

**"Source: *Post-Seizure Procedures,*  
*Working Paper 39, 1985.*  
Department of Justice Canada. Reproduced  
with the permission of the Minister of Public  
Works and Government Services Canada, 2007."**

## Table of Contents

I. INTRODUCTION.....	1
A. Scope.....	1
B. Types of Property Not Covered by Proposed Scheme.....	2
C. Overview of Scheme.....	3
D. Intrusive Nature of Search, Seizure and Detention.....	5
E. Reasons for Requiring Detention of Seized Things.....	6
F. Help to Victims.....	8
G. Costs and Benefits to Police.....	10
II. POST-SEIZURE CONTROL.....	13
<b>RECOMMENDATION 1</b> .....	13
A. The Need for a Comprehensive Regime.....	13
(1) Lack of Comprehensiveness.....	13
(2) The Misplaced Emphasis on the Mode of Authorization of the Seizure.....	14
B. Judicial Control.....	15
(1) The Need for Accountability Mechanisms and Judicial Control over Things Seized.....	15
(2) Lists of Things Seized.....	17
<b>RECOMMENDATION 2</b> .....	17
(3) Reporting Requirements.....	20
<b>RECOMMENDATION 2 (Cont.)</b> .....	20
C. Custody Orders.....	22
<b>RECOMMENDATION 3</b> .....	23
(1) Nature of the Custody Order.....	24

<b>RECOMMENDATION 3 (Cont.)</b> .....	25
(2) Perishables .....	26
(3) Materials for Which Solicitor-Client Privilege Is Claimed .....	27
(4) Firearms, Weapons and Dangerous Substances .....	29
D. Access .....	31
<b>RECOMMENDATION 4</b> .....	31
(1) Access to Court Records and Documents .....	32
(2) Access to Things Seized and Detained .....	35
(3) Procedures for Access to Things Seized and Detained .....	38
E. Duration of Custody Orders .....	39
<b>RECOMMENDATION 5</b> .....	39
(1) Issues of Detention and Disposition .....	39
(2) Where No Proceedings Have Been Instituted .....	40
(3) Where Proceedings Are Instituted .....	42
F. Disposition upon Termination of the Custody Order .....	42
<b>RECOMMENDATION 6</b> .....	42
(1) Takings and Evidence .....	44
(a) Procedures to Determine Disposition .....	44
(b) Disposition Where There Are Conflicting Claims to Things Seized and Civil Proceedings Are Pending .....	46
(c) Disposition Where There Are No Conflicting Claims .....	46
(d) Disposition Where There Are Conflicting Claims and No Civil Proceedings Are Pending .....	46
(e) Disposition Where There Are No Claims to Things Seized .....	47
(2) Contraband .....	48
<b>RECOMMENDATION 6 (Cont.)</b> .....	48
<b>III. RESTORATION APPLICATIONS</b> .....	53
A. Introduction .....	53
(1) The Need for Restoration Proceedings .....	53
(2) The Present Law and the Need for Reform .....	53
(3) Proposed Restoration Procedures .....	54
B. Restoration Applications .....	55
(1) Who May Apply .....	55
<b>RECOMMENDATION 7</b> .....	55
(2) Notice .....	57
<b>RECOMMENDATION 8</b> .....	57
(3) Grounds .....	57

<b>RECOMMENDATION 9</b> .....	57
(a) Claims Regarding Need for Continued Detention of Things.....	59
(b) The Nature of the Things .....	61
(c) Alternatives to Detaining the Things .....	62
(d) Other Considerations.....	65
(4) Order.....	65
<b>RECOMMENDATION 10</b> .....	65
(5) Accurate Record to Be Made.....	67
<b>RECOMMENDATION 11</b> .....	67
(6) No Order Where Competing Claims.....	69
<b>RECOMMENDATION 12</b> .....	69
(7) No Property Rights Affected by Order .....	70
<b>RECOMMENDATION 13</b> .....	70
(8) Appeals.....	71
<b>RECOMMENDATION 14</b> .....	71
<b>SUMMARY OF RECOMMENDATIONS</b> .....	73