Court File No.: CV-16-11424-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

EMMANUEL VILLAGE RESIDENCE INC.

Respondent

Application under section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended

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FACTUM OF SURE MORTGAGE CAPITAL INC.
(Motion by Emmanuel Village Residence Inc. returnable September 6, 2016 re: *inter alia* broker's commission)

DATE: September 1, 2016

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TO: THE SERVICE LIST

PART I – INTRODUCTION

1. This is the second part of a motion by Emmanuel Village Residence Inc. ("**EVR**") for a a contemplated transaction. By order made at a 9:30 appointment, the part of EVR's motion for approval of the transaction proceeded on August 26, 2016, which was granted by the Honourable Mr. Justice Hainey. The remainder of the relief sought, including an increased charge for professional fees and a charge for the payment of the broker's commission on the transaction, was set for hearing on September 6, 2016.

2. Sure Mortgage Capital Inc. ("**Sure Mortgage**") is the broker for the transaction. Sure Mortgage understands that the Attorney General for Ontario (the "**A-G**") opposes the payment of Sure Mortgage's commission for the sale contemplated by the transaction.

3. These are the submissions of Sure Mortgage in favour of the relief sought by EVR in connection with the broker's commission (or alternatively that the receiver simply be authorized to pay the commission from the proceeds of sale, thereby dispensing with the need for a charge in that respect).

PART II – OVERVIEW

4. The *Civil Remedies Act, 2001* contains very broad terms, but also allows for judicial discretion in terms of whether all or part of an asset that might be proceeds of illegal activity should be forfeited.

5. The leading case in that regard speaks of whether forfeiture would offend the community's sense of fairness, or would do a disservice to the administration of justice.

6. While the facts of Sure Mortgage's claim for payment are understandably hard to match up against the typical situations that have been litigated under this statute, it would neither promote the administration of justice nor satisfy the community's sense of fairness if Sure Mortgage were not to be paid its commission for having generated the sale that will now benefit all stakeholders. This is particularly the case when Sure Mortgage did so under a Court-supervised process approved by this Court in the Approval and Vesting Order granted for the transaction in question.

PART III – FACTS

Brief overview of these and the related proceedings

7. The proceeding in this court file was begun by EVR to establish a process by which a court-appointed receiver could supervise EVR's attempt to sell itself. A modified receivership order was granted to that effect.

> **Order of Penny J. dated June 24, 2016, Appendix "D" to the Third Report of BDO Canada Ltd. in its capacity as receiver of Emmanuel Village Residence Inc. dated August 22, 2016 (the "Third Report).**

8. Around the same time as this proceeding started, the A-G commenced proceedings under the *Civil Remedies Act, 2001* (the "**CR Act**") against EVR and its assets (also against other entities and assets as well, but those are not material to this motion).

> **Order of Broad J. dated June 16, 2016, Appendix "C" to the Third Report.**

9. There has not yet been any determination that the assets of EVR are proceeds of crime within the meaning of the CR Act, whether in whole or in part. The orders made to date are in the nature of preservation only.

10. There were accordingly orders obtained in both this receivership proceeding and in the A-G's CR Act proceeding to safeguard the assets of EVR pending further court order. Notably, the receivership order provided that the Receiver was expressly appointed "for the purpose of completing a going concern sale of EVR's business."

Para. 3 of the Order dated June 24, 2016, Appendix "D" to the Third Report.

Sure Mortgage's role

11. Sure Mortgage is a broker and advisor that was retained by EVR to assist with a potential sale of EVR's assets.

Third Report, paras 1.1.9.

12. This engagement arose after one of the principals of EVR, Brian Hunking, pled guilty to a charge of fraud over $5,000, and a subsequent decision by the Retirement Homes Regulatory Authority to revoke EVR's licence to operate as a result of that plea.

Third Report, para. 1.1.6 and 1.1.8.

13. Sure Mortgage had previously been retained by EVR in 2010 to obtain financing, as well as in 2012 and 2014 for two refinancing transactions. Following the 2014 refinancing transaction, Sure Mortgage was also instructed by EVR to seek out possible buyers, but the subsequent negotiations ultimately did not go anywhere.

Third Report, para. 2.2

14. Sure Mortgage is also a secured creditor of EVR, on account of mortgage broker commissions that were not paid in the previous refinancings of EVR and which were

accordingly secured by way of mortgage. Sure Mortgage's entitlement to be paid under that secured loan is not an issue on this motion (and it is not clear that the A-G opposes payment of those amounts in any event).

15. Sure Mortgage, and Jeffrey Winters as its principal, conducted the process by which EVR sought to sell itself following March of 2016. It is EVR's evidence that Sure Mortgage and Mr. Winters "made a sufficient effort to obtain the best price and acted fairly and in the best interest of EVR and its creditors and stakeholders in reaching an agreement to sell EVR". Further, EVR's evidence is that Mr. Winters "played an integral role in the negotiations that have led to the Sale Agreement."

Affidavit of Judith Ann Hunking sworn August 19, 2016 (the "EVR Affidavit"), paras. 20 and 21; Motion Record of EVR, tab 2.

16. The Receiver also commented on Sure Mortgage's work in connection with EVR's sale. The Receiver noted that Sure Mortgage prepared a "targeted marketing program to logical purchasers of EVR's assets and operations" and performed "extensive market research into potential purchasers in the local market."

Third Report, para. 2.2.

17. The Receiver further noted that "Sure Mortgage was an integral party in bringing the transaction to EVR and the successful negotiation of same both before and after the Receiver's appointment."

Third Report, para. 2.9.

18. In connection with EVR's request for a charge to secure the payment of Sure Mortgage's

commission, the Receiver stated that it "supports the creation of the Commission Charge and its priority status as described above."

Third Report, para. 2.9.

19. The commission payable to Sure Mortgage is 2.5% of the sale value. It is the evidence of EVR (on advice and belief from its counsel) that this is a standard term in a transaction like this.

EVR Affidavit, para. 19; EVR Motion Record, tab 2.

Third Report, para. 2.9.

20. Sure Mortgage understands that a copy of its engagement letter, which sets the 2.5% commission, has been filed by the Receiver as part of its confidential report.

The A-G's apparent objections

21. Sure Mortgage understands that the A-G objects to payment of the commission to Sure Mortgage.

22. This objection is apparently based on the argument that all of the proceeds of the sale of EVR's assets under that transaction may be proceeds of unlawful activity within the meaning of the CR Act.

23. The A-G has thus far refused to produce its witness for cross-examination. Counsel for Sure Mortgage requested this on August 29 by writing:

> Please advise when your affiant is available for cross-examination on either Wednesday or Thursday this week. I will require production of each and every sale agreement that the A-G has permitted to proceed under this legislation as well as details of all commissions paid to any

> broker, real estate agent, liquidator, or other sales broker under this legislation. Any of those persons were also paid with proceeds of crime, and if the only distinguishing factor is whether the A-G "likes" them then this will give rise to an issue of abuse of power and bad faith.

24. The response from the A-G that same day on that point was:

> As previously stated there is very little chance that the information would be with the Minister 's office before your demand for a cross-examination on a non-existent affidavit. I will, as stated, bring your concerns to the AG's attention and I will advise once a decision has been made.
>
> For the record it has nothing to do with the AG liking anyone or not. First, I am not aware that any broker has been paid under the legislation as the sale of an on-going businesses is exceedingly rare under this relatively new statute. Payments made to realtors were pursuant to preset arrangements with the AG; those arrangements were made before proceeds were knowingly converted. These arrangements allowed the AG to determine if the conversion was in accordance with the legislation. The AG has unfortunately been given no such opportunity in this matter.

PART IV – ISSUE AND ARGUMENT

25. The sole issue that Sure Mortgage will address in this factum is whether the commission owing to Sure Mortgage should be paid.

26. The answer is “yes”. The CR Act provides wide judicial discretion to decline to order forfeiture when to do so would “clearly not be in the interests of justice”, and the circumstances of Sure Mortgage’s work, which was to further a transaction for the benefit of all stakeholders including victims of crime as contemplated by the CR Act, merits a determination that to the extent that proceeds of crime may be at issue, Sure Mortgages should nonetheless be paid its commission.

The CR Act

27. The CR Act is quite wide-sweeping legislation. On its face, if the Court determines that property is the proceeds of crime (as defined in that Act) then the Court shall make an

order forfeiting such property. This provision is in subs. 3(1) of the CR Act:

> Forfeiture order
> 3. (1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the court finds that the property is proceeds of unlawful activity.

28. There is an exception in subs. 3(3) of the CR Act to the mandatory provision to forfeit property where the interests of "legitimate owners" are concerned. That is not relevant to the claims of Sure Mortgage for commission, however, because s. 2 of the CR Act limits the definition of "legitimate owner" to someone who acquired property after the unlawful activity and "did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity." In this case, since the very genesis of Sure Mortgage's engagement was in the wake of Mr. Hunking's guilty plea, Sure Mortgage cannot fit within that exception.

29. The general forfeiture provision in subs. 3(1) of the CR Act does also contain a further discretionary exception to forfeiture in the phrase "except where it would clearly not be in the interests of justice".

30. The leading case on the interpretation of that phrase is *Attorney General for Ontario v. 8477 Darlington Crescent*, 2011 ONCA 363. Part of the issues before the Court of Appeal involved the determination by the judge at first instance that certain of the properties at issue (referred to as the "Atwater property" in that case) should not be forfeited because of that part of subs. 3(1). The Court upheld that determination.

> ***Attorney General for Ontario v. 8477 Darlington Crescent,* 2011 ONCA 363 at para. 96; Factum tab A(1).**

31. The Court of Appeal in *8477 Darlington Crescent* analogized the issues that should be considered in the general exception from forfeiture in subs. 3(1) of the CR Act to the case law dealing with civil relief from forfeiture.

> ***Attorney General for Ontario v. 8477 Darlington Crescent,* 2011 ONCA 363 at para. 112; Factum tab A(1).**

32. The Court of Appeal held that an appropriate test for this provision would be to analyze:

a) the conduct of the applicant;

b) the gravity of the breaches; and

c) the disparity between the value of the property forfeited and the breach.

> **Attorney General for Ontario v. 8477 Darlington Crescent, 2011 ONCA 363 at para. 88; Factum tab A(1).**

33. In doing so, the Court of Appeal commented that one distinguishing factor between the civil relief from forfeiture test and what should be considered in subs. 3(1) of the CR Act is that the former involves a balancing of private interests, whereas the latter involves public concerns in addition to private ones.

> **Attorney General for Ontario v. 8477 Darlington Crescent, 2011 ONCA 363 at para. 94; Factum tab A(1).**

34. In considering the interests involved, however, the Court of Appeal rejected the argument by the A-G in that case that the purpose of the CR Act should solely inform that analysis. Instead, the Court of Appeal held that the focus should be broader:

> [96] I do not, however, agree that the "interests of justice" in s. 3(1) are limited to the purposes of the CRA identified in s. 1. Those purposes

> are part of, but cannot be equated with, the "interests of justice". That phrase is a broad one and includes maintaining public confidence in the civil justice process. That confidence is promoted by orders that are, broadly speaking, in accord with the community's sense of fairness. A forfeiture order made in circumstances where any reasonable person would regard the order as excessive, while perhaps serving the purposes of the CRA in the narrow sense, would do a real disservice to the administration of justice and thereby undermine rather than promote the "interests of justice".
>
> **Attorney General for Ontario v. 8477 Darlington Crescent, 2011 ONCA 363 at para. 96; Factum tab A(1).**

35. Counsel have been unable to find any case law considering the CR Act and the payment of professionals or other expenses that arise in the deposition of an asset that has been preserved and may possibly be forfeited under that Act. The CR Act also has no direct provisions on point, seeing as sections 5 and 10 only deal with claims for legal fees by owners or persons claiming an interest in such property.

36. Therefore, it is necessary to argue by analogy. It is difficult in that regard, though, to fully apply the analysis that the Court of Appeal followed in *8477 Darlington Crescent* to the facts in this case at this point. For example, in that case the Court of Appeal considered the actions of the owner who sought to avoid forfeiture of her property as they related to (i) knowledge of the criminal activity, (ii) whether reasonable steps were taken to avoid that activity, (iii) any profit derived from that activity, and (iv) steps taken after the owner became aware of the criminal activity.

> **Attorney General for Ontario v. 8477 Darlington Crescent, 2011 ONCA 363 at para. 98; Factum tab A(1).**

37. In this case, Sure Mortgage's engagement arose after all the (apparent) criminal activity was completed, and indeed after all of it was pretty well known.

38. On the other hand, however, Sure Mortgage was engaged as part of the process to generate proceeds for all of EVR's creditors and stakeholders. Indeed, while all of Sure Mortgage's actions were taken after the world knew of the activity that might be the basis for a forfeiture order under the CR Act, by the same token all of Sure Mortgage's actions were done as part of a court-supervised sales process.

39. In that regard, it is also relevant that the sales process which Sure Mortgage undertook on behalf of EVR (described as extensive and integral) was in fact just recently approved by this Court in the Approval and Vesting Order granted on August 26, 2016.

40. Other parts of the test in *8477 Darlington Crescent* also do not match up well with the facts of this case. For example, the disparity in value between the value of the property and the breach does not work as in other CR Act cases. In this case, Sure Mortgage provided valuable service and will not be paid anything for it if the broker commission is not paid. Sure Mortgage did not otherwise benefit from the illegal activity in any way in the same fashion as the owner of the Atwater property in *8477 Darlington Crescent* who had received rental payments derived from a grow-op.

41. In the circumstances of this case, if one instead turns to the more general articulation of the test for the exception against forfeiture in subs. 3(1) of the CR Act (as noted in paral 34 above) then it seems quite possible that the "community's sense of fairness" would be offended if professionals who participate in a court-supervised (and approved) sales process in relation to possible proceeds of illegal activity were not paid for their services. This would, to again quote the Court of Appeal's reasoning, "do a real disservice to the administration of justice".

42. In contrast, the best that the A-G seems to be able to say in this case is that, in other cases where the A-G has not objected to payments to agents or brokers, this was because the A-G was able to "determine if the conversion was in accordance with the legislation".

43. With respect, that makes no sense. First of all, as a general matter, whether the A-G pre-approved the services being given by the professional has nothing to do with whether the CR Act allows for payment for that professional's services. Either the CR Act permits such payments (seemingly in subs. 3(1)) or it does not. Secondly, in the particular facts of this case where the Court already supervised and approved the process through the receivership, which probably does not occur all that often in CR Act cases, query how steps taken in furtherance of that process could be inappropriate.

44. While one can readily see that the structure of the CR Act is different than the approach taken in insolvency liquidations, it is submitted that one of the rationales in the latter should still apply. Namely, the good faith contribution by professionals of their services to enhance the estate should result in payment to those professionals.

45. The alternative is that distressed assets will not get the benefit of professional services to get the best value through a well-developed sales process that takes advantage of a broker's contacts, experience and acumen. The harm to estates though the loss of value would outweigh the cost of those services.

The relief sought for Sure Mortgage

46. The relief sought in EVR's motion for Sure Mortgage's commission merits a brief

comment.

47. EVR's relief seeks a charge to secure the payment of Sure Mortgage's 2.5% commission.

48. In the ordinary course in insolvency proceedings, the receiver is authorized to simply pay commission out of the proceeds of sale, and then to hold and administer net proceeds subject to distribution orders.

49. In this case, the granting of a charge will just create a two-step process where one (the payment of the commission at the time of closing) will do. This is because one step will be the creation of the charge, and the other will be the need for an order paying out the proceeds to satisfy that charge.

50. Unlike the other professionals in this matter for whom an administration charge has been granted, Sure Mortgage will perform no other services after closing and will have no other fees to be paid. It is accordingly submitted that the Receiver should be now authorized and directed to pay Sure Mortgage's commission out of the proceeds of sale of EVR's assets in the transaction.

51. If that is for some reason not appropriate or possible, then the charge sought by EVR is a satisfactory remedy instead.

PART V – ORDER SOUGHT

52. Sure Mortgage accordingly seeks an order:

a) authorizing and directing the Receiver to pay Sure Mortgage's commission out of

the proceeds of sale of EVR's assets in the transaction; or

b) in the alternative granting the Brokerage Charge set out in EVR's draft Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: September 1, 2016

R. Brendan Bissell
Of counsel to Sure Mortgage Capital Inc.

Schedule "A" – Authorities Cited

Attorney General for Ontario v. 8477 Darlington Crescent, 2011 ONCA 363 **(Tab 1)**

Tab 1

CITATION: Ontario (Attorney General) v. 8477 Darlington Crescent, 2011 ONCA 363
DATE: 20110510
DOCKET: C49874-C49934

COURT OF APPEAL FOR ONTARIO

Doherty, Watt and Epstein JJ.A.

C49874

BETWEEN

Attorney General of Ontario

Applicant (Appellant)

and

8477 Darlington Crescent, Windsor, 10824 Atwater Crescent, Windsor, $29,000 in Canadian Currency (*in rem*), Van-Xinh Do and Tuoi Le Thi Tran

Respondents (Respondents in Appeal)

C49934

BETWEEN

Attorney General of Ontario

Applicant (Respondent)

and

1140 Aubin Road, Windsor and 3142 Halpin Road, Windsor (*in rem*) and Elwin James McDougall

Respondent (Appellant)

AND BETWEEN

Attorney General of Ontario

Applicant (Respondent)

and

8477 Darlington Crescent, Windsor, 10824 Atwater Crescent, Windsor, $29,000 in Canadian Currency (*in rem*), Van-Xinh Do and Tuoi Le Thi Tran

Respondents (Appellants)

Robin K. Basu and Leslie Zamojc, for the appellant, Attorney General of Ontario

Kenneth W. Golish, for the respondents, McDougall, Do and Tran

Heard: November 16, 2010

On appeal from the judgments of Justice Renee M. Pomerance of the Superior Court of Justice dated December 10, 2008, reported at [2008] O.J. No. 5209.

Doherty J.A.:

I

Overview

[1] In November 2005, the Attorney General of Ontario ("AG") commenced an application under the *Civil Remedies Act, 2001*, S.O. 2001, c. 28 ("*CRA*") seeking the forfeiture of two residences in Windsor, Ontario, one located at 8477 Darlington Crescent

("Darlington property") and the other at 10824 Atwater Crescent ("Atwater property"). Both residences had been searched in August 2004 and the police had found large, sophisticated marijuana growing operations. Mr. Van-Xinh Do ("Do") owned the Darlington property at the time of the search. He also rented the Arlington property from his former girlfriend, Ms. Tuoi Le Thi Tran ("Tran"). Do and Tran were named as respondents on the AG's forfeiture application.[1]

[2] In October 2006, the AG commenced a second application under the *CRA* seeking the forfeiture of two more properties in Windsor, Ontario, one located at 1140 Aubin Road ("Aubin property") and the other at 3142 Halpin Road ("Halpin property"). The police had searched those properties in December 2004 and found substantial marijuana growing operations. At the time of the search, Elwin McDougall ("McDougall") owned both properties. He was the respondent on this forfeiture application.

[3] The two applications were eventually heard together on March 17, 2008.[2] On December 10, 2008, the application judge released reasons ordering the Darlington, Aubin and Halpin properties forfeited to the Crown in Right of Ontario. She declined to order the forfeiture of the Atwater property.

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[1] The AG also sought the forfeiture of $29,000 found on the Atwater premises. That request was refused and is not challenged on appeal.

[2] A forfeiture application under s. 3 or s. 8 may be commenced by action or application: s. 3(2), s. 8(2). These proceedings were both commenced by way of application. While the appropriateness of proceeding by way of application is not in issue, with the benefit of hindsight, given the factual disputes and the refusals of Tran, McDougall and Do to produce certain relevant documents and answer relevant questions, it would have been better had the matters proceeded by action.

[4] The proceedings before the application judge have generated four appeals:

- the AG appeals from the order refusing to forfeit the Atwater property to the Crown in Right of Ontario (C49874);
- Tran, who successfully opposed the application for an order forfeiting the Atwater property, appeals the application judge's refusal to grant her costs on the application (C49874);
- Do appeals from the order forfeiting the Darlington property (C49934); and
- McDougall appeals the order forfeiting the Aubin and Halpin properties (C49934).

[5] I will address the appeals brought by McDougall and Do first. I would dismiss those appeals and affirm the orders directing the forfeiture of the Darlington, Halpin and Aubin properties.

[6] I will next consider the AG's appeal. I would dismiss that appeal and affirm the order refusing forfeiture of the Atwater property.

[7] Lastly, I will address Tran's appeal from the application judge's refusal to order the AG pay costs on the application. I would dismiss that appeal.

II

The *Civil Remedies Act*

[8] These forfeiture applications were brought under ss. 3 and 8 of the *CRA*. That *Act* identifies two kinds of property that can be the subject of forfeiture orders. Under s. 3 the

court may order the forfeiture of property acquired by unlawful activity and under s. 8 the court may order the forfeiture of property used to engage in unlawful activity. The former, described as the "proceeds of unlawful activity" in the *CRA*, is dealt with in Part II of the *Act* (ss. 2-6). The latter, referred to as the "instruments of unlawful activity" in the *CRA*, is dealt with in Part III (ss. 7-11). Property may fall under either, both, or neither definition.

[9] The forfeiture provisions in Parts II and III closely parallel each other. I will review the operation of those provisions as necessary to understand the issues raised on these appeals. My review is not an attempt to provide a comprehensive description of the *CRA*. The relevant provisions are attached as an appendix to these reasons.

[10] The *CRA* creates a civil forfeiture scheme and is not part of the criminal process. Its purposes are expressly set out in s. 1 and include the compensation of victims and the deterrence of crime. Binnie J. in *AG (Ontario) v. Chatterjee*, [2009] 1 S.C.R. 624 said, at para. 4:

> Moreover, the *CRA* method of attack on crime is to authorize *in rem* forfeiture of its proceeds... It is true that forfeiture may have de facto punitive effects in some cases, but its dominant purpose is to make crime in general unprofitable, to capture resources tainted by crime so as to make them unavailable to fund future crime and to help compensate private individuals and public institutions for the costs of past crime.

[11] The nature of the proceedings contemplated by the *CRA* was described in *Chatterjee*, at para. 23:

> In essence, therefore, the CRA creates a property-based authority to seize money and other things shown on a balance of probabilities to be tainted by crime and thereafter to allocate the proceeds to compensating victims of and remedying the societal effects of criminality. The practical (and intended) effect is also to take the profit out of crime and to deter its present and would-be perpetrators.

[12] Section 3 of the *CRA* provides for a forfeiture order in respect of property that is "proceeds of unlawful activity". That phrase is defined in s. 2. Under that definition, and having regard to the definition of "property" in s. 2, any direct or indirect interest in property, real or personal, acquired by unlawful activity will constitute the "proceeds of unlawful activity". The definition is clearly a broad one and does not require that the person acquiring the property interest be involved in or even aware of the unlawful activity tainting that property interest: see *Chatterjee* at para. 46.

[13] If the AG demonstrates that the property falls within the meaning of the "proceeds of unlawful activity", the court must make a forfeiture order under s. 3, subject to two exceptions. The first exception is found in s. 3(3) and applies where the party seeking to avoid forfeiture "proves" that he or she is a "legitimate owner". If the party is successful, the court must make an order that protects the legitimate owner's interest in the property,

unless the AG demonstrates that such a protection order would "clearly not be in the interests of justice".

[14] The phrase "legitimate owner" is also defined in s. 2. It can refer to a person who was the rightful owner of the property before the unlawful activity (subsection (a)), or to a person who acquired the property for fair value after the unlawful activity occurred (subsection (b)). In either case there are additional criteria that must be met for a person to qualify as a "legitimate owner". The definition of "legitimate owner" is a narrow one.

[15] Tran was the rightful owner of the Atwater property at the time of the unlawful activity relied on by the AG. She claimed that she fell within the "legitimate owner" exception on the forfeiture application relating to the Atwater property. I will deal with this exception in more detail when I come to the AG's appeal from the refusal to order the forfeiture of the Atwater property.

[16] The second exception to a forfeiture order is found in s. 3(1) itself. That section provides that the court may decline to order forfeiture where it would "clearly not be in the interests of justice". This language gives the court the discretion to refuse forfeiture even where the AG has established that the property is the "proceeds of unlawful activity" and the respondent on the application has failed to bring him or herself within the "legitimate owner" exception.

[17] The application judge relied on this discretion as an alternative ground for refusing to order the forfeiture of the Atwater property. Therefore, the meaning of the phrase "clearly not in the interests of justice" is also an issue on the Crown's appeal relating to the Atwater property.

[18] Section 8 of the *CRA* is the forfeiture provision in Part III of the *Act* that parallels s. 3 in Part II. Section 8 applies to property that falls within the definition of "instrument of unlawful activity" as defined in s. 7. Like s. 3, s. 8 requires that a forfeiture order be made if the property falls within the relevant definition, unless the party opposing forfeiture can demonstrate that he or she is a "responsible owner" or that it would "clearly not be in the interests of justice" to order forfeiture. "Responsible owner" is defined in s. 7.

[19] For reasons I will explain below, these appeals can be determined without regard to the provisions in Part III of the *CRA*. I propose to follow that course and need not describe those provisions any further.

III

The Appeal Brought by Do and McDougall

[20] These appeals involve the Darlington property owned by Do, and the Aubin and Halpin properties owned by McDougall. A brief history of each property is necessary before turning to the issues raised by the appeals.

(a) The Darlington property

[21] Do purchased the Darlington property in February 2000 for $77,000. He secured a mortgage from the TD Bank in the amount of $57,000. He made monthly payments on that mortgage of $463.66. Do is still the registered owner of the property.

[22] In August 2004, the police executed a search warrant at the Darlington property and discovered a large commercial marijuana growing operation. The marijuana found in the residence had a value of slightly under $500,000. In November 2006, Do pled guilty to charges of producing marijuana and possessing marijuana for the purpose of trafficking.

[23] In his affidavit filed on the forfeiture application, Do indicated that in 2004 he leased the Darlington property to someone he had met at the casino in Windsor. He knew the person would be using it to grow marijuana, but Do needed the rent money to pay large gambling debts. Do claimed to have a job but did not produce any documents or provide any information referable to his income or the payments made on the mortgage on the Darlington property. The application judge ultimately concluded at para. 60:

> Do asserted that he has maintained regular employment. However, records indicate that, since 2002, Do has lost approximately $600,000 at Casino Windsor alone. Given the nature of his expenses and given the size of the marijuana cultivation operation, it is more likely than not that Do was receiving income from the sale of marijuana. It is also more likely than not that he used his income to finance the downpayment and mortgage payments on the house.

(b) The Aubin property

[24] McDougall purchased the Aubin property in May 1997 for $143,500. He placed a mortgage on the property in 1999 in the amount of $108,500. McDougall owned the Aubin property until sometime after these proceedings were commenced. The property was sold and did not generate funds beyond those owing to the mortgagee.

[25] The Aubin property has a long history as a marijuana grow-op. In March 2001, the police executed a search warrant and found a large-scale marijuana growing operation involving some 382 plants. McDougall subsequently pled guilty to production of a controlled substance.

[26] In December 2004, the police executed another search warrant on the Aubin property. Once again, they found a significant marijuana growing operation, although it was smaller than the previous one. At the time of the raid, two other people were living in the residence. One paid rent to McDougall. The drugs seized on this search were valued at approximately $90,000.

[27] McDougall pled guilty to cultivating the marijuana found in the 2004 search. He explained that he and the two people living in the residence were involved in the cultivation and that one third of the plants belonged to him. He denied that he was intending to sell any of the product from his plants.

[28] McDougall claimed to be self-employed. He refused to answer questions concerning the source of the funds used to purchase the property and pay the mortgage. He also refused to provide other documentation relevant to his income, including his income tax statements. McDougall agreed that at least one of his tenants at the Aubin property, and a co-venturer in the marijuana grow-op, paid him rent on a monthly basis.

[29] The trial judge, at para. 39, made the following findings of fact:

> I find that the Crown has established, on the balance of probabilities, that 1140 Aubin Road is proceeds of unlawful activity. McDougall purchased 1140 Aubin Road in 1997 for $143,500. He stated that he was self-employed at the time in the clean-up and disposal business. However, he refused to disclose the source of the downpayment used to purchase the property. McDougall also refused to provide any bank statements or income tax statements with respect to his business, known as AMD Recycle. A mortgage was registered on title on June 29, 1999 in favour of the National Bank of Canada in the amount of $108,500. There is no evidence to indicate that the mortgage has been discharged.

(c) The Halpin property

[30] McDougall purchased the Halpin property in January 2004 for $140,000. There was a mortgage in the amount of $102,500. In December 2004, the police executed a search warrant on the Halpin property. They found a marijuana grow-op. The street value of the drugs found on site was about $37,000.

[31] McDougall leased the Halpin property to a man named Hamilton who was charged in connection with the grow-op. Hamilton paid rent of $650.00 a month. McDougall

knew there was a marijuana grow-op at the Halpin property and he knew that the rent was in all likelihood coming from the proceeds of that operation.

[32] The Halpin property was sold in May 2008. After payment of the amount owing to the mortgagee, a small amount remained. It is being held in trust by a law firm pending the outcome of these proceedings.

[33] The trial judge made the following findings in respect of Halpin Road:

> McDougall purchased the 3142 Halpin Road property in 2004 for $140,000.00. He took out a mortgage for $102,500.00 from the Home Trust Company. McDougall refused to provide any bank statements, income tax filings, or other financial documentation disclosing the source of funds used for the downpayment and for the mortgage payments on the property. Absent evidence to the contrary, it is more likely than not that McDougall used rent proceeds from Hamilton to make payments on the property. McDougall was aware that Hamilton was growing marijuana, and had to know that the rent money was likely derived from this activity.

(d) Issues raised by Do and McDougall

[34] Do and McDougall challenge the trial judge's finding that the three properties were the proceeds of unlawful activity and the trial judge's finding that the properties were also instruments of unlawful activity. On the first finding, forfeiture was ordered under s. 3 of the *CRA*, and on the second finding, forfeiture was ordered under s. 8. If either is sustained, the forfeiture orders should be upheld, subject to the other arguments advanced on behalf of Do and McDougall.

[35] For reasons I will develop, I would hold that the application judge did not err in finding that each of the three properties fell within the definition of the "proceeds of unlawful activity". As forfeiture is justified under s. 3, it is unnecessary to the determination of this appeal to decide whether the properties also fell within the definition of "instrument of unlawful activity" and could be forfeited under s. 8. It is not only unnecessary to decide that question, but also inappropriate to do so. Unlike the forfeiture power in s. 3 of the *CRA*, the constitutionality of the forfeiture power in s. 8 has not been definitively decided. By agreement, the parties did not litigate the constitutionality of s. 8 before the application judge. To address the merits of the grounds of appeal relating to the forfeiture power under s. 8, this court would be required to consider the constitutional arguments that were not vetted before the application judge. That would not be a prudent course.

[36] I will not address the grounds of appeal relating to Part III of the *CRA*, in particular, the argument directed at the proper interpretation of s. 7(2) of the *CRA*. Those arguments have no relevance to the correctness of the forfeiture orders made under s. 3.

[37] Counsel for Do and McDougall raise four issues arising out of the forfeiture order made under s. 3:

i. Did the application judge err in holding that the AG had established that the properties were the "proceeds of unlawful activity"?

ii. Did the application judge err in holding that the AG was required to establish that the properties were the proceeds of unlawful activity on the balance of probabilities, rather than beyond a reasonable doubt?

iii. Did the application judge err in law in placing the onus on Do and McDougall to demonstrate that they fell within the "legitimate owner" exception to forfeiture?

iv. Did the application judge err in failing to hold that the AG was estopped from making a forfeiture application under the *CRA* by virtue of the federal Crown's failure to seek a forfeiture order in the criminal proceedings?

a) Did the application judge err in holding that the AG had established that the properties were the "proceeds of unlawful activity"?

[38] Counsel submits that the application judge improperly drew adverse inferences against Do and McDougall from their failure to answer questions or produce documentation relevant to their sources of income and the sources of the money used to fund the purchases of the properties and the payments on the mortgages on the properties. Counsel contends that without this improper inference, the evidence could not reasonably support the finding that the properties were the "proceeds of unlawful activity".

[39] Clearly, if money acquired through the sale of drugs was used to purchase any of these properties, that property is the "proceeds of unlawful activity". Counsel also accepts that if drug money is used to pay down a mortgage, the interest acquired in the property is the "proceeds of unlawful activity" under the definition in s. 2 of the *CRA*.

[40] I agree that payments on the mortgage constitute the acquisition of an interest in the property. Under s. 6 of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, a mortgage ("charge") does not, unlike the common law, operate as a transfer of the legal estate in the land. The charge does, however, give the mortgagee equitable rights in the property that remain in place until the obligation secured by the charge is discharged.

[41] Although the mortgagee maintains an equitable interest until the obligation is discharged, payments on the mortgage affect the respective rights of the mortgagor and mortgagee. If a mortgagor has made significant payments against the mortgage, the defaulting mortgagor may receive relief from forfeiture and be allowed to redeem the property. Payments on the mortgage can be seen as enhancing the mortgagor's equity and diminishing the mortgagee's equitable interest: see *355498 B.C. Ltd. v. Namu Properties Ltd.* (1999), 171 D.L.R. (4th) 513 at para. 17 (B.C.C.A.); *Coast-to-Coast Industrial Development Co. v. 1657438 Ontario Inc.*, [2009] O.J. No. 5212 at para. 14 (S.C.). In my view, paying down a mortgage constitutes a direct acquisition of an interest in property for the purposes of the *CRA*.

[42] The trial judge concluded, at para. 60, that Do used drug money to finance both the downpayment and the mortgage payments on the Darlington property. Do purchased the property in February 2000, four and a half years before the police discovered the marijuana grow-op in the residence. Even if the evidence supports the inference that the grow-op at the Darlington property was in place for quite some time before the August

2004 search, that evidence cannot reach back to 2000. There is no evidence connecting Do to any drug operation at the Darlington property or anywhere else in 2000 when he purchased the Darlington property. There is no evidence from which it could reasonably be inferred that Do used the proceeds of the production and sale of drugs to fund the purchase of the Darlington property in 2000.

[43] The evidence does, however, support the inference that Do paid his mortgage using money generated from the marijuana growing operation. That operation was large and well-established at the time of the search. There was almost $500,000 in product on site. It is a fair inference that Do had been running the marijuana growing business at the Darlington property for some time and that a business of that size had generated considerable income.

[44] Although Do indicated in his affidavit that he had a job, he did not provide any details of the income earned by him from that job or any details as to the sources of the funds used to pay down the mortgage. Do did admit that he had very large gambling debts. Those debts no doubt put further strain on any source of income that Do had. The only source of income alluded to by Do was rent paid to him on the Darlington property by a person who Do knew was using the property to grow marijuana.

[45] I do not think the application judge drew any adverse inference against Do from his failure to identify sources of income and the source of the funds used to pay down the

mortgage. Do was not cross-examined. The application judge was entitled to draw inferences from the facts established by the AG's material and in doing so she was entitled to have regard to the absence of any evidence documenting any other sources of income or other sources for the funds used to pay the mortgage on the Darlington property. The inferences urged by the AG stood unanswered except for Do's bald assertion that he had a job. It was open to the application judge to draw the inferences she did concerning the funding of the mortgage payments on the Darlington property. On those findings, the property was properly characterized as being the "proceeds of unlawful activity".

[46] The application judge's findings that the Aubin property and the Halpin property, both owned by McDougall, were the "proceeds of unlawful activity" can be considered together. The evidence supported the inference that McDougall was in the business of producing and selling marijuana and had been in that business for several years. McDougall was criminally implicated in three separate grow-ops between 2001 and 2004. He also had a prior conviction for drug trafficking.

[47] In cross-examination on his affidavit, McDougall admitted that Hamilton, his tenant at the Halpin property, produced marijuana on the property and that the rent paid to McDougall by Hamilton likely came from the sale of marijuana produced on the property. McDougall acknowledged using that drug money to pay his mortgage on the

Halpin property. These admissions provide a further basis for finding that the Halpin property constituted the "proceeds of unlawful activity".

[48] In his affidavit, McDougall presented himself as an entrepreneur who operated two or three different businesses. McDougall made these assertions presumably to demonstrate that he had sources of income other than the income derived from his marijuana growing business.

[49] McDougall refused to provide any details of his income or to identify the sources used to pay down the mortgages on his properties (other than money received from his drug-producing tenant). McDougall's counsel, at the cross-examination of McDougall and in this court, maintained that McDougall was not required to answer questions about the mortgage or his income because the AG's material filed on the application did not provide any factual basis for the AG's allegations concerning the property.

[50] An affiant is not entitled to refuse to answer relevant questions in cross-examination because the affiant, or his lawyer, thinks the opposing party's case is insufficient to warrant a response. The allegations made in the application, the supporting material filed by the applicant, and the responding material, including the affiant's affidavit, draw the boundaries of relevance for the purpose of cross-examination. The acquisition of the properties through unlawful activity was a central allegation in the application. Those allegations made the source of the funds used to pay down the

mortgages a relevant fact. McDougall was required to answer questions concerning the payment of the mortgages and his income sources regardless of his view of the sufficiency of the AG's material filed in support of the allegations that the properties were the proceeds of unlawful activity.

[51] In refusing to answer questions, McDougall risked, at a minimum, that the inferences available from the AG's evidence would remain unchallenged and, therefore, more likely to be drawn. I think he also risked an adverse inference. The application judge was not obliged to draw that inference, but it was within her discretion to do so. She did not misuse McDougall's refusals to answer relevant questions concerning the property. I would affirm her findings that both properties were the "proceeds of unlawful activity".

(ii) Did the application judge err in holding that the AG was required to prove that the properties were the proceeds of unlawful activity on the balance of probabilities, rather than beyond a reasonable doubt?

[52] Section 16 of the *CRA* specifically provides that findings of fact in proceedings under that *Act* "shall be made on the balance of probabilities". That standard of proof reflects and is consistent with the civil nature of the forfeiture proceedings.

[53] As I understand counsel's submission, he argues that a forfeiture order made under the *CRA* on a balance of probabilities standard violates s. 7 of the *Charter* in that it infringes an individual's liberty interest in a manner that is inconsistent with the

principles of fundamental justice. Counsel identifies the liberty interest as "a right to property". I take him to identify the principle of fundamental justice at play as a requirement that the state meet the reasonable doubt standard when seeking an order that interferes with an interest protected by s. 7.

[54] Section 7 of the *Charter* does not protect economic interests. I am far from satisfied that the liberty right includes a "right to property". I am, however, firmly convinced that the application of the balance of probabilities standard in a civil proceeding, even where s. 7 rights are implicated, is not inconsistent with the principles of fundamental justice. To the contrary, the balance of probabilities standard is a basic tenet of our civil justice system: see *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

[55] Many civil proceedings in which the government and an individual are the protagonists involve the individual's s. 7 rights. I am not aware of any case in which the court has held that if a litigant's constitutional rights are engaged in a civil proceeding, s. 7 demands the abandonment of the balance of probabilities standard in favour of a reasonable doubt requirement. In my view, the balance of probabilities standard is consistent with the principles of fundamental justice as they apply in civil proceedings.

(iii) Did the application judge err in law in placing the onus on Do and McDougall to demonstrate that they fell within the "legitimate owner" exception to forfeiture?

[56] In his factum, counsel argued that the application judge wrongly put the onus on Do and McDougall to prove they were "legitimate owners". Counsel ties this submission to s. 15.5 of the *CRA*. That section directs that notice of forfeiture proceedings must be given to certain entities, including those who appear through the parcel register of the property to have an interest in the property.

[57] I cannot see any connection between s. 15.5, essentially a procedural notice provision, and the operation of the "legitimate owner" exception to forfeiture orders. Section 3(3) of the *CRA* requires the party claiming to be a "legitimate owner" to "prove" that he or she meets the criteria in that definition. Section 16 of the *CRA* requires the party who carries the onus on a particular fact to meet that onus on the balance of probabilities.

[58] The statute is crystal clear. The party relying on the "legitimate owner" exception bears the burden of proving that the exception applies.

(iv) Did the application judge err in holding that the AG was not estopped from pursuing a forfeiture application?

[59] Do and McDougall were prosecuted for drug offences by the federal Crown. The federal Crown did not seek forfeiture orders as part of the sentencing process, though it could have done so under the relevant legislation: *Controlled Drugs and Substances Act*,

S.C. 1996, c. 19. There is no suggestion that the federal prosecutor made any representations to Do or McDougall one way or the other in relation to forfeiture. It would appear that forfeiture was never an issue in the criminal proceedings.

[60] The AG in right of the provincial Crown brings this application. This is a civil *in rem* proceeding and is not connected to or dependent upon the prior criminal proceedings, although the outcome of those proceedings can have evidentiary value in this proceeding: *CRA* s. 17.

[61] Counsel submits that the federal Crown in the criminal prosecution and the provincial AG in these proceedings are "indivisible" and that the decision made by the federal prosecutors not to pursue a forfeiture order in the criminal proceedings is binding on the provincial AG in this proceeding. Counsel cites no authority for this proposition.

[62] The submission cannot survive the analysis in *Chatterjee*. In the course of discussing the potential intersection of proceedings under the *CRA* and forfeiture applications in the course of sentencing proceedings, Binnie J., after recognizing the possibility of abusive re-litigation of factual issues, said, at para. 49:

> ... but where no forfeiture is sought in the sentencing process, I see no reason why the Attorney General cannot make an application under the *CRA*. Where forfeiture is sought and refused in the criminal process, a different issue arises.

[63] I would dismiss the appeals brought by Do and McDougall.

IV

The AG's Appeal

(a) The Atwater property

[64] The AG appeals the application judge's refusal to order the forfeiture of the Atwater property. Tran purchased the property in June 2001 for $166,000 with a downpayment of $41,500. The Royal Bank took a mortgage in the amount of $124,500. Tran paid $833 a month on the mortgage.

[65] Tran lived in the Atwater property with her children. In February or March 2004, she rented the property to her then-boyfriend, Do. Tran continued to live in the property until June or perhaps July 2004 when she learned that Do was married. Tran, who was angry with Do, moved out of the Atwater property and went to Toronto to live with her children. Do continued to live in the Atwater property and pay rent. Tran returned to Windsor from time to time in the summer of 2004 to, among other things, check on the property. According to her, she did not enter the house.

[66] The police executed a search warrant at the Atwater property on August 13, 2004. They found 854 marijuana plants with a street value of over $1,000,000. They also found equipment, including a hydro bypass, indicating that the property housed a large-scale active marijuana grow-op. The evidence found at the property was consistent with the grow-op having been in operation through at least one grow cycle, a period of three months.

[67] Do and Tran were charged with cultivating marijuana and with trafficking in marijuana. Do pled guilty to both charges. The charges were withdrawn against Tran. In his affidavit filed on the application, Do insisted that Tran had nothing to do with the marijuana grow-op. Tran filed an affidavit denying any knowledge of the grow-op at the Atwater property. She was cross-examined on her affidavit. Tran testified that she was also unaware of Do's marijuana grow-op at the Darlington property, even though she visited him there a number of times in the summer of 2004.

[68] Tran indicated that Do paid her $1,200 a month in rent between February and August 2004. He paid in cash and she applied the cash to the payment of the mortgage. The Atwater property was sold under power of sale sometime after the application was heard. The proceeds of the sale were less than the outstanding amount owed on the mortgage.

(b) The application judge's findings

[69] The application judge found, at para. 75, that the Atwater property was the proceeds of unlawful activity by virtue of Tran's admitted use of the rent payments from Do to make her mortgage payments. The application judge concluded that Do's income came from the cultivation and sale of marijuana at the Darlington and Atwater properties.

[70] The application judge declined to make a forfeiture order in respect of the Atwater property for two reasons. First, she concluded that Tran's conduct was "consistent with

that of a legitimate owner" (para. 79). Second, she held that a forfeiture order on the Atwater property "would clearly not be in the interests of justice" (para. 82). The AG challenges both findings.

(c) Was Tran a "legitimate owner" within the meaning of s. 2 of the CRA?

[71] Counsel for the AG submits that the application judge erred in holding that the "legitimate owner" exception to a forfeiture order was available to Tran. Counsel contends that this error flowed from a misapprehension of evidence, an improper placing of the burden on the AG to disprove that Tran was a "legitimate owner", and a failure to draw adverse inferences from Tran's refusal to answer questions concerning her income and the funding of her purchase of the property.

[72] As explained earlier, the "legitimate owner" exception comes into play only if the court is satisfied that the AG has established that the property is the "proceeds of unlawful activity". The exception provides potential protection for the property interests of those who can "prove" on the balance of probabilities that they meet the qualifications of a "legitimate owner", even though the property is the "proceeds of unlawful activity". Contrary to the submissions of counsel for Tran, I do not think that the phrase "legitimate owner" in s. 3 has anything to do with the question of standing under the *Act*.

[73] I find it unnecessary to deal with the specific arguments made by the AG in support of the contention that the application judge misapplied the "legitimate owner"

exception. On a plain reading of the statutory language, there is no evidence capable of bringing Tran within the definition of "legitimate owner".

[74] Tran was the rightful owner of the Atwater property before the unlawful activity occurred. The relevant definition of "legitimate owner" is therefore found in subsection (a):

> "legitimate owner" means, with respect to property that is proceeds of unlawful activity, a person who did not, directly or indirectly, acquire the property as a result of unlawful activity committed by the person, and who,
>
> (a) was the rightful owner of the property before the unlawful activity occurred and was deprived of possession or control of the property by means of the unlawful activity [Emphasis added.]

[75] To fall within the definition of "legitimate owner" set out above, three requirements must be met:

- the person did not acquire the property as a result of unlawful activity;
- the person was the rightful owner of the property before the unlawful activity occurred; and
- the person was deprived of possession or control of the property by means of the unlawful activity.

[76] On the evidence, Tran meets the first and second requirements. The application judge did not turn her mind to the third requirement. There was no evidence that Tran

was ever deprived of possession or control of the Atwater property by means of Do's unlawful cultivation of marijuana at that property. To the contrary, on the evidence, the only possession or control Do had was that given to him under the lease. Had the application judge turned her mind to the third requirement in the definition of "legitimate owner", she would have found that Tran did not prove that she was a "legitimate owner" of the Atwater property.

(d) Did the application judge err in the interpretation of the "clearly not in the interests of justice" exception to forfeiture?

(i) The reasons

[77] The application judge interpreted the "interests of justice" exception in s. 3(1) as having application only where the AG had established that the property was forfeitable under s. 3. She put it this way, at paras. 26 and 30:

> ... First, the interests of justice test is only triggered when the standard of proof has been met. If the Crown has failed to discharge its burden, there is no need to weigh the interests of justice; the case for forfeiture has not been made out. The enactment discloses a recognition by the Legislature there will be cases in which forfeiture should not be ordered, notwithstanding that it has been proved that the property is proceeds or an instrument of unlawful activity. The court retains a residual discretion to weigh competing interests and determine whether, independent of the statutory criteria, it is fair and just to issue the order.
>
> ...
>
> ... Viewed in this light, it makes sense that the court is empowered to consider overarching issues of fairness and

> proportionality before ordering forfeiture, even where the standard of proof has been met.

[78] The application judge exercised her discretion against forfeiture of the Atwater property for three reasons. First, she found that Tran was not connected to the unlawful activity at the Atwater property either by actual criminal participation, or by knowledge of the criminal activities that were going on at the property (para. 84). Second, the application judge observed that Tran had owned the property since 2001, over three years before the unlawful activity occurred in 2004 (para. 88). Third, she concluded that a forfeiture application following the withdrawal of criminal charges against Tran created an appearance of unfairness (para. 87).

(ii) The AG's arguments

[79] Counsel for the AG submits that the application judge gave an unwarranted and overly broad reading to the phrase "interests of justice". Counsel argues that the application judge's interpretation ignored the purposes of the *CRA* and the requirement that the party resisting forfeiture show that forfeiture is clearly not in the interests of justice.

[80] Counsel for the AG further contends that proportionality in the sense of the relationship between the role played by the property owner in the unlawful activity and the harm suffered by the property owner should a forfeiture order be made plays no role in deciding whether forfeiture would be "clearly not in the interests of justice". Counsel

maintains that proportionality is a criminal law concept and has no place in the civil regime created under the *CRA*.

[81] Counsel for the AG next submits that the strength of the nexus between the property and the unlawful activity is the primary, if not the sole, consideration in determining whether forfeiture would "clearly not be in the interests of justice". On this submission, a weak nexus between the property and the unlawful activity could result in a finding that forfeiture was "clearly not in the interests of justice". Counsel argues that the Atwater property was being used as a grow-op, making the connection between the property and the unlawful activity a strong one.

[82] Finally, counsel challenges the findings of fact made by the application judge. While counsel urges this court to find that the nature of Tran's involvement in the criminal activity at the Atwater property had little, if any, relevance to whether the forfeiture order should be made, counsel also argues that the application judge misapprehended the relevant evidence. Counsel submits that on a reasonable reading of the evidence, Tran must have at least known that Do was operating the marijuana grow-op at the Atwater property in the summer of 2004.

(iii) Analysis

[83] The relevant part of s. 3(1) reads:

> ... the Superior Court of Justice shall, subject to subsection (3) [the legitimate owner exception] and except where it would

> clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in Right of Ontario if the court finds that the property is proceeds of unlawful activity.

[84] I agree with the application judge that the "interests of justice" exception to forfeiture operates where the Crown has otherwise shown that the property is subject to forfeiture and the respondent has not brought herself within the "legitimate owner" exception. The "interests of justice" exception to forfeiture recognizes that, given the very broad definition of "proceeds of unlawful activity" and the narrow exception to forfeiture carved out by the definition of "legitimate owner", there will be cases that fall within the scope of the forfeiture power where, on any reasonable view, forfeiture would be a draconian and unjust result. The Legislature, rather than attempting to identify with specificity factors that would justify granting relief from forfeiture, used the broad phrase "interests of justice" and left it to the court on a case-by-case basis to determine when forfeiture was "clearly not in the interests of justice".[3]

[85] I do accept counsel for the AG's contention that s. 3(1) does not contemplate that the question of forfeiture will be decided based on a mere balancing of the pros and cons of making a forfeiture order. The word "clearly" modifies the phrase "interests of justice" and must be given some meaning. I think the word "clearly" speaks to the

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[3] For example, the forfeiture provisions in the *Controlled Drugs and Substances Act*, S.C. 1996, c.19 provide for exemptions from forfeiture using much more specific language in ss. 19(3), 19.1(3)(4).

cogency of the claim advanced for relief from forfeiture. The party seeking relief must demonstrate that, in the circumstances, the forfeiture order would be a manifestly harsh and inequitable result.

[86] The application judge analogized the discretion to refuse forfeiture to the discretion to refuse to issue a search warrant even though the statutory preconditions for the issuing of a warrant were met. I think a better analogy is the civil remedy of relief from forfeiture. Courts of equity have always had the power to relieve against the forfeiture of property consequent upon a breach of contract: see *McBride v. Comfort Living Housing Co-Op* (1992), 7 O.R. (3d) 394 at 402 (C.A.). That power is now expressed in various statutes dealing with specific kinds of contracts (*e.g.* contracts of insurance, leases) and has been given more general expression in s. 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43:

> A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.

[87] The power to relieve from forfeiture is discretionary and fact-specific: *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490 at p. 504. The power is predicated on the existence of circumstances in which enforcing a contractual right of forfeiture, although consistent with the terms of the contract, visits an inequitable consequence on the party that breached the contract. Relief from forfeiture is particularly appropriate where the interests of the party seeking enforcement by

forfeiture can be fully vindicated without resort to forfeiture. Relief from forfeiture is granted sparingly and the party seeking that relief bears the onus of making the case for it: *1497777 Ontario Inc. v. Leon's Furniture Ltd.* (2003), 67 O.R. (3d) 206 at paras. 67-69, 92 (C.A.).

[88] In *Saskatchewan River Bungalows*, at p. 504, Major J. identified the factors relevant to the exercise of the power to grant relief against forfeiture:

> ... The factors to be considered by the court in the exercise of its discretion are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach.

[89] The first factor, the conduct of the breaching party, requires an examination of the reasonableness of the breaching party's conduct as it relates to all facets of the contractual relationship, including the breach in issue and the aftermath of the breach. Osborne J.A. explained the nature of this inquiry in *Williams Estate v. Paul Revere Life Insurance Co.* (1997), 34 O.R. (3d) 161 at p. 175 (C.A.):

> The reasonableness test requires consideration of the nature of the breach, what caused it and what, if anything, the insured attempted to do about it. All of the circumstances, including those that go to explain the act or omission that caused the lapse (forfeiture) of the policy, should be taken into account. It is only by considering the relevant background that the reasonableness of the insured's conduct can be realistically considered. [Emphasis added.]

[90] The examination of the reasonableness of the breaching party's conduct lies at the heart of the relief from forfeiture analysis. A party whose conduct is not seen as reasonable cannot hope to obtain relief from forfeiture: see *Paul Revere* at p. 175; *Saskatchewan River Bungalows* at pp. 504-05.

[91] The second factor identified in *Saskatchewan River Bungalows*, the gravity of the breach, looks both at the nature of the breach itself and the impact of that breach on the contractual rights of the other party: see *Leon's Furniture* at paras. 75-78. If, for example, the forfeiture provision operated as a means of securing payment of the rent required under a lease, the fact that the breaching party had paid all amounts owing could obviate the need to resort to forfeiture and support a claim for relief from forfeiture.

[92] The third factor identified in *Saskatchewan River Bungalows* engages a kind of proportionality analysis. If there is a large difference between the value of the property to be forfeited and the amount owing as a result of the breach, equity will favour relief from forfeiture. For example, in *Liscumb v. Provenzano* (1985), 51 O.R. (2d) 129 (H.C.), aff'd (1986), 55 O.R. (2d) 404 (C.A.), the trial judge, in granting relief from forfeiture, observed that the property to be forfeited was worth between three and four times the amount owing on the debt giving rise to the breach. The trial judge relied on this disproportionality between the debt owing and the consequences of the forfeiture as one factor in favour of granting relief from forfeiture.

[93] There are several similarities between a relief from forfeiture provision like s. 98 of the *Courts of Justice Act* and the "clearly not in the interests of justice" exception in s. 3(1) of the *CRA*. Both accept that the unqualified enforcement of one party's legal right to take the property of another, whether under contract or statute, is not always in the best interests of justice and that exceptions should be made based on specific circumstances. The discretion in s. 3(1), like the discretion in s. 98, is framed in broad terms that invite a case-by-case consideration of the specific circumstances. Finally, the power to relieve from forfeiture under s. 3(1), again like the power in s. 98, will not be routinely exercised to allow a party to avoid prescribed statutory or contractual consequences. Relief from forfeiture is very much the exception and will be granted only where the party seeking that remedy clearly makes the case that forfeiture would be an inequitable and unjust order in all of the circumstances.

[94] While I regard the "interests of justice" exception in s. 3(1) as a relief from forfeiture provision that has much in common with the more generic form of that remedy, I acknowledge that s. 3(1) does not operate in exactly the same way as does relief from forfeiture in the realm of private law. Relief from forfeiture in the contractual context pits competing private rights against each other. Those rights are generally quantifiable in economic terms. A forfeiture claim under the *CRA* engages important public concerns. The interests of justice in s. 3(1) encompass both public and private interests.

[95] I agree with counsel for the AG that forfeiture orders under the *CRA* are intended to further the purposes of the *Act* as set out in s. 1. It follows that in deciding whether to grant relief from forfeiture under s. 3(1), the court must consider the effect of granting relief on the achievement of those purposes. The power to relieve from forfeiture cannot be allowed to subvert the purposes of the *CRA*.

[96] I do not, however, agree that the "interests of justice" in s. 3(1) are limited to the purposes of the *CRA* identified in s. 1. Those purposes are part of, but cannot be equated with, the "interests of justice". That phrase is a broad one and includes maintaining public confidence in the civil justice process. That confidence is promoted by orders that are, broadly speaking, in accord with the community's sense of fairness. A forfeiture order made in circumstances where any reasonable person would regard the order as excessive, while perhaps serving the purposes of the *CRA* in the narrow sense, would do a real disservice to the administration of justice and thereby undermine rather than promote the "interests of justice".

[97] A court asked to grant relief from forfeiture under s. 3 must consider all factors that are relevant to the "interests of justice". It is not possible to catalogue all of the factors that could properly be taken into account in evaluating the interests of justice in any given case. Those factors certainly include the closeness of the connection between the property and the illegal activity: see, for example, *Ontario (Attorney General) v. 170 Glenville Road, King (In Rem)*, [2010] O.J. No. 2865 at para. 72 (S.C.).

[98] I will focus on three factors that are significant to the decision not to order the Atwater property forfeited. Two of those factors, the conduct of the party whose property is the subject of the forfeiture application, and the value of that party's interest in the property compared to the value of the property that is tainted by the unlawful activity, are analogous to two of the considerations that figure prominently in the relief from forfeiture jurisprudence. The third factor examines the interplay between the purposes of the *CRA* and the exercise of the "interests of justice" discretion in s. 3.

[99] As explained above, the reasonableness of the conduct of the breaching party is a crucial consideration when that party seeks relief from forfeiture in private law matters. In the context of a forfeiture application under s. 3 of the *CRA*, it is the conduct of the party whose property is the target of the forfeiture application as it relates to the unlawful activity that is important. That conduct is not limited to any involvement in the criminal activity. It extends to any knowledge of the criminal activity, the failure to take reasonable steps to prevent the criminal activity, any profit derived knowingly or unknowingly from the criminal activity, and any steps taken after the property owner became aware of the criminal activity.

[100] In holding that the property owner's conduct as it relates to the unlawful activity is an important consideration in determining whether to grant relief from forfeiture, I do not suggest that actual involvement in the criminal activity is in any way a prerequisite to a forfeiture order under the *CRA*. It is not. However, nothing in the *CRA* precludes the

common sense recognition that the conduct of the property owner will be important when deciding whether it is clearly not in the interests of justice to order forfeiture. Surely, a property owner who had no involvement in the criminal activity, was unaware of that activity, had acted reasonably throughout and did not profit from the activity, should, as a matter of elementary justice, be treated differently on a forfeiture application than the property owner who was involved in and directly profited from the unlawful activity. If *170 Glenville Road, King*, at para. 78, stands for the proposition that a consideration of the property owner's involvement in the criminal activity in issue is irrelevant to the "interests of justice", I must, with respect, disagree.

[101] It is suggested that by considering the property owner's conduct in respect of the unlawful activity, one confuses the civil process of forfeiture with concepts of criminal liability and sentencing. I see no confusion. There are obvious and important differences between civil and criminal proceedings. Those labels cannot, however, obscure the reality underlying any particular proceeding. Regardless of whether a forfeiture proceeding is labelled as civil, criminal, *in personam* or *in rem*, taking a person's property away from that person has a punitive component: see *Chatterjee* at para. 4. The interests of justice require that punitive orders made by the courts be reasonably perceived by the community as being deserved by those against whom they are made.

[102] The application judge found that Tran did not participate in, and had no knowledge of Do's unlawful activity at the Atwater property before the police raid in

August 2004. She also found that Tran was unaware that Do was paying the rent with drug money. In making these findings, the trial judge relied on Tran's evidence. There was considerable evidence to the contrary, indicating that at a minimum Tran was aware of the drug activity.

[103] It was for the application judge to assess the evidence. I cannot describe her findings as unreasonable on the totality of the evidence. Those findings stand and are entitled to significant weight in assessing Tran's claim for relief from forfeiture.

[104] The second factor I will address is the difference in the value of Tran's total interest in the Atwater property and the value of the part of the Atwater property acquired directly or indirectly through Do's drug activities. On the application judge's findings, Tran purchased the property in June 2001 with a downpayment of $41,500. There is no evidence connecting that downpayment to any unlawful activity. Tran presumably paid the mortgage for the next three years. There is no evidence connecting any of those payments to unlawful activity. Do began paying rent in February 2004. The rent was used to pay the mortgage. On the application judge's findings, the criminal activity began in about June 2004. Tran received three months' rent totalling $2,499 between June 2004 and August 2004. That money, unbeknownst to Tran, came from Do's drug activity. The property interest acquired by Tran as a result of Do's unlawful activity was limited to three mortgage payments totalling $2,499. That amount is small compared to

the value of Tran's entire interest in the property, which included the $41,500 downpayment and some three years of mortgage payments.

[105] The application judge did not specifically refer to the disparity in the value of Tran's total interest in the property, and the value of the interest acquired as a result of unlawful activity. She may have been indirectly referring to that disparity when she observed that Tran had purchased the property in June 2001 with a sizeable downpayment, and that the rent payments from the drug proceeds did not begin until three years later and continued for only three months.

[106] The significant disparity described above was a relevant consideration in determining whether forfeiture would "clearly not be in the interests of justice". It is particularly significant where the property owner is not implicated in or aware of the criminal activity. An order requiring forfeiture of an entire interest in property based on the fact that a small part of that interest was unknowingly acquired through unlawful activity could well be seen as an unwarranted and unjust use of the forfeiture power.

[107] I turn now to the third factor, the interplay between the purposes of the *CRA* and the exercise of the discretion to relieve from forfeiture. Section 1 of the *CRA* identifies compensation of victims, crime prevention and deterrence as the purposes motivating the remedies provided by the *CRA*. It is fair to say that in most circumstances those purposes

are furthered by a forfeiture order. As explained earlier, the purposes of the *CRA* are part of, but not synonymous with, the "public interest" concerns in s. 3.

[108] The purposes identified in s. 1 of the *CRA* do, however, mandate the drawing of a distinction, for the purposes of determining whether to relieve from forfeiture, between innocent property owners and those who are involved in or at least have knowledge of the relevant criminal activity. Directing forfeiture of the property of a person who had no involvement in, knowledge of, or responsibility for the relevant criminal activity would hardly seem to further the deterrence objective of the *CRA*. There is no need to deter the innocent and responsible property owner by seizing his or her property. Indeed, it could be argued that disregarding the property owner's lack of involvement in or knowledge of the criminal activity when deciding the question of forfeiture could well undermine the deterrence goals of the *CRA*. If forfeiture falls indiscriminately on the innocent and the complicit, there may seem to be little value in avoiding involvement in criminal activity. Given the application judge's findings of fact, an order requiring Tran to forfeit her interest in the Atwater property would not promote the deterrence goals underlying the *CRA*.

[109] The three factors discussed above, considered in combination, justified the application judge's decision not to order forfeiture of Tran's interest in the Atwater property. I would not interfere with the exercise of that discretion. I will, however,

address one additional consideration relied on by the application judge that, in my view, has no relevance to the exercise of her discretion.

[110] The application judge found the forfeiture application created the appearance of unfairness because it followed the withdrawal of criminal charges against Tran by the federal prosecutor. In her view, the forfeiture application could be seen as an attempt to gain forfeiture while avoiding the more rigorous criminal standard of proof in favour of the civil balance of probabilities requirement.

[111] I see no unfairness in the bringing of the application. The federal Crown, responsible for the drug prosecution, chose not to prosecute Ms. Tran. The provincial AG, responsible for the operation of the *CRA*, chose to pursue a forfeiture order. The AG's claims did not depend upon demonstrating, to any standard of proof, that Tran was complicit in any criminal activity. The AG's decision to pursue a forfeiture claim can hardly be described as arbitrary or unfair when, under the terms of the legislation, the AG established a *prima facie* entitlement to the forfeiture order, subject to the "interests of justice" exception in s. 3. That exception saved Tran's interest in the Atwater property.

[112] In summary, even though I reject the application judge's finding of an appearance of unfairness in the proceedings, I would affirm her decision that forfeiture of the Atwater property was "clearly not in the interests of justice". On the application judge's findings, Tran was innocent of any involvement in the unlawful activity, and only a small

fraction of her interest was acquired as a result of unlawful activity. To order forfeiture in those circumstances would constitute a punitive and excessive exercise of the forfeiture order that would not further the purposes of the *CRA*.

V

Tran's Appeal from the Costs Order

[113] The application judge made no order as to costs in respect of either application. Counsel for Tran seeks leave to appeal from that order, asks the court to grant leave, and order costs in favour of Tran. Counsel submits that the application judge erred in not giving the parties an opportunity to make submissions on costs and that there is no reason to depart from the normal rule that the successful party, in this case Tran, should get her costs.

[114] I would agree with Tran's counsel that the application judge should have entertained submissions on costs. That said, we have now done so and can, therefore, address the merits of the submission. As our analysis reveals, the application brought by the AG had considerable merit in that the preconditions to a forfeiture order were all established by the AG. Tran escaped forfeiture only by virtue of the relief from forfeiture provision in s. 3. A "no costs" order aptly reflects the outcome of this application. I would grant leave to appeal the costs order, but would dismiss that appeal.

VI

Conclusion

[115] I would dismiss all of the appeals. On the appeals brought by McDougall and Do, I would order costs in favour of the AG as against Do in the amount of $4,500 and as against McDougall in the amount of $4,500, inclusive of disbursements and HST.

[116] In respect of the litigation between the AG and Tran, that is, the Crown's appeal and Tran's costs appeal, I would consider the two together and order costs in favour of Tran in the amount of $7,000, inclusive of disbursements and HST.

RELEASED: "DD" "MAY 10 2011"

"Doherty J.A."
"I agree David Watt J.A."
"I agree Gloria Epstein J.A."

APPENDIX A

Civil Remedies Act, 2001
S.O. 2001, CHAPTER 28

Part I – Purpose

Purpose
1. The purpose of this Act is to provide civil remedies that will assist in,

(a) compensating persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities;

(b) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;

(c) preventing property, including vehicles as defined in Part III.1, from being used to engage in certain unlawful activities; and

(d) preventing injury to the public that may result from conspiracies to engage in unlawful activities. 2001, c. 28, s. 1; 2007, c. 13, s. 26.

Part II – Proceeds of Unlawful Activity

Definitions
2. In this Part,
...
"legitimate owner" means, with respect to property that is proceeds of unlawful activity, a person who did not, directly or indirectly, acquire the property as a result of unlawful activity committed by the person, and who,

(a) was the rightful owner of the property before the unlawful activity occurred and was deprived of possession or control of the property by means of the unlawful activity,

(b) acquired the property for fair value after the unlawful activity occurred and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity, or

(c) acquired the property from a person mentioned in clause (a) or (b); ("propriétaire légitime")

"proceeds of unlawful activity" means property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity, whether the property was acquired before or after this Act came into force, but does not include proceeds of a contract for recounting crime within the meaning of the *Prohibiting Profiting from Recounting Crimes Act, 2002*; ("produit d'activité illégale")

"property" means real or personal property, and includes any interest in property; ("bien")

...

Forfeiture order
3. (1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the court finds that the property is proceeds of unlawful activity. 2001, c. 28, s. 3 (1).

Action or application
(2) The proceeding may be by action or application. 2001, c. 28, s. 3 (2).

Legitimate owners
(3) If the court finds that property is proceeds of unlawful activity and a party to the proceeding proves that he, she or it is a legitimate owner of the property, the court, except where it would clearly not be in the interests of justice, shall make such order as it considers necessary to protect the legitimate owner's interest in the property. 2001, c. 28, s. 3 (3).
...

Part III – Instruments of Unlawful Activity

Definitions
7. (1) In this Part,
...
"instrument of unlawful activity" means 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 or in serious bodily harm to any person, and includes any property that is realized from the sale or other disposition of such property; ("instrument d'activité illégale")

"property" means real or personal property, and includes any interest in property; ("bien")

"responsible owner" means, with respect to property that is an instrument of unlawful activity, a person with an interest in the property who has done all that can reasonably be done to prevent the property from being used to engage in unlawful activity, including,

(a) promptly notifying appropriate law enforcement agencies whenever the person knows or ought to know that the property has been or is likely to be used to engage in unlawful activity, and

(b) refusing or withdrawing any permission that the person has authority to give and that the person knows or ought to know has facilitated or is likely to facilitate the property being used to engage in unlawful activity; ("propriétaire responsable")

...

Instruments of unlawful activity
(2) For the purpose of the definition of "instrument of unlawful activity" in subsection (1), proof that property was used to engage in unlawful activity that, in turn, resulted in the acquisition of other property or in serious bodily harm to any person is proof, in the absence of evidence to the contrary, that the property is likely to be used to engage in unlawful activity that, in turn, would be likely to result in the acquisition of other property or in serious bodily harm to any person. 2001, c. 28, s. 7 (2).
...

Forfeiture order
8. (1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the court finds that the property is an instrument of unlawful activity. 2001, c. 28, s. 8 (1).

Action or application
(2) The proceeding may be by action or application. 2001, c. 28, s. 8 (2).

Responsible owners
(3) If the court finds that property is an instrument of unlawful activity and a party to the proceeding proves that he, she or it is a responsible owner of the property, the court, except where it would clearly not be in the interests of justice, shall make such order as it considers necessary to protect the responsible owner's interest in the property. 2001, c. 28, s. 8 (3).

Part V - General
...

Actions *in rem*
15.6 (1) All proceedings, including proceedings for an interlocutory order, under Parts II, III and III.1, whether by action or application, are *in rem* and not *in personam*. 2007, c. 13, s. 37.
...

Standard of proof
16. Except as otherwise provided in this Act, findings of fact in proceedings under this Act shall be made on the balance of probabilities. 2001, c. 28, s. 16.

Proof of offences
17. (1) In proceedings under this Act, proof that a person was convicted, found guilty or found not criminally responsible on account of mental disorder in respect of an offence is proof that the person committed the offence. 2001, c. 28, s. 17 (1).
(2) In proceedings under this Act, an offence may be found to have been committed even if,
(a) no person has been charged with the offence; or

(b) a person was charged with the offence but the charge was withdrawn or stayed or the person was acquitted of the charge. 2001, c. 28, s. 17 (2).

...

Schedule "B" – Statutes and Regulations

Civil Remedies Act, 2001, S.O. 2001, c. 28, ss. 2, 3(1) and 3(3)

Definitions

2. In this Part,
"Director" means the Director of Asset Management – Civil appointed under section 15.1; ("directeur")

"legitimate owner" means, with respect to property that is proceeds of unlawful activity, a person who did not, directly or indirectly, acquire the property as a result of unlawful activity committed by the person, and who,

(a) was the rightful owner of the property before the unlawful activity occurred and was deprived of possession or control of the property by means of the unlawful activity,
(b) acquired the property for fair value after the unlawful activity occurred and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity, or
(c) acquired the property from a person mentioned in clause (a) or (b); ("propriétaire légitime")

"proceeds of unlawful activity" means property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity, whether the property was acquired before or after this Act came into force, but does not include proceeds of a contract for recounting crime within the meaning of the *Prohibiting Profiting from Recounting Crimes Act, 2002*; ("produit d'activité illégale")

"property" means real or personal property, and includes any interest in property; ("bien")

"unlawful activity" means an act or omission that,

(a) is an offence under an Act of Canada, Ontario or another province or territory of Canada, or
(b) is an offence under an Act of a jurisdiction outside Canada, if a similar act or omission would be an offence under an Act of Canada or Ontario if it were committed in Ontario,

whether the act or omission occurred before or after this Part came into force. ("activité illégale")

Forfeiture order

3. (1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the court finds that the property is proceeds of unlawful activity.

Legitimate owners

(3) If the court finds that property is proceeds of unlawful activity and a party to the proceeding proves that he, she or it is a legitimate owner of the property, the court, except where it would clearly not be in the interests of justice, shall make such order as it considers necessary to protect the legitimate owner's interest in the property.

Court File No.: CV-16-11424-00CL

EMMANUEL VILLAGE RESIDENCE INC.

- and -

Applicant

EMMANUEL VILLAGE RESIDENCE INC.

Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

FACTUM OF SURE MORTGAGE CAPITAL INC.
(Motion by Emmanuel Village Residence Inc.
returnable September 6, 2016
re: *inter alia* broker's commission)

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