



DEPARTMENT OF JUSTICE

Restraint, Seizure and Forfeiture of Criminal Proceeds In Canada

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Ability to Seek Restraint and Forfeiture from Canada

- A foreign State may seek restraint, seizure and forfeiture of criminal proceeds from Canada in one of two circumstances:
 1. By making a mutual legal assistance request to Canada seeking the enforcement of a restraint, seizure, or forfeiture/confiscation order issued by a court of criminal jurisdiction in the requesting jurisdiction; or
 2. By requesting Canada to pursue a domestic proceeds of crime investigation.



Restraint and Seizure under section 9.3 of the Mutual Legal Assistance Act

A foreign state can seek the restraint or seizure of criminal proceeds or offence-related property if:

1. The request is made in writing to the Minister of Justice by 1) a treaty partner, 2) a state or entity designated in Canada's domestic legislation as a partner, or 3) a country with which Canada has entered into an administrative arrangement.
 2. The request includes a copy of the foreign order issued by a court of criminal jurisdiction for restraint or seizure of property located in Canada;
 3. The person to whom the property relates is **charged** with a criminal offence which would also be a serious crime in Canada.
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Forfeiture under section 9.4 of the the Mutual Legal Assistance Act

Preconditions:

1. Written request presented to the Minister of Justice for the enforcement of an order of forfeiture of property situation in Canada;
 2. Request must include a forfeiture order issued by a court of criminal jurisdiction in the other jurisdiction;
 3. Person to whom the property relates must be **convicted** of a criminal offence in the other state and no further appeals possible; and
 4. The offence would be an indictable offence (serious crime) if it had been committed in Canada (dual criminality requirement).
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Mutual Legal Assistance Treaties

Argentina (**December 20, 2001**)

Austria (**December 1, 1997**)

Australia (**March 14, 1990**)

Bahamas (**July 10, 1990**)

Belgium (**April 1, 2003**)

Brazil (**November 1, 2008**)

China (**July 1, 1995**)

Czech Republic (**November 1, 2000**)

France (**May 1, 1991**)

Germany (**October 23, 2004**)

Hellenic Republic (**January 28, 2000**)

Hong Kong (**March 1, 2002**)

Hungary (**September 1, 1996**)

India (**October 25, 1995**)

Israel (**March 16, 2000**)

Italy (**December 1, 1995**)

Korea (**February 1, 1995**)

Mexico (**October 21, 1990**)

Netherlands (**May 1, 1992**)

Norway (**January 14, 1999**)

Peru (**January 25, 2000**)

Poland (**July 1, 1997**)

Portugal (**May 1, 2000**)

Romania (**June 30, 1999**)

Russia (**December 18, 2000**)

South Africa (**May 4, 2000**)

Spain (**March 3, 1995**)

Sweden (**December 1, 2001**)

Switzerland (**November 17, 1995**)

Thailand (**October 3, 1994**)

Trinidad Tobago (**October 11, 2003**)

Ukraine (**March 1, 1999**)

United Kingdom (**Sept. 17, 1993**)

United States (**January 24, 1990**)

Uruguay (**March 1, 2002**)





Multilateral Conventions

Canada has MLA obligations under several multilateral conventions, e.g.

- ◆ *UN Convention against Corruption*
 - ◆ *UN Transnational Organized Crime Convention*
 - ◆ *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*
 - ◆ *UN Convention against Torture*
 - ◆ *Inter-American Convention on MLA*
 - ◆ *COE Convention Against Cybercrime (ratified in 2015)*
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Number of MLA Requests to and From Canada

- In 2018 Canada received 717 requests for assistance
- Canada made 134 requests for assistance.



Number of MLA requests Under UNTOC

- In last 5 years Canada received 54 requests under UNTOC
- Canada made 3 requests



Mandatory Grounds of Refusal to Enforce Foreign Order of Forfeiture

- Section 9.4(2) of the MLA Act requires that the Minister of Justice refuse a request seeking the enforcement of an order of forfeiture if:
 - Request is made to punish a person on one or more listed grounds of discrimination, e.g. race, nationality, age, political opinion;
 - Enforcement would compromise an ongoing Canadian proceeding or investigation;
 - Enforcement would “impose an excessive burden on the resources of federal, provincial or territorial authorities” in Canada;
 - Enforcement might prejudice Canada’s security, national interest or sovereignty; or
 - Refusal of request is in the public interest.
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Nexus Between Foreign Offence and Canadian Property

- A request to restrain, seize, or confiscate Canadian property must clearly outline the basis to believe that the property constitutes the proceeds of crime or is offence related property;
- Evidence must be provided. It is not enough to simply state that it is criminal proceeds or offence related property,
- For example, it would be necessary to provide an outline of the facts that show that money used to purchase Canadian property came from the crime for which the person was charged or convicted.



SPECIFIC CANADIAN PROPERTY MUST BE IDENTIFIED

- The request for assistance and the foreign order of restraint, seizure or forfeiture must clearly identify the Canadian property that is the subject of the order.
- It is not sufficient to refer to general property or assets situated in Canada, e.g. all bank accounts in the name of the accused or convicted person; all real estate held by the accused or convicted person in Canada.



PROCESS FOR EXECUTING REQUESTS UNDER SECTIONS 9.3 AND 9.4 OF THE MLA ACT

- If Minister approves the execution of the request, Ministerial Authorization is issued to the Attorney General of Canada to make arrangements to enforce the foreign order.
- Counsel for the A.G. of Canada, on receipt of the Ministerial Authorization, may file the order with the Superior Court in the province in which the property is located.
- On being filed, the order is entered as a judgment of that court and may be executed anywhere in Canada.



Notice to Parties with a Claim to the Property

- For forfeiture and confiscation orders, notice must be given to persons that the Canadian court believes have a valid interest in the property before the order can be enforced.



Non-conviction Based Asset Forfeiture

- Civil forfeiture is not available in Canada through the mutual legal assistance process.
- For constitutional reasons this area is a provincial responsibility.
- If a foreign state wished to recover assets that are subject to a non-criminal order it would need to retain counsel and pursue enforcement as a civil matter in the province where the property is located.



SEIZED PROPERTY MANAGEMENT ACT

- The *Seized Property Management Act* gives the Minister of Public Works and Government Service the authority to take custody of property that was restrained and forfeited; to manage and dispose of it as appropriate.
 - Management of the property may include maintaining the ongoing operation of the property and making improvements to preserve its economic worth.
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Asset Sharing

- The *Seized Property Management Act* provides authority for the AG of Canada to enter into a reciprocal sharing agreement with a foreign state in order to return assets.
- No sharing can take place unless a sharing agreement has been entered into.
- Prior to return or sharing of forfeited assets Canada deducts from forfeited funds the reasonable costs incurred in its investigative and judicial proceedings. This is done on a diminishing value basis e.g. 10% for minimal contributions, 50% for significant Canadian contributions, up to 90% for predominant Canadian contribution.



Canadian Central Authority

- Canada's Central Authority is the International Assistance Group - Established in 1988
- HQ at the Department of Justice in Ottawa – 26 counsel (1 posted in Brussels), 14 paralegals, 9 legal assistants;
- Established to carry out most of the functions assigned to the Minister of Justice under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*.
- The Canadian Central Authority functions as the single location through which all requests for assistance flow.
- The Central Authority is responsible for coordinating and monitoring the progress of both requests made and requests received.
- The Central Authority provides information and assistance to both domestic and foreign law enforcement and prosecutorial authorities



Points of Contact

- All requests for mutual legal assistance including restraint, seizure and forfeiture of criminal proceeds are made to the Central Authority:

International Assistance Group

Litigation Branch, Criminal Law Division

Justice Canada

284 Wellington Street, 2nd floor

Ottawa ON K1A 0H8

Telephone: 1 – 613-957-4832

Fax: 1-613-957-8412





Justice Liaison Official in Belgium

- There is an official in Brussels who can facilitate the processing of mutual legal assistance requests from countries in Europe:

Counsellor of International Criminal Operations

Canadian Mission to the European Union

Avenue des Arts 58

Brussels 1000

Belgium

Telephone: +32-2-741-0771

Fax: +32-2-741-0679

