bc civil liberties association
L'Association des libertés civiles de la Colombie-Britannique

May 19, 2011

Minister Shirley Bond
Office of the Minister of Public Safety and Solicitor General
Victoria, British Columbia

VIA FAX: 250 356-8270

Dear Solicitor General Bond:

RE: Civil Forfeiture Amendment Act

I write to you in my position as President of the B.C. Civil Liberties Association. Recently, your government, with the support of the opposition, passed the *Civil Forfeiture Amendment Act.* We are extremely concerned that this new law is unconstitutional, and strips away critical due process rights from British Columbians risking gross abuses of power and abridgement of the rights of innocent and law abiding residents.

In short, it is our understanding on reviewing the text of the legislation that your government seeks to avoid judicial oversight of seizure of property that is valued at up to $75,000, and that the act reverses the onus when property is seized. Now, instead of government being required to go to court to justify seizing a citizen's property to a judge, citizens must take the government to court to explain why the government shouldn't take their property.

Our concerns with the new Act are many, and include:

1. The now increased risk that a forfeiture order will be extremely difficult to challenge even if no criminal charges are ever laid, or if charges are withdrawn, or a full acquittal granted.
2. The lowered standard of proof from a balance of probabilities to a "reason to believe" that the property was the product or instrument of crime.
3. The significantly increased risk of seizure of property from innocent parties.

We understand that the justification for these changes, according to your office, is that forfeiture notices are not disputed in nearly a third of all cases under the existing rules. The intention is to increase the use of civil forfeiture and to make it cost effective to claim smaller property items.

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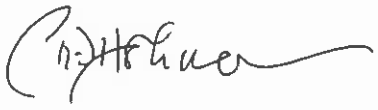
From our perspective, despite the obvious increase in efficiency that comes with removing the oversight of courts, the rule of law requires that government not be allowed to seize a citizen's belongings without due process. For example, a democratic society does not eliminate criminal trials and incarcerate all accused persons simply because most prosecutions result in guilty pleas. The principle of due process holds true here as well. In many cases, civil forfeiture will carry a much heavier penalty than any criminal law process would – the loss of a family car, for example, recoverable only through a B.C. Supreme Court action against the government, could be much more serious to the economic fortunes of an individual than a brief period of jail or probation.

Our research strongly suggests that the removal of the court's oversight will render the Amendments vulnerable to constitutional litigation. While the case of *Chatterjee v Ontario* [2009 SCC 19] upheld provincial authority to enact civil forfeiture legislation, it was important to the Supreme Court of Canada that the legislation in that case involved court oversight. The Court framed civil forfeiture legislation as being "a property-based authority to seize money and other things shown on a balance of probabilities to be tainted by crime" [emphasis added, para 23].

While we understand that this measure promises to bring significant income to the provincial government at a difficult financial time, abridging the private property rights of citizens in British Columbia is a major erosion of basic rights and freedoms and one that is unlikely to be tolerated by our courts. We urge you to revisit this ill-conceived initiative.

Yours truly,



Robert Holmes, Q.C.
President