



# Seeking Asset Recovery from Canada: A Practical Guide



Department of Justice  
Canada

Ministère de la Justice  
Canada

Canada



## I. Introduction

Consistent with Canada's support for international legal instruments such as the *United Nations Convention against Corruption* (UNCAC) and the *United Nations Convention against Transnational Crime* (UNTOC), Canada is committed to working with the global community to fight serious criminality, including corruption. States must work together to ensure that those who try to use international borders to evade justice and to hide the fruits of their criminality are not permitted to do so. Canada recognizes that robust tools of international cooperation are vital to preserving peace and security at home and abroad, including asset recovery and the sharing of criminal proceeds.

For these tools to be effective, however, States must have a clear and concise understanding of the legal and procedural requirements for obtaining the required assistance.

The following provides a practical overview of the processes in Canada for seeking the freezing/restraint, seizure, forfeiture/confiscation, and sharing of criminal proceeds. Additionally, it provides Canadian contact points to allow for efficient consultation. To assist foreign investigations and prosecutions, relevant resources such as open source data links for provincial civil forfeiture regimes, business registries, legislation, and financial institution directories, are also included below. Finally, a sample mutual legal assistance request is included to assist foreign authorities.

## II. Overview of Procedure for Seeking the Freezing of Assets in Canada of Corrupt Government Officials

Under the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), the Government of Canada may issue orders or regulations that freeze the assets or restrain the property of a foreign State's former leaders and senior officials, if the following preconditions are met:

1. The foreign State asserts in writing to the Government of Canada that a person has misappropriated property of the foreign State or acquired property inappropriately by virtue of their office or a personal or business relationship;
2. The written assertion asks the Government of Canada to freeze property of the person; and
3. The circumstances associated with the request demonstrate to the Government of Canada's satisfaction that:
  - The person is, in relation to the foreign State, a politically exposed foreign person;<sup>1</sup>

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<sup>1</sup> For greater certainty, a "politically exposed foreign person" is defined under FACFOA to mean a person who holds or has held one of the following offices or positions in or on behalf of a foreign State and includes any person who, for personal or business reasons, is or was closely associated with such a person, including a family member:

- (a) head of State or head of government;
- (b) member of the executive council of government or member of a legislature;





- There is internal turmoil, or an uncertain political situation, in the foreign State; and
- The making of the order or regulation is in the interests of international relations.

If the following conditions are met, the Government of Canada may issue an order or regulation that lists and designates the person in question as someone with whom Canadians may not engage in the following activities, whether carried out inside or outside of Canada:

1. The dealing, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person;
2. The entering into or facilitating, directly or indirectly, any financial transaction related to a dealing, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person; and
3. The provision of any financial services or other related services in respect of any property of a listed politically exposed foreign person.

In addition to restricting and prohibiting dealing with the properties of corrupt foreign officials, their associates and their family members, FACFOA further provides that Canadians and financial entities must disclose to the Royal Canadian Mounted Police (RCMP) whether they have possession or control of property of a person who is the subject of an order or regulation. As such, property associated with a politically exposed foreign person can be identified and frozen at the request of the foreign State on an ongoing basis for the duration of the order or the regulation, which is five years with the possibility of renewal.

While FACFOA authorizes the Government of Canada to seize property, seizure cannot occur unless the property is identified as a proceed of crime. As described above, however, it is not necessary to establish that the property is a proceed of crime in order for it to be frozen under FACFOA. Rather, the freeze ensures that the property remains in Canada to give the foreign State time to pursue its investigations and gather evidence to support a formal request for the seizure and forfeiture of such assets. For more detailed information, States are encouraged to review FACFOA and the regulations made thereunder at <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>.

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- (c) deputy minister or equivalent rank;
  - (d) ambassador or attaché or counsellor of an ambassador;
  - (e) military officer with a rank of general or above;
  - (f) president of a State-owned company or a State-owned bank;
  - (g) head of a government agency;
  - (h) judge;
  - (i) leader or president of a political party represented in a legislature; or
  - (j) holder of any prescribed office or position.



### III. Overview of Procedure for Seeking Restraint/Seizure and Forfeiture of Assets in Canada

A foreign State may seek restraint, seizure, and forfeiture of criminal proceeds and offence-related property/instrumentalities of crime, from Canada in one of two circumstances:

- By making a mutual legal assistance request to Canada seeking the enforcement of a restraint, seizure or forfeiture order issued by a court of criminal jurisdiction in the requesting State; or
- By requesting that Canada pursue a domestic investigation into criminal proceeds or offence-related property.

#### A. Mutual Legal Assistance Process

##### i. Restraint and Seizure under section 9.3 of the Mutual Legal Assistance in Criminal Matters Act

A foreign State may seek the restraint or seizure of criminal proceeds or offence-related property from Canada if the following preconditions are met:

1. The request is made in writing to the Minister of Justice of Canada (Minister of Justice);
2. The request is made by (1) a treaty partner; (2) a State or entity designated in the Schedule to Canada's *Mutual Legal Assistance in Criminal Matters Act* (MLACMA); or (3) by a State or entity with which Canada has entered into a one-time case specific administrative arrangement;
3. The request seeks the enforcement of an order for restraint or seizure of property situated in Canada;
4. The request includes a copy of the restraint or seizure order issued by a court of criminal jurisdiction in the requesting State;
5. The person to whom the property relates is charged with a criminal offence in the requesting State; and
6. The foreign offence with which the person is charged would be an indictable offence (serious offence) under Canadian law had the conduct been committed in Canada (dual criminality requirement).



## **ii. Grounds of Refusal and Postponement of Request for the Enforcement of Restraint or Seizure Orders**

The Minister of Justice shall refuse a request for the enforcement of a restraint or seizure order if any of the above preconditions are not met. As noted above, dual criminality is a prerequisite to Canada's assistance in such matters.

The Minister of Justice may refuse a request for the enforcement of a restraint or seizure order if it would be contrary to the public interest, e.g. the property is the subject of a Canadian criminal proceeds investigation or prosecution. Moreover, the Minister of Justice may postpone a request for the enforcement of a restraint or seizure order if execution would interfere with an ongoing Canadian investigation or prosecution.<sup>2</sup>

## **iii. Forfeiture under section 9.4 of the Mutual Legal Assistance in Criminal Matters Act**

A foreign State may seek the forfeiture of criminal proceeds or offence-related property from Canada if the following preconditions are met:

1. The request is made in writing to the Minister of Justice;
2. The request is made by (1) a treaty partner; (2) a State or entity designated in the Schedule to Canada's MLACMA; or (3) by a State or entity with which Canada has entered into a one-time case specific administrative arrangement;
3. The request seeks the enforcement of a forfeiture order issued by a court of criminal jurisdiction in the requesting State and includes a copy of the order;
4. The person to whom the property relates must be convicted of a criminal offence in the requesting State;
5. Both the forfeiture order and the relevant conviction must be final and not subject to further appeals; and
6. The foreign offence of which the person was convicted would be an indictable offence (serious offence) under Canadian law had the conduct been committed in Canada (dual criminality requirement).

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<sup>2</sup> The discretionary bases for refusal and postponement are found in most of Canada's bilateral mutual legal assistance treaties.



#### **iv. Grounds of Refusal of Request for the Enforcement of Forfeiture Orders**

The Minister of Justice shall refuse a request to enforce a foreign forfeiture order if the above preconditions are not met. In addition, the Minister of Justice shall refuse a request in one or more of the following circumstances:

- There are reasonable grounds to believe that the request is made to punish a person on one or more listed grounds of discrimination: race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, political opinion, and mental or physical disability;
- Enforcement would prejudice an ongoing Canadian court proceeding or investigation;
- Enforcement would impose an excessive burden on the resources of federal, provincial, or territorial authorities;
- Enforcement might prejudice Canada's security, national interest, or sovereignty; or
- Refusal of the request is in the public interest.

#### **v. Nexus Between the Foreign Offence and the Canadian Property as Proceeds of Crime or Offence-Related Property**

Under Canada's MLACMA, a request to Canada that seeks the enforcement of a restraint, seizure, or forfeiture order should clearly outline the basis to believe that the Canadian property constitutes either the proceeds of the foreign criminal offence or offence-related property.

According to the MLACMA, it is not sufficient to merely assert that the property is criminal proceeds or offence-related property. Evidence to substantiate this allegation is necessary. For example, the requesting State should provide an outline of the evidence showing that the funds in a specific Canadian bank account emanate from the offence for which the person is charged or convicted.

While the MLACMA specifies that foreign orders should sufficiently identify criminal proceeds or offence-related property, recent jurisprudential developments have successfully facilitated mutual legal assistance requests for equivalent value/substituted assets. It may therefore be possible for Canada to assist foreign States in the forfeiture of substitute or equivalent assets.

#### **vi. Specific Canadian Assets Must be Identified**

The mutual legal assistance request and the foreign order of restraint, seizure or forfeiture must be specific. It is not sufficient to refer to general property or assets situated in Canada. For example, it is insufficient to refer to all bank accounts or all real estate in the name of the subject person. The



request should, instead, list where the property or assets are located in Canada, such as a city or a specific branch of specific bank.

### **vii. Canadian Legal Process for Executing Requests for Restraint, Seizure and Forfeiture**

If the Minister of Justice approves the execution of a mutual legal assistance request, a Ministerial Authorization may be issued to the Attorney General of Canada (AGC) or an Attorney General of one of the Provinces to arrange for the direct enforcement of the foreign order.

On receipt of a Ministerial Authorization, counsel for the AGC or an Attorney General of one of the Provinces, may file the order with the Superior Court in the Province in which the property is located.

After an order is filed, it is entered as a judgment of that Court and may be executed anywhere in Canada.

With respect to mutual legal assistance requests for the enforcement of foreign forfeiture orders, notice must be given to persons who, in the opinion of the Court, may have a valid interest in the property to be forfeited before the order may be executed against the Canadian property.

### **viii. Non-Conviction Based Asset Forfeiture**

In contrast to criminal asset recovery, non-conviction based (NCB) asset forfeiture, also known as civil forfeiture, enables governments and the victims of crime to recover illegally acquired assets from an individual or an entity. This is done through a direct action against their property without the requirement of a prior criminal conviction.

Due to Canada's constitutional division of powers, civil forfeiture or NCB asset recovery assistance is not available through the mutual legal assistance process. These requests fall within the jurisdiction of Canada's Provinces. As such, should a foreign State seek to recover assets from Canada through civil forfeiture, it must hire private counsel to act on its behalf in the Province where the property is located.

Eight out of ten of Canada's Provinces have regimes in place to facilitate civil forfeiture. These Provinces are: Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, and Saskatchewan.

Since NCB asset recovery constitutes a civil proceeding, its standard of proof is on a "balance of probabilities". This standard is a lower burden than the criminal standard of proof of "beyond a reasonable doubt". The civil "balance of probabilities" standard is described as "more probable than not" or requiring a 50.1 per cent likelihood of occurrence. For additional information on each of the eight applicable provincial regimes, see "References" below.





## **B. Canadian Proceeds of Crime Investigation**

In cases where the requirements of Canada's MLACMA cannot be met, a request for restraint, seizure or forfeiture may be referred to the RCMP to assess whether the foreign request provides a basis to commence a Canadian investigation for possession of proceeds of crime or offence-related property. In these cases, Canadian law enforcement would review the evidence provided by the requesting State to determine whether there has been a violation of Canadian laws and whether Canadian charges should be laid.

If a Canadian investigation is commenced on this basis and property is identified by the RCMP as proceeds of crime or offence-related property, the AGC may apply to the courts to obtain an order under Canada's *Criminal Code* to prohibit any person from disposing of, or otherwise dealing with any interest in, the property specified in the order, other than in the manner that may be specified in the order. In turn, if it is established by a Canadian court that the property constitutes proceeds of crime or offence-related property and that an offence was committed in relation to that property, the court shall order that the property be forfeited to the Government of Canada to be disposed of as the AGC directs or otherwise dealt with in accordance with the law.

The RCMP may only consider commencing a Canadian proceeds of crime or offence-related property investigation if:

1. The subject assets are specifically identified;
2. There is evidence linking the Canadian assets to an alleged criminal offence in Canada or a foreign State;
3. There is evidence that the Canadian assets constitute the proceeds of crime or offence-related property; and
4. The time from the commission of the crime and the accumulation of assets coincide.

Of note, the recovery of substitute or equivalent value assets is unavailable under Canada's domestic criminal law in the context of a Canadian investigation.

## **IV. Overview of Procedure for Asset Sharing**

In accordance with its domestic law, Canada fully supports the implementation of Chapter V of the UNCAC, which recognizes cooperation and assistance between States Parties as a fundamental principle with regard to the return of assets to legitimate owners.







Consistent with article 59 of the UNCAC, Canadian law requires that there be a formal asset sharing agreement with a foreign State before any assets can be returned to a foreign State. In this respect, section 11 of Canada's *Seized Property Management Act* (SPMA), provides that the AGC, with the approval of the Governor in Council, may enter into a reciprocal asset sharing agreement with the government of a foreign State to facilitate the return of forfeited assets. Sections 3 and 4 of the *Forfeited Property Sharing Regulations* (FPSR), which apply to such agreements, further provide that no sharing under the SPMA and FPSR shall take place with the government of a foreign State unless the government of that foreign State has entered into an agreement pursuant to section 11 of the SPMA. In turn, the agreement with the government of a foreign State, shall:

1. Provide that sharing will be between the Government of Canada and the government of that foreign State;
2. Provide that the sharing of the proceeds of disposition of property in Canada and the sharing of fines in Canada will be in accordance with the Regulations;
3. Provide that there will be no conditions in respect of the use of any monies received under the agreement; and
4. Provide the title of the official to whom the amount of any share is to be paid and sent, or provide that a central authority will designate to whom the amount of any share is to be paid and sent.

Consistent with article 57(4) of the UNCAC, Canada shares property with the requesting State in a manner that recognizes deductions for reasonable expenses incurred in investigations, prosecutions, and judicial proceedings leading to the return or disposition of confiscated property. Specifically, the FPSR provides that Canada shall use a percentage based asset-sharing formula that recognizes the value of its contributions towards achieving the return or disposition of the property. This is assessed on a diminishing value basis, where the value of Canada's contributions may be deducted from the value of the property at 90 per cent for predominant contributions, 50 per cent for significant contributions, and 10 per cent for minimal contributions.

## **V. Points of Contact in Canada**

### **A. Contact on Freezing Assets of Corrupt Government Officials**

In Canada, requests to freeze the assets of corrupt government officials must be made to Global Affairs Canada through the following contact point:

**Global Affairs Canada  
Criminal, Security and Diplomatic Law Division  
Legal Affairs Bureau**





**Lester B Pearson, Tower C**  
**125 Sussex Drive**  
**Ottawa, ON, K1A 0G2, Canada**  
**Email: [EXTOTTJLA@international.gc.ca](mailto:EXTOTTJLA@international.gc.ca)**

## **B. Contacts for Requests for Mutual Legal Assistance**

All requests for mutual legal assistance in criminal matters, including those seeking the restraint, seizure, forfeiture and sharing of criminal proceeds are submitted to the Canadian Central Authority, the International Assistance Group at the Department of Justice Canada. The contact information is provided below:

**International Assistance Group**  
**National Litigation Sector, Criminal Law Operations**  
**Department of Justice Canada**  
**284 Wellington Street, 2nd Floor**  
**Ottawa, ON, K1A 0H8, Canada**  
**After hours number: +01 613 851 7891**  
**Email: [cdncentralauthority@justice.gc.ca](mailto:cdncentralauthority@justice.gc.ca)**

In addition, Canada has a liaison official in Brussels to facilitate the processing of mutual legal assistance requests from countries in Europe. The contact is as follows:

**Thomas Beveridge**  
**Counsellor, International Criminal Operations**  
**Canadian Mission to the European Union**  
**Avenue des Arts 58, 1000, Bruxelles, Belgique**  
**Tel: +32 02 741 0771**  
**Fax: +32 02 741 0643**  
**E-mail: [thomas.beveridge@international.gc.ca](mailto:thomas.beveridge@international.gc.ca)**

Inquiries on recovering forfeited criminal proceeds or offence-related property can be made to the following contact:

**Ivan Nault**  
**Senior Counsel**  
**International Assistance Group**  
**National Litigation Sector, Criminal Law Operations**  
**Department of Justice Canada**  
**284 Wellington Street, 2nd Floor**  
**Ottawa, ON, K1A 0H8, Canada**  
**E-mail: [ivan.nault@justice.gc.ca](mailto:ivan.nault@justice.gc.ca)**





Inquiries on asset sharing agreements and the sharing of forfeited assets can be made to the following contact:

**Marisa Ferraiuolo**  
**Senior Counsel**  
**International Assistance Group**  
**National Litigation Sector, Criminal Law Operations**  
**Department of Justice Canada**  
**284 Wellington Street, 2nd Floor**  
**Ottawa, ON, K1A 0H8, Canada**  
**E-mail: [marisa.ferraiuolo@justice.gc.ca](mailto:marisa.ferraiuolo@justice.gc.ca)**

#### **C. Contact at Camden Asset Recovery Inter-agency Network**

**RCMP Federal Policing Criminal Operations (FPCO) - Financial Crime**  
**Luke MacAulay**  
**National Coordinator, Asset Recovery Inter-agency Network (ARIN/CARIN)**  
**RCMP National Headquarters**  
**73 Leikin Drive**  
**Ottawa, ON, K1A 0R2, Canada**  
**E-mail: [luke.macaulay@rcmp-grc.gc.ca](mailto:luke.macaulay@rcmp-grc.gc.ca)**  
**ARIN Canada E-mail: [RCMP.ARINCanada-CanadaRIRA.GRC@rcmp-grc.gc.ca](mailto:RCMP.ARINCanada-CanadaRIRA.GRC@rcmp-grc.gc.ca)**

## **VI. References**

For more information about the Canadian laws and legal measures discussed in this guide, you are encouraged to consult the following websites:

- Asset Recovery Inter-agency Network  
<http://www.arin-ap.org/main.do>
- Criminal, Security and Treaty Law Division (JLA) of Global Affairs Canada  
[https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/legislation-lois.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/legislation-lois.aspx?lang=eng)
- Department of Justice Canada's Law Website  
<http://laws-lois.justice.gc.ca/eng/>
- *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA)  
<https://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>  
[https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/contact\\_us-communiquiez\\_avec\\_nous.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/contact_us-communiquiez_avec_nous.aspx?lang=eng)





- International Assistance Group at the Department of Justice Canada
  - <https://www.justice.gc.ca/eng/cj-jp/emla-eej/about-apropos.html>
- Legislation and Regulations Pursuant to Forfeited Property:
  - *Seized Property Management Act* (SPMA)  
<https://laws-lois.justice.gc.ca/eng/acts/S-8.3/>
  - *Forfeited Property Sharing Regulations* (FPSR)  
<https://laws-lois.justice.gc.ca/eng/regulations/sor-95-76/index.html>
- *Mutual Legal Assistance in Criminal Matters Act* (MLACMA)  
<https://laws-lois.justice.gc.ca/eng/acts/M-13.6/index.html>
- Open-source Database of Federally Incorporated Corporations  
<https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/fdrlCrpSrch.html>
- Open-source Databases of Provincially/Territorially Incorporated Corporations:
  - Alberta  
<https://www.alberta.ca/find-corporation-details.aspx>
  - British Columbia  
<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/citizens-services/bc-registries-online-services>
  - Manitoba  
[https://companiesoffice.gov.mb.ca/search\\_registry.html](https://companiesoffice.gov.mb.ca/search_registry.html)
  - New Brunswick  
<https://www2.snb.ca/content/snb/en/sites/corporate-registry/registry.html>
  - Newfoundland  
<https://cado.eservices.gov.nl.ca/CADOInternet/Company/CompanyMain.aspx>
  - Northwest Territories  
<https://www.justice.gov.nt.ca/en/corporate-registry-searches/>
  - Nova Scotia  
<https://beta.novascotia.ca/search-business-or-non-profit-information-filed-registry-joint-stock-companies>





- Nunavut  
[http://nunavutlegalregistries.ca/cr\\_index\\_en.shtml](http://nunavutlegalregistries.ca/cr_index_en.shtml)
- Ontario  
<https://www.ontario.ca/page/ontario-business-registry>
- Quebec  
[http://www.registreentreprises.gouv.qc.ca/en/a\\_propos/neq/default.aspx](http://www.registreentreprises.gouv.qc.ca/en/a_propos/neq/default.aspx)
- Prince Edward Island  
<https://www.princeedwardisland.ca/en/feature/pei-business-corporate-registry#/service/BusinessAPI/BusinessSearch>
- Saskatchewan  
<https://www.isc.ca/corporateregistry/findanexistingbusiness/Pages/Search-find-information-on-an-existing-business.aspx>
- Yukon  
<https://ycor-reey.gov.yk.ca/search>
- Provinces with Non-Conviction Based/Civil Forfeiture Regimes:
  - Alberta  
<https://www.alberta.ca/civil-forfeiture.aspx>
  - British Columbia  
<https://www2.gov.bc.ca/gov/content/safety/crime-prevention/civil-forfeiture-office/civil-forfeiture>
  - Manitoba  
<https://www.gov.mb.ca/justice/commsafe/cpf/index.html>
  - New Brunswick  
<https://www.canlii.org/en/nb/laws/astat/snb-2010-c-c-4.5/latest/snb-2010-c-c-4.5.html>
  - Nova Scotia  
[https://novascotia.ca/just/public\\_safety/civil\\_forfeitures.asp](https://novascotia.ca/just/public_safety/civil_forfeitures.asp)
  - Ontario  
<https://www.ontario.ca/page/administrative-forfeiture>







- Quebec  
<http://legisquebec.gouv.qc.ca/en/document/cs/C-52.2>
- Saskatchewan  
<https://www.saskatchewan.ca/residents/justice-crime-and-the-law/seizure-of-criminal-property>
- Website for Searching Canadian Postal Codes  
<https://www.canadapost-postescanada.ca/info/mc/personal/postalcode/fpc.jsf>
- The Financial Institutions Branch Directory (FIBD) provides routing numbers and addresses for branches of all Canadian financial institutions.  
<https://www.payments.ca/our-directories/financial-institutions-branch-directory>
- Branch Directories for Major Canadian Banks:
  - Bank of Montreal (BMO)  
<https://branchlocator.bmo.com/index.html>
  - Canadian Imperial Bank of Commerce (CIBC)  
<https://locations.cibc.com/>
  - HSBC Bank Canada  
<https://www.hsbc.ca/branch-locator/>
  - National Bank of Canada (NBC)  
<https://locator.nbc.ca/>
  - Royal Bank of Canada (RBC)  
<https://maps.rbcroyalbank.com/index.php>
  - Bank of Nova Scotia (Scotiabank)  
<https://maps.scotiabank.com/locator/index.html>
  - Toronto-Dominion Bank (TD)  
<https://www.td.com/ca/en/personal-banking/branch-locator/#/>





## Sample Mutual Legal Assistance Request to Canada for Asset Restraint or Forfeiture

*(On letterhead and translated into one of Canada's official languages  
(English or French))*

**URGENT\*/ CONFIDENTIAL**

(\*delete the above if not urgent)

### **REQUEST FOR MUTUAL LEGAL ASSISTANCE BY THE REQUESTING STATE TO CANADA PURSUANT TO THE BILATERAL MUTUAL LEGAL ASSISTANCE TREATY BETWEEN THE REQUESTING STATE AND CANADA OR MULTILATERAL TREATY OF WHICH THE REQUESTING STATE AND CANADA ARE PARTIES**

#### **I. Overview of the Investigation and Prosecution**

The National Police Force and the National Prosecuting Service of the Requesting State are investigating an alleged Fraud on its government, namely "Influence Peddling", contrary to section 555 of the *Penal Code* of the Requesting State. This offence is alleged against:

**Minister X**

**Date of Birth: January 1, 1951**

**Resident of 555 Tulip Lane, City of Oak, Requesting State.**

Minister X is charged with the above-stated offence and is currently on bail pending the commencement of his trial on December 1, 2021. Apart from the criminal proceedings against Minister X, he is also the subject of a parliamentary investigation under the *Conflict of Interest Code of the Requesting State* and at risk of removal from office if he is found to have breached his official duties under the *Code*.

In relation to the criminal investigation/prosecution, the National Police Force and the National Prosecuting Service of the Requesting State require the following assistance:

- For section 9.3 mutual legal assistance requests for asset restraint: Enforcement of a restraint order for criminal proceeds or offence-related property in Canada.

At a future date, the Requesting State intends to submit a supplemental request to Canada seeking the enforcement of seizure and confiscation orders.



- For section 9.4 mutual legal assistance requests for asset forfeiture: Forfeiture of criminal proceeds or offence-related property in Canada.

This request is both urgent and confidential for the reasons described in sections V and VI below.

## II. Relevant Legal Provisions

The relevant *Penal Code* provisions in the Requesting State are reproduced below:

### Fraud on the Government (Influence Peddling)

Section 555(1) of the *Penal Code* of the Requesting State provides:

Every one commits an offence who, being an official, demands, accepts or offers or agrees to accept from any person for himself or another person a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with the transaction of business with or any matter of business relating to the government.

### Punishment

Section 555(2) provides:

Every one who commits an offence under this section is liable to imprisonment for a term not exceeding five years.

### Definition of “Official”

Section 554 of the *Penal Code* of the Requesting State defines “official” as follows:

“Official” means a person who holds an office, or is appointed or elected to discharge a public duty.

## III. Summary of the Case

In this section, the Requesting State should ensure a link to Canada is clearly explained and sourced. Under Canada’s *Mutual Legal Assistance for Criminal Matters Act* (MLACMA), a request to Canada that seeks the enforcement of a foreign restraint, seizure, or forfeiture order, should clearly outline the basis to believe that the Canadian property constitutes the proceeds of the foreign criminal offence or offence-related property.

It is not sufficient to state that the property is criminal proceeds or offence-related property. Evidence to substantiate this allegation is necessary. For example, the Requesting State should provide an outline of the evidence demonstrating that the funds in a specific Canadian bank account emanate from the offence for which the person was charged or convicted.

For section 9.3 mutual legal assistance requests for asset restraint, the following two preconditions must be satisfied:

1. The person to whom the property relates is charged with a criminal offence in the Requesting State; and
2. The foreign offence with which the person is charged would be an indictable offence (serious offence) under Canadian law had the conduct been committed in Canada (dual criminality requirement).

For section 9.4 mutual legal assistance requests for asset forfeiture, the following three preconditions must be satisfied:

1. The person to whom the property relates must be convicted of a criminal offence in the requesting State;
2. Both the forfeiture order and the relevant conviction must be final and not subject to further appeals; and
3. The foreign offence for which the person was convicted would be an indictable offence (serious offence) under Canadian law had the conduct been committed in Canada (dual criminality requirement).

#### **A. Summary of the Allegations Against Minister X**

In March 2018, Minister X was elected to Parliament in the Requesting State and began receiving a Minister's salary at that time. As a Minister, he was required, under the *Conflict of Interest Code* of the Requesting State, to publicly disclose his private interests on an annual basis through an established mandatory disclosure policy.

In January 2019, investigators of the Requesting State received an anonymous tip in which it was alleged that Minister X was compromising his public position by lobbying for government monies in favour of private corporations to which he provided legal representation. It was further alleged in the anonymous tip that Minister X had gained significant financial advantage for himself in making these representations.



On the basis of the anonymous tip, investigators commenced an investigation. They concluded that Minister X had improperly accepted payments in the amount of \$280,000.00 CAD and a loan of \$100,000.00 USD from two companies, ABC Inc. and DEF Corp., for his efforts in attempting to secure government grants on their behalf. The evidence supporting these allegations

## **B. Evidence Obtained in Support of Allegations/Sources**

### **i. Public Records Linking Minister X to ABC Inc. and DEF Corp.**

The investigators obtained the public records pertaining to Minister X's declared private interests and determined that, prior to and after his election, he was paid as the legal representative for ABC Inc. and DEF Corp. According to incorporation records, also obtained by the investigators during the course of their inquiries, the principal shareholder of ABC Inc. and DEF Corp. is Ms. K.

### **ii. Statement of Ms. K, Principal Shareholder of ABC Inc. and DEF Corp., Regarding Remuneration and Loan Allegedly Paid to Minister X**

The investigators interviewed Ms. K as a witness. She revealed that Minister X's role in representing ABC Inc. and DEF Corp. began in January of 2018, before his election, and included making representations to various levels of government in the Requesting State on behalf of, and for the benefit of, Ms. K's companies. She further stated that the purpose of these representations was to secure substantial government grants for her two companies. Ms. K also revealed that, for his efforts to obtain grants for her companies, Minister X received fees totaling \$300,000.00 CAD – of which \$280,000.00 CAD was earned and paid after he was elected to the Parliament in March 2018. In addition, Ms. K told the investigators that, at his request, she granted Minister X a loan for \$100,000.00 USD in October 2018 – also in consideration of his attempts to secure government grants for the benefit of her companies.

According to Ms. K, most of Minister X's efforts to obtain government grants for her companies were unsuccessful. However, Minister X did succeed in securing one grant in the amount of \$1,500,000.00 GBP from the National Industry Department (NID). This grant was for the benefit of ABC Inc., and was used to fund various domestic infrastructure projects initiated by ABC Inc.

### **iii. Statement of Mr. C, Senior Official at the National Industry Department, Regarding the Grant Given to ABC Inc.**

The investigators subsequently interviewed Mr. C, a senior official of the NID. Mr. C revealed that Minister X had indeed lobbied for a grant on behalf of ABC Inc. in May 2018, and that the NID agreed to issue the grant after questioning Minister X about any benefit or advantage he had received or was expected to receive from ABC Inc. for his submissions on their behalf. Minister X allegedly assured Mr. C that he was receiving no remuneration or benefit of any kind from ABC Inc. for his efforts, and that his motivation in seeking the grant was purely for the betterment of the country as a whole.







In this regard, he stated that ABC Inc.'s industrial initiatives were sure to improve the national economy, which needed a boost at the relevant time.

**iv. Statement of Ms. H, Former Staff Member Working with Minister X, Regarding Cheques Received by Minister X from ABC Inc. and DEF Corp.**

The investigators also interviewed Ms. H, a former staff member who had worked with Minister X shortly after his election and was dismissed four months later. Ms. H told the investigators that while employed with Minister X, she noticed that he received numerous cheques from ABC Inc. and DEF Corp., in amounts of between \$55,000.00 CAD and \$85,000.00 CAD. The cheques were identified as "payment for seeking grants". She stated that she became concerned about the source of these payments and raised her concerns with Minister X. He allegedly told her that he had disclosed this income through the conflict of interest process applicable to Ministers and that no impropriety was identified.

Two months after Ms. H raised her concerns with Minister X, she was dismissed – ostensibly on the grounds of incompetence. Mr. H has brought a civil action against Minister X for wrongful dismissal and adjudication of the matter is pending.

Note that the public records obtained by the investigators in relation to Minister X's mandatory disclosure duties, referred to above, do not show any of the payments referred to by Ms. H.

**v. Search Warrant Executed at the Residence of Minister X Revealed Bank Transfers from his Personal Bank Account in the Requesting State to a Foreign Bank Account in Canada**

In October 2019, a search warrant was executed at the residence of Minister X at 555 Tulipe Lane, City of Oak, in the Requesting State. Among the items seized were bank statements showing deposits made by ABC Inc. and DEF Corp. to Minister X's personal bank account (no. 5555 5555 5555) at the Book Bank of the Requesting State between March 29, 2018 and October 1, 2018, as follows:

- March 29, 2018 – cheque no. 2345 6789 in the amount of \$55,000.00 CAD;
- May 15, 2018 – cheque no. 3456 7891 in the amount of \$55,000.00 CAD;
- June 25, 2018 – cheque no. 1111 2222 in the amount of \$85,000.00 CAD;
- August 11, 2018 – cheque no. 3333 4444 in the amount of \$85, 000.00 CAD; and
- October 1, 2018 – cheque no. 7777 8888 in the amount of \$100,000.00 CAD.

TOTAL: \$380,000.00 CAD

Pursuant to a judicial authorization for the production of bank records, the investigators subsequently obtained bank records from the Book Bank in the Requesting State in relation to bank account no. 5555 5555 5555. These records indicate that 28 transfers, each in the amounts of \$10,000.00 CAD



(totaling \$280,000.00 CAD), were made from Minister X's personal account no. 5555 5555 5555 at the Book Bank of the Requesting State to account no. 2222 2222 2222 held by a Ms. S at the Foreign Bank of Canada, located at 222 Lane Road in the City of Pine in Canada. According to publicly available information on Minister X's personal circumstances, Ms. S is Minister X's daughter, who is currently a resident of 333 Road Way in the City of Pine in Canada.

### C. Conclusion

Based on the evidence gathered to date, and as summarized above, investigators believe that Minister X improperly used his position to secure government grants for the benefit of Ms. K's two companies; that he received financial benefit for doing so; and transferred the monies received from Ms. K to the Foreign Bank of Canada.

## IV. Requested Assistance

In order to further the investigation and/or prosecution, the investigating/prosecuting authorities of the Requesting State require the following assistance from Canada:

***[Note: The request for assistance and the foreign restraint or forfeiture order must be specific. It is not sufficient to refer to general property or assets situated in Canada. For example, referring to all bank accounts or all real estate in the name associated to the subject person is insufficient. The request should list where the property or assets are located in Canada, such as a city or a specific branch of the bank.]***

1. For section 9.3 mutual legal assistance requests for asset restraint: Enforcement of a restraint order for criminal proceeds or offence-related property in Canada.

***[Note: A copy of the restraint order from the Requesting State must be attached.]***

2. For section 9.4 mutual legal assistance requests for asset forfeiture: Forfeiture of criminal proceeds or offence-related property in Canada.

***[Note: A copy of the forfeiture order from the Requesting State must be attached.]***

## V. Urgency

The Requesting State asks that their request be given high priority. Both Minister X and Ms. S are aware of the criminal investigation and may take steps to remove any assets that remain in Ms. S's account at the Foreign Bank of Canada.



## VI. Confidentiality

Confidentiality of the existence and contents of this request is essential to preserving the ongoing criminal proceedings against Minister X and to allow for the restraint/forfeiture of the assets that may remain at the Foreign Bank of Canada. Should your authorities be unable to execute this request in a manner that preserves confidentiality, we would ask that you contact the Central Authority of the Requesting State (see contact details below) to discuss whether the request should still be executed in whole or in part.

***[Note: Where applicable, use the Confidentiality section to identify any past or anticipated media interest in the case under investigation/prosecution and outline any public interest concerns raised by the case.]***

## VII. Contact Persons in the Requesting State

The following are the names and contact numbers of the Central Authority and the key investigators/prosecutors involved in this matter in the Requesting State:

Ms. P  
Central Authority of the  
Requesting State 3000 Sun  
Street  
City of Oak,  
Requesting State  
Phone: 222 2222  
Facsimile: 333 3333  
Email: [Ms.P@CentralAuthority.com](mailto:Ms.P@CentralAuthority.com)

Officer D  
National Police Force of the  
Requesting State 2000 Star Street  
City of Oak,  
Requesting State  
Telephone: 444 4444  
Facsimile: 555 5555  
Email: [OfficerD@NationalPolice.com](mailto:OfficerD@NationalPolice.com)





Mr. E  
Senior Prosecutor  
National Prosecuting Service of the  
Requesting State 1000 Moon Street  
City of Oak,  
Requesting State  
Telephone: 777 7777  
Facsimile: 888 8888  
Email: [Mr.E@NationalProsecutingService.com](mailto:Mr.E@NationalProsecutingService.com)

#### VIII. Contact Persons in Canada

Detective V of the Central Police Force of Canada is familiar with this case and has provided some informal assistance to the Requesting State. His/her contact information is: Telephone 999 9999 / Facsimile 121 1212 / Email: [DetV@CentralPoliceForce.com](mailto:DetV@CentralPoliceForce.com)

Dated at the Requesting State, this 2<sup>nd</sup> day of November, 2021.

\_\_\_\_\_ ***signed by*** \_\_\_\_\_  
Central Authority of the Requesting State  
(or competent authority if the request is a non-treaty request)

