

SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Civil Forfeiture) v. Allen, 2013 NSSC 109

Date: 20130319

Docket: Tru No. 366302

Registry: Truro

Between:

Manager of Civil Forfeiture

Plaintiff

v.

Matthew Patrick Allen and Jennifer MacBurnie

Defendants

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Judge: The Honourable Justice Michael J. Wood

Heard: January 10, 2013 (in Chambers), in Halifax, Nova Scotia

Final Written Submissions: February 25, 2013

Written Decision: March 19, 2013

Subject: Civil Forfeiture
Civil Procedure - Evidence on *Ex Parte* Motions

Summary: Police seized cash from the Defendants as a result of a traffic stop. The Manager of Civil Forfeiture started this proceeding for an order of forfeiture under the *Forfeiture Act*, alleging that the money was proceeds of unlawful activity. No defences were filed and the Manager made

a motion for default judgment and a forfeiture order.

Issue: Should a forfeiture order be granted in the circumstances?

Result: A proceeding under the *Civil Forfeiture Act* is *in rem* and requires an evidentiary hearing even if no defence is filed. The Manager must prove the claim on a balance of probabilities. Police opinion evidence may be admitted in some circumstances. The affidavits filed by the Manager were not sufficient to prove that the money was proceeds of unlawful activity.

Motion dismissed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***