

Canada: Cops can now 'take all your stuff'

By [Mindelle Jacobs](#)

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There have been some terrible miscarriages of justice due to proceeds of crime legislation in other countries.

Whether Canada will do better remains to be seen.

To the surprise of at least one legal expert, the Supreme Court of Canada last week unanimously gave the provinces incredible powers to seize assets allegedly connected to crime.

For a country that has gained the reputation, whether deserved or not, of protecting the rights of the accused over the rights of victims, it's quite an about-face.

As one worried reader e-mailed the other day: "This is a terrifying development. If the police even suspect you of a crime, they can take all your stuff. They don't have to prove it."

Is he right? "Yes and no," says University of Manitoba law professor Michelle Gallant. The cops can take your car, for instance, if they think you're using it to sell drugs.

But the police have to persuade a judge that, on a balance of probabilities, the vehicle is connected to crime. And that's much easier to show than providing evidence beyond a reasonable doubt that someone is guilty of a crime.

In other words, if the police want your car, house, money or any other assets, they can get away with it without even arresting you as long as they convince a judge something doesn't smell right. No conviction necessary.

"It's kind of scary," says Gallant, an expert in proceeds of crime, who never thought Canada would embrace such wide-ranging legislation.

While the goal — going after assets associated with crimes like drug trafficking — is laudatory, it's an awful lot of leeway to give the government, she says.

At least Britain brought in a more narrowly defined law, limiting proceeds of crime proceedings to assets over 10,000 pounds (\$18,000 Canadian).

"It does strike me as quite radical," says Gallant, of the top court ruling. "Now the state can sue anybody — any asset — and if it proves on a balance of probabilities that it's connected to crime, it can take it. That's quite an extraordinary power."

She would have been more comfortable with more restrictive proceeds of crime laws limited to assets over \$100,000 and involving only serious crimes such as drug trafficking.

In the U.S., she adds, there have been shocking abuses of the system. She cites the case of a poor woman who lost her house because her son had been dealing drugs out of the place. And a lot of marginalized people have no control over what goes on around them.

Listen up, folks. Most of the provinces have similar provisions in their proceeds of crime legislation. If your kid is selling drugs out of your car, and you don't know it, the state could still seize the vehicle as an instrument of crime.

Imagine another scenario. A new immigrant flying back to his native country with a thick wad of cash for his relatives. "We use banks. They use envelopes," Gallant says of certain immigrant groups.

PANDORA'S BOX

That's the kind of money the government might decide, on a balance of probabilities, is connected to crime.

The optimistic view is the provinces examined the U.S. and European proceeds of crime laws and got rid of "the worst bits," says Gallant.

On the other hand, we may have unleashed a Pandora's Box of potential abuses. We'll just have to keep our fingers crossed that Canadian judges have a finely honed sense of fairness.

"I'm ambivalent," Gallant says of the Supreme Court decision. "I'm not sure if I have a lot of faith in our proceeds of crime units (and) government's ability to apply these laws."

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