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<p><b>CHAPTER II – CHAPITRE II :</b> <b>The Decision to Prosecute</b> <b>Décision d’engager une poursuite</b></p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

## PROCEEDS OF CRIME AND OFFENCE-RELATED PROPERTY

### 1. Introduction

The proceeds of crime and offence-related property provisions of the *Criminal Code* help denounce unlawful conduct by weakening the economic incentive to commit an offence. To ensure this function of the criminal justice system is effectively employed, Public Prosecution Services has dedicated a full-time, specialized Crown Prosecutor as Proceeds of Crime Counsel to assist the police and other investigative agents during the investigation, and to assist the Crown Prosecutor during the pre-charge screening and throughout the prosecution in matters concerning proceeds of crime and offence-related property. Where appropriate, the Proceeds of Crime Counsel will take carriage of the proceeds of crime and offence-related property aspects of a matter.

### 2. Scope of Policy

This Policy delineates the roles and responsibilities of the various parties, and sets out the practices and procedures, including the method of dispute resolution, for handling matters concerning proceeds of crime and offence-related property. This Policy also identifies situations in which the *Civil Forfeiture Act* may apply.

### 3. Governing Legislation

#### 3.1 Proceeds of Crime

Section 462.37 of the *Criminal Code* governs the forfeiture of proceeds of crime where the accused has been convicted of a designated offence.

Where the Crown satisfies the court, on a balance of probabilities, that any property is the proceeds of crime, and the designated offence that was the subject of the trial was committed in relation to such property, the court will order its forfeiture.

Where the connection between the offence and the property is not established, but the court is satisfied beyond a reasonable doubt that the property is the proceeds of crime, the judge may order its forfeiture, even where the property is located outside of Canada.

This section also provides extended jurisdiction for the court to order forfeiture in certain circumstances where the accused is convicted of a criminal organization offence or certain offences under the *Controlled Drugs and Substances Act*, where the connection between the offence and the property is not made out, but the court is satisfied on a balance of probabilities that the offender had been involved in a pattern of

criminal activity for the purpose of directly or indirectly receiving a material benefit within the ten (10) years prior to the proceedings.

Where property, that would otherwise be subject to forfeiture under this section, but which cannot be found after the exercise of due diligence, has been transferred, is outside Canada, or has been diminished or commingled, the court may, in lieu of forfeiture, impose a fine of equal value.

### **3.2 Offence-related Property**

Section 490.1 of the *Criminal Code* governs the forfeiture of offence-related property in a similar manner as the provisions relating to proceeds of crime.

“Offence-related property” means any property, within or outside Canada, by means of or in respect of which any indictable offence under the *Criminal Code* or *Corruption of Foreign Public Officials Act* is committed, that is used in any manner in connection with the commission of any indictable offence, or that is intended for use for the purpose of committing an indictable offence.

Under section 490.1, forfeiture is triggered upon conviction for an indictable offence. If the court is satisfied on a balance of probabilities that the offence was committed in relation to the offence-related property, it is ordered forfeited. If the court is not so satisfied, but is satisfied beyond a reasonable doubt that the property was nevertheless offence-related property, the property may also be forfeited.

### **3.3 Controlled Drugs and Substances Act**

Section 16 of the *Controlled Drugs and Substances Act* governs forfeiture of offence-related property where a person is convicted of a designated substance offence and the court is satisfied, on a balance of probabilities, that the property is offence-related property and that the offence was committed in relation to that property. If the court is not so satisfied, but is satisfied beyond a reasonable doubt that the property was nevertheless offence-related property, the property may also be forfeited.

### **3.4 Management of Seized and Forfeited Property Act**

The *Management of Seized and Forfeited Property Act* governs the management of forfeited property in New Brunswick. It permits the Attorney General to manage, control, sell, or otherwise deal with forfeited property in any manner he or she considers appropriate.

## **4. Practice and Procedure**

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### **4.1 Identification of Proceeds of Crime and Offence-related Property**

The Crown Prosecutor shall be mindful of the proceeds of crime and offence-related property provisions, set out in section 3 above, and seek to identify instances where the provisions may apply. Where the Crown Prosecutor encounters such a situation, he or she shall consult with the Proceeds of Crime Counsel, unless there are exceptional circumstances, or doing so is impractical.

#### **4.1.1 Pre-charge Screening**

The opportunity that a successful prosecution may facilitate entitlement to compensation, reparation, or forfeiture, is a public interest factor that supports a decision to prosecute where the evidential test is met; however, it is not determinative. As set out in Policy 11, Pre-charge Screening, the public interest test requires the Crown Prosecutor to carefully balance factors for and against prosecution. The Crown Prosecutor must decide how important this factor is in the circumstances of the case and make an overall assessment that takes this factor into account in relation to all the other relevant factors. Where the proposed charge does not meet the charge approval standard, the Crown Prosecutor cannot proceed with a prosecution, but may, upon consultation with the Proceeds of Crime Counsel, recommend proceeding under the *Civil Forfeiture Act*, as set out in section 6 below.

#### 4.1.2 Post-charge Reassessment and Plea Resolution

Unless there are exceptional circumstances, where the Crown Prosecutor, upon post-charge reassessment of a matter involving proceeds of crime or offence-related property, determines that the likelihood of a successful prosecution has diminished, he or she shall not seek to enter a stay, withdrawal the charges, or negotiate a plea resolution agreement, until he or she has consulted with the Proceeds of Crime Counsel, unless doing so is impractical.

Where the Crown Prosecutor does not consult with the Proceeds of Crime Counsel prior to entering a stay, withdrawing charges, or entering into a plea resolution agreement, he or she shall take into account beforehand the impact such action will have on recovering proceeds of crime or offence-related property. The Crown Prosecutor shall advise the Proceeds of Crime Counsel of any action taken as soon as practicable.

#### 4.1.3 Special Search Warrants and Restraint Orders

Special search warrants issued under section 462.32 and restraint orders issued under section 462.33 of the *Criminal Code* fall within the exclusive purview of the Proceeds of Crime Counsel. If the Crown Prosecutor is approached concerning a special search warrant or restraint order, he or she shall refer the inquiring party to the Proceeds of Crime Counsel.

### **4.2 Roles and Responsibilities**

Where the Crown Prosecutor consults with the Proceeds of Crime Counsel, the Proceeds of Crime Counsel shall determine whether to take carriage of the proceeds of crime or offence-related property aspects of the matter or whether to advise and direct the Crown Prosecutor in such matters.

Where the Crown Prosecutor retains carriage of all aspects of the matter, he or she is expected to consult with and take direction from the Proceeds of Crime Counsel in all matters concerning or impacting proceeds of crime or offence-related property.

Where the Proceeds of Crime counsel takes carriage of the proceeds of crime or offence-related property aspects of the matter, the Crown Prosecutor maintains conduct of the substantive aspect of the file, but shall consult with the Proceeds of Crime Counsel to avoid making decisions that will impact or extinguish rights under the proceeds of crime or offence-related property legislation.

In any event, the Crown Prosecutor shall keep the Proceeds of Crime Counsel informed of the status of the proceedings.

## **5. Dispute Resolution**

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Where the Crown Prosecutor and the Proceeds of Crime Counsel disagree, they shall consult with the Regional Director and the Director of Specialized Prosecutions in an effort to resolve the matter. Where the Regional Director and the Director of Specialized Prosecutions are not able to resolve the matter, they shall refer the matter to the Director of Public Prosecutions to resolve.

## **6. Civil Forfeiture**

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The *Civil Forfeiture Act* provides civil remedies to assist in preventing persons who engage in unlawful activities from benefiting or gaining from those activities, and from using property to engage in unlawful activities.

Neither a criminal conviction nor a criminal charge is prerequisite to a finding that unlawful activity occurred for the purposes of the *Civil Forfeiture Act*.

Where the proposed charge does not meet the charge approval standard or the accused has been acquitted of the charge, the Crown Prosecutor shall consult with the Proceeds of Crime Counsel to determine whether to commence a civil action under the *Civil Forfeiture Act*.

The Proceeds of Crime Counsel, or his or her designate, shall refer all proposed civil actions under the *Civil Forfeiture Act* to the legal services branch of the Office of the Attorney General.

## **7. Related Documents**

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Policy 4	Specific Delegations by the Attorney General
Policy 11	Pre-charge Screening
Policy 14	Post-charge Reassessment
Policy 15	Stay of Proceedings and Recommencement of Proceedings
Policy 16	Withdrawal of Charges
Policy 30	Sentencing and Plea Resolution