CRIMINAL LAWYERS' ASSOCIATION
189 Queen Street East, Suite 1
Toronto, ON M5A 1S2
Tel: 416-214-9875

www.criminallawyers.ca
ed@criminallawyers.ca

August 26, 2026

VIA EMAIL (MAGPolicy@ontario.ca)

Ministry of the Attorney General
Policy Division
720 Bay Street, 11th Floor
Toronto, ON
M7A 2S9

Re: Consultation on Proposed Amendments to the *Civil Remedies Act*, 2001 and New Measures for the Collection of Criminal Fines and Penalties

The Criminal Lawyers' Association ("CLA") represents over 1,800 criminal defence practitioners across Ontario. The CLA's mandate includes protecting rights guaranteed by the *Canadian Charter of Rights and Freedoms* ("*Charter*"), promoting the proper administration of justice, and advocating before government on key criminal justice issues. We welcome the opportunity to respond to the Ministry of the Attorney General's ("MAG") Consultation Paper.

While the CLA supports efforts to target organized crime, money laundering, and victim compensation, civil statutory regimes must operate within constitutional boundaries, respect the division of powers, and preserve procedural fairness. Our submission focuses on five critical areas where the proposed reforms interface with the criminal justice system, compromise procedural protections, and negatively impact accused persons.

These comments were prepared by members of the Legislation Committee.

Unexplained Wealth Orders

MAG proposes introducing an unexplained wealth order ("UWO") regime modeled on Manitoba's *Criminal Property Forfeiture Act*.[1] The proposed framework creates a reverse-onus scheme compelling a person, not charged or convicted of an offence, to disclose the origins of their assets in the absence of any proof of criminal or other wrongdoing.

Currently under the *Civil Remedies Act, 2001*[2] ("*CRA*"), the state is required to prove on a balance of probabilities that the property sought to be forfeited constitutes proceeds of unlawful activity. The proposed amendment would require only a discrepancy between the

[1] CCSM c C 306.
[2] SO 2001, Chapter 28.

Criminal Lawyers' Association — est. 1971 —

CRIMINAL LAWYERS' ASSOCIATION
189 Queen Street East, Suite 1
Toronto, ON M5A 1S2
Tel: 416-214-9875

www.criminallawyers.ca
ed@criminallawyers.ca

person's lawfully-obtained income and the value of property in their possession to compel disclosure.

Shifting this burden from the government to individuals creates a significant risk of constitutional infirmity. To protect section 8 *Charter* guarantees and avoid using civil procedures as parallel criminal discovery, and *CRA* must include the following statutory safeguards:

- **Codified Evidentiary Threshold**: The Crown must establish an objective, verifiable link connecting specific property to unlawful activity. A wealth-to-income disparity alone must not trigger state-compelled disclosure;

- **Mandatory Disclosure**: The Crown must provide the Respondent with full written disclosure of the evidentiary basis for the UWO upon issuance; and

- **Investigative Firewalls**: The *CRA* must explicitly prohibit using UWOs to advance criminal investigations or circumvent section 8 *Charter* warrant requirements.

<u>Interplay Between Section 490 of the *Criminal Code of Canada* and the *CRA*</u>

The Consultation Paper proposes to specify that section 490 of the *Criminal Code of Canada*[3] ("*Criminal Code*") does not bar *CRA* proceedings and seeks to amend section 18.2 of the *CRA* to permit public bodies (*e.g.*, police services) to retain property for up to 120 days following a judicial disposition or the expiration of detention authority.

While section 490 of the *Criminal Code* does not preclude MAG from commencing independent civil forfeiture proceedings, an automatic 120-day provincial holding window creates both constitutional and operational conflicts:

- **Federal Paramountcy**: Under section 490(9) of the *Criminal Code*, a court may order the immediate return of seized property following an acquittal, stay, or withdrawal of charges.[4] A provincial rule authorizing police to retain property for an additional 120 days could directly conflict with an operative criminal court order, triggering federal paramountcy;

- **Section 8 *Charter* Protections**: Police authority to detain property under section 490 is strictly bounded by federal law. Retaining property past statutory limits or in defiance of a court order converts lawful custody into an unreasonable search and seizure under section 8 of the *Charter*;

[3] RSC, 1985, c C-46, s 490.
[4] *Criminal Code*, s 490(9).

CRIMINAL LAWYERS' ASSOCIATION
189 Queen Street East, Suite 1
Toronto, ON M5A 1S2
Tel: 416-214-9875

www.criminallawyers.ca
ed@criminallawyers.ca

- **Interference with a Federal Scheme**: Section 490 of the *Criminal Code* already establishes a clear process governing civil claims to seized property. An automatic provincial holding period improperly circumvents this federal statutory framework;

- **Curing Federal Procedural Defaults**: Under s. 490 of the *Criminal Code*, when statutory detention authority expires without a Crown extension application, return is mandatory. A 120-day provincial holding window improperly uses provincial legislation to cure federal procedural default and bypass statutory return mandates; and

Rather than granting police automatic retention powers, MAG must use existing legal mechanisms. If MAG seeks to preserve property for civil forfeiture, it must obtain an interlocutory restraint order under section 4 of the *CRA* before the federal obligation to return property under section 490 becomes operative.

<u>Procedural Protections, Disclosure, and Legal Representation in Parallel Proceedings</u>

The CLA recognizes MAG's intent to keep *CRA* civil forfeiture processes distinct and separate from criminal prosecutions. We are deeply concerned with the practical impact of the proposed amendments when civil forfeiture actions run parallel to active criminal proceedings against the same accused:

- **Solemn Declaration Requirement (Part C3)**: While *CRA* evidence is not intended for use in a criminal trial, compelling a respondent to file a sworn solemn declaration to dispute a forfeiture creates an insurmountable practical conflict. An accused person defending their civil property rights is forced to give sworn evidence under oath while criminal charges remain outstanding. This exposes them to tactical police scrutiny, potential cross-examination, and perjury charges under the *Criminal Code*, undermining the constitutional right to silence and protection against self-incrimination under the *Charter*;

- **Shortening Dispute Timeline (Part C2)**: Shortening the time period to dispute administrative forfeiture from 120 days to 60 days severely prejudices accused persons who are incarcerated or managing concurrent criminal trials. The compressed window forces an accused to either abandon their civil property rights or make hasty sworn disclosures before their criminal defence strategy is fully formed;

- **Barring Prospective Legal Expenses (Part C7)**: Explicitly clarifying that prospective legal expenses cannot be paid out of property frozen under an interlocutory order creates a significant detrimental effect on an accused's ability to mount a criminal defence. Freezing liquid assets or property starves an accused of the

CRIMINAL LAWYERS' ASSOCIATION
189 Queen Street East, Suite 1
Toronto, ON M5A 1S2
Tel: 416-214-9875

www.criminallawyers.ca
ed@criminallawyers.ca

financial capacity to retain counsel of choice for both their criminal trial and the parallel civil proceeding. In practice, this directly impairs an accused person's fundamental right to make full answer and defence under the *Charter*; and

- **Crown Disclosure and Informant Privilege (Part C10)**: Authorizing the Attorney General to unilaterally refuse disclosure on grounds of public interest or confidential informants in civil forfeiture proceedings undermines procedural fairness. Where civil claims rely on evidence generated by parallel criminal investigations, the CLA submits that the *CRA* must require mandatory, independent *in camera* judicial review before the Crown can withhold discovery materials.

Statutory Presumptions and Reversal of Proof in Parallel Litigation (C12–C16)

The proposal to introduce statutory rebuttable presumptions regarding criminal organization membership, cash proximity, vehicle modifications, illicit cannabis, and e-transfer sales creates severe tactical spillover into parallel criminal matters.

Although framed strictly as civil evidentiary standards, these statutory shortcuts lower the Crown's burden of proof and force the Respondent to disprove unlawful activity. When an individual faces active criminal charges, these civil presumptions trap the accused: to prevent the immediate civil forfeiture of their home, vehicle, or funds, they are compelled to take the witness stand or submit evidence in civil court to rebut the presumption. The CLA opposes these statutory presumptions and insists that the Crown maintain the onus of proving unlawful activity on a balance of probabilities without legislative shortcuts.

Collection Tools for Criminal Fines, Penalties, and Restitution

MAG proposes enhancing collection mechanisms for unpaid criminal fines and restitution by adopting powers under the *Ministry of Revenue Act*[5] and mechanisms modeled on the *Family Responsibility and Support Arrears Enforcement Act*, 1996.[6] These measures include wage garnishments, property liens, and driver's license suspensions.

Enforcement measures must comply with the *Charter* by avoiding severe financial hardship or depriving individuals of basic survival needs:

- **Protection of Living Necessities**: Income garnishments must be subject to statutory caps that account for existing obligations to guarantee individuals retain sufficient income for basic living expenses;

[5] RSO 1990, c M 33.
[6] 1996, SO 1996, c 31.

Criminal Lawyers' Association — est. 1971 —

CRIMINAL LAWYERS' ASSOCIATION
189 Queen Street East, Suite 1
Toronto, ON M5A 1S2
Tel: 416-214-9875

www.criminallawyers.ca
ed@criminallawyers.ca

- **Restricting Driver's License Suspensions**: License suspensions should be reserved for cases of proven, wilful default. In rural and northern communities in particular, losing a driver's license impairs employment opportunities, directly undermining an individual's capacity to pay court-ordered fines; and

- **Statutory Priority of Victim Restitution**: Court-ordered criminal restitution payable directly to victims must take statutory priority over provincial fine collection, *CRA* asset forfeitures, and administrative recovery costs. Public revenue recovery must not displace direct victim restitution.

Conclusion

The CLA appreciates the opportunity to contribute to this consultation and remains available to assist MAG in ensuring civil remedies operate fairly, effectively, and within constitutional limits.

Respectfully submitted,

Maija Martin, Co-Chair, Legislation Committee
CRIMINAL LAWYERS' ASSOCIATION