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Conference Theme: "Investigating Money Laundering"
The Challenges in Investigating and Prosecuting Money Laundering in Fiji

National Anti-Money Laundering Conference
7th October 2010
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The purpose of the criminal justice system?

- Convicting the guilty
- Acquitting the innocent
- Punishment proportionate to the crime
- Sentence
- Restitution?
- Compensation?
- Removing the benefit from the crime?
Changes

- Crime does pay!?
- Prison may not deter criminals
- White collar crime has traditionally led to lenient sentences
- What is real crime?
The law on confiscation, compensation and restitution

- Prior to the Proceeds of Crime Act, dealt with under Penal Code
- Provisions were post-conviction
- Applications in the High Court rare
- Magistrates Court limited in jurisdiction
- No provisions as to assets which deteriorate, or diminish in value
- Constitutional provision protecting people from arbitrary confiscation of property
The Proceeds of Crime Act 1997

- Intended to remove the profit from crime
- Intended to punish money-laundering
- Intended as a package with the Extradition Act and the Mutual Assistance in Criminal Matters Act
Interpretation

- Account
- Proceeds of Crime
- Property tracking document
- Tainted Property
- Realisable Property
Forfeiture Orders

- What is tainted property? Section 11(2)

- How much was the offender worth before the offending?

- How much was the offender worth after the offending?
An example

- DPP v Anand Kumar Prasad and others
- Civil non-conviction forfeiture
- Judicial test of tainted property
The deeming provision

- **State v Epeli Duve and others (2005)**

- Is the respondent in possession of tainted property? If so the property is deemed to be proceeds of crime unless the contrary is proved on a balance of probabilities.
Civil Forfeiture

- Section 19
- The advantages
- Under used by the prosecution
Pecuniary Penalty Orders

- Section 20
- Post conviction and on proof that the offender has benefitted from his/her crime
- Payment into court of the total value of the benefit
- Section 21-assessing the value of the benefit
Restraining Orders

- Section 34
- Are there reasonable grounds to suspect that property is subject to a possible forfeiture order?
- Ex parte
- On affidavit evidence
Example

- **Makario Anisimai v State (2004)**
- Application to vary a restraining order for payments to brief counsel
- Refused
Life of a restraining order

- 48 hours after the time given to charge the alleged offender
- Where the person is charged, until acquittal or withdrawal of the charge
- 6 months after it is made unless the court extends it under section 44(2)
Production and Inspection Orders

- Division 3 of the Act

- Does a police officer have reasonable grounds to suspect that a person has possession or control of a property-tracking document?

- Order for production and/or inspection
Monitoring Orders

- Directing a financial institution to give information to the DPP
- Financial institutions defined by the Financial Transactions Reporting Act 2004
- Includes banks, real estate agencies and lawyers’ trust accounts
Money Laundering

- Section 69
- Section 69(3) a deeming definition
- Not necessary for the prosecution to prove that a serious offence has been committed
- Section 70
- Possessing concealing disposing of or importing property reasonably suspected of being proceeds of crime
Challenges

- The need for specialist knowledge and training
- Inability to explain the provisions to judges and to provide evidence on the affidavits
- Lack of experience in the drafting of relevant affidavits
- Attitude
- Enforcing orders abroad – the politics of international law
- Under-use of the civil forfeiture order
The Way Forward

- Training
- Exposure to jurisdictions with similar provisions
- Access to cases from similar jurisdictions where orders are regularly made
- Political/Judicial/Investigative/Prosecution will to enforce the laws on money laundering and proceeds of crime
Close

- Nazhat Shameem
- Anti-Money Laundering Conference, Suva, Fiji.
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