



ROLE & EXPECTATIONS IN MONEY LAUNDERING CASES

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ROLE OF THE ODPP

- **Prosecute money laundering offences** pursuant to Section 69 of the **POCA, 1997 (as amended by the POC (Amendment) Act, 2005)**
- **Prosecute offence of possession of property suspected of being proceed of crime** pursuant to Section 70 of the **POCA, 1997 (as amended by the POC (Amendment) Act, 2005)**
- **Prosecute financing of terrorism** pursuant to Section 70A of the **POCA, 1997 (as amended by the POC (Amendment) Act, 2005)**
- **Analyse and charge corporate liability** pursuant to Section 71 of the **POCA, 1997 (as amended by the POC (Amendment) Act, 2005)**

ROLE OF THE ODPP

- Apply for forfeiture orders pursuant to Sections 5 – 9, 11 - 18 of the POCA, 1997 (as amended by the POC (Amendment) Act, 2003)**

ROLE OF THE DPP

- **Apply for pecuniary penalty orders following conviction pursuant to S. 5 & S. 20 – 26 of the POCA, 1997 (as amended by the POC (Amendment) Act, 2003)**
- **Facilitate and effect a foreign forfeiture order or a foreign pecuniary penalty order pursuant to S. 19 and S. 27 of the POCA, 1997 (as amended by the POC (Amendment) Act, 2003)**

ROLE OF THE ODPP

- Facilitate giving effect to registered foreign forfeiture order. (see section 19 of POCA)**
- Apply for forfeiture orders where a person absconds in connection with a serious offence. (s. 10 of POCA)**

ROLE OF THE DPP

- **Apply for Civil Forfeiture Orders after charge but before conviction for tainted property.**
- S. 19C – 19E of POCA, 1997 (as amended by POC(Amendment)A, 2003)
- **Apply for Civil Forfeiture Orders after charge but before conviction for terrorist property.**
- Section 19A, 19F-10 of POCA (as amended by POC(Amendment)A, 2003)

ROLE OF THE ODPP

- FACILITATE POLICE INVESTIGATIONS**

➤ Apply for a pre-charge restraining order pursuant to s. 34 – 49 of the **POCA, 1997 (as amended by the POC (Amendment) Act, 2003)**

ROLE OF THE DPP

- **Apply for disposal order in respect of a**
 - drug of dependence,
 - a poison,
 - an illicit drug,
 - an instrument, device or substance that is or has been used (or is capable of being used) for or in the cultivation, manufacture, sale or use of a drug of dependence or a poison or an illicit drug;
 - An explosive substance. (**s. 67 of POCA**)

ROLE OF THE DPP

- Article 3.1 of the **Prosecution Code, 2003:**
- Every prosecutor has the duty to ensure that the right person is prosecuted for the right offence and that the court is given all relevant evidence in each case

MONEY LAUNDERING OFFENCES

FIRST CONSIDERATION (see s. 69 (2))

Is the accused
a natural
person?

Is the accused
a body
corporate?

MONEY LAUNDERING OFFENCES

IF A BODY CORPORATE

What type of body corporate?

- *company registration documents
 - *current shareholders list? When did it become a public company?
 - *current list of directors?
 - *business licence etc.
-

To prove that the company knew or ought reasonably to have known that the money or property is derived or realised directly or indirectly from some form of unlawful activity:

Did the Director, Servant or Agent by whom the physical element was carried out have that state of mind?

When this person was doing what he or she was doing, did they do so within the scope of his or her actual or apparent authority?

Did somebody else carry out the physical elements of the offence at the direction or with the consent or agreement of a director, servant or agent of the body corporate in circumstances where the direction, consent or agreement was within the scope of the actual or apparent authority of the director, servant or agent.?

MONEY LAUNDERING OFFENCE

IF A BODY CORPORATE

Obtain:

1. Statement and documents: What is the corporate structure?
 2. List of employees: Go back at least 5 years from period of offending – Somebody who left may have knowledge of when the fake accounts/subsidiary companies etc was first set up or how the corporate entity first became involved in laundering etc.
 3. Interview each current employee and identify and try to interview past employees.
 4. Contracts, remuneration, bonuses given out, perks and benefits & roles and responsibilities of each employee. (Focus: management and the key players)
 5. Obtain internal and external communications including fax, emails and letters. Are there scanned documents?
 6. Obtain written policies, written directives, minutes of meetings, contracts with outside parties, sale and purchase agreements, invoices etc.
 7. Forensically examine all financial records of the company – compare and contrast with memos and directives and meetings, external contracts, sale and purchase agreements and records, invoices etc: Are there hidden assets? Was there money laundering?
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ROLE OF THE ODPP

- Article 8.1 of the Prosecution Code, 2003 provides:
 - Prosecutors should select charges which:
 - (a) reflect the seriousness of the offending;
 - (b) give the court adequate sentencing powers;
 - (c) enable the case to be presented in a clear and simple way; and
 - (d) adequately reflect the true criminality of the offender's conduct.
 - Prosecutor should not continue with more charges than are necessary. They should not lay more charges than are necessary just to encourage an accused to plead guilty to a few. They should never lay a more serious charge just to encourage an accused to please guilty to a lesser charge.

MONEY LAUNDERING OFFENCE 1

- Section 69(3)(a): “*A person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime.*”

CASE STUDY: Idris v Regina [2008] SBHC 29; HCSI-CRC 108 of 2008 (3 July 2008) (per Justice Cameron) : Prohibition against double punishment

The essential facts are that on 10 August 2007 Mr. Idris and his wife Rosie Idris arrived in Honiara from South Africa. Their sole purpose in making this trip was to convert stolen travellers cheques in their possession into Solomon Islands currency, and then convert that currency into British pounds and American dollars. To do this they needed false passports.

The criminal behaviour of the pair commenced as soon as they had stepped off the plane in Honiara that Friday. On arrival at the airport Mr. Idris completed an 'HM Customs Passenger Baggage Declaration', declaring he did not have in his possession articles which exceeded \$500 in value. In fact he was in possession of American and Australian travellers cheques to the value of approximately SBD700,000.

After clearing Customs, Mr. Idris went to the foreign currency exchange counter at the airport and requested the staff to change 2 US visa travellers cheques into Solomon dollars. He used a false British passport bearing a photograph of Mr. Idris, but the name of the person who had originally purchased the travellers cheques, and then countersigned the travellers cheques using that other person's name. In this way he obtained SBD6,680.

Mr. and Mrs. Idris then visited two different banks that afternoon, both obtaining further Solomon dollars by the same method of false pretence.

Then on every successive day but Sunday, until they were apprehended the following week on Friday 17 August, the couple either continued to exchange stolen travellers cheques for Solomon dollars (or in one case attempted to do so), or exchanged the Solomon dollars thus obtained into British pounds or US dollars. This venture even included a day trip on 14 August to Auki in Malaita, where once again travellers cheques were exchanged for Solomon dollars. That was the sole purpose of the trip.

As a result of this criminal spree the couple obtained SBD108,059.68, some of which was then exchanged for British pounds and US dollars.

Idris v Regina [2008] SBHC 29; HCSI-CRC 108 of 2008 (3 July 2008) (per Justice Cameron) : Prohibition against double punishment

Count 1:

False Declaration: \$1,000; 7 days to pay; in default 3 months imprisonment

Count 2:

Money laundering : 4 years imprisonment

Counts 3 to 9:

Obtaining by false pretence: 4 years imprisonment

Count 10:

Uttering an Exhausted Document: \$2,500 to be paid to the Quality Inn

Count 11:

Possession of forged documents: 3 years imprisonment

All sentences to be served concurrent with Count 2: 4 years imprisonment total plus fines and compensation orders.

Idris v Regina [2008] SBHC 29; HCSI-CRC 108 of 2008 (3 July 2008) (per Justice Cameron) : Prohibition against double punishment

- Court held:

I refer to the proviso to section 2 of the [Penal Code](#), which states:

"Provided that if a person does an act which is punishable under this Code and is also punishable under another Act, Statute or other law of any of the kinds mentioned in this section, he shall not be punished for that act both under that Act, Statute or other law and also under this Code."

This is precisely the situation which faced the learned Magistrate. The same acts were punishable on the one hand by the [Penal Code](#), and on the hand under the [Money Laundering and Proceeds of Crime Act 2002](#).

Idris v Regina [2008] SBHC 29; HCSI-CRC 108 of 2008 (3 July 2008) (per Justice Cameron) : Prohibition against double punishment

"Having found, as it did, that the money laundering charge introduced no additional facts not already the subject of charges, and involved the same acts for which the appellant was to be sentenced under the Penal Code, the proper course was for the Court not to enter a conviction against the appellant and to dismiss the money laundering charge. I refer to section 203 of the Criminal Procedure Code, enabling the Court to take this course "if it is of opinion that it is not expedient to inflict any further punishment notwithstanding that it thinks this charge against the accused is proved".

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I add that a conviction can constitute a punishment in itself, and hence it was not appropriate to enter a conviction. Both the entering of the conviction and the imposition of a term of imprisonment on the money laundering charge were, in the circumstances, a contravention of the Penal Code. The fact that the appellant pleaded guilty to the charge is irrelevant."

BAR AGAINST DOUBLE PUNISHMENT

- Section 3 (2) of the **Crimes Decree, 2009** provides:
- *“(2) If a person does an act which is punishable under this Decree and is also punishable under another Act or Decree or Promulgation or any other law of any of the kinds mentioned in subsection (1), he or she shall not be punished for that act both under that Act or Decree and also under this Decree.”*

QUESTION

➤ *If I steal \$20, 000.00 by creating a fake account and then I withdraw the money then I can be charged for: Obtaining property by deception contrary to Section 317 (1) of the Crimes Decree, 2009. Can I also be charged for Money Laundering? OR*

SOLUTION?

- Answer will depend on when I am deemed to have “obtained the property” pursuant to Section 317 (1) of the **Crimes Decree, 2009**.
- Pursuant to Section 317 (2) “for the purposes of this section (and for the purposes of the application of section 306 to this section), the person is taken to have obtained property if, and only if —
 - (a) the person obtains ownership, possession or control of it for himself or herself or for another person...”

MONEY LAUNDERING OFFENCE 2

- **Section 69 (3)(b) of the Crimes Decree, 2009**
- Section 69 (3)(b), “*the person receives, possesses, conceals, uses, disposes of or brings into Fiji any money, or other property, that are proceeds of crime, ... know[ing] or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.*”

CASE STUDY 1:

- **State v. Sachin Deo FJHC 441; HAC002.2010 (10 August 2011)**, The Office of the Director of Public Prosecutions withdrew a count of **money laundering**, that was premised on a finding of drugs and money (\$46, 000.00) in separate receptacles under the accused person's mother's bed.
- We had been able to successfully apply for a CFO in respect of the \$46, 000.00.

QUESTION

- **Sachin Deo** admitted that the money and the drugs were his and that the money was from the sale of drugs. Was this a case of “**concealing any money that are proceeds of crime?**”
- Or was this a case of “**possession of money that is proceeds of crime?**”

MONEY LAUNDERING OFFENCE 3

- Section 69 (3)(c), “*the person converts or transfers money or other property derived directly or indirectly from a serious offence or a serious foreign offence, with the aim of concealing or disguising the illicit origin of the money or other property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof.*”

ISSUES TO PROVE

- Investigator has to obtain statements from a person qualified to give evidence (perhaps a senior Police Officer from that jurisdiction) of the discovery of the crime in his or her jurisdiction and the fact that forgery is a crime in that country with a maximum penalty of between 6 months and death or a fine of more than \$500.00.

ISSUES TO PROVE

- Transferring money
- With the aim of concealing or disguising the illicit nature of its origins
- Knowing or ought reasonably to know that the money is derived or realised, directly or indirectly, from some form of unlawful activity.

MONEY LAUNDERING OFFENCE 4

- Section 69 (3)(d) “*the person conceals or disguises the true nature, origin, location, disposition, movement or ownership of the money or other property derived directly or indirectly from a serious offence or a foreign serious offence.*”
- We have yet to charge for an offence under these provisions.

EVIDENCE NEEDED: FORFEITURE ORDER (s. 11(2)(a) of the POCA)



Was the the property we want forfeited in B-1's possession at the time of, or immediately after, the commission of the crime for which B-1 was convicted?

Had that property been used in, or in connection with, the commission of the offence?

EXAMPLE:



*Burglar Tools
*Computers used for unauthorized access or for forgery

*Illegal Fishing vessel
*Getaway vessel
*Gun running/people smuggling vessel etc

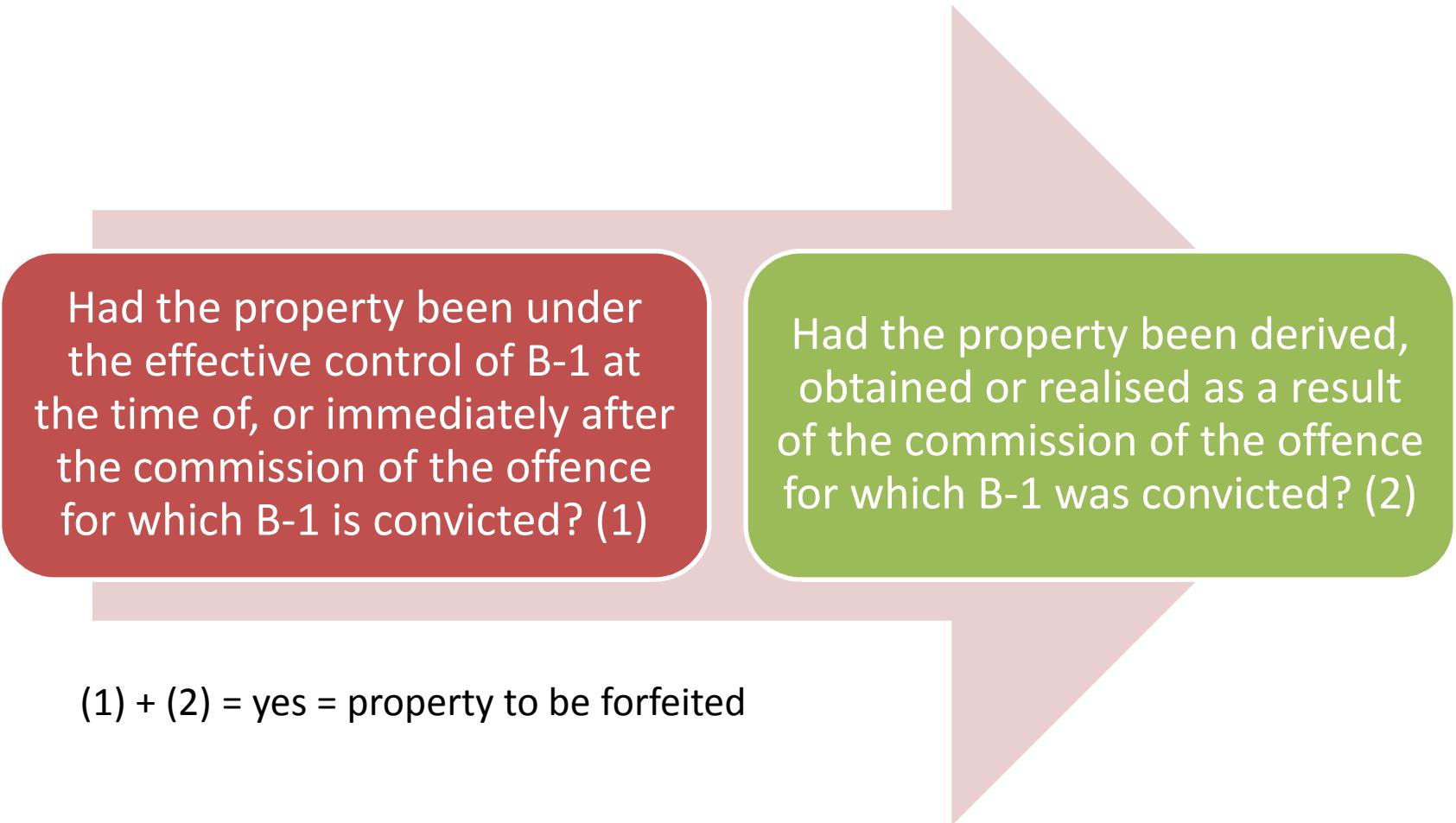


*Getaway car
*Farm used to grow marijuana or cocaine
Any vehicle used to transport marijuana or cocaine (seedlings for growth) or plants or manufactured drugs for sale

*Brothels & Massage Parlours
: Prostitution
Offence, Debt Bondage,
Sexual Servitude, HT
*



EVIDENCE NEEDED: FORFEITURE ORDER (s. 11(2)(b) of the POCA)



Had the property been under the effective control of B-1 at the time of, or immediately after the commission of the offence for which B-1 is convicted? (1)

Had the property been derived, obtained or realised as a result of the commission of the offence for which B-1 was convicted? (2)

(1) + (2) = yes = property to be forfeited

EXAMPLE: HUMAN TRAFFICKING



*Premises where victims are brought to be shown to customers before they are taken to a secondary location to be sexual exploited.

*Premises leased and business registered under someone else.

*Surveillance: (often the missing link) – Who gives directions over the day to day running of the business? Is that person the “manager” of the business?

*Financial trail: How did the registered “owner” obtain finances to purchase the premises?

EVIDENCE NEEDED: FORFEITURE ORDER (s11(2)(c) of the POCA)

What property (particularly \$) was found in B-1's possession before or after B-1 was charged for the offence B-1 was convicted for? (1)

Or What property (particularly \$) was found in B-1's effective control in a building, vehicle, receptacle or place

Before or after the charge of the person for the offence for which B-1 is convicted?

(2)

Was the property (\$) derived, obtained or realised as a result of the crime that B-1 is convicted for? (3)

(1) + (3) = property/\$ to be forfeited = (2) +(3)

EFFECTIVE CONTROL (s.25 of the POCA) : NEED PROOF THAT

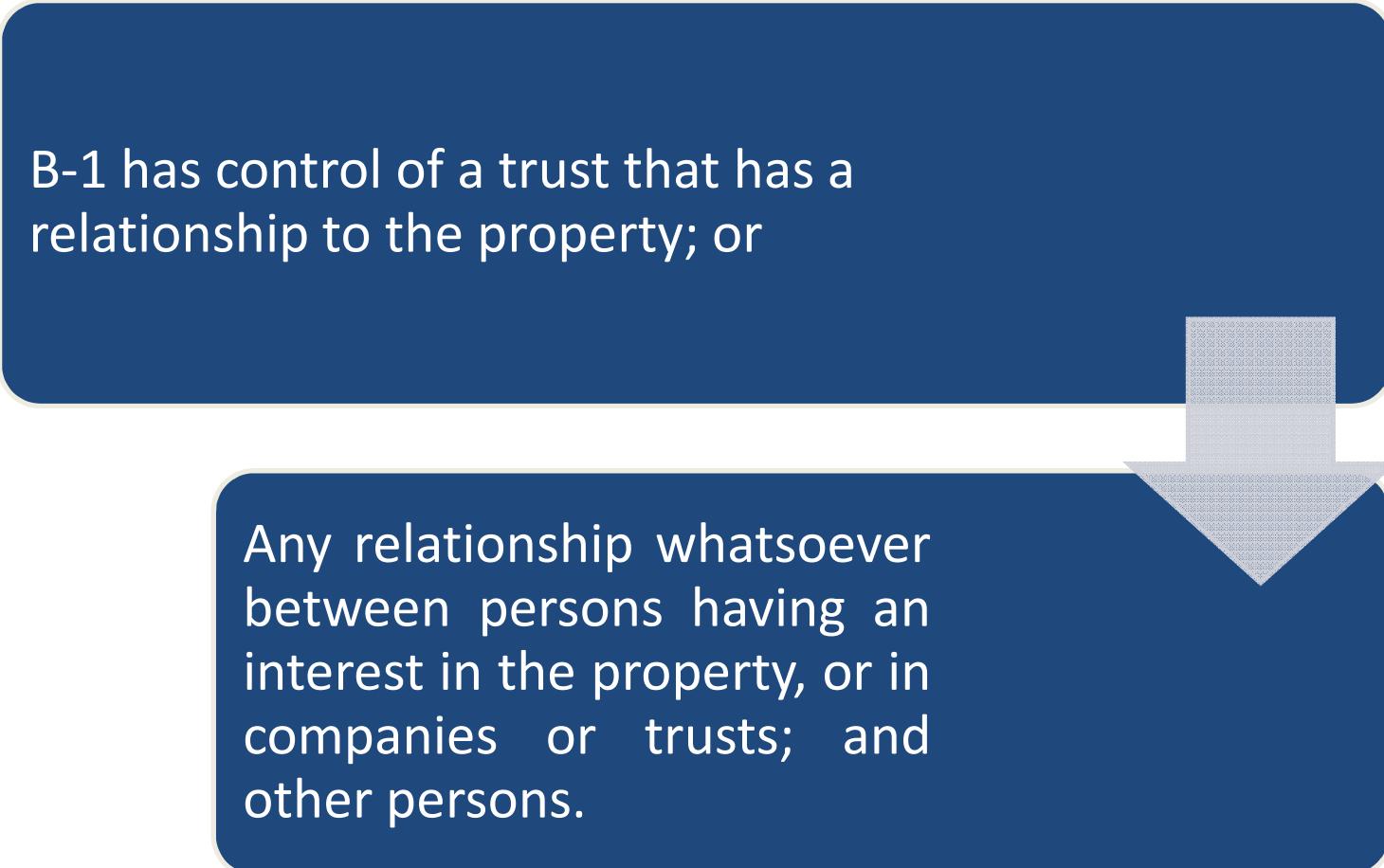
B-1 possesses legal or equitable interest in the property; or

B-1 holds any right, power or privilege in respect of the property; or

B-1 is a company or a person who has shareholdings in, debentures over or directorship in a company that has an interest in the tainted property; or

EFFECTIVE CONTROL: NEED PROOF THAT/OF

B-1 has control of a trust that has a relationship to the property; or



Any relationship whatsoever between persons having an interest in the property, or in companies or trusts; and other persons.

EVIDENCE NEEDED: FORFEITURE ORDER (s.11(d) of the POCA)

What is the value of all ascertainable property after crime? (1)

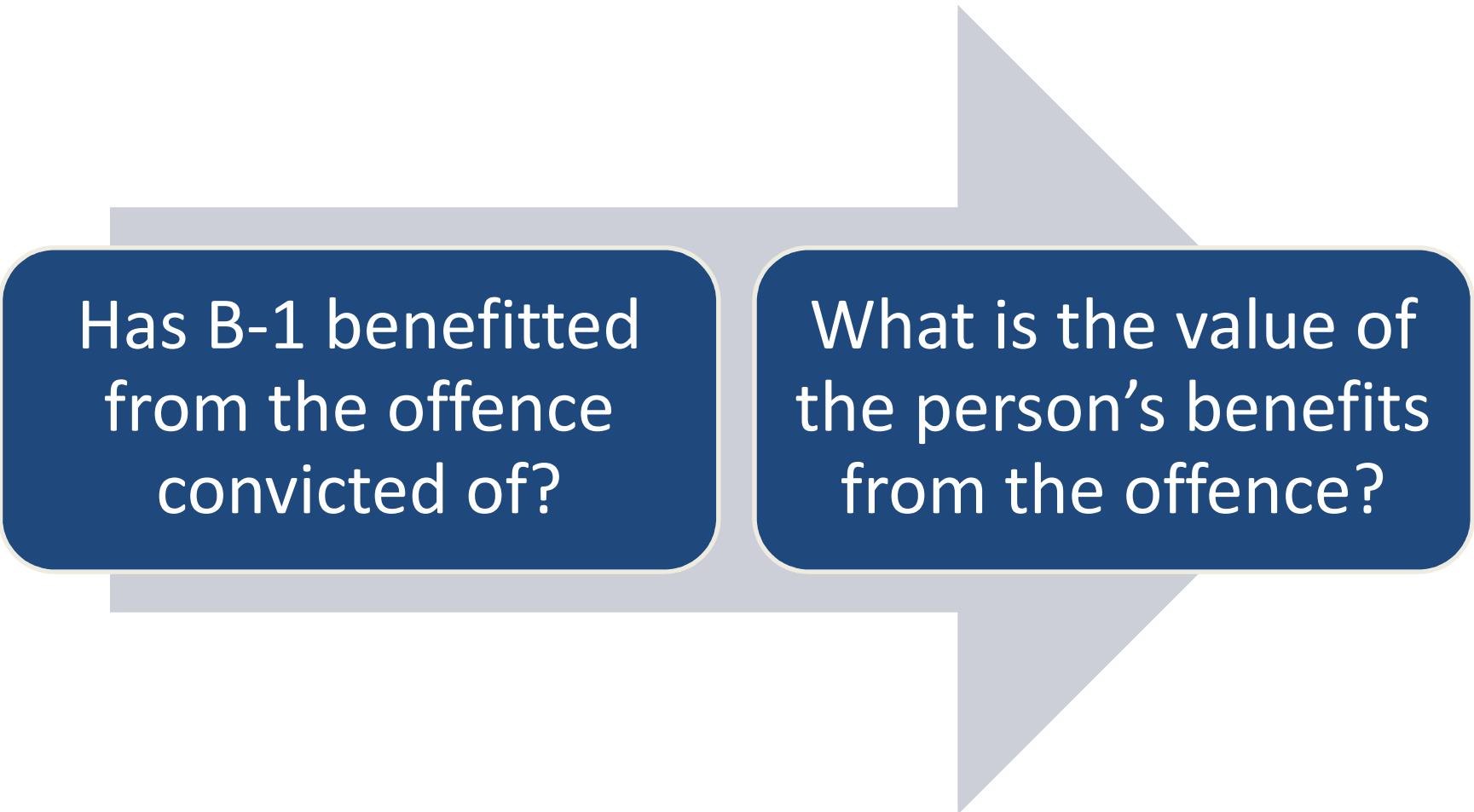
What is the value of all ascertainable property prior to commission of the crime? (2)

Is the value of (1) > (2)?

What was B-1's income from sources unrelated to the crime convicted for! (3)

[Only if (1) > (2), then $(1) - (2) \neq (3)$] = property derived, obtained or realised by person directly or indirectly from crime convicted for = property to be forfeited!]

EVIDENCE NEEDED: PECUNIARY PENALTY ORDER



Has B-1 benefitted
from the offence
convicted of?

What is the value of
the person's benefits
from the offence?

PPO: EVIDENCE TO ADDUCE

Did B-1 obtain property as a result of, or in connection with the commission of the serious offence?

- What was the value of that property then?
- What is its current value?

Did B-1 derive an advantage as a result of, or in connection with the commission of, the serious offence?

- What was that advantage?
- How long did he or she enjoy that advantage for? i.e. Personation (Part 17: Sub-Division 9 of the **Crimes Decree, 2009**)

PPO: EVIDENCE TO ADDUCE (s. 21 (3)(a) of the POCA)

What property does B-1 hold on the day on which the PPO application is made?

What property did B-1 hold at any time between the day the offence was committed and the day the application was made; or

Within the period of 5 years before the day on which the application was made (which is the shorter)?

This property will be deemed property that came into the possession or control of B-1 by reason of the commission of the offence or offences B-1 is convicted for.

PPO: EVIDENCE TO ADDUCE (s. 21 (3)(b) of the POCA)

What expenditure has B-1 made since the beginning of the period between the day of the offence and the day the offence was committed;

or within the period of 5 years before the day of the application, whichever is the shorter?

This expenditure will be expenditure deemed to have been met out of payments received by B-1 as a result of, or in connection, with the offence B-1 is convicted for.

Tainted Property

- Section 3: “tainted property” in relation to a serious offence of a foreign serious offence means:
 - (a) Property used in, or in connection with, the commission of the offence;
 - (b) Property intended to be used in, or in connection with the commission of the offence;
 - (c) Proceeds of crime.

CIVIL FORFEITURE ORDER

- The civil forfeiture order provisions allows us to go directly after tainted property.
- The way the provisions are structured, it is for interested parties to come to Court to prove that:
 - (a) They have an interest in the property;
 - (b) They did not acquire interest in the property as a result of any serious offence carried out by the person; and
 - (i) had the interest before any serious offence occurred;
or
 - (ii) acquired the interest for fair value after the serious offence occurred and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property.

CIVIL FORFEITURE ORDERS

- The test is simple.
- It can be proven on the balance of probabilities.
- We don't have to wait for the conclusion of the trial.
- Places onus on persons (whether suspect, accused or third parties) to prove show cause why it should not be declared tainted property and forfeited pursuant to a CFO.

CONCLUSION

