

Supreme Court denies province's appeal in civil forfeiture case.

JASON VAN RASSEL, CALGARY HERALD. Dec 2014

The Supreme Court of Canada has refused to hear an appeal of a lower court decision that returned a home used as a marijuana grow op to its owner after it was seized by the Crown.

The nation's top court announced the decision to deny leave of appeal to Alberta Justice and Solicitor General on its website Thursday and awarded legal costs to Heng Kiet Kouch, whose home was seized under the province's civil forfeiture legislation.

The Alberta Court of Appeal overturned the order forfeiting Kouch's home to the Crown earlier this year, ruling prosecutors used inadmissible evidence to make their case.

"Clearly, this is something (the Supreme Court) thought was properly resolved by the court of appeal," said Kouch's lawyer, Karen Molle.

Kouch, who is in her late 60s, pleaded guilty to production of marijuana and received a one-year conditional sentence in connection with a marijuana grow op found by police during a raid of her Applewood home in June 2010.

Alberta's Victim Restitution and Compensation Payment Act gives prosecutors the authority to ask the court to permanently seize property that has been bought with proceeds of crime or used in the commission of crime.

Kouch's guilty plea confirmed the home as an instrument of crime eligible for forfeiture, but the judge still had discretion to grant relief.

Previous case law established that a judge can exercise discretion if the value of the asset being considered for forfeiture was "vastly greater" than that of the drugs.

In Kouch's case, Justice Carolyn Phillips heard that the street value of the 128 marijuana plants found in Kouch's home fell between \$100,000 and \$160,000.

The estimate came close to Kouch's equity in the home — but Phillips opted for forfeiture after accepting the prosecution's claim the marijuana "carried a potentially sizeable profit" that greatly increased its value compared to that of the house.

However, the Alberta Court of Appeal ruled that Phillips erred in admitting that evidence, because authorities had failed to follow the proper procedure to have it

admitted as a professional opinion.

The three-judge appeal panel said the “professional opinion” relied upon by Phillips was a brief, unsworn and unsigned document — as opposed to an opinion given under oath — and it violated the rules of evidence because it didn’t include any statement of credentials verifying the author as an expert.

When an asset as valuable as someone’s home is on the line, details matter, the three-judge appellate panel wrote in its decision.

“Forfeiture to the state of a citizen’s rights in her property, particularly when it is a dwelling place, calls for scrupulous adherence to all the applicable procedural and legal requirements,” the appeal judges wrote.

The costs awarded to the defence are still to be determined, but Molle questioned the expense and justification for pursuing the forfeiture the way to the Supreme Court, considering Kouch was already sanctioned in criminal court. Losing her home, which she shares with her elderly mother, her daughter and two young grandchildren, would have been disproportionate to the crime.

“How are we advancing any sort of cause for victims by creating additional victims?” said Molle.

The provincial government has seized and restrained more than \$25 million in property since the civil forfeiture legislation came into force in 2008.

Alberta Justice and Solicitor General spokeswoman Michelle Davio said Thursday that the Supreme Court judgment applies only to the particulars of the Kouch case and doesn’t have any legal implications for the civil forfeiture program or its operation.