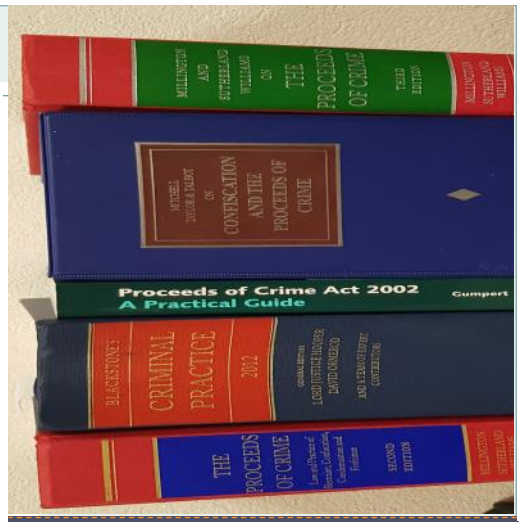
ARU
Asset Recovery Unit

January 2019
Volume 1, Issue 3

Asset Recovery Times



The Core Functions of the RSS ARU

A. Mentoring on Live Cases;

B. Capacity Building;

C. Training;

D. Advocating for Standardised Asset Recovery Legislation Across the Member States; and

E. Assisting in obtaining Asset Recovery Orders

Director's Message

As the Director of the Regional Security System Asset Recovery Unit, I am pleased to invite you to peruse the Third issue of the 'Asset Recovery Times'.

The Regional Security System Asset Recovery Unit (RSS ARU) is an innovative approach to tackling serious and organized crime in the seven (7) RSS member states and wider Caribbean through the use of financial investigations and the recovery of the proceeds of crime legislation. A key objective of the RSS ARU is to build the capacity of financial investigators in the specialized financial intelligence units to effectively undertake financial investigations to detect, dissuade and disrupt criminality. This aim is achieved primarily through mentoring on live cases, the provision of training and awareness raising in each member State.

It is critical that all players in the criminal justice system work in a synergistic manner to facilitate the continued development of proceeds of crime and asset recovery implementation as an integral part of the criminal justice system and the national security architecture. In this regard, it is imperative that all practitioners in the criminal justice system are adequately equipped with the skills and knowledge either to detect, investigate or adjudicate on proceeds of crime and the recovery of assets derived from criminal conduct cases. These practitioners include all mainstream police officers including customs and excise, coast guards and border security agencies, prosecutors and members of the magistracy and judiciary.

An effective system is one which deprives criminals of their benefit from criminal conduct and ensures that ill-gotten gains are not allowed to be reinvested in further criminal activity. Such a system will add value to the aphorism not only must justice be done; it must also be seen to be done. In the view of one writer, "How do we convince the upcoming generation that education is the key when they are surrounded by poor graduates and rich criminals." It is therefore incumbent on all of us, as practitioners in the criminal justice system, to clearly and effectively demonstrate that "crime does not pay!".

In this issue of the Asset Recovery Times, we highlight persons who are working diligently to deter, detect, investigate and prosecute crime using financial investigations and the proceeds of crime laws. We look at their efforts to enhance the national security of the wider Caribbean, the RSS member states and their own countries and communities, their successes, challenges and the myriad of issues they confront on a day to day basis.

I invite you to join us on the journey as we build an effective financial investigations and recovery of proceeds of crime regime.

INSIDE THIS ISSUE

OUTSTANDING DIRECTOR FOR THE QUARTER

Lt. Col. Edward Croft is the Director of Antigua and Barbuda's Office of National Drug and Money Laundering Control Policy (ONDCP). Its principal mandate is combating serious organized crime. The ONDCP is a mixed-model FIU comprised of a diverse number of complementary units. Its core functions are intelligence gathering on drugs and financial crime, surveillance and interdiction of illegal narcotic and psychotropic substances, the investigation and prosecution of drug and money laundering offences, and confiscation and recovery of the proceeds of crime, through both criminal and civil proceedings.

Over the past four years, Lt. Col. Croft's leadership of the ONDCP has seen some impressive achievements in the area of proceeds of crime and asset recovery. This includes, in 2015 the forfeiture of **US$63,000,000** that were proceeds of foreign corruption, in 2016 the forfeiture of all assets of a convicted drug trafficker valued at over **XCD$2,000,000**, in 2016 the restraint of **US$66,000,000.00** related to foreign corruption on investigation, and in 2018, in preparation for the filing of a civil recovery application, obtaining a property freezing order affecting property valued at over **XCD$4,300,000.00**

The Investigations Department was pivotal to the these achievements and is a busy hive for processing and prosecuting drug traffickers and developing complex money laundering cases, while the Financial Analysis Unit tackles, coordinates, makes sense of a myriad of suspicious activity reports, passing on for investigation to critical "hits".

The ONDCP's Financial Compliance Unit (FCU) has developed skills at examining financial institutions and DNFBPs, acknowledged by the fact that the ECCB, who has recently taken over AML/CFT supervision of banks in Antigua and Barbuda, consults and at times examines financial institutions with the assistance for examiners from the FCU.

Meanwhile, Lt. Col. Croft plays a leading role in developing and implementing the country's Anti-Drug Strategy, concerned with demand reduction, supply reduction, drug control measures and institutional strengthening.

Lt. Col. Croft's drive for excellence has resulted in him being appointed the leadership role in preparing for his country's CFATF Evaluation, including guiding the country's National Risk Assessment (NRA) to a successful conclusion, and him being made head of delegation to defend Antigua and Barbuda's position at the CFATF Plenary. In light of this, he was recently requested to assist Anguilla by sharing his experience in developing and executing an NRA and preparing for a mutual evaluation. On the heels of that, the ECCB has solicited his assistance in guiding another OECS country in their preparation for their NRA and upcoming mutual evaluation. He is presently the Deputy Chair of Caribbean Financial Action Task Force (CFATF), a position usually be held by Attorney Generals and Ministers of Government, and will by the end of the year take up the chairmanship of CFATF.

Failure to require fishermen to maintain records on their catch may facilitate money laundering!

The region is facing an increase in criminal activities being carried out by individuals allege to be working within or making use of the fishing sector. The stringent laws and measures put in place to ensure compliance with the AML/CFT Recommendations, have forced criminals to resort to using fishing vessels to transport their money to evade the attention of law enforcement officials.

Interceptions of fishing vessels carrying large amounts of cash present challenges for Law Enforcement Agencies (LEAs) when investigating the provenance of such cash. Intercepted persons have claimed that the money is derived from the sale of fish and seafood. The difficulty for LEAs arises from the lack of paper trail in relation to cash sales and operators being unable to provide records of sales and/or the identities of the persons to whom the fish or conch were sold.

Fishermen engaged in the practice of exporting conch from the jurisdictions without having the requisite licence. Concerns are being raised as to whether there are any laws or regulations in place requiring operators of fishing vessels to maintain records of their catch and if so, whether they are being enforced. All the Regional Security System (RSS) member states have enacted fisheries laws and regulations which make provisions to establish, access, control and regulate the development, management and conservation of their fisheries and aquatic ecosystems.

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Contained within these regulations, are provisions which require the maintenance of a logbook recording fishing operations. Generally, this provision states:

"The master of the vessel shall, if so required by the Chief Fisheries Officer, cause a logbook to be maintained on a daily basis in such form as the Chief Fisheries Officer may from time to time require for the purpose of recording the fishing operations of the vessel." **Fisheries Regulations:** ANU(Reg.24(2)(b) and 31(c)); GND (Reg. 6(2)(b) and 11(f)), SVG (Reg. 6(2)(b) and 11(f); SLU (Reg.14(1)(d) and 15(f))

Although the provision does not specify fish catches, the term "fishing operations" can be interpreted to include such. Information on fish catches can be vital in providing assistance to law enforcement officers in their investigations of money laundering and related crimes.

Despite the existence of such a provision, research has shown that there is little evidence of it being enforced. The reluctance to enforce the provision can be attributed in some degree to the uncertainty of the interpretation of its wording which appears to be discretionary in nature in that a master of a vessel is not obliged to maintain records of fishing activities unless it is required by the Chief Fisheries Officer.

St. Vincent and the Grenadines Fisheries Regulations 1987 (Reg. 6(3)(b)) and Saint Christopher and Nevis Fisheries Aquaculture and Marine Resources Act 2016 (Sec. 70(1)) have addressed this concern with clear provisions which make it mandatory for operators of fishing vessels to maintain records of their fishing activities.

To prevent criminals from abusing the fisheries sector to facilitate money laundering, jurisdictions should constantly review their fisheries laws and regulations to make them relevant and effective in addressing the issues of crime particularly money laundering. Additionally, there needs to be a more multi-disciplinary co-operative criminal law enforcement approach both at the domestic, regional and international levels. Domestically, collaboration is required between an array of authorities including the departments of fisheries, Customs, Police and Coast Guard to effectively monitor the ports in robustly enforcing the laws and regulations. Investigators and Prosecutors should advocate the importance of using information on fish catches as evidence to successfully prosecute money laundering and related crimes involving the fisheries sector.

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Cash Seizure POCU: the Director of ONDCP v Mitchell Joseph

"As far as reasonable possible, investigate and verify the information provided or every line of inquiry emanating from the Respondent 's statement"

Facts

On Monday 11th December, 2017 a search warrant was executed on the premises of the Respondent. During the search a sum of monies were found, the sums of **XCD$16,895.50** and US$436.00. Some were found on his person, and some hidden in 2 pants hanging in his clothes closet. Paraphernalia that is associated with the sale of cannabis including a scale and Ziploc bags were also found in the house. During the search of the yard the officers observed a foot part leading from one property to the next and based on the observation another warrant was applied for and obtained for the said property. Pursuant to Second Warrant, a search of the backyard lead to the recovery of One (1) Kilo and 397 grams of cannabis.

Conviction

The drugs and monies were seized as part of the criminal investigations being carried out by the Police. Respondent claimed the drugs were his. He stated that the moneys were from his mother's pension. He was taken before the Court where he pleaded guilty to Possession of Cannabis and Possession of Cannabis with intent to transfer. He was fined $30,000.00 on the said charges.

Continued Detention

Following an Investigation by the Proceeds of Crime unit (POCU) into the origin and intended use of the cash seized, an application for continued detention was made and granted. After further investigation into the origin of the cash the Police found that the explanation given by the Respondent in relation to the source of the cash seized was untrue. Hence, a Forfeiture application was made for the seized currency.

Forfeiture

After months of numerous responses to the Applicant's affidavit from the Respondent, a forfeiture hearing was held on the 28th March, 2018 and concluded on the 3rd of October 2018. The Respondent failed to prove to the court that the cash seized were not the proceeds of crime. All the cash seized were forfeited to the State.

Challenges

The length of time it took to receive responses for request sent out to agencies caused a delay in completing the file. Further, the Respondent's representative made several oral representations which change frequently.

General Advice

1. The Respondent's statement should not be the end of your investigation, nothing should be taken for granted;

2. As far as reasonable possible, investigate and verify the information provided or every line of inquiry emanating from the Respondent 's statement;

3. No matter how insignificant you may think the information is, document everything, as this may help with any allegations mounted by the Respondent;

Asset Recovery and Money Laundering Accomplishments for 2018

Serious Organised Crime continues to plague the nations of the world, the Caribbean being no different. The RSS member states have steadily improved their AML and CFT regime over the last decade and through financial investigations and asset recovery have realized numerous successes in the fight against criminality.

The core function of the RSS ARU is capacity building of stakeholders on all matters related to the proceeds of crime regime in the seven RSS ARU member states. With the assistance of the RSS, much assistance has been provided to member states in the form of advocacy, mentoring, training and drafting of legislation.

Some of the highlights of the partnership between the RSS member states and the ARU in Asset recovery and ML for 2018 were:

Restraint Assets – US $205,886.10;

*Cash seizures – 47 cases valued at US $497,849.44;

*Total Confiscated/Forfeited Funds –US $1,358791.06;

*ML investigation carried out – 95

* Training of **427** persons in proceeds of crime investigations and prosecutions;

*Assistance to Dominica following Hurricane Maria;

*Arin-Carib Requests - **146**;

*Successful completion of **3 financial investigators** on the ARU Advanced Secondment Programme;

Through continued collaboration, dedication and capacity building, it is expected that the AML and CFT regime amongst member states will grow from Strength to Strength.

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RSS ASSET RECOVERY UNIT ACTIVITIES: 2016– 2019

Customs and Excise Training in Grenada

Suspicious Activity Report Training– St. Lucia

CFATF Plenary and Meeting 2018

FIU Directors Management Training 2017

Prosecutor's Advanced Training Course 2018

ARIN/CARIB AGM & Conferences 2017-2018

ARU Advanced Secondment Programme

Financial Investigators Training Course 2017

ARU Asset Recovery Unit

Achieving Effectiveness in Immediate Outcome 9 Despite Low Risk Assessment for Terrorist Financing

"...It is necessary for the legislative provisions to allow for the intent/knowledge necessary to proof the offence to be inferred from objective factual circumstances"

The Forth- Round Mutual Evaluations results of the FATF, CFATF and other FSRBs illustrate the difficulty which small countries are facing in addressing the international standards, especially in relation to the Immediate Outcomes. This is mostly because the international standards, specifically relating to terrorism applies to all countries despite size and local circumstances and an increase in the onerousness of the mutual evaluation process.

Immediate Outcome 9 assess the effectiveness of the systems and structures a country has established in relation to terrorist financing. It predominantly looks at the operationalisation of the technical elements of Recommendation 5 with further influences from Recommendation 1, 30, 31,39.

Recommendation 5 requires that terrorist financing is criminalised consistent with the Convention on the Suppression of Terrorist Financing. It is necessary for the legislative provisions to allow for the intent/knowledge necessary to proof the offence to be inferred from objective factual circumstances and for dissuasive, proportionate and effective sanctions. Countries are required to illustrate, through legislative provisions and the establishment of systems, that they have the required legal capacity to prosecute and apply criminal sanctions and establish terrorist financing as a predicate offence to money laundering.

Countries operating as international financial centres must be able to illustrate not only that there is no financing of terrorist activities by persons and entities through the use of its corporate vehicles directly, but must also illustrate that the inflows and outflows are not being sent to jurisdictions who are linked or are in closed proximity to high risk.

The CFATF methodology for assessing effectiveness focuses on the identification and investigation of TF, the prosecution of TF, the extent sanctions are applied and whether they are dissuasive, proportionate and effective and other criminal justice measures that are applied in disrupting TF activities where it is not practical to achieve a TF conviction.

In light of the aforementioned, it is advised that countries seek to asked and answer the following questions:

Is there a dedicated entity to investigate TF?

How TF investigations are prioritised?

What measures are in place to identify, initiate, prioritise TF cases to ensure prompt investigation and action?

How quickly and to what extent can TF investigators obtain and access relevant financial intelligence and other information?

What are the underlying consideration for decisions made not to proceed with prosecution of TF offence?

To what extent do authorities apply specific action or strategies to deal with particular threat(s)? Is this consistent with national AML/CFT policies, strategies and risk?

How well do Law Enforcement Agencies (LEAs) cooperate and coordinate their respective task associated with TF investigations?

Are there other aspects of the investigative, prosecutorial or judicial process that impeded or hinder TF prosecutions, sanctions or disruption?

Do competent authorities have adequate resources (including investigation tools) to manage their work or address TF risks adequately?

Answering these questions will help in assessing the present status of the State's CFT regime and promote a realisation of the work that should be done prior to its Mutual Evaluation.

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CASH SEIZURE: "REASONABLE GROUNDS FOR SUSPECTING" AND THE IMPORTANCE OF RECORDING DATES!

Five of the Seven RSS member States Proceeds of Crime and Money Laundering legislation include cash seizure provisions. These legislative provision gives law enforcement officers (LEOs) the authority to seize and detain cash when they have **reasonable grounds to suspect** that the cash, directly or indirectly, represents any person's proceeds of crime or was intended by the person for use in unlawful activity (that is, it is recoverable cash).

Cash seizure proceedings are civil in rem proceedings adjudicated in the Magistrate courts, the standard of proof being "on a balance of probability". For these reasons, the legal process of dealing with recoverable cash is simple and efficient and has proven to be most effective in denying criminals the proceeds of their unlawful conduct.

It is imperative that LEOs are required to understand the meaning of suspicion and or reasonable grounds for suspecting, as they must demonstrate to the court their **reasonable grounds for suspecting** that the seized cash came from crime or was intended to be used in unlawful conduct.

"Suspecting" is defined in the case of **R v Da Silva [2006] EWCA Crim 1654;** the court found that a person "*must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice*."

The test used in the respective Legislations is "reasonable grounds for suspecting"; or its derivatives which connotes a different meaning than "suspect" or "suspecting". In **R v Da Silva** it was stated that " *the statute does not require suspicion to be "clear" or 'firmly grounded and targeted on specific facts, or based upon 'reasonable grounds'*." This suggest that more is required where the statue use the words 'reasonable grounds'. In **O'hara v Chief Constable of the Royal Ulster Constabulary [1996] UKHL 6** the court sought to explained "reasonable grounds to suspect" stating "*in part it is a subjective test, because he (the Officer) must have formed a genuine suspicion in his own mind that the person has been concerned in acts…In part it is an objective one, because there must be also be reasonable grounds for the suspicion which he has formed*."

It is not reasonable to seize cash only because someone is of a particular religion, race or because they are from a particular area.

Reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer, in possession of the same facts, that the cash concerned came from or was intended for crime.

The importance of Continued Detention dates

Cash seizure provisions allows for cash lawfully seized to be **initially** detained for a particular period of time, where the LEO continues to have reasonable grounds for suspecting that said cash directly or indirectly represents any person's proceeds of crime or was intended for same. In Antigua and Barbuda, the period of initial detention is *7 days* while in the other RSS Member States it is *"72 hours"*. Further Continued Detention may be obtained by Order from a magistrate for up to 3 or 6 months at a time but not exceeding two years.

A **Continued Detention Order** must be obtained before the expiration of the initial detention period by the LEO. It is insufficient to simply apply for a continued detention order before the initial period expires. The order must be granted within the period otherwise the application will be denied. Consistently, it was stated in the case of ***Catherine Walsh, Paul Etherington v HM Customs & Excise [2001] EWHC Admin 426*** that *"the magistrate must make his or her order before the end of the 48 hour period."[72 hours or 7 days in the RSS member states]*

In demonstrating to the Court that one has complied with the specific provisions of the law it is most important that the LEO make a record of the exact date and time when the cash was seized and the respondent being informed of the seizure. That information must form part of the continued detention application.

The court of Appeal in ***R v Uxbridge Magistrates' Court*** found that the cash is effectively seized when certain actions are taken by LEO in relation to the respondent and the cash. The Court found that the seizure was not when the Respondent was served with a notice of seizure but rather at the time when the Authority informed the Respondents that the monies would be seized if they left. The authority had already formed reasonable grounds for seizure.

The case of ***Chief Constable of Merseyside Police v Lawrence Robert Reynolds*** is instructive, the court noted **that** "*Strict compliance with the time limits for seized cash is necessary….and should not have been left until the date of expiration of the order….to apply. Such orders are dated and timed and we believe that this is also indicative of the fact that the order ceases at the same time on the expiration date. Otherwise, if the order merely ceases at midnight, as contended, there would be no need to time the order at all, merely date it*."

Annual General Meeting: Asset Recovery Inter-Agency Network for the Caribbean (ARIN– CARIB)

ARIN-CARIB is an informal network of practitioners and cooperating bodies concerned with all aspects of asset recovery The aim of the network is to increase the effectiveness of members' efforts on a multi-agency basis in depriving criminals of their illicit gains. ARIN-CARIB is considered to be a tool available to law enforcement in targeting organized crimes with particular focus on financial deprivation and emphasis on enhancing cross border and inter-agency cooperation The network was officially launched in June 2017 and like its other counterpart networks in Europe, Latin America, Africa and the Asia-Pacific regions, ARIN-CARIB is dedicated to fostering international cooperation among law enforcement and judicial agencies in an effort to identity, disrupt and dismantle organised criminal groups operating transnationally. The 2018 Presidency of the network was held by St Vincent and the Grenadines (SVG) and the RSS ARU serves as the network's permanent secretariat. The 2019 Presidency is held by Jamaica.

ARIN-CARIB held its 2018 AGM in SVG from 14-16 November 2018. The meeting was attended by regional and international criminal justice practitioners and covered topics which included Victim Compensation, Proceeds of Crime legislation, Mutual Legal Assistance, FATF standards, Unexplained Wealth Orders, Trust and Beneficial Ownership, the Stolen Asset Recovery (StAR) Initiative and Crypto Currency threats to the region. Prime Minister, Hon. Dr. Ralph Gonsalves gave the keynote address. Amongst the speakers were DPP (Ag.) from St Vincent and the Grenadines, Ms Sejilla McDowall, Director (Ag.) of the FIU, Ms LaTeisha Sandy and Mr Colin John, Commissioner of Police of the Royal St Vincent and the Grenadines Police Force.

The purpose of the meeting was to bring together, under one roof, asset recovery practitioners from around the region to discuss the recovery of criminal proceeds, that is, stripping criminals of their benefits from crime. The meeting focused on the network's effectiveness in reducing financial crimes and the sharing of best practices in tracing and seizing of assets. Meeting outcomes resulted in the nomination of several jurisdictions to serve as the Presidency in 2020, rotation of the Steering Group in 2020, the launch of the ARIN-CARIB website in the first quarter of 2019 and confirmed dates for 2019 activities including the AGM to be held in Jamaica in June 2019. It was also agreed that in 2019 the network will focus on training in asset management for members.

Cecil Toussaint V Attorney General of Saint Lucia et al

" The court applying the reasoning in AG v Williams and Others ...ruled that the first warrant was defective."

Background

This article seeks to highlight the impact of the constitution and other competing pieces of legislation (Code of Civil Procedure Amendment Act, No. 21 of 2016) on Proceeds of Crime legislation, particularly, in relation to the jurisdiction of magistrates to deal with forfeiture applications. This decision though instructive must be read within the context of St Lucia. Additionally, this decision is subject to appeal and the contents of this article is in no way intended to advise, influence or interfere with the decision.

Facts

The Claimant, Cecil Toussaint, challenged the constitutionality of the actions of the Royal Saint Lucia Police Force for the unlawful search of his premises, unlawful arrest and the subsequent unlawful detention and forfeiture of his property pursuant to the Proceeds of Crime Act ("the Act") Cap 3.04 of the Revised Laws of Saint Lucia as amended by the Proceeds of Crime Amendment Acts Nos. 4 of 2010 and 15 of 2011.On the 9th day of February 2012, members of the Royal Saint Lucia Police Force, upon the execution of a warrant to search for controlled drugs, entered into the premises of the Claimant. The police officers found **no drugs** but found a sum of cash totaling EC $71,920.00, €1,460.00, US $4,249.00 and CA $20.00, which was seized from the Claimant pursuant to the section 29A of the Act. The Defendants then sought to have the cash forfeited as the proceeds of crime pursuant to section 49A, 49B and 49C of the Act. The first warrant authorized the police officers to search the premises of "One Ras" for controlled drugs however, a second search warrant was then issued, apparently following the discovery of the cash, to search the premises of Cecil Toussaint for documents evidencing money laundering .

Judgment

In the case at bar, the Court held that though it is constitutional for the police to enter and search premises pursuant to a warrant to search issued by a Magistrate under the Criminal Code; the fundamental question (answered in favour of the Claimant) was what happens when a police officer or a magistrate, in the execution of lawful statutory provisions authorizing search and entry, fails through oversight or otherwise to comply with procedural provisions of that law expressed in mandatory terms. The Claimant argued that the first warrant which was to search for controlled drugs was executed upon him in the name "One Ras". No drugs were found but monies were recovered and seized. It was upon the discovery of the money and the correct name of the claimant that a second warrant pursuant to the Money laundering Prevention Act was obtained and executed. The Claimant argued that the first warrant which gave rise to the discovery of the cash did not identify him as the subject of the search and he was not known as "Ras". The court applying the reasoning in **Attorney-General v Williams (Danhai) and Others (1997) 51 WIR 264** ruled that the first warrant was defective. In the circumstances the judge held the search was unlawful.

Much of the second issue (Arbitrary Deprivation of Liberty) concerned whether the police had reasonable grounds to suspect that the Claimant had committed an offence or was about to commit an offence. He was invited to the police station where he was arrested on suspicion of money laundering, interviewed under caution and released. In reaching a decision the judge relied on the exigencies provided by Ramdhani J in **Everette Davis v Attorney General of St Christopher and Nevis**. In the case at bar, the police cited the grounds for arrest as: (1) unusual large amount of cash kept in a premises as opposed to a bank; (2) common practice for criminals to transact business in bulk cash, thereby avoiding the funds being traced; to name a few. The judge held that the arrest was not unlawful, though the Claimant owned a bus, he possessed a large sum of money that he "*could not rationally account for*", the police officer had formed reasonable suspicion that the cash might be the proceeds of or connected to criminal activity.

The main point of contention in this case was the constitutionality of the Proceeds of Crime Act, in particular whether the Act can give a magistrate unlimited jurisdiction to deal with the detention application and subsequent forfeiture application of cash. The Claimant had argued that the cash represented his property and in the circumstances the jurisdiction vested in the magistracy under Sections 29A, 49A, 49B, and 49C of the Proceeds of Crime Act constituted an impermissible amendment of the jurisdiction of the Supreme Court effected in a manner inconsistent with the provisions of section 41 of the Constitution and was therefore void, the Act having been passed by a simple majority.

The judge in his deliberations held that section 49A of the Act, that is, the forfeiture provisions are **inconsistent** with the Constitution to the extent that it confers jurisdiction on the Magistracy to hear and determine applications for the forfeiture of "any amount" of cash which is outside the jurisdiction of the magistracy of St Lucia as stipulated by the Code of Civil Procedure. In St Lucia, prior to 2016 the magistrates' jurisdiction to determine civil matters was restricted to $5000.00 which was increased to $25,000.00 in 2016 while the jurisdiction to determine all others suits was vested in the High Court .

The court held the legislation which gave the Magistracy the jurisdiction to deal with civil matters of any amount necessitated a change in the Constitution, thus requiring a ¾ majority. In support, the court relied on the Privy Council decision of **Hinds v R (1976) All ER 353**.The judge did not find the provisions for cash detention to be unconstitutional on the basis that a detention order was not considered to be a final order as opposed to a forfeiture order which finally determines a person's rights to property. Applying **Jabari Nervais and the Queen (2018) CCJ 19 (AJ)** the judge sought to remedy the apparent conflict between the Proceeds of Crime Act and the Constitution by applying necessary modifications which, resulted in the Magistracy having jurisdiction over cash forfeiture matter not exceeding EC $25,000.00.

A distinction should however be drawn between St Lucia and other RSS member states in that they all have a savings clause which allows a magistrate jurisdiction over a matter as conferred by statute. The Code of Civil Procedure (Amendment) Act 2016 of St Lucia has curtailed that jurisdiction to a maximum of EC $25,000.00.

The court ordered the return of the cash to the Claimant however the Defendant has been successful in obtaining a stay of the order as it relates to restitution of the cash.

Stay tuned!!

The State (Barbados) v DI and D2

A parallel investigation was conducted involving the Financial Crimes Investigation Unit (FCIU) and the Drug Squad where co-defendants (D1 and D2) were arrested and charged with several drug related offences, firearm offences and money laundering.

The members of the Drug Squad conducted a surveillance exercise where they observed D1 removing packages from his motor car and placing it into the vehicle of D2.

As D2 was driving away his vehicle was subsequently stopped and searched. The mentioned packages were found and when searched they contained cannabis weighing 27 pounds.

The vehicle of D1 was searched and a firearm, ammunition and cannabis weighing 155 grams were found.

A warrant was also executed at D1's residence and a quantity of cannabis weighing 450 grams and money totaling Bds. $46,300; US$8115.00 and €50.00 were found.

The office of the FCIU was contacted and a financial investigation was conducted. Investigation revealed that D1 operates a small business which imports and supplies materials to customers. The evidence suggest that his business was used facilitate the trafficking of illegal drugs concealed in the shipment of materials.

When asked to account for the money found, D1 stated it was the proceeds from his business.

D1 was charged with 12 offences which include 9 offences under the Drug Abuse (Prevention and Control) Act; 2 offences under the Firearms Act and 1 offence under the Money Laundering and Financing of Terrorism Act.

D2 was charged with 3 offences under the Drug Abuse (Prevention and Control) Act.

Promotions in the Quarter

Antigua and Barbuda

Colonel Edward Croft, Director of the ONDCP, was appointed the Deputy Chairman of the Caribbean Financial Action Task Force (CFATF).

Senior Sergeant Vhonda-Kay Frederick , Head of the Proceeds of Crime Unit, was appointed Inspector (AG).

Barbados

Markeith Gibson-Woodrift, Head of Financial Investigations Crimes Unit (FCIU), was promoted to the rank of Assistant Superintendent (AG) of Police.

Sonia Thompson, Financial Investigator at FCIU, was promoted to the rank of Inspector (Ag).

Alicia Brewster, Financial Investigator at the FCIU, was promoted to the rank of Station Sergeant (AG).

Ross Clarke , Financial Investigator at the FCIU, was promoted to the rank of Sergeant (AG)

St. Vincent and the Grenadines

Ivo Ash, Chief Investigator of the Financial Intelligence Unit was promoted to the rank of Sergeant.

St. Kitts and Nevis

Cpl Jerry Watts was appointed Officer in Charge of the White Collar Crime Unit.

"***We at the RSS ARU, say a hearty Congratulations to ALL the persons appointed, whether listed here or not, and wish all many more such promotions .***

ARU
Asset Recovery Unit

OUSTANDING LEGAL ADVISOR OF THE QUARTER: CROWN COUNSEL CHEVAUGHN JOSEPH

Introduction: In 2003, I was admitted to the Bar of Trinidad and Tobago and subsequently in Grenada, in 2007. I have worked in both private and public practice and was introduced to civil asset recovery/ proceeds of crime in 2015 while at the Attorney-General's Chambers in the capacity of Senior Crown Counsel. I am still on a learning curve and although I have only dealt with cash seizure and detention, property freezing orders and recovery orders, the knowledge and experience gained is far more extensive from the areas of law I generally and regularly deal with on a daily basis.

What are some of the highlights of your experience practicing within the asset recovery/ proceeds of crime area? My highlights come every time an order for civil asset recovery is made in the favour of the AGs Chambers, especially the matters involving the detention of cash, mainly because the Respondents no longer have access to their ill-gotten gains. One judgement received very recently from the High Court was particularly special because of the impact it will have on the jurisprudence for property freezing orders in Grenada and the region. The court dismissed an application to discharge a property freezing order obtained in April 2017. The main reason why the decision was significant is that we waited approximately 15 months for the decision. As a result of the order we can pursue a recovery claim, and if successful, it will be the first of its kind in Grenada with an aggregate value of recoverable assets that may be the largest in the region.

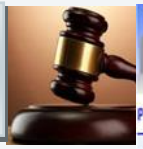
How have consultant type agencies like the RSSARU helped and what more can be done to help in developing the practice in the area of asset recovery and proceeds of crime? "I am able to function in the area of asset recovery because of these agencies. The support and assistance is invaluable and what is even more remarkable is their willingness and readiness to help. I will also remember vividly the week long training received on asset recovery. It was gruelling but practical and it prepared me for an area of law which was at the time very new to me...it came at an opportune time and more of its kind is actually needed."

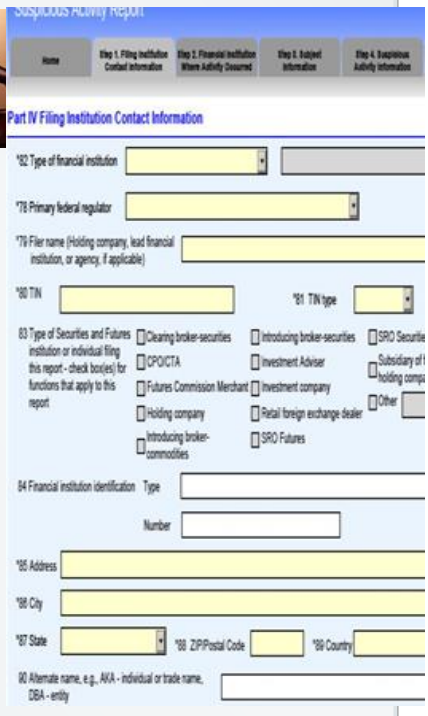
What are some of the challenges/ shortcomings that you have encountered while practicing with Asset Recovery matters and the Proceeds of crime legislation? "Honestly, my main observation has been the hesitation of the court to rule in matters which, serves as a set back at times, though not hindering decisions in favour of the State, a more proactive approach can be taken when adjudicating on matters especially at the Magisterial level. I appreciate that this area of law is new to all of us but significant interest should be shown in order to dispense with such matters."

What can you suggest to improve the work of asset recovery/ proceeds of crime matters with the region? "A lot has already been done through workshops/seminars, networking, websites and the informal groups but honestly, what I will like to see is an easily accessible depository for precedents and judgments for asset recovery emanating from the region."

What is your advice for other practitioners who are new to or interested in joining this field of practice? "Be flexible and nimble and ready to receive change. This is an area of law that is quite different from traditional areas mainly because it is new. It is not taught at the undergraduate level or in law school so interest is not sparked at that level hence the need to be open to the concepts when the opportunities arise."

COURT ORDERED SAR DISCLOSURE !!!





In the case of [David Lonsdale v National West Bank PLC [2018] EWCA Crim 1843 (QC)] the appellant sued his former bank, inter alia, for breach of contract and defamation, after the bank had closed all his accounts and filed SARs to the National Crime Agency. Mr Lonsdale requested access to the SARs submitting that their content could substantiate his claims against the bank for both the alleged breach and defamation. Further details can be found by clicking the hyperlink, specifically at paragraph 140.

The court concluded '*that inspection is necessary for the fair disposal of the claim. The content of the SARs are plainly relevant to the assessment of whether the Bank's employees had a relevant genuine suspicion, which is the key issue in the contract claim. The SARs are also the primary communications which are alleged to be defamatory. Without sight of them, Mr Lonsdale cannot tell, for example, [the level of] the defamatory statements...*' The court rejected the bank's fears that by giving access to the SARs, even under a court order, they could be committing offences of 'tipping off' (UK POCA s333A) or prejudicing an investigation (UK POCA s342). The court did give NCA 14 days to respond however, i.e. to oppose or vary the order, potentially to submit that the SARs should only be disclosed in redacted form.

The judgement does not open the floodgates for litigation or disclosure of SARs as a routine; what it does though is remind reporting entities that SARs should be filed in appropriate cases and not merely defensively or from an excess of caution. There must be a balancing exercise and reporting entities must be mindful that they may be ordered to disclose what they have written in SARs.

THE RSS ARU COLLOBORATION WITH THE EASTERN CARIBBEAN CENTRAL BANK

The RSS ARU is pleased to announce a new partnership agreement with the Eastern Caribbean Central Bank (ECCB). The partnership took effect from September 2018 and will see the ARU collaborating with the ECCB on a number of initiatives that support its mandate to take the profit out of crime. The main areas of collaboration will involve ARU providing support in the execution of a series of ECCB community outreach programmes; annual ECCB Creative Youth Competition, Mentoring Programme for Schools and its Financial Information Month (FIM). In addition, ARU will provide ECCB with training and technical assistance relating to AML/CFT.

To date, the collaboration has resulted in ARU playing an integral part in the planning and delivery of the Creative Youth Competition launched in September 2018 throughout ECCB Member Countries. During the month of October 2018, ARU participated in FIM and presented at several Symposiums held in the respective ECCB Member Countries. The theme for FIM 2018 was Financial Empowerment Through Education and ARU presented on topics surrounding cryptocurrency

<u>Collaborative Events with the ECCB</u>

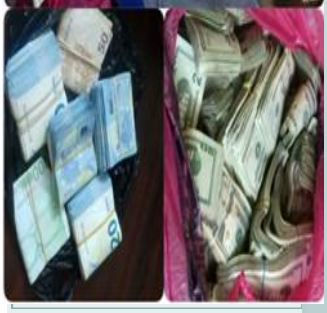
⇒ On the 18 Oct, St Lucia Financial Information Month Symposium, Senior Legal Adviser, Giovanni James, presented on the topic "Crypto Currency from an Investigatory Perspective".

⇒ On the 31 Oct, St Kitts-the Financial Information Month Symposium, Director, Grenville Williams, served as a discussant on the panel, and spoke on matters related to cryptocurrency, AML/CFT and proceeds of crime and the considerations/ implications for businesses.

⇒ On the 31 Oct, Grenada Financial Information Month Symposium. – Legal Adviser, Andrew Searles, presented on the topic "Innovation in the Payments Systems".

⇒ 2019 will see the ARU supporting the mentorship programme for youths by going into schools and speaking with students on social issues affecting the region focusing on financial crimes, playing a role in the assessment of the competition submissions and participating in 2019 FIM. These activities would be used as a vehicle to sensitize and educate the public in support of our mandate in taking the profit out of crime.

OUSTANDING FINANCIAL INVESTIGATOR OF THE QUARTER



My name is Albertha Elie, a Corporal of Police of Thirteen (13) years with the Royal St. Lucia Police Force and a Senior Financial Investigator attached to the St. Lucia Financial Intelligence Authority for six (6) years.

I have received training in Cash seizure and Forfeiture, Confiscation, Money Laundering, Prosecution, Interview Techniques, Cash Smuggling, Intelligence Gathering and Analysis, Techniques of Financial Investigation and Forensic Accounting and Fraud Investigation from various regional and international bodies, including the RSS ARU.

During the Quarter, I have effected three (3) Cash seizures valued at approximately Three Hundred and Eighty-four Thousand, One Hundred and Ninety-one Eastern Caribbean Dollars (**XCD$384,191.00)** and carried out Two (2) Money Laundering investigations. I am the lead investigator in (5) Forfeiture applications pending trial with a total value of approximately Three Hundred and Ninety-eight Thousand Two Hundred and Fifty-eight Dollars (**XCD$398,258.00**)

Further, I have preferred Money laundering charges, with an aggregate value of One Million, Five Hundred and Eighty-Four Thousand, Two Hundred and Forty-nine Eastern Caribbean dollars **(XCD1,584,249.00),** against five (5) individuals of which two were withdrawn and three (3) were convicted. I have obtained over six (6) Restraint orders against property and successfully forfeited trials with a total value of approximately Seven Hundred and Eighty-six Thousand Eight Hundred and Sixty-one Dollars (**XCD$786,861.00**) in nine cash forfeiture cases.

The epitome of my money laundering investigations is a parallel investigation involving Two (2) Venezuelans who were seeking to embark a Caribbean Airlines flight destined to Venezuela. They were intercepted by Customs officials during a security screening in the departure lounge at the George FL Charles Airport. Both Defendants had separate amounts of Five Thousand European dollars (€5000) concealed in their underwear and VEF 161,800.00, VEF 1,843, 950.00 and USD 1,275 concealed in their checked luggage. They were arrested and charged for Money Laundering and the monies were seized under the Proceeds of Crime Act. At the time the Venezuelan Bolivars were equivalent to approximately **XCD$43,686.00** and **XCD$497,866.00** respectively.

Search warrants were effectively used to obtain permission to search for documents and for the extraction of data from mobile phones. The analysis of the data extracted revealed pictures of firearms, drugs, European currency, Western Union vouchers and foreign exchange vouchers from various banks. The vouchers from the banks were European dollars that were sold by different witnesses. The evidence showed that the Defendants laundered monies from St. Lucia to Colombia to Venezuela. They were both convicted and sentenced.

HOT TOPIC: LEGAL CANNABIS AND ITS IMPLICATIONS FOR THE REGION

".....it is arguable that a licensed marijuana business could be permitted to open an account and undertake transactions in a state with laws decriminalizing marijuana."

The shift in attitudes on marijuana from an illegal drug to a plant with medicinal, scientific and commercial opportunities necessitates an open and informed debate on the application of the laws and regulations. In the Caribbean, Jamaica decriminalized marijuana in 2015. While, in 2018 the Regional Security System (RSS) member states of Antigua and Barbuda decriminalized possession of small quantities of marijuana and Saint Vincent and the Grenadines decriminalized marijuana for medical, scientific and religious purposes. A related topical issue is the application of money laundering and asset recovery legislation to monies derived from a licensed marijuana business in an environment where decriminalization or legalization is not standardized across jurisdictions.

The laws regarding marijuana are complicated and can vary dramatically depending on whether one speaks of legalization or decriminalization. Decriminalization of marijuana means that under the amended laws of a jurisdiction a person ought not to be arrested and given a criminal record for possession of small quantities of marijuana for personal use, e.g. 10 grammes in Antigua and Barbuda. Under decriminalization, both the production and sale of marijuana remain criminalized. Legalization, on the other hand, is the lifting or abolishment of laws banning the possession and use of marijuana. Both decriminalization and legalization of marijuana are limited in application and scope. A person can be arrested for the production, distribution, sale, and possession of marijuana if they are not following the laws on licenses or taxation. Further, decriminalization and legalization of marijuana within a jurisdiction do not change the strict rules and guidelines around cross-border drug trafficking, illegal cultivation and the aim of keeping illegally obtained profits out of the hands of criminals.

In the RSS member states, the various anti-money laundering laws generally define criminal conduct as conduct which constitutes an offence or would constitute an offence if it had occurred in the [that] state. Under these laws, a person may be charged for an offence of money laundering whether possessing, converting, concealing, disguising, transferring the proceeds of criminal conduct concerning marijuana.

There is a strong arguable case that where a person is in possession of or conducting business using proceeds derived from a licensed and lawful marijuana business that such a transaction ought not to be labeled as money laundering in any jurisdiction, as the underlying conduct was permitted in the state where the proceeds were generated.

On the other hand, the extra-territorial application of the legislation could result in monies derived from a licensed and lawful marijuana business in one state being deemed criminal property in a state where marijuana is not legalized or decriminalized. Notwithstanding, that the conduct is legal in the state where the proceeds were obtained, a person can be guilty of a money laundering offence where it can be shown that the act is criminal conduct in another country where the money is handled. Double criminality of the conduct giving rise to the benefit in the place where the conduct occurred and the place where the financial benefit is handled does not need to be shown.

Under the current framework on the legalization and decriminalization, another pertinent issue which arises is whether a financial institution or business regulated under the anti-money laundering framework permitted to onboard customers in the medical marijuana business.

The simplistic answer is that only two of the seven RSS member states have relaxed their laws around marijuana via the decriminalization route. In those two states, there are limited circumstances under which proceeds generated from the production, distribution, possession, and sale of marijuana would be lawful, that is, in the licensed medical and scientific marijuana sector. Where these conditions are satisfied, it is arguable that a licensed marijuana business could be permitted to open an account and undertake transactions in a state with laws decriminalizing marijuana. A number of questions remain unresolved including whether such monies can be lawfully handled in a country where marijuana remains illegal until there is legislative reform?

A further question is whether a requirement exists to file a suspicious activity report concerning an individual or business account connected to the licensed and lawfully permitted marijuana trade? The financial institution or regulated business may file a Suspicious Activity Report /Suspicious Transaction Report on the basis that the activity or transaction is suspicious premised on subjective and objective factors. A SAR/STR may, therefore, be filed about a licensed marijuana business if its financial activities or operations are unusual notwithstanding that it is a licensed and lawful entity.

The legal environment is a dynamic one, in the current climate, it may be time for a sensible application of the law concerning the treatment of proceeds generated from a licensed and lawful marijuana business. Monies generated from a licensed marijuana business ought not to be deemed criminal property whether in the state where marijuana is legalized or decriminalized or in another country where monies from a lawful marijuana business is handled.

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