery, theft, human trafficking and drug trafficking.

ONTARIO CIVIL REMEDIES ACT

When law enforcement are unable to seize assets pursuant to a criminal investigation, a referral can be made to the Civil Remedies for Illicit Activities (CRIA) office. This process is described below; however, it should be noted that the CRIA may conduct its own parallel investigation from the onset and intervene should pursuance of criminal charges not be a viable option.

The *Ontario Civil Remedies Act* was the first of its kind in Canada. It permits a civil court, at the request of the Attorney General, to freeze, take possession of and forfeit to the Crown, property acquired through or likely to be used for unlawful activity. Property includes all types of assets, such as real estate, cars and cash.

The CRIA is a government body that enforces the *Ontario Civil Remedies Act*. In Ontario, civil forfeiture legislation focuses solely on the connection between property and unlawful activity and is not dependent on any criminal charges or convictions. The standard of proof required for civil forfeiture is the same as in all civil suits – a balance of probabilities.

There are two types of civil cases that the Attorney General of Ontario and YRP typically work in partnership under the *Ontario Civil Remedies Act*:

- In a proceeds case, the Attorney General must establish that property was acquired as the result of unlawful activity. If proven, this property may be forfeited to the Crown by an order of the Ontario Superior Court of Justice.
- In an offence-related property case, the Attorney General must establish that the property in question (for example, a vehicle) is likely to have been used to engage in unlawful activity that could result in the acquisition of other property, including money, or in serious bodily harm to any person. Property in this context means real or personal property and includes any interest in property used to facilitate an unlawful activity. Where the Attorney General establishes that the property is an instrument, often from past use of the property during an unlawful activity, the Ontario Superior Court of Justice may order that the property be forfeited to the Crown.

CIVIL FORFEITURE

The Superior Court of Justice must approve all steps in a civil forfeiture proceeding under the Act. The *Civil Remedies Act* authorizes the Court to order the preservation of money or property to prevent it from being sold or mortgaged. If the Government then proves its case, the Court can order the money or property to be forfeited to the Crown. The onus is on the Government to prove its case.

The process for civil forfeiture begins when an institution designated in the Act, such as a police service or government ministry, submits a case to the reviewing authority, specifically an independent Crown counsel in the Ministry of the Attorney General. Counsel reviews the case and decides whether the statutory criteria in the *Civil Remedies Act* has been met. The case information is then forwarded to the CRIA office. CRIA lawyers bring proceedings to court on behalf of the Attorney General.

The CRIA's Director of Asset Management is responsible for taking possession of and preserving, managing and disposing of all property either forfeited to the Crown or returned to the owner.

Forfeited property is converted to cash and deposited into the *Civil Remedies Act* special purpose account. The Act allows for disbursement as follows:

- Victim Compensation – Victims of the unlawful activity that has given rise to forfeiture may submit a claim for compensation
- Cost Recovery – Funds may be used for cost recovery to the Crown. Although the Crown is entitled to recover its costs first, the practice to date has been to compensate victims first
- Grants – Funds remaining after cost recovery and victim compensation may be disbursed via grants for programs to assist victims or prevent victimization.

Organizations eligible for grants are designated by the court and include law enforcement agencies who must meet the established criteria and submit a project proposal outlining how the grant will assist victims of unlawful activities or prevent victimization

4. Analysis

YRP has made a significant impact in recent years in deterring, disrupting and dismantling criminal activities or organized and serious crime groups. Recent efforts and enforcement focus is directed at targeting high-level organized crime groups. These investigations result in arrests of organized crime figures and seizures of property and cash. The reporting of the seizures is not considered a forfeiture until the court cases are completed and the property and cash is officially deemed forfeited by the courts.

5. Financial

Under the authority of a Court Order, for the fiscal year ending March 31, 2021, YRP turned over a total of \$1,087,825 in cash and assets to the SPMD, PSB and MAG.

The following chart identifies the number of forfeiture cases YRP forwarded to the above agencies from 2017 to 2021, as well as the value of cash and assets seized by YRP and forfeited. The value of the forfeitures is based upon a gross value of assets and does not reflect the expenses associated to the management, remediation or dispersal of the property.

TABLE #1

York Regional Police Offence-Related Property/Proceeds of Crime Forfeitures

Year Ending	Number of Cases	Gross Value of Forfeitures
March 31, 2017	125	\$870,450
March 31, 2018	97	\$1,529,022
March 31, 2019	136	\$833,077
March 31, 2020	92	\$500,742
March 31, 2021	135	\$1,088,795
TOTAL	585	\$4,822,086

6. Conclusion

The primary goal of the aforementioned legislation is to disrupt and dismantle criminal organizations. Removal of proceeds of crime and properties used to facilitate these crimes is

a strong deterrent to criminal activity. In addition, the funds derived by the process are used in part to benefit victims of crime and/or are re-invested into community safeguards.

Accessible formats or communication supports are available upon request.

Jim MacSween, B.A.A.
Chief of Police

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