

MINISTRY OF JUSTICE
Community Safety and Crime Prevention Branch
Civil Forfeiture Office

BRIEFING NOTE

PREPARED FOR: Suzanne Anton, Attorney General and Minister of Justice
FOR INFORMATION (meeting with Guide Outfitters 5pm July 15)

ISSUE:

The Guide Outfitters Association (GOA) challenges whether *the Civil Forfeiture Act (CFA)* should have application to members of the GOA.

BACKGROUND:

- The *CFA* was passed in 2005. In 2006 the Civil Forfeiture Office (CFO) began operations and since that time the CFO has successfully forfeited in excess of \$35M in properties which were either the *proceeds* or *instruments* of unlawful activity. The majority of files referred to the CFO for consideration of civil forfeiture come from police agencies in BC. A portion of forfeited funds is returned to BC communities (\$10M+) in the form of crime prevention grants.
- In August 2011, the Conservation Officer Service (COS) referred a file to the CFO which contained evidence that a person who held a guiding territory permit had been operating with this permit in contravention of several offences under the Wildlife Act over a prolonged period of time.
- The CFO filed proceedings against the Defendant (who is also a member of the GOA) in May 2012 claiming that the permit held by the Defendant was an instrument of unlawful activity.

s.16, s.22, s.14

- The GOA is considering make an Application for intervener status in this matter arguing that the *CFA* should not be applied against members of the GOA as the intention of the legislation was to be a tool limited to organized crime.
- The CFO's position is that the *CFA* was drafted with the intent of being sufficiently broad to be considered in a number of applications. The Act states that unlawful activity is defined as any offence contrary to any "Provincial or Federal Act" or any offence outside of Canada that would be an offence in Canada. A letter was prepared for the DM in response and is attached.

Prepared by:
Phil Tawtel
Executive Director
Civil Forfeiture Office

s.17, s.15

Approved by:
Lynda Cavanaugh
Assistant Deputy Minister
Community Safety and Crime Prevention

s.17, s.15



Mr. Mark Werner, President
Mr. Scott Ellis, Executive Director
Guide Outfitters Association of British Columbia
Suite 103, 19140 – 20th Avenue
Surrey BC V3S 6M3

Dear Mr. Werner and Mr. Ellis:

Thank you for your letter regarding the application of the Civil Forfeiture Act and the Guide Outfitters Association.

Our meeting was informative and provided meaningful clarification of your position. There are multiple statutes and regulations, both federal and provincial, which cover a broad range of activities and offences. Depending on the type of investigation and offence, an action may be simultaneously started under more than one federal statute (Criminal Code and Income Tax Act, for example) and more than one provincial statute. The Civil Forfeiture Act was purposely drafted to work in concert with other statutes and not to be limited to certain offences.

The Director of Civil Forfeiture has the discretion to commence forfeiture actions pursuant to the *Civil Forfeiture Act* where there is evidence that a property is an instrument of unlawful activity or may cause serious bodily harm to a person, or property that is the proceeds of unlawful activity. Unlawful activity is broadly defined to include any offence under a federal or provincial statute. In exercising discretion, the Director considers all relevant factors including the strength of the evidence, the interests of justice, and the economic factors of the action. Exemptions to the legislation cannot be arbitrarily granted.

I am encouraged that you are continuing your discussions with the Ministry of Environment regarding the application of section 61 of the Wildlife Act, and would suggest that this is the most appropriate direction to take regarding your concerns.

Sincerely,

Lori Wanamaker, FCA
Deputy Solicitor General

pc: The Honourable Terry Lake
The Honourable Pat Bell
The Honourable Steve Thomson

**MINISTRY OF JUSTICE
COMMUNITY SAFETY AND CRIME PREVENTION BRANCH**

BRIEFING NOTE

PREPARED FOR: Suzanne Anton, Attorney General and Minister of Justice

ISSUE: Civil Forfeiture Overview

BACKGROUND:

- The Civil Forfeiture Office (CFO) operates under the authority of the Civil Forfeiture Act (“the Act”) and has been active since 2006. The CFO is entirely self-funding receiving no appropriation from government. Revenues derived from forfeitures are expended:
 - to operate the program (legal and administrative costs);
 - to provide crime prevention grants to community associations (and police);
 - to meet an assigned budget target to the government which has increased over the past two years by \$1M to its current \$3M.
- At the close of FY 12/13, the CFO had forfeited \$31M+ in property and provided in excess of \$10M+ in crime prevention grants and victim compensation payments.
- The Act allows the CFO to seek the forfeiture of property that is alleged to have been used to commit unlawful activity (e.g. a home used as for a marijuana grow operation) or property that is allegedly the proceeds of unlawful activity (e.g: cash from a drug deal or a vehicle purchased with money from selling drugs).
- The CFO uses the civil court process rather than the criminal court process. Two key distinctions are: actions depend upon a civil standard of proof – that is, a balance of probabilities – and the actions are against property- not people.
- All Civil Forfeiture actions involve normal Due Process and consideration of Charter Rights. Ultimately the CFO must convince a BC Supreme Court judge that forfeiture should be ordered. The court must also consider whether forfeiture is in the interests of justice. If a court subsequently determines that forfeiture is not in the interests of justice, the court may limit or refuse to issue a Forfeiture Order.

- The CFO can receive referrals from police and non-police agencies across BC, from other provinces and from foreign jurisdictions. Information is provided to the CFO through Information Sharing Agreements. Civil Forfeiture actions do not depend on whether there were criminal charges or convictions. The police cannot investigate on behalf of the CFO and must consider criminal forfeiture before making a referral to the CFO.
- The CFO has no power to investigate or “seize” property: it can only preserve the property pending a Court Order to have the property forfeited. Once the property is forfeited, the Act requires the CFO to liquidate (sell) the property.
- In accepting a file, the CFO will consider the strength of the evidence outlined within the case material, the interests of justice and the economic benefit of pursuing litigation.
- In 2011, the Act was amended to allow for Administrative Forfeiture, which authorized the CFO to commence proceedings against lower dollar value property (ie: cash, vehicles, jewelry) in a more cost effective manner.
- The CFO can only commence proceedings under Administrative Forfeiture for certain property: property that is worth \$75,000 or less, is not real property (a house) and property that does not have a secured interest or lien. If the interest holder does not dispute the claim that the property was either used for unlawful activity or was proceeds of unlawful activity within 60 days of notification, then the property is administratively forfeited. If a claimant files a dispute then the matter is directed into the normal Civil Forfeiture process (court).

DISCUSSION:

Specific issues:

- **Challenges to the validity of Act:** CFO cases rarely go to trial as the vast majority of actions settle on terms that are favourable to the office. In the handful of cases where a trial has occurred, the Act has been challenged but been validated by the court (both the BC Supreme Court and BC Court of Appeal). There are currently challenges to aspects of the Act in both the BCCA and the Supreme Court of Canada. Interpretations of the Act by the court have not necessitated changes to the legislation.
- **Administrative Forfeiture:** While the implementation of the Administrative Forfeiture program (the first in Canada) initially raised concerns from the BC Civil Liberties Association and some media outlets, there have been very little if any

negative comments since then. Financially, the program has been a resounding success and similar legislation is currently in the process of being enacted by other Civil Forfeiture Offices across Canada.

- **Grants:** Crime prevention grants are critical to the CFO for three reasons:
 - Grants generate positive feedback from the police and community associations which see the immediate benefit to both their community and to their departments. Police make file referrals voluntarily to the CFO and so without their support there would be no program;
 - Grants provide the government with the opportunity to identify emerging issues and meet priority commitments. For example, CFO funding of education awareness regarding the drug ecstasy following a sudden upsurge in the fatality of young persons associated to this drug;
 - Grants demonstrate to the BC Courts that the CFO is following the Supreme Court of Canada's validation of Civil Forfeiture law which outlined the requirement to compensate communities who suffer from unlawful activity.
- **CFO Security:** Following recommendations by the Ministry's Corporate Security Office, the CFO upgraded physical security to its office and increased the confidentiality of the identity of its employees. There is currently a single media requestor who is seeking to identify and publish the names of all employees. This matter is in the process of being adjudicated by the Office of Information and Privacy Commissioner.

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