

Short title

1. This Act may be cited as the Anti-Terrorism (Amendment) Act 2010.

Insertion of sections 35A, 35B and 35C

2. The Anti-Terrorism Act 2003, No. 36 is amended by inserting immediately after section 35 the following new sections 35A, 35B and 35C:

“Review of search warrants and restraining orders

35A. – (1) A person who has an interest in property that was seized under a warrant issued under section 35 or in respect of which a restraining order was made may, at any time, apply to the Court –

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Court unless the applicant gives to the Director of Public Prosecutions at least 3 days clear notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(4) On an application made under subsection (1)(a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions and any other person to whom notice was given under subsection (3), order that the property or any part of the property be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the property or any part of the property from the application of the order, or make the order subject to such conditions as the Court thinks fit –

- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs and, where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
- (b) if the conditions referred to in subsection (5) are satisfied; or
- (c) for the purpose of –
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was

executed or the order was made or any person who, in the opinion of the Court has an interest in the property and of the dependants of that person; or

- (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(5) An order under subsection (4)(b) in respect of property may be made by the Court if the Court is satisfied:

- (a) that a warrant should not have been issued under section 24 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a scheduled offence or of any collusion in relation to such an offence; and
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application made to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine property subject to such terms as may appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Expiry of restraining orders

35.B – (1) Subject to this section, where a restraining order is made in relation to property, the restraining order does not continue in force for a period of more than 6 months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the Court is satisfied –

- (a) that a forfeiture order may be made in respect of the property or part of it; or
- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order;

the Court may extend for a specific period the period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order.

Disposal of property seized or dealt with

35C. Subject to this section, where the Court is satisfied that property will no longer be required for the purposes of sections 34 and 36 or any enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceeding, the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion –

- (a) where a restraining order is made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into under section 35A(4)(a), cancel the recognizance; and
- (c) where property has been seized under a warrant issued under section 35 or where the property is under the control of a person appointed under section 35A -
 - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person;
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession; or
 - (iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with law.”.

Passed in the House of Assembly this 8th day of December, 2009.

ROSEMARIE HUSBANDS-MATHURIN,
Speaker of the House.

Passed in the Senate this 15th day of December, 2009.

GAIL V. PHILIP,
President of the Senate.