

CASE NO.

VOL. NO.

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**IN THE MATTER OF:**

AN APPLICATION BY THE ATTORNEY  
GENERAL OF CANADA FOR FORFEITURE  
OF PROPERTY OF RICHARD JOSEPH MARRIOTT,  
DECEASED and GAIL STONE, DECEASED,  
PURSUANT TO SECTION 462.38 OF THE  
**CRIMINAL CODE**

CAC 166209

Halifax, N.S.

BATEMAN, J.A.

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[Cite as: **R. v. Marriott, 2001 NSCA 84**]

**APPEAL HEARD:**

March 20, 2001

**JUDGMENT DELIVERED:**

May 17, 2001

**SUBJECT:**

**Forfeiture of proceeds of crime.**

**SUMMARY:**

Marriott and Stone, common law spouses, were charged with possession and/or laundering proceeds of crime (drug trafficking), contrary to ss. 8(1) and 9(1) of the **Controlled Drugs and Substances Act**, S.C. 1996, c. 19. They were fatally shot before their trial on the charges. Pursuant to s. 462.38 of the **Criminal Code** the Crown sought forfeiture of certain of their property which was alleged to be proceeds of crime. The judge ordered forfeiture of most of the property but declined to order forfeiture of a full interest in the parties' residence, limiting forfeiture to a part interest only.

**ISSUES:**

The Crown appealed the judge's finding that neither the down payment on the residence, nor the pay-out of the mortgage through insurance as a result of their deaths were proceeds of crime. The discharge of the mortgage occurred after the end of the charge period.

**RESULT:**

Pursuant to s. 462.44 of the **Code**, a Crown appeal from a forfeiture order is like an appeal from a verdict of acquittal and, therefore, pursuant to s.676(1)(a), limited to a question of law alone.

The judge did not err at law in concluding that the down payment on the residence (which was purchased during the charge period) derived from legitimate funds and was not proceeds of crime.

In determining that the equity created through the discharge of the mortgage was not proceeds of crime the judge misinterpreted the requirements of s. 462.38(2)(b) and therefore erred at law. Appeal Court satisfied beyond a reasonable doubt that the equity created by the discharge of the mortgage was proceeds of crime. Appeal allowed to the extent of including that amount in the forfeiture order.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.