

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Siek*, 2007 NSCA 23

Date: 20070216

Docket: CAC 266726

Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

Rady Siek

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: December 7, 2006

Subject: *Forfeiture of real property - s. 2, 16.(3) and 19.1(3),
Controlled Drugs and Substances Act S.C. 1996, c. 19*

Summary: The respondent, who had pled guilty to charges of unlawful production of cannabis marihuana, possession for the purpose of trafficking, and diversion of electricity, was sentenced to a total of two years in a federal penitentiary. The judge also ordered forfeiture of certain offence-related personal property relating to the marihuana grow operation. The Crown's application for forfeiture of the real property used in connection with the commission of those offences was heard a few months later. The judge dismissed that application, and the Crown appeals.

Issue: Whether the judge erred by failing to order forfeiture of the real property.

Result: Appeal allowed and forfeiture of the real property ordered. It was undisputed that the property was offence-related property as defined in s. 2 of the *C.D.S.A.* Forfeiture would automatically follow pursuant to s. 16.(3), unless the property is real property and the offender can satisfy the court under s. 19.1(3) that forfeiture would be disproportionate, having regard to the factors

listed there. In dismissing the Crown's application for forfeiture, the judge erred in his application of the disproportionality test, by over-emphasizing certain matters, by not considering all of the factors stipulated, and by considering the sentence that had been imposed. Forfeiture is part of the sentencing process, but is not part of the sentence itself. It is not essential that a forfeiture application be heard at the same time as sentencing. Taking all the factors set out in the disproportionality test, the impact of forfeiture of the property upon the respondent, and the facts of this particular case into consideration, forfeiture should have been ordered.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.