

Provincial Proceeds-of-Crime Legislation is Constitutional: Supreme Court

On April 17, 2009, the Supreme Court of Canada ruled that provinces may legislate to seize the proceeds of crime and use the proceeds to compensate victims.

Robin Chatterjee was arrested in Ontario, but never charged, for breach of probation. In searching his car, police found cash and equipment commonly used in the illegal drug trade. The Ontario government, under a provincial statute, obtained a court order for forfeiture of the seized money and equipment, as proceeds of unlawful activity. Chatterjee argued that the law authorizing the forfeiture was unconstitutional, because it is *criminal* law, and criminal law is under federal jurisdiction. The decision, [Chatterjee v. Ontario \(Attorney General\)](#), rejected this constitutional argument, upholding the decisions of the trial judge and the Ontario Court of Appeal.[\[1\]](#)

On behalf of a unanimous Court, Justice Binnie concluded that the Ontario law

...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.[\[2\]](#)

The legislation

...was enacted to deter crime and to compensate its victims. The former purpose is broad enough that both the federal government (in relation to criminal law) and the provincial governments (in relation to property and civil rights) can validly pursue it. The latter purpose falls squarely within provincial competence.[\[3\]](#)

Seven provinces intervened in the case, on behalf of their various proceeds-of-crime laws. Alberta's statute, the [Victims Restitution and Compensation Payment](#)

[Act](#), enacted in December 2008, allowed the Province to obtain approximately \$500,000 worth of property in the first two months of 2009.[\[4\]](#) Alison Redford, Alberta’s Minister of Justice and Attorney General, who introduced the Alberta legislation, was “pleased” that the similar Ontario statute was upheld.[\[5\]](#)

[\[1\]](#) 2009 SCC 19.

[\[2\]](#) *Ibid.* at para.23.

[\[3\]](#) *Ibid.* at para. 3.

[\[4\]](#) S.A. 2001, c. V-3.5; “Making crime pay intrigues Alberta Justice” *Edmonton Journal* (19 April 2009).

[\[5\]](#) *Edmonton Journal*, *ibid.*