

**CITATION:** Attorney General of Ontario v. \$27,995 in Canadian Currency, 2024 ONSC 902  
**COURT FILE NO.:** CV-22-00681371-0000  
**DATE:** 20240122

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ATTORNEY GENERAL OF ONTARIO

**AND:**

\$27,995 IN CANADIAN CURRENCY AND \$315 IN AMERICAN CURRENCY  
(*in rem*)

**BEFORE:** Brownstone J.

**COUNSEL:** *Sylvia Davis*, for the Applicant

*Anthony Paas*, for the Respondent

**HEARD:** In Writing – January 22, 2024

**ENDORSEMENT**

[1] The Attorney General of Ontario seeks forfeiture of \$27,995 in Canadian currency and \$315.00 in United States currency, in accordance with ss. 3 and 8 of the *Civil Remedies Act*, 2001, SO 2001, C28.

**Background facts**

[2] On February 5, 2021, Toronto police officers responded to a call involving a domestic dispute. When officers attended the apartment in which the dispute arose, they learned that Mr. Leng had previous gun charges. They placed him under investigative detention due to both those charges and his current behavior, and conducted a pat-down search, finding a knife on Mr. Leng. The officers also opened a satchel that Mr. Leng was carrying, in which they found the money the Attorney General now seeks to have forfeited and a Canadian passport. The Canadian money was mostly in \$20 and \$50 bills; the American currency was mostly \$20 bills. Mr. Leng advised the police that the property was from deliveries made some eleven months prior, and said that he had been unemployed since that time.

[3] The person who had reported the domestic incident advised police that Mr. Leng was a drug dealer and to check his backpack. They did so and found 13.78g of a substance later determined to be ketamine, a controlled substance under the *Controlled Drugs and Substances Act* S.C. 1996, c. 19 (the *CDSA*). The reporter of the incident claimed the knapsack belonged to her or to both of them. A prescription in Mr. Leng's name was found in the knapsack.

[4] A few days later, the police executed a warrant that had been issued to search Mr. Leng's car.

[5] They found 228.44 grams of a substance later determined to be ecstasy, another controlled substance under the *CDSA*.

[6] The Attorney General provided evidence that:

- the amounts of the ketamine and ecstasy found indicate that they were not for personal consumption;
- drug-dealers rely heavily on cash, partly to avoid suspicion and inquiries at banks;
- the manner in which the funds were bundled is consistent with how drug-dealers bundle money for ease of counting and transfer.
- ketamine sells on the street for \$20 to \$40 per gram and ecstasy for \$10 to \$20 per pill.
- the circumstances surrounding the seized property, including the amount found and the associated criminal activity, suggest that the property was derived from or is associated with drug trafficking or other profit-motivated unlawful activity;
- Mr. Leng has a lengthy criminal record, including 5 convictions for possession of controlled substances for the purpose of trafficking, 2 firearms related offences, and two counts of possession of property obtained by crime.

[7] Mr. Leng was charged with one count of possession of property obtained by crime over \$5000 under the *Criminal Code* RSC 1985, c C-46 and two counts of possession of a schedule 1 substance for the purpose of trafficking under the *CDSA*. On August 16, 2021, those charges were stayed at the Crown's discretion.

### **Procedural history**

[8] The police obtained orders for detention for the seized property on February 10 and May 31, 2021.

[9] On March 27, 2022, counsel for Mr. Leng requested the return of the property. On March 30, 2022, a property disposition order was issued, requiring the return of the property to Mr. Leng. On June 10, 2022, an order was issued preserving the property until the final disposition of the application. The funds are currently in an interest-bearing account with the accountant of the Superior Court.

[10] On February 28th, 2023, this application record was served on Mr. Leng's counsel. On March 24, 2023, counsel responded that he accepted service but could not obtain instructions, as

Mr. Leng had been out of the country and had no firm return date. Counsel for the Attorney General asked that counsel for Mr. Leng attempt to contact him, failing which the Attorney General would proceed with this application. Nothing further was heard from counsel or Mr. Leng.

[11] The Attorney General served the application material on Mr. Leng's counsel and asks that the application be treated as unopposed, given the lack of any response from Mr. Leng or his counsel.

[12] I agree that in these circumstances, the application may proceed as unopposed. His counsel was served. He was given time to contact his client before further steps were taken. No request was made on Mr. Leng's behalf to adjourn the matter, or to seek more time to get in touch with him. The last information provided was that Mr. Leng had left the country with no return date.

### **The Statutory Scheme**

[13] Under the *Civil Remedies Act*, 2001, SO 2001, c 28 the court is required to make an order forfeiting property that is the subject of a forfeiture proceeding if it is satisfied that the property is the proceeds of unlawful activity (s. 3) and/or an instrument of unlawful activity (s. 8), unless to so order would clearly not be in the interests of justice. The Attorney General must establish that the property is the proceeds of and/or an instrument of unlawful activity on a balance of probabilities. If it does so, the court considers whether it is clearly not in the interest of justice to order forfeiture.

[14] One of the purposes of the *Civil Remedies Act* is to prevent those who were engaged in unlawful activities from keeping property that was acquired as a result of those activities. Another purpose is to prevent property from being used to engage in certain unlawful activities. Proceedings are *in rem*, not *in personam* (s. 15.6).

[15] Proceeds of unlawful activity is defined as property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity (s. 2). An instrument of unlawful activity is defined as property that is likely to be used to engage in unlawful activity that, in turn, would be likely to or is intended to result in the acquisition of other property, in injury to the public or in serious bodily harm to any person, and includes any property that is realized from the sale or other disposition of such property (s. 7).

### **Does the property meet the statutory definition?**

[16] Because proceeds of drug purchases are often used to buy more drugs to keep the cycle going, the Attorney General submits that the property in this case is both proceeds of and an instrument of unlawful activity.

[17] I find that the Attorney General has proven, on a balance of probabilities, that the property was the proceeds of and an instrument of unlawful activity on the following basis:

- Mr. Leng was found with a substantial amount of cash on him, mostly in \$20 and \$50 bills,
- Funds in these denominations are consistent with drug purchase and sale;
- Drug dealers deal mainly in cash and carry large amounts of cash on them for purposes of buying and selling drugs;
- Mr. Leng has a related criminal record;
- The currency was bundled in a way that is consistent with draft trafficking;
- Controlled substances were found in Mr. Leng's apartment and his car, in quantities that demonstrate they were not for personal consumption.

[18] I also note that Mr. Leng had not been employed for 11 months and did not provide any reasonable explanation for having the funds on him, nor has he provided one since. This is not to reverse the onus, but I accept the Attorney General's submission that where such suspicious circumstances are present, the absence of evidence establishing a legitimate source of the property or explaining the possession of large amounts of money without an apparent source may be considered by the court: *Attorney General of Ontario and \$543,515 in Canadian Currency (in rem)*, 2021 ONSC 4323 at para. 23. The court may have regard to the absence of any evidence documenting a legitimate source for the currency: *Ontario (Attorney General) v. 8477 Darlington Crescent*, 2011 ONCA 363 at para. 45.

[19] Given all of the above, I find on a balance of probabilities, that the property is the proceeds of and/or an instrument of drug trafficking contrary to the *CDSA*, and possession of property obtained by the commission of an offence under the *Criminal Code*.

**Is it clearly not in the interests of justice to make an order forfeiting the property?**

[20] The party who seeks relief from forfeiture based on the forfeiture clearly not being in the interest of justice bears the onus of demonstrating that in all the circumstances forfeiture would be a manifestly harsh and inequitable result. *Ontario (Attorney General) v 1140 Aubin Road, Windsor and 3142 Halpin Road, Windsor (in rem)*, 2011 ONCA 363 at para. 85.

[21] In assessing this factor, the courts consider a number of factors, which may include the closeness of the connection between the property and the illegal activities, the reasonableness of the party whose property is the subject of the forfeiture application, whether there is a disparity between the party's interest in the property and the overall value of the property that is tainted by unlawful activity, and the interplay between the purposes of the *Civil Remedies Act* and the exercise of the discretion to relieve from forfeiture. *Ontario (Attorney General) v 1140 Aubin Road, Windsor and 3142 Halpin Road, Windsor (in rem)* at paras. 97-99, 104 and 107.

[22] The Attorney General submits that the property is closely tied to the illegal activity, and that Mr. Leng benefited from and participated in that activity. Further, there is no disparity

between his interest and the overall value of the property because all of the property in this case is tainted by crime. It further submits that the purposes of the *Civil Remedies Act*, including making crime unprofitable and preventing property from being used to engage in unlawful activity, would be promoted by forfeiture.

[23] I accept the Attorney General’s submissions in this regard. There is no reason to find the forfeiture is not in the interests of justice. On all factors, the order of forfeiture in this case clearly promotes the purposes of the legislation and is clearly in the interests of justice.

[24] The forfeiture order will issue.

[25] The Attorney General’s factum states that it seeks costs on a partial indemnity basis. No bill of costs was provided and no specific amount of costs was sought. The draft order contained no provision ordering costs. In the circumstances, no order is made as to costs.

[26] Therefore:

1. THIS COURT ORDERS that the \$27,995 in Canadian currency and \$315 in American Currency, seized by the Toronto Police Service on February 5, 2021 (“Subject Currency”), is forfeited to the Crown in Right of Ontario, pursuant to sections 3 and 8 of the Civil Remedies Act.
2. THIS COURT ORDERS that upon receipt of this Order, the Accountant of the Superior Court of Justice shall pay the Seized Currency, plus all accumulated interest, to the Minister of Finance.

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L. Brownstone J.

**Date:** January 22, 2024