
Civil Forfeiture Office - File Referral Acceptance Policy

Objective This policy sets out the review procedures to be followed by Civil Forfeiture Office (“CFO”) employees when considering the suitability of initiating a forfeiture application based on a file referral received from a public body (the “file”).

Definitions Words and phrases defined under the *Civil Forfeiture Act*, RSBC 2024, c. 1 (the “Act”) appearing in this policy have the same meaning as set out in the Act. The “Director” refers to the Director as appointed under the Act and his or her delegates.

Application This policy applies to all CFO employees and specifically applies to the Director’s exercise of discretion under sections 3 and 30 of the Act for both civil and administrative forfeiture proceedings.

Guiding Principles The file review procedure should be guided by the foundational purposes of the Act:

- 1) to take the profit out of unlawful activity;
- 2) to prevent the use of property to unlawfully acquire wealth or cause bodily injury; and
- 3) to compensate victims of crime and fund crime prevention and remediation.

General *Available Information*

- 1) Information received from a public body must be received in a manner consistent with the Act, the *Freedom of Information and Protection of Privacy Act*, and any Information Sharing Agreements (“ISA”) that exist between the CFO and the public body.
- 2) A file will be assessed according to information available to the Director at the time it is received.
- 3) The Director will make reasonable efforts to ensure the accuracy and completeness of the file by:
 - a. Requesting any available additional information from the referring agency that is likely relevant to the Director’s decision pursuant to this policy; and/or
 - b. Accessing open source information and subscription service information available to the CFO at the relevant time.

Referral Acceptance Factors

- 4) All referrals will be assessed by the Director in accordance with the following criteria:
 - a. Public Interest – public interest factors may include, but are not limited to:
 - i. actual harm or a reasonable prospect of harm to individuals, particularly vulnerable individuals such as children or the elderly;
 - ii. the use of firearms or other weapons;
 - iii. involvement of gangs or organized crime;
 - iv. money laundering;
 - v. presence of hard drugs;
 - vi. financial exploitation of vulnerable individuals;
 - vii. harm or reasonable prospect of harm to law enforcement; and
 - viii. any other factors relevant to the unlawful activity.
 - b. Strength and Adequacy of the Available Evidence –the available evidence is to be assessed based on the likelihood of a successful forfeiture application using a balance of probabilities standard for civil forfeiture files or the reason to believe standard for administrative forfeiture files.
 - c. Financial Considerations – Given the cost recovery nature of the CFO program, the Director’s review will be guided by a cost-benefit financial analysis of the file that will consider the estimated cost of obtaining a successful forfeiture against the estimated financial benefit.
 - d. Interests of Justice – The Director must assess the interests of justice in accordance with the Act and relevant judicial precedents by using information reasonably available to the Director at the time a file is received, which includes consideration of the reputation of the administration of justice.
- 5) Each of the above factors may be assigned a different weight based on the circumstances of the particular file under review.

Source of File

- 6) Files arising out of a criminal investigation will be considered where:

- a. The public body has decided not to refer the file to a Crown Prosecutor for charge approval, or;
 - b. Where following charge approval the Crown Prosecutor has decided not to pursue criminal restraint or forfeiture proceedings, or;
 - c. Where criminal proceedings have concluded for any reason without criminal forfeiture.
- 7) Files arising out of a regulatory investigation will be considered where:
- a. The public body has decided not to pursue regulatory enforcement proceedings, or;
 - b. Where a file has been referred to a Crown Prosecutor for consideration and the Crown Prosecutor has decided not to pursue regulatory enforcement proceedings.

Provincial Offences as Unlawful Activity

- 8) The CFO recognizes that provincial offences are, generally speaking, viewed as having less potential for physical harm or financial gain than criminal offences. It is important that forfeiture applications based on provincial offences are seen as being fair, proportional to the degree of actual or likely harm, and above all in the public interest. Therefore, the following special considerations apply where the underlying unlawful activity is a provincial offence, except for:
- a. provincial driving offences which are dealt with separately in this policy; and
 - b. provincial offences related to organized crime and gang activity, including, but not limited to:
 - i. offences under the Armoured Vehicle and After-Market Compartment Control Act [SBC 2010] c.8; and,
 - ii. offences under the Gaming Control Act [SBC 2002] c.14
- 9) Where the unlawful activity associated to a file is a provincial offence, the Director must consider whether existing statutory sanctions by the referring public body have been exhausted. A failure by the public body to exhaust existing statutory sanctions weighs against accepting the file, but is not determinative.
- 10) Where the unlawful activity associated to a file involving a provincial offence is:
- a. Based on the same offence(s) associated to a previously accepted file, a majority of Directors must agree that the files

should be accepted in accordance with the criteria set out in this policy or the file shall be declined; or,

- b. Based on an offence not previously the subject of an accepted civil forfeiture file, all Directors in consultation with legal counsel must agree that the file should be accepted in accordance with the criteria set out in this policy or the file shall be declined.

Driving offences as Unlawful Activity

- 11) The CFO recognizes the existence of a comprehensive regulatory and judicial enforcement regime with respect to driving offences. Generally speaking, a forfeiture application should only be pursued where there are repeated incidents of vehicular unlawful activity notwithstanding regulatory and/or judicial sanctions or where the public interest considerations involved in a single incident, particularly the existence of potential or actual harm, are so egregious as to warrant a forfeiture application.
- 12) When a file involves either a provincial or criminal driving offence as the unlawful activity, the Director must consider the following:
 - a. The driving history of the vehicle operator, specifically, any patterns of repeat behavior with the potential to cause harm;
 - b. Any prior or existing sanctions placed on the vehicle, vehicle owner or operator;
 - c. Compliance or lack thereof with prior or existing restrictions on a vehicle, vehicle owner or operator; and
 - d. The particular circumstances of the unlawful activity and their impact on the reasonable likelihood of bodily harm, including, but not limited to:
 - i. Time of day;
 - ii. Location;
 - iii. Traffic conditions;
 - iv. Weather;
 - v. Presence of pedestrians; and
 - vi. Failure to comply with directions from law enforcement.

Record of Decision

- 13) When a file is received, a unique CFO case number will be generated. The public body will be advised in writing of the CFO decision to either accept or decline the file.