Province's Ability to Seize Drug Proceeds Upheld

Ontario's Remedies for Organized Crime and Other Unlawful Activities Act (commonly known as the Civil Remedies Act) is legislation designed to combat the "drugs and thugs" of organized crime by seizing the proceeds of unlawful activity and using them to compensate crime victims. In a May 30, 2007 decision of the Ontario Court of Appeal, the Act withstood a Charter challenge.

1. Ontario (AG) v. Chatterjee [1], the petitioner argued two grounds of appeal: first, that the legislation was criminal law and thus the jurisdiction of the federal government and hence should not have been enacted by a province; and second, that the Act violated his personal s. 11(d) Charter right to be presumed innocent until found guilty. The petitioner had been stopped by the police because of a missing licence plate. Following an investigation of the vehicle, the police found $29,020 cash, a light socket, light ballast, and an exhaust fan. These items are common indicators of marijuana grow operations and drug trafficking.

In a unanimous decision the Ontario Court of Appeal dismissed the claim. The Court held that the legislation was not criminal; its concern was the connection between property and unlawful activity. Moreover, seizure of property under the Act was not dependant on criminal charges or convictions. Legislative debates describing the Act supported this judgment. Specifically, the purpose of the Act is to enable the province to ask the courts to forfeit to the government the proceeds of unlawful activity; compensate victims of crime; and remove financial incentives for crime.

With regard to the Charter challenge, the petitioner argued that the legislation violated the presumption of innocence guaranteed under s. 11(d) of the Charter. Under the Act, "the finding that an offence has been committed is made on a balance of probabilities" which has a less onerous burden of proof than the 'proof beyond a reasonable doubt required in criminal cases [2]. The Court held that s. 11(d) was not applicable in this case. First, the Act does not require a finding of innocence or guilt and does not result in penal consequences. Therefore, it is not criminal in nature. Second, the Attorney General of Ontario must only establish that the property is the proceeds of unlawful activity. In this case, the petitioner's conflicting stories regarding the large sum of cash (at one time the cash was from a casino payout, at another it was the property of his sister) undermined his credibility before the Court.

Alberta, Manitoba, Saskatchewan and British Columbia have enacted similar legislation (Alberta's has yet to be proclaimed in force). In 2006, the Attorney General of Ontario

reported that the victim's fund had over $8.4 M in net assets from property forfeitures. In 2000, organized crime cost the Canadian economy $5 to $9 B [3].

Sources

- Tracey Tyler, "Proceeds of crime law upheld," Toronto Star (30 May 2007).

Further Reading

- Victims Restitution and Compensation Payment Act, S.A. 2001, c. V-35.
- "AG destroys street racing cars forfeited as instruments of unlawful activity," Government of Ontario (15 June 2006) http://ogov.newswire.ca/ontario/GPOE/2006/06/15/c9498.html?lmatch=&lang=_e.html.
- "Civil Asset Forfeiture," Ministry of the Attorney General (1 August 2006).
- "Grants awarded under the CRA", Government of Ontario (22 January 2007).

[1] Ontario (AG) v Chatterjee, 2007 ONCA 406 [Chatterjee].
[2] Chatterjee, supra, note 1 at 39.
[3] Ontario, Legislative Assembly, Official Report of Debates (Hansard) (5 December 2000) (Hon. Gary Carr).