

An Garda Síochána

Oifig an Choimisinéara,
An Garda Síochána,
Páirc an Fhionnuisce,
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Éire.



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Mr Dermot Ahern, TD
Minister for Justice, Equality & Law Reform
94 St Stephens Green
Dublin 2

RE: **12TH ANNUAL REPORT OF THE CRIMINAL ASSETS BUREAU**

Dear *Minister*

In accordance with the provisions of Section 21 of the Criminal Assets Bureau Act, 1996 I am happy to present to you the 2007 Annual Report of the Criminal Assets Bureau.

During the year 2007 the Bureau continued to pursue its statutory remit by carrying out investigations into the suspected proceeds of criminal conduct and applying the Proceeds of Crime, Revenue and Social Welfare legislation.

The Bureau continues to work with international crime investigation agencies and has successfully targeted proceeds of foreign criminality from such jurisdictions as the United States and the United Kingdom.

The policy shift towards preliminary applications focused on lower value assets has tended to target a more middle ranking criminal. While this approach may not realise extensive financial returns, it demonstrates the Bureau's ability to react to local community concerns and accordingly is seen as an effective use of Bureau resources.

The establishment of the Bureau Analysis Unit, the adoption of international best practices in the area of Forensic Analysis and the use of enhanced training has worked to the advantage of the Bureau by assisting in the identification and tracing of such assets and in the presentation of testimony before the Court.

Yours sincerely

Fachtna Murphy
MF MURPHY
COMMISSIONER OF
AN GARDÁ SÍOCHÁNA

23rd May 2008

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

Ráiteas Misin:

An leibhéal inasroichte is airde a bhaint amach maidir le Cosaint Phearsanta, Tiomantas don Phobal agus Slándáil Stáit.

Criminal Assets Bureau

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15th May, 2008

Commissioner Fachtna Murphy
An Garda Síochána
Phoenix Park
Dublin 8

Dear Commissioner

As Chief Bureau Officer it is my pleasure to present the 12th Annual Report of the Bureau, for the calendar year 2007. This report is submitted for onward transmission to the Minister for Justice, Equality and Law Reform, pursuant to Section 21 of the Criminal Assets Bureau Act 1996 and 2005.

The year 2007 marked the Bureau's twelfth year in existence and it continues to pursue its statutory objectives, carrying out investigations and wherever possible taking action, utilising the Proceeds of Crime, Revenue and Social Welfare legislation against the suspected proceeds of criminal conduct. Resulting from these investigations and actions, the Bureau forwarded in excess of €10 million to the Central Exchequer.

The increase in the number of Proceeds of Crime applications initiated in the course of the year demonstrates a policy shift towards earlier or preliminary applications, focused on lower value assets. The approach tends to target a more middle ranking criminal and,

while it may not realise extensive funds, illustrates the Bureau's ability to react to local community concern and as such is seen as an effective use of Bureau resources.

The Bureau continues to liaise with foreign law enforcement Agencies and to support initiatives aimed at examining alternative strategies to deny or deprive persons of the benefit of the proceeds of criminality, not only nationally but also internationally. There was a heightened level of international co-operation, in particular with the Federal Bureau of Investigation and the Assets Recovery Agency in Northern Ireland, resulting in almost five million US Dollars being returned to victims of an American fraud and in excess of half a million Pounds Sterling forwarded to the Revenue Authorities of Northern Ireland.

The Bureau continued to receive support from the Financial Institutions, Accountancy Bodies and the Public, throughout 2007. This support is of great value to the operation of the Bureau.

I wish to express my appreciation for the excellent service provided by the legal staff in the Office of the Chief State Solicitor and Counsel instructed by them.

The members of the Bureau were saddened by the untimely death of one of its members in the course of the year and I wish, on behalf of the Bureau, to acknowledge her contribution to the work of the Bureau and to extend my condolences to her family.

I would like to record my thanks for the dedicated and professional work of all the Officers and Staff of the Bureau during what has been a particularly active year.

Yours sincerely

JOHN O'MAHONEY

**D/CHIEF SUPERINTENDENT
CHIEF BUREAU OFFICER**

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Criminal Assets Bureau

Annual Report

2007

Chapter 1

1. Introduction

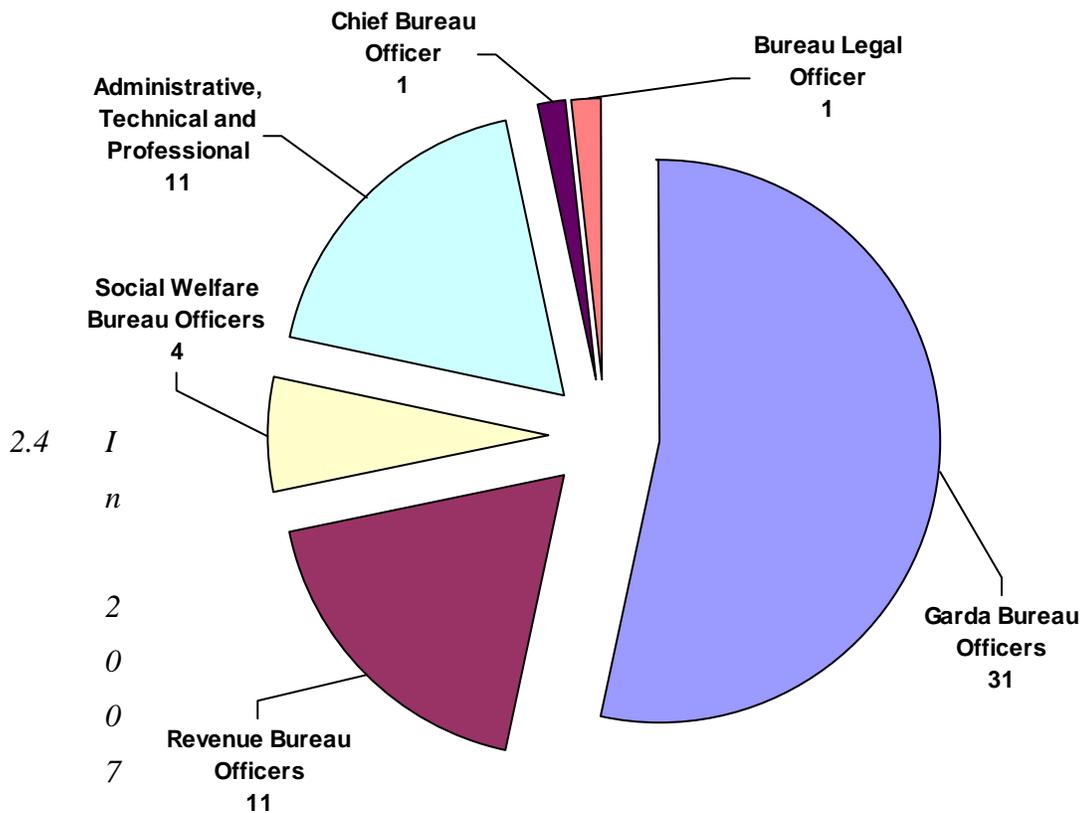
- 1.1 *This is the twelfth annual report of the activities of the Criminal Assets Bureau (hereinafter referred to as the Bureau) and covers the period 1 January 2007 to 31 December 2007 inclusive.*
- 1.2 *The Bureau was established in 1996 by the Criminal Assets Bureau Act 1996 (hereinafter referred to as “the Act”). The Act was amended by the Proceeds of Crime (Amendment) Act 2005. Sections 4 and 5 of the Act set out the statutory objectives and functions of the Bureau and these sections are attached at Appendix 1 of this report.*
- 1.3 *This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice, Equality & Law Reform, of its activities during the year.*

Chapter 2

2. Personnel

- 2.1 *The Bureau is staffed by officers from An Garda Síochána, the Revenue Commissioners, the Department of Social and Family Affairs, the Department of Justice, Equality and Law Reform and the Bureau Legal Officer.*
- 2.2 *The Chief State Solicitor provides one Principal Solicitor, one State Solicitor, one Legal Executive and two Clerical Officers to provide the necessary legal support services to the Bureau.*
- 2.3 *The total number of staff of the Bureau as of 31 December 2007 was 59 and the breakdown of this number is shown in Chart 1 overleaf:*

Chart 1:- Bureau Officers and Staff



2.4

three Revenue Bureau officers were seconded to the Bureau, two of these officers filled vacancies that were extant at the 31 December 2006. The third secondment represents an additional resource to the Bureau as sanctioned by the Office of the Revenue Commissioners. In all, the Revenue Commissioner has sanctioned two extra Revenue personnel for the Bureau and the second position will be filled in early 2008.

2.5

The Department of Justice, Equality and Law Reform has sanctioned the appointment of two additional Financial Crime Analysts to the Bureau. To this effect, interviews have been held and it is expected that both posts will be filled in early 2008.

- 2.6 *The Divisional Criminal Assets Profiler initiative (as outlined in the previous Criminal Assets Bureau Annual Reports) continued throughout 2007. The number of Profilers was increased from 25 to 28. These profilers continued to assist the Bureau in pursuing its statutory remit. They also assisted in investigations within their own divisions targeting persons suspected to be in possession of assets deriving from criminal conduct and the preparation of files for the Director of Public Prosecution directed towards effecting these remedies provided for in the Criminal Justice Act 1994 (as amended).*
- 2.7 *During 2007 as part of the planned expansion of the number of Divisional Profilers the Bureau trained three revenue customs profilers. These are the first Customs Officers to be so trained.*

Chapter 3

3 Finance

- 3.1 *During the course of the year the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice, Equality and Law Reform in order to carry out its statutory functions and to achieve its statutory objectives.*
- 3.2 *The Bureau expended €5,108,688.18 as broken down in the following Table 1.*

Table 1:- Accounts for the period 1 January 2007 – 31 December 2007

		€	€
<i>Monies provided by the Oireachtas</i>			<i>5,108,688.18</i>
<i>Expenditure</i>	<i>Pay</i>	<i>4,134,793.17</i>	
	<i>Non-Pay</i>	<i>973,895.01</i>	
	<i>Total</i>	<i>5,108,688.18</i>	<i>5,108,688.18</i>

- 3.3 *All such amounts have been audited by the Comptroller and Auditor General, as is provided for by Statute.*

Chapter 4

4 Actions by the Bureau

- 4.1 *During the course of the year the Bureau undertook a number of actions in pursuit of its statutory objectives and in execution of its statutory functions in targeting the proceeds of criminal conduct. The information and statistics furnished in this report relate to cases in which the Bureau took action, through the courts or otherwise, in pursuit of this statutory remit.*
- 4.2 *These actions covered a wide range of Garda, Revenue and Social Welfare activities and also included other actions specific to the work of the Bureau.*
- 4.3 *Court applications were made by the Bureau, pursuant to Sections 14 and 14A of the Act, to obtain Search Warrants and Production Orders which were used by the Bureau to uplift evidence in carrying out its investigations. The numbers of Warrants and Orders obtained are set out in Table 2.*

Table 2:- Number of warrants and Orders

<i>Description</i>	<i>Number</i>
<i>Search Warrants under Section 14 of the Act</i>	<i>113</i>
<i>Orders to make material available under Section 14A of the Act</i>	<i>254</i>

- 4.4 *A substantial part of the work of the Bureau is by way of proceedings in the High Court. During 2007 the Bureau initiated a number of actions under the Proceeds of Crime Act 1996 and 2005 (hereinafter referred to as the PoC Act)*

and other legislation and advanced other actions which had been initiated in the course of previous years.

Proceeds of Crime Actions

- 4.5 *The Chief Bureau Officer, or the Bureau in its own name, may make an application to the High Court under Section 2 of the PoC Act seeking an interim Order, which prohibits dealing with property if the Court is satisfied, on the civil standard of proof, that such property is the proceeds of criminal conduct and which has a value of not less than €13,000.*
- 4.6 *Subsequent to a Section 2 Order being granted, the Applicant must, to keep the prohibition in place, apply within twenty one days for an Order under Section 3 of the same Act. If such an application is successful the High Court makes an interlocutory Order, which in effect freezes the property until further notice, unless the court is satisfied that all or part of the property is not the proceeds of criminal conduct.*
- 4.7 *A Section 3 application may be made even where no Section 2 Order is in place or has been sought. An application for an Order under Section 2 is only made where there is an immediate concern that property may be dissipated or where a receiver needs to be appointed to preserve its value.*
- 4.8 *Once a Section 2 or Section 3 Order is in place it is open to any person to seek to vary or set aside such freezing Order (Section 2(3) or Section 3(3) of the Act), if that person can satisfy the court that they have a legitimate right to the property and/or said property is not the proceeds of criminal conduct.*
- 4.9 *A receiver may be appointed by the court under Section 7 of the same Act, either to preserve the value of or dispose of, property which is already frozen under Section 2 or Section 3 Orders. In 2007 the Bureau obtained eleven*

Receivership Orders and in all cases the Receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts, a mobile home, jewellery, a motorbike and motorcars. In some Receivership cases the High Court made Orders for possession and sale by the Receiver. A Receivership Order cannot be made unless a Section 2 or Section 3 Order is already in place.

4.10 Section 4 of the PoC Act provides for the making of ‘Disposal Orders’ whereby the High Court may make an order transferring assets, which have already been frozen under a Section 3 Order for at least seven years, to the Minister for Finance for the benefit of the Central Fund.

4.11 The Proceeds of Crime (Amendment) Act 2005 made provision for the obtaining of a ‘Section 4A consent disposal order’ whereby the High Court may make a similar Order to that of a Section 4 Order on consent, in cases where the Section 3 Order is in existence for less than seven years.

4.12 The Bureau obtained a total of three Orders under the provisions of Section 4 and four Orders under the provisions of Section 4A.

4.13 The number of Orders obtained under Sections 2, 3, 3(3), 4, 4A, and 7 of the Proceeds of Crime Act 1996 and 2005 are shown in Table 3.

<i>Description</i>	<i>Number of Defendants</i>	<i>Number of Orders</i>	<i>Amount €</i>	<i>Amount STG £</i>
<i>Interim Orders under Section 2</i>	<i>23</i>	<i>16</i>	<i>9,804,193.14</i>	<i>30,690.00</i>
<i>Interlocutory Orders under Section 3(1)</i>	<i>10</i>	<i>8</i>	<i>6,531,594.06</i>	<i>Nil</i>

<i>Variation Orders under Section 3(3)</i>	3	2	3,316,838.78	<i>Nil</i>
<i>b Disposal Orders under Section 4 e</i>	5	3	907,154.08	<i>Nil</i>
<i>3 Consent Disposal Orders under Section 4A</i>	4	4	528,186.51	<i>Nil</i>
<i>O Receivership Orders under Section 7 d</i>	16	11	5,358,861.05	30,690.00
<i>ers obtained under the Proceeds of Crime Act</i>				

Some figures include sums converted from other currencies

- 4.13 *In the course of 2007, €254,651.94 was paid over to the Minister for Finance. All such funds related to the collection of Section 4 and 4A Orders made in the course of 2006.*
- 4.14 *All but one of the Disposal Orders made in the course of the year, 2007, occurred in the Michaelmas term. The Receiver is bound to await the perfected Order prior to authorising a transfer of funds. Once all outstanding issues relating to these Receivership accounts have been finalised, all remaining funds including accrued interest will be realised and forwarded to the Minister of Finance.*
- 4.15 *The transfer of property the subject of a Section 4 Order in the case of Criminal Assets Bureau -v- Kelly & Traynor (see paragraph 5.3) valued at €606,434.34 cannot be effected as the Order is the subject of a stay, pending appeal.*
- 4.16 *The funds referred to as transferred to the Minister for Finance under Section 4 and 4A, or varied pursuant to Section 3(3), will already have been accounted for earlier as having been frozen either under Section 2 or Section 3. Furthermore all sums held in receivership accounts will similarly have been, of necessity, the subject of either a previous Section 2 or Section 3 Order.*

4.17 The following Table 4 sets out the opening balance as of 1 January 2007, the activity during the year and the closing balance as of 31 December 2007 in receivership accounts held at the Bureau.

Table 4:- Statement of Receivership accounts.

	€	STG £	US\$
Opening Balance Receivership Accounts 1/1/2007	8,990,385	878,795	89,782
Amounts realised (including Interest and prior year adjustment)	5,164,315	57,154	2,308
Payments Out	954,160	4,912	0.00
Closing Balance Receivership Accounts 31/12/2007	13,200,540	931,037	92,090

Revenue Actions

4.18 The Bureau is empowered under the Act to apply, where appropriate, the relevant powers of the Taxes Acts to the profits or gains derived from criminal conduct and suspected criminal conduct. The application of these powers enables the Bureau to carry out its statutory remit and is an effective means of depriving those engaged in criminal conduct and suspected criminal conduct, of such profits or gains.

- 4.19 *The provisions of the Disclosure of Information for Taxation and Other Purposes Act 1996 were used extensively during the year in providing for the transfer of information between the Revenue Commissioners and the Bureau.*
- 4.20 *Following investigations into the financial affairs of those engaged in criminal conduct, or suspected criminal conduct, the Bureau applied the provisions of the Taxes Acts to a number of persons. Many investigations were concluded by agreement providing for the payment of tax, interest and penalties.*
- 4.21 *Revenue Bureau Officers raised assessments to tax on twenty one persons as a result of investigations by the Bureau. During the year, ten individuals invoked proper appeal notices and seven others had their appeal applications refused due to failure to comply with the relevant provisions of the Taxes Acts. Two of these individuals appealed the refusal to admit the applications for an appeal to the Appeal Commissioners. In both of these cases the Appeal Commissioners upheld the Inspector's decision not to admit the appeals.*
- 4.22 *Two appeals were withdrawn by the appellants prior to hearing and the Appeal Commissioners determined the tax liabilities in respect of five persons in 2007. In four cases the Appeal Commissioners confirmed the assessments as made by the Bureau and their determinations were challenged in two of these cases, by way of appeal to the Circuit Court. In one case the Appeal Commissioners reduced the quantum of the income charged by the assessments. The two appeals to the Circuit Court were withdrawn and settled by agreement. Three cases are awaiting hearing as of 31 December 2007.*
- 4.23 *In one case the Appeal Commissioners refused a preliminary application made by a taxpayer seeking an "Order for Discovery or Disclosure of the report prepared by the Inspector in raising his assessment". (See paragraph 5.10)*

- 4.24 *The Bureau applied the enforcement procedures of the Taxes Acts (including the use of Attachment Orders) against the financial assets of tax defaulters and instituted High Court recovery proceedings in the pursuit of taxes due.*
- 4.25 *The following Tables 5 to 9 inclusive give details of Revenue actions by the Bureau, including the amounts of taxes charged by assessment, demanded and collected or otherwise recovered.*

Table 5: Tax charged by assessment

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>15,364,132.49</i>
<i>Value Added Tax</i>	<i>1,624,290.61</i>
<i>Capital Gains Tax</i>	<i>1,382,444.00</i>
<i>TOTAL</i>	<i>18,370,867.10</i>

Table 6: Tax and interest demanded

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>18,720,206.65</i>
<i>Capital Gains Tax</i>	<i>409,972.78</i>
<i>TOTAL</i>	<i>19,130,179.43</i>

Table 7: Tax and interest collected

<i>Description</i>	<i>€</i>
<i>Income Tax</i>	<i>7,310,978.20</i>
<i>Capital Gains Tax</i>	<i>301,487.12</i>
<i>Value Added Tax</i>	<i>946,490.80</i>
<i>Corporation Tax</i>	<i>1,326,714.15</i>
<i>PAYE/PRSI</i>	<i>123,789.00</i>
<i>TOTAL</i>	<i>10,009,459.27</i>

Table 8:- High Court proceedings instituted for recovery of tax and interest

<i>Description</i>	<i>No of cases</i>	<i>€</i>
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Total	11	6,781,061.51
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Table 9:- Tax and interest recovered using Revenue powers of attachment

	No of cases	€
Total	3	128,537.17

Social Welfare Actions

4.25 The Bureau also takes actions under the Social Welfare Acts in relation to persons engaged in criminal conduct. Arising from investigations by Bureau Officers, who are also officers of the Minister for Social and Family Affairs, a number of Social Welfare payments were terminated, resulting in savings to the Exchequer as set out at Table 10.

Table 10:- Social Welfare savings by scheme type

Scheme Type	€
Jobseeker's Allowance	145,424.80
One Parent Family Payment	245,588.80
Disability Allowance	78,798.40
Carer's Allowance	60,384.00
Farm Assist	20,780.80
Total	550,976.80

4.26 There were seven appeals lodged with the Chief Appeals Officer against decisions made by Bureau Officers. The Chief Appeals Officer certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court. Two appeals were so lodged. One was withdrawn in the course of the hearing and the second appeal is listed for hearing as of 31 December 2007.

4.27 Two other such appeals to the Circuit Court, carried forward from 2006, were listed for hearing in the course of the year. One appeal was withdrawn in the

course of the hearing at the Circuit Civil Court and in relation to the other appeal, the appellant was unsuccessful.

- 4.28 The Bureau also identified overpayments of assistance resulting from determinations, details of which are set out in Table 11.

Table 11:- Social Welfare overpayments by scheme type

Scheme Type	€
Jobseeker's Allowance	114,643.29
One Parent Family Payment	327,659.42
Disability Allowance	61,833.80
Carer's Allowance	27,821.20
Total	531,957.71

- 4.29 The recovery of monies as per Table 12 was effected by repayments, by instalments and by deductions, from current entitlements

Table 12:- Social Welfare recovery of monies by scheme type

Scheme Type	€
Jobseeker's Allowance	19,590.56
One Parent Family Payment	73,234.03
Disability Allowance	26,300.00
Invalidity Pension	7,499.00
Carer's Allowance	10,000.00
Total	136,623.59

- 4.30 In seven new cases, Summary Summons proceedings commenced with a view to recovering amounts overpaid and are continuing as of 31 December 2007. Two cases in which Summary Summons proceedings had carried forward from previous years, into 2007, were concluded successfully.

- 4.31 One criminal prosecution against a claimant, who continued to claim

unemployment payments while working on a full time basis, was initiated in 2006. The claimant pleaded guilty before the District Court in 2007 and the case has been adjourned for sentencing until April 2008.

Other Investigations

- 4.32 *During the course of 2007 Garda Bureau Officers, on the Directions of the Director of Public Prosecutions, charged three individuals with offences contrary to Section 1078 of Taxes Consolidation Act 1997. A book of evidence was served in each case. All cases are currently before the Criminal Courts.*
- 4.33 *During the course of 2007 two individuals were arrested and interviewed in relation to offences contrary to Section 1078 of Taxes Consolidation Act 1997. One of these individuals was also interviewed in relation to offences under Section 31 Criminal Justice Act 1994 (Money Laundering).*
- 4.34 *In December 2007 one individual, who, in the previous year, was charged with offences contrary to Section 1078 of Taxes Consolidation Act 1997, pleaded guilty to three separate charges before the Dublin Circuit Criminal Court. He was fined a total of €6,000 and received a two year prison sentence which was suspended for three years on his entering a bond to keep the peace.*
- 4.35 *During the course of 2007 an investigation, targeting a number of car dealers in the Dublin Metropolitan Region who are suspected of importing a large number of high-end vehicles without paying the full amount of Vehicle Registration Tax (VRT) upon registering the vehicles in the State, was established. This investigation was led by the Criminal Assets Bureau, assisted by members from the National Bureau of Criminal Investigation, Garda Bureau of Fraud Investigation, Dublin Metropolitan Region (DMR)*

and Customs Officers from the Office of the Revenue Commissioners. During the course of this investigation, following a series of searches, one suspect was arrested for an offence contrary to Section 139 of the Finance Act 1992 and detained under the provisions of Section 4 of the Criminal Justice Act 1984 as amended. He was released and a file is being prepared for the Director of Public Prosecutions. As of the 31 December 2007 the investigation is continuing.

Chapter 5

5. LEGAL AND CASE LAW

5.1 GENERAL

Sixteen new Proceeds of Crime cases were initiated in the course of this year, an increase of some forty five percent over the previous year. This increase demonstrates a policy shift towards earlier or preliminary applications, focused on lower value assets. Such an approach ensures that easily disposed of assets, such as high powered motor vehicles or jewellery, are not dissipated by the time a more comprehensive investigation is complete. It also tends to target a more middle ranking criminal, effectively giving the Bureau a higher visibility at a more local level. While such an approach does utilise extensive Bureau resources and the legal expenses are somewhat similar to the more high value cases, these cases are often determined more quickly than is usual.

An example is the case of a high powered motor vehicle, beneficially owned by a convicted Drug Dealer. The car was targeted and an Order sought in March, pleadings were complete by June, the application heard and determined by July. The effect was the disposal of the vehicle resulting in a net contribution of some €13,000, less the Bureau's legal expenses.

5.2 *There were a number of Judgements given, cases heard and legal strategies employed in the course of the year. This report will address these under the following headings: Family Home, Foreign Criminality, Expert Testimony, Incremental Litigation, Brussels Convention and Revenue.*

5.3 FAMILY HOME

***Criminal Assets Bureau –v- John Kelly and Teresa Traynor:
Feeney J., 3rd October 2007***

This case constituted an application by the Bureau for a Disposal Order pursuant to Section 4 of the PoC Act. The Court concluded the asset in question, a family home, was the proceeds of criminal conduct following the First Named Respondent's acknowledgement that he had no evidence to counteract the Bureau's sworn testimony. The Respondent's wife, who is residing in the house with her son, submitted that there would be a serious risk of injustice should such a Disposal Order be made. The Court concluded that Section 4 of the PoC Act does extend to a dwelling-house. The following constitutes selected quotes from the Judgement:-

“There are strong public policy grounds for ensuring that persons do not benefit from assets obtained from the proceeds of crime, irrespective of whether the person who benefits actually knows or knew that the property was obtained with the proceeds of crime.....

The second named respondent has failed to identify any real meritorious basis to be allowed to remain in occupation, other than the suggestion that she needs a home. That in itself cannot operate to defeat the public interest requirement of depriving persons from property obtained by means of the proceeds of crime.....

The fact that the second named respondent will be placed in a position where she will have to seek alternative accommodation is again of itself not a basis for refusing an application for a Disposal Order nor is it the basis upon which it can be properly contended that a constitutional right is correctly invoked in relation to the making of the Disposal Order. To allow the second named respondent to remain indefinitely..... would in

fact perpetuate her in a position where she would continue to benefit from an asset obtained exclusively from the proceeds of crime”.

The Court made the Disposal Order, placing a stay for a period of eight months to allow her son to remain at his present school until the end of that school term. The Respondent’s wife has appealed this Judgement to the Supreme Court.

5.4 FOREIGN CRIMINALITY

The Supreme Court’s determination in F. McK. –v- GWD ([2004] 2 I.R.470), that the PoC Act did not apply to offences committed abroad, created a difficulty in a number of cases which were listed for trial in the course of the year. The Bureau had initiated these proceedings in line with prior High Court precedent to the effect that the Act did apply to such foreign criminality. Note the following two cases, which involved the smuggling of diesel fuel on both sides of the border between the Republic of Ireland and Northern Ireland.

(i) F.McK. -v- DB

This case was heard over a two week period concluding in May. While the act of smuggling itself constituted an offence in Northern Ireland, it was submitted on behalf of the Bureau that the offence, by its very nature, cannot be perpetrated without offences having being committed in this jurisdiction. A number of domestic regulatory offences were brought to the attention of the Court. It was also submitted that a transfer of the profits of such criminality, its conversion and its use to purchase properties in this jurisdiction, constituted the domestic offence of Money Laundering. Judgement was reserved and, as of end of 2007, is awaited.

(ii) F.McK. -v- EH

The Bureau contended that the Respondent had made significant profits from illegal smuggling on the Border. The Respondent denied this but submitted that even if the Bureau's contention was true, the Court had no jurisdiction, as all the proceeds constituted foreign criminality. The Respondent furthermore sought compensation as significant funds had been frozen for some time. The matter had arisen in the course of a joint investigation with the authorities in Northern Ireland, who subsequently raised tax assessments on the Respondent, which remained outstanding as of the date of the hearing. The case was settled and a Receiver appointed. Settlement resulted in the provision of, inter alia, substantial funds both to the Irish Exchequer and to the Revenue Authorities in Northern Ireland.

There are still outstanding cases to which the foreign criminality argument applies.

(iii) THE CRIMINAL ASSETS BUREAU –V- MATTHEW SCHACHTER & ANOTHER

This is an unusual case which merits a special mention. The First Respondent, through the vehicle of a number of bogus insurance companies, registered in St. Vincent and the Grenadines, defrauded the American public of some \$19 million US dollars. A portion of this money was transferred to Ireland, some of which was used to purchase property in Co. Kerry. The Bureau, with the assistance of the Federal Bureau of Investigation, conducted its own investigation and obtained an Order pursuant to Section 3 of the Act, it appearing to the Court that all the funds were the proceeds of criminal conduct. The First Named Respondent had subsequently died and liquidators have been appointed, by the Courts in St. Vincent and the Grenadines, over the bogus Insurance Companies with the object of collecting as much funds as are available internationally for the benefit of the victims. Those liquidators then applied in Ireland, pursuant to Section 3(3) of the Act, that the Receiver

transfer the funds to them, for the ultimate benefit of the victims, as such victims were the persons ultimately entitled to those assets. The Bureau presented no objection and the Court made the appropriate order. This remedy is available in those cases where victims are readily identifiable.

5.6 *The Bureau concludes that deprivation or denial of persons of assets which derive from criminal activity is its primary objective, pursuant to Section 4 of the Act, regardless of whether the Irish Exchequer, victims in the United States or the Revenue Authorities in Northern Ireland are the ultimate beneficiaries. The Bureau also notes that the transfer by the Receiver of significant funds both to the United States and the Northern Ireland authorities enhances the effectiveness of the International Co-operation between the Bureau and the authorities in both these jurisdictions.*

5.7 ***EXPERT TESTIMONY***

Tracing criminal assets has become more difficult over the years, with criminal proceeds being held by nominees including friends, acquaintances, family members etc., or alternatively laundered through businesses with the appearance of legitimacy. The use of Forensic Accountants allow the Bureau to trace and analyse the movement of such funds, filter and extract the legitimate from the illegitimate and draw conclusions as to what constitutes the proceeds of criminal conduct. Careful consideration was taken as to how such evidence should be adduced before the Court, and the precedent of utilising “expert testimony” was adopted. Appropriate training was undertaken by members of the Bureau Analysis Unit to ensure their evidence came within the parameters as required by such precedent. While the evidence, when eventually presented, may appear straightforward, aided by clearly constructed i2 charts, all of it is supported by careful and extensive research and analysis. Such evidence was utilised in the

course of the year and in particular the Forensic Accountant was cross-examined on his evidence in the course of F.McK. -v- DB, referred to above (para 5.4(i)). The Court's view of this approach is awaited.

5.8 INCREMENTAL LITIGATION

(COLLATERAL ATTACK ON THE SUPREME COURT)

Since its inception the Bureau has found difficulty in finalising litigation, as attempts are often made to re-litigate points already determined or litigate further technical points on cases which were thought to have been completed. A determined approach was made by the Bureau, during the course of the year, in bringing this difficulty before the Court. Note the following two decisions:

- (i) ***Thomas Kavanagh and Joanne Byrne -v- Ireland and the Attorney General***
Judgement of Hanna J., 20th December 2007

The Plaintiffs sought a declaration that the Proceeds of Crime Act 1996 was unconstitutional, an issue the Bureau contended had already been determined by the Supreme Court. The relevant assets had already been the subject of a prior Proceeds of Crime Application, which had been determined, the funds having already been provided to the Minister for Finance. The Court, in upholding the Constitutionality of the Act, was “driven to the conclusion that these proceedings constitute an improper collateral attack on the decision of the Supreme Court of the 15th July 2002”. The Court further concluded that “the proceedings amounted to a frivolous and vexatious abuse of process”. The Court made an Order for Costs in favour of the Bureau, which will be difficult to execute as the Plaintiffs now reside outside the jurisdiction.

(ii) *John Gilligan –v- Ireland, Attorney General, The Criminal Assets Bureau*
Judgement of Mr. Justice Feeney J., 7th June 2007

These proceedings also seek a declaration that the Proceeds of Crime Act 1996 is repugnant to the Constitution. In the course of refusing an application by the Plaintiff for Legal Aid the Court concluded that “This Application amounts to a review or a reconsideration of the Statement of Law as made by the Supreme Court. There is no Application to the Supreme Court in relation to its Order or Judgement, there is no application set aside the original Section 3 Order based upon any assertion that there was a misunderstanding or misapprehension and these proceedings did not commence until 2006, some five years after the decision was made by the Supreme Court..... This Court must not permit the High Court to be used as a review of the Supreme Court”.

The Court also noted in relation to the same plaintiff “there already had been a full hearing in the High Court and the Supreme Court dealing with and resulting in determinations concerning the constitutionality of Section 3. It is clear from the Supreme Court’s approach, as identified in the Judgement of Hardiman J. in Carroll -v- The Law Society, that the Court cannot in any way support or permit, absent extraordinary circumstances, incremental litigation where the Court is asked effectively to come back to a newly thought out point in relation to a matter which could properly have been brought before the Court at the time that a full hearing was given. The Court must regard as precious Court’s time and the concept of drip feed litigation is not a matter which a Court could in normal circumstances facilitate by means of the provision of Legal Aid”.

This judgement has been appealed.

The Bureau will continue to bring such abuses to the attention of the Court.

5.9 BRUSSELS CONVENTION

CRIMINAL ASSETS BUREAU -V- JACKSON WAY PROPERTIES LIMITED JUDGEMENT OF FEENEY J., 24 MAY 2007

The Respondent sought a determination of a preliminary issue in the above case, in which the Bureau had initiated proceedings the previous year, seeking an Unjust Enrichment Order pursuant to Section 16(b)(2) of the Proceeds of Crime Act 1996 (as amended). The Defendant Company, which had been incorporated in the United Kingdom, submitted that the proceedings should have been instituted within the United Kingdom, pursuant to Article 2 of the Brussels Convention. Article 2 dictates that persons (including legal persons) domiciled in the Member States of the European Union, shall, whatever their nationality, be sued in “civil and commercial matters” in the Courts of that Member State.

The Court disagreed with the Defendant’s submission, concluding that the Bureau was instituting such proceedings as a public body, acting in the exercise of its public powers and accordingly the proceedings were not “civil and commercial matters” within the scope of Article 1 of the Convention. This matter has been appealed.

5.10 REVENUE

DECISION OF TAX APPEAL - COMMISSIONER KELLY, 9 OCTOBER 2007

The Appeal Commissioner was asked to consider and determine a preliminary issue in an appeal brought by a chargeable person for whom assessment had been

raised by a tax inspector. The preliminary application sought an Order for Discovery or Disclosure of the report prepared by the Inspector in raising his assessment, which application was opposed by the Bureau. The Appeal Commissioner concluded that the onus was on the Appellant to satisfy him that the assessment was incorrect.

He was satisfied that no reason existed to justify the heightened level of fairness argued for by the Appellant in this case and that the procedures in place for tax appeals are long and well established and fairness is not compromised by the refusal to provide the Respondent with the grounds relied upon by the Tax Inspector in making his assessment.

The Appellant has sought and obtained leave to apply for Judicial Review of that decision. Coincidentally, this point has already been the subject of a Judicial Review Application brought by T.J. which was heard in the course of the year, but has yet to be determined.

CHAPTER 6

6. INTERNATIONAL DEVELOPMENTS

- 6.1 *The Bureau participated in a number of parallel international investigations during the year.*
- 6.2 *The Bureau received delegations from the United Kingdom, United States of America, Lithuania, Uzbekistan, Jamaica and The Seychelles. Bureau Officers attended and made presentations at a number of international conferences which included Brussels, Sofia and Vienna.*
- 6.3 *During 2007 the Assets Recovery Agency (ARA) in Belfast and London sent eleven of their staff to the Bureau on secondment for one week at a time. The Serious Organised Crime Agency (SOCA) which was established in the United Kingdom in 2007 will take over the functions of the ARA in Belfast and London in April 2008. It is planned that SOCA will continue to avail of this facility of secondments, which has been acknowledged as an excellent way for staff on both sides to get to know each other and gain an understanding of how each agency operates.*

CAMDEN ASSETS RECOVERY INTER-AGENCY NETWORK (CARIN)

- 6.4 *The Bureau continues to be involved and support CARIN. The Annual Conference was held in May in the United Kingdom, the Bureau Legal Officer chairing one of the workshops. The conference examined best practices and made a number of recommendations, including the following four, which the Bureau feel are of particular significance:-*

- (1) *That the European Union should encourage member states to implement a non-conviction asset forfeiture regime against the proceeds of crime.*
- (2) *That each country should provide legislation directing Banks and other financial institutions to contribute basic information to a centralised national database. This suggestion reflects recommendations by the FATF, and the rules in the third Money Laundering Directive.*
- (3) *That a practical guideline document on the establishment of Joint Investigation Teams (JIT's) should be produced and disseminated to all judicial and law enforcement practitioners.*
- (4) *During the course of the Conference an apprehension was expressed concerning the use of forfeited funds as incentives to the investigative unit. It was recommended that CARIN prepare a document detailing the risks associated with such an incentivisation policy so that national policy units can at least have access to these views.*

6.4 *All thirty-nine recommendations made at this conference, and all recommendations made in the course of the previous conferences, can be sourced on the CARIN website at carin@europol.europa.eu.*

EUROPEAN COMMISSION

6.6 *The Head of the Financial Crime Section of the European Commission invited the Bureau to partake, as part of an expert group, in an analysis of the effectiveness of the existing European Legislative Framework on the area of Criminal Assets Recovery. While the Commission has been effective in such areas as the*

International recognition of Criminal Restraint and Confiscation Orders, improving anti-Money Laundering measures, particularly within the Banking community, and establishing Asset Recovery offices, there is a perception that it may now be time to focus both on the benefit of the multi-agency approach and on a non-conviction based forfeiture model.

It is acknowledged that many jurisdictions have a jurisprudential difficulty with the latter. Regardless, both Ireland and the United Kingdom are employing such a model effectively. The Bureau continues to participate in order to support any aspirations the Commission may have in this area.

CO-OPERATION WITH INTERNATIONAL LAW ENFORCEMENT AUTHORITIES

CO-OPERATION WITH THE AUTHORITIES IN THE UNITED KINGDOM

- 6.7 *The Bureau, along with An Garda Síochána and the Revenue Commissioners, continue to work closely with agencies including the Asset Recovery Agency based in Belfast and London, Her Majesty's Revenue & Customs, the Police Service in Northern Ireland, the Serious Organised Crime Agency and various United Kingdom Police Forces in targeting assets of persons and organisations engaged in cross-border and international criminal conduct. The Bureau continued to meet formally with the Assets Recovery Agency both at investigative level and between its lawyers, in order to enhance information and knowledge exchange. In addition to these meetings the Bureau attended meetings with ARA to discuss the transition into SOCA which is planned for 1 April 2008.*
- 6.8 *The Bureau attended the Organised Crime Cross-Border Cooperation Seminar held in October 2007 in Enfield, Co. Meath, the purpose of which was to identify new crime trends and to agree on areas of cooperation between the law enforcement authorities on both sides of the Border.*

6.9 *In the course of the year a difficulty was identified concerning the exchange of information between Her Majesty's Revenue & Customs and the Bureau. This was created by the enactment in the United Kingdom of Sections 18 to 23 of the Commissioners for Revenue and Customs Act 2005. A number of meetings were held between legal representatives of both Agencies to address the problems this created in existing cases. Furthermore, with the support and cooperation of the House of Commons, Northern Ireland Committee and Her Majesty's Customs & Revenue, amending legislation was enacted. The amendment, Section 27 of the Serious Crime Act 2007, specifically permitted the Revenue and Customs authorities to provide information directly to the Bureau. Further meetings have been held in order to finalise a Memorandum of Understanding between the two agencies, designed both to control the exchange of information and intelligence and ensure the Bureau complies with this legislation. This Memorandum of Understanding will be finalised in the course of the next year.*

CO-OPERATION WITH THE AUTHORITIES IN THE UNITED STATES

6.9 *The Bureau has run parallel investigations in two particular cases with the cooperation of both the Federal Bureau of Investigation and the Inland Revenue Services. In the course of these investigations Agents swore affidavits in this jurisdiction in High Court proceedings. One case has resulted in the transfer of some three million Euro for the benefit of victims in the United States, while in the second case, property in this jurisdiction is now the subject of a Section 2 Freezing Order.*

CO-OPERATION WITH THE AUTHORITIES IN SOUTH AFRICA

6.10 *During 2007 the Bureau partook in an international investigation involving*

international drug dealers operating across Borders. As a result of this investigation the Bureau provided evidence to support the Asset Forfeiture Unit in South Africa in obtaining a High Court Order, restraining the substantial assets of a suspected international drug trafficker in that jurisdiction.

Chapter 7

7. CONCLUSION

- 7.1 *This is the twelfth report of the Bureau and it once again outlines the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of criminal conduct.*
- 7.2 *During the year 2007 the Bureau continued to pursue its statutory remit by carrying out investigations into the suspected proceeds of criminal conduct and applying the Proceeds of Crime, Revenue and Social Welfare legislation.*
- 7.3. *The utilisation of the recent statutory amendment permitting “Consent Disposal Orders” pursuant to Section 4A of the PoC Act has proved to be of significant benefit in negotiating a number of early settlements and transferring funds to the Minister for Finance without delay.*
- 7.4 *The Bureau continues to work with international crime investigation agencies and has successfully targeted proceeds of foreign criminality from such jurisdictions as the United States and the United Kingdom.*
- 7.5 *The Bureau continues to involve itself with such international bodies as CARIN and the European Commission in order to demonstrate, in the international arena, the significant benefits which may accrue by the utilisation of both the multi-agency approach and non-conviction based forfeiture model.*
- 7.6 *The fact that the Bureau is not bound by any particular financial targets has, particularly in the course of this year, given it great flexibility in its utilisation of the remedies available to it. It was, for instance, able to draw on the offices of a number of Agencies in the United States and liquidators appointed by Courts in*

St. Vincent and the Grenadines to ensure, by the imaginative use of the Proceeds of Crime Act, that significant funds were provided for the benefit of victims of an insurance fraud in the United States.

Furthermore, this flexibility allowed the Bureau to negotiate a complicated settlement, where significant funds were provided to discharge tax liabilities in the United Kingdom, which in the ordinary course would not have been discharged.

The Bureau notes that its primary objective is the deprivation of the proceeds of fruits of such crime and the fact that funds eventually accrue to the Exchequer, while of importance, is seen as secondary to this prime objective.

7.7 *It is also noted that these actions have enhanced mutual co-operation with a number of jurisdictions. There is, however, an argument that bilateral Treaties on mutual co-operation in the civil recovery of criminal assets, which might also consider addressing the issue of asset sharing, should be addressed in the near future. This is an area the Bureau will seek to progress with the relevant authorities in the course of the next year.*

7.8 *It is noted that criminals are becoming more adept at hiding the fruits of their criminal activity. The Bureau needs to continue to develop measures to counteract this. The establishment of the Bureau Analysis Unit, the adoption of international best practices in the area of Forensic Analysis and the use of enhanced training has worked to the advantage of the Bureau by assisting in the identification and tracing of such assets and in the presentation of testimony before the Court.*

7.9 *The policy shift towards earlier or preliminary applications focused on lower value assets has tended to target a more middle ranking criminal. While this approach may not realise extensive financial returns, it demonstrates the*

Bureau's ability to react to local community concerns and accordingly is seen as an effective use of Bureau resources.

7.10 The Bureau coordinates its own strategy with the Policing Plan and overall strategy of An Garda Síochána. It continues to support the role-out of the Garda Divisional Profiler programme, providing ongoing lectures, training and expertise and receiving in turn intelligence, information and evidence from said profilers. The Bureau will continue to support, and utilise the fruits of this programme.

Appendix

Objectives of the Bureau

Section 4 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005

4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—

- (a) *the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,*
- (b) *the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and*
- (c) *the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).*

Functions of the Bureau

Section 5 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005 –

5.—(1) *Without prejudice to the generality of section 4, the functions of the Bureau, operating through its bureau officers, shall be the taking of all necessary actions—*

- (a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,*
- (b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,*
- (c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and*
- (d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,*

and such actions include, where appropriate, subject to any international agreement, cooperation with any police force, or any authority, being an authority with functions

related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

- (a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or*
- (b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.*