

**THE SEVENTH MEETING OF MINISTERS OF JUSTICE OR OF
MINISTERS OR ATTORNEYS GENERAL OF THE AMERICAS
(REMJA VII)**

APRIL 28 -30, 2008

**Intervention by the Hon. Attorney-General and Minister of Legal
Affairs, Claire Hepburn**

**Topic: Hemispheric trends and legal and judicial co-operation in
criminal matters – Mutual legal assistance, extradition, asset seizure
and other cooperation in combating hemispheric trends, including drug
trafficking, corruption and other transnational crimes.**

As signatories to a number of international conventions requiring the provision of legal assistance, The Bahamas has either entered into specific bi-lateral agreements (Extradition treaties and Mutual legal assistance treaties – Canada, the United States of America, and the United Kingdom) or enacted legislation to allow it to respond to requests for legal assistance from abroad.

As required by a number of the international conventions, there is a designated Central Authority, i.e. the Attorney-General, who receives requests for legal assistance. In order to enable The Bahamas to respond to requests for legal assistance, since July 2000, the Office of the Attorney-General has a dedicated International Legal Co-operation Unit, whose function is to deal with all requests for legal assistance, whether for criminal or civil proceedings in foreign jurisdictions. This Unit also deals with requests for assistance in the restraint and forfeiture of the proceeds of crime.

The principal legislation for the provision of legal assistance in the absence of a treaty and in non-extradition matters is the Criminal Justice (International Co-operation) Act, Chapter 105 which was enacted in 2000. This Act, which incorporates the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 1988, empowers the Attorney-General to render assistance to courts or tribunals exercising criminal jurisdiction, prosecuting authorities or any other authority having criminal jurisdiction. The Attorney-General is able to receive from and make requests to other countries on a mutual and reciprocal basis for the provision of evidence (either documentary or witness testimony), the service of process, the transfer of Bahamian and overseas prisoners to give evidence in matters before the respective courts, and the enforcement of overseas forfeiture orders.

There is no requirement for dual criminality under the Criminal Justice (International Co-operation) Act. The Attorney-General need only be satisfied “that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed.” (s. 6(2)) The provision of legal assistance by The Bahamas is of course subject to the general prohibitions against offences which are political in nature, and to a certain extent, tax related matters, and is subject to restrictions on the use of information provided. The Courts of The Bahamas are also empowered under this Act to receive the application of the Attorney-General in execution of a request for assistance, and make any order to facilitate such execution. Regulations

made under the Act identify the various classes of illegal drugs.

The Attorney-General is also empowered by the Criminal Justice (International Co-operation) Act (s.9) to specifically address by Order, the issue of the enforcement of overseas forfeiture orders and in 2002 the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order was enacted whereby courts in The Bahamas are empowered to prohibit any person by restraint order from dealing with any property liable to forfeiture by a foreign court, where that property is related to a drug trafficking offence or an offence related to the proceeds of drug trafficking as set out under the Proceeds of Crime Act, Chapter 93. Law enforcement and legal officials in The Bahamas are empowered to trace, restrain and forfeit not only the proceeds of drug trafficking, but the proceeds of all serious crime, including bribery, money laundering, and terrorist offences.

Perhaps the most common request for legal assistance is for the restraint of the property of persons who are the subject of criminal investigations or proceedings. It is perhaps the most powerful tool in combating drug trafficking, corruption, and organized crime as invariably these offences are the ones which generate huge profits, and participants in these offences generally attempt to secrete and remove their profits beyond the reach of their domestic law enforcement agencies through the avenues of either tax fraud or money laundering. For most countries, the answer to this is of course tracing and seizing these profits wherever found.

Successful tracing and seizure require the co-operation and assistance

from other countries. In addition to the Criminal Justice (International Co-operation) Act , The Bahamas has brought into force the Proceeds of Crime Act, Chapter 93 and the Proceeds of Crime (Designated Countries & Territories) Order, 2001),which address the specific issues of drug trafficking and money laundering. This legislation adopts the international regime with respect to the investigation, restraint of property and seizure of cash, and the confiscation of the proceeds of all serious crime and is specifically focused on organized drug trafficking and money laundering activities.

With respect to foreign investigations or trials, which involve drug trafficking , money laundering or any serious offence, the Proceeds of Crime (Designated Countries & Territories) Order empowers the Courts of The Bahamas upon the application of the Attorney-General to make orders restraining criminal property and to recover or confiscate such property upon the registration of an external confiscation order.

Most requests pursuant to the Criminal Justice (International Co-operation) Act for the restraint of criminal property also seek the provision of documentary evidence. To a large extent, the property most restrained is money held by local banks and trust companies in the financial services industry. Whilst The Bahamas subscribes to the notion of bank secrecy, as a responsible member of the international community, it has adopted the stance that where criminality is involved, bank secrecy cannot be a shield to the wrongdoer, whose activity has the potential to derail a most important industry in the country. Hence, the Banks and Trust Companies Regulation Act, Chapter 316, specifically provides that the duty of confidentiality that a

banker has to his client is subject to an order of the court requiring disclosure to be made. As a result of a legal challenge to the court's jurisdiction to make disclosure orders under the Criminal Justice (International Co-operation) Act there was a delay in responding to a number of requests. The Act has now been amended to make clear the courts jurisdiction to make disclosure orders and requests can once again be dealt with in a timely manner. Since the Criminal Justice (International Co-operation) Act was passed in 2000 we have completed 186 requests for assistance.

It should be noted that all of the regulators of the financial services industry are empowered to share information with other domestic agencies and international counterparts. Requests for assistance from foreign regulators may be made directly to the Securities Commission, as provided under the Securities Industry Act; and the Financial Intelligence Unit of The Bahamas is able to exchange information with foreign Financial Intelligence Units abroad.

The ability of members of the financial services industry to provide documentary information is facilitated by the reporting and record keeping requirements under the Banks and Trust Companies Regulation Act, the Financial Transactions Reporting Act, Chapter 368, the Securities Industry Act, Chapter 363, and the Financial Intelligence Unit Act, Chapter 367.

Legal co-operation also takes place between the various law enforcement agencies of The Bahamas and their foreign counterparts. For example, the Royal Bahamas Police Force is a member of INTERPOL and

as such can act to execute international warrants for the arrest and return of fugitives. Law enforcement agencies of The Bahamas regularly co-operate with regional partners in an effort to combat drug trafficking. The Royal Bahamas Defence Force is a member of the Caribbean Information Sharing Network, which was established in 1998 and is a multilateral internet-based network used by Caribbean and United States military and law enforcement agencies to share information on transnational issues and threats of common concern. Joint operations between The Bahamas, the Turks and Caicos Islands, and the United States of America (OPBAT) for example, have been most important in intercepting drug traffickers, and as a result, there has been a noticeable shift of the trade south of The Bahamas.

Arms trafficking is a particular problem for The Bahamas. Small arms from the United States are being smuggled into The Bahamas secreted in imported goods, including laundry detergent and the door panels of cars. Intelligence led policing, including information from source countries such as the United States as to the source and purchase locations of these firearms is necessary to stem this tide of illegal firearms on the streets of The Bahamas. We have purchased and implemented high tech scanning apparatus to detect arms and narcotics, in strategic ports of entry/departure.

In respect of money laundering The Bahamas has updated its laws and in respect of narcotics trafficking Bahamian law enforcement works in close co-operation with its international partners to combat same.

Terrorism has added a new layer to the provision of mutual legal

assistance and extradition and The Bahamas has responded by enacting the Anti-Terrorism Act in 2004 and amending the Criminal Justice (International Co-operation) Act and the Extradition Act to include terrorism as an extradition offence and an offence for which legal assistance may be provided.

The Bahamas is able to respond to and take necessary action to freeze and seize assets of persons and organizations identified as terrorist or designated terrorist organizations by the UN. The Bahamas is also able to comply with the obligations as members of the UN under Security Council Resolutions 1267 and 1373 to take the necessary steps to restrict terrorist activities. Prior to the enactment of the Anti-Terrorism Bill, The Bahamas utilized the International Obligations (Economic and Ancillary Measures) Act, 1993. The Anti-Terrorism Act empowers the Attorney General to apply to a judge of the Supreme Court, in chambers, for an order for the freezing of assets and the designation of a terrorist entity in line with such designation by the United Nations Security Council.

Thank you very much for this opportunity to intervene.