

Civil Forfeiture Act, SA 2001, c C-15.2 

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1 Interpretation

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CIVIL FORFEITURE ACT

Chapter C-15.2

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts
as follows:

Interpretation

1(1) In this Act,

(a) “investigator” means a person designated as an investigator or a member of a class of persons designated as investigators by the regulations;

(a.1) “legal action” means

(i) an action under Part 1.01 and includes any application or order made or step or process taken in respect of that action;

(i.1) an action under Part 1.1 and includes any application or order made or step or process taken in respect of that action;

(ii), (iii) repealed 2020 c37 s6;

(b) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act and includes a person acting on behalf of the Minister;

(c) “property” includes

(i) things, as well as rights or interests in things,

(ii) anything regarded in law or equity as property or as an interest in property,

(iii) any right or interest that can be transferred for value from one person to another,

(iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and

(v) any cause of action;

(d) “Victims of Crime and Public Safety Fund” means the Victims of Crime and Public Safety Fund under the *Victims of Crime and Public Safety Act*.

(2) A reference in this Act to an illegal act is a reference to any of the following:

(a) anything done or carried out in contravention of, or that constitutes an offence under, an enactment of Canada;

(b) anything done or carried out in contravention of, or that constitutes an offence under, an enactment of Alberta;

(c) anything done or carried out in contravention of, or that constitutes an offence under, an enactment of another province or territory of Canada;

(d) anything done or carried out in contravention of, or that constitutes an offence under, an enactment of a foreign jurisdiction if the thing would have constituted an offence under an enactment of Canada or Alberta had it occurred in Alberta.

(3) A reference in this Act to property acquired by illegal means is a reference to any of the following:

(a) property that has been acquired or derived directly or indirectly through an illegal act;

(b) the amount of an increase in value of property that resulted directly or indirectly from an illegal act;

(c) the amount of a decrease in a debt obligation secured against property that resulted directly or indirectly from an illegal act.

(3.1) A reference in this Act to an instrument of illegal activity is a reference to property that

(a) was used in carrying out an illegal act that, in turn, resulted in or was likely to or was intended to result in the acquisition of other property or in bodily harm to any person,

(b) is likely to be used in carrying out an illegal act that, in turn, would or would be likely to or be intended to result in the acquisition of other property or in bodily harm to any person, or

(c) is realized from the sale or other disposition of property referred to in clause (a) or (b).

(3.2) For the purposes of subsection (3.1)(b), proof that property was used in carrying out an illegal act that, in turn, resulted in the acquisition of other property or in bodily harm to any person is proof, in the absence of evidence to the contrary, that the property is likely to be used in carrying out an illegal act that, in turn, would or would be likely to or intended to result in the acquisition of other property or in bodily harm to any person.

(4) A reference in this Act to a property victim is a reference to a person who has been deprived of property by reason of an illegal act being carried out by another person.

2001 cV-3.5 s1;2003 c41 s4(32);2008 c41 s2;2010 c12 s2;

2013 c5 s22;2013 c10 s34;2020 c18 s28;2020 c37 s6;

2022 c21 s12

Part 1

Administrative Disposition Procedure

Definitions

1.1 In this Part,

(a) “Court” means the Court of King’s Bench;

(b) “dispute period” means the 30-day period from the later of

(i) the date all parties required to be served with a notice of disposition under section 1.4(2)(b) are served or are deemed to have been served, and

(ii) the last date of publication, if any, of a notice of disposition under section 1.4(7);

(c) “public body” means a police service or a prescribed public body.

2013 c5 s12;AR 217/2022

Application of Part

1.2(1) Subject to this Part, property described in section 1.3 may be disposed of without the Minister having to commence a legal action under Part 1.01 or Part 1.1.

(2) This Part does not apply if

- (a) the limitation period for commencing a legal action under Part 1.01 or Part 1.1 has expired,
- (b) the Minister has commenced a legal action under Part 1.01 or Part 1.1 with respect to the property, or
- (c) the property is subject to a court order establishing that a person other than a public body has an interest in or right of possession to the property.

2013 c5 s12

Administrative disposition proceeding

1.3(1) In this section, “bona fide interest holder” means, in relation to property described in subsection (2)(a), a person who has an interest in the whole or a portion of the property in respect of which the person has registered a financing statement in the Personal Property Registry, and who

- (a) did not directly or indirectly engage in the carrying out of the illegal act that is the basis for disposal under this Act, or
- (b) where the property had been acquired subsequent to the acquisition of the property by illegal means, did not know and would not reasonably be expected to know that the property had been acquired by illegal means.

(2) The Minister may commence an administrative disposition proceeding under this Part with respect to personal property without having to commence a legal action under Part 1.01 or Part 1.1 if

- (a) the Minister has reason to believe that the property is property acquired by illegal means or is an instrument of illegal activity,
- (b) the Minister has no reason to believe that there are any bona fide interest holders with respect to the property, and
- (c) the property is located in Alberta and is in the possession of a public body.

2013 c5 s12

Notice of administrative disposition

1.4(1) In this section, “recorded mail” means any form of mail for which the addressee or a person on behalf of an addressee is required to acknowledge receipt of the mail by providing a signature.

(2) An administrative disposition proceeding may be commenced by

- (a) registering notice of disposition in the Personal Property Registry with respect to the property that is subject to disposition under this Part, unless notice of disposition in respect of the property would be refused registration in the Personal Property Registry, and
- (b) serving a notice of disposition on each of the following:
 - (i) the person from whom the property was seized,

- (ii) any other person claiming an interest in the property,
- (iii) a person who the Minister has reason to believe may have a registered or unregistered interest in the whole or a portion of the property, and
- (iv) the public body, if any, in possession of the property.

(3) For the purposes of registering notice of disposition in the Personal Property Registry pursuant to subsection (2)(a), the Crown is deemed to have an interest in the property.

(4) Notice under subsection (2)(a) must state

- (a) that the property is subject to disposition under this Part, and
- (b) that the property and all interests in the property may be affected by disposition under this Part.

(5) A notice under subsection (2)(b) must

- (a) describe the property that is subject to disposition under this Part,
 - (b) state why the property is subject to disposition under this Part,
 - (c) state that the property and all interests in the property may be affected by disposition under this Part,
 - (d) state that the person on whom the notice is served may dispute disposition under this Part and where information relating to the dispute process can be found,
 - (e) state that the person on whom the notice is served will be deemed to admit the facts asserted in the notice unless the person
 - (i) files a notice of objection in accordance with section 1.6, or
 - (ii) is successful in an application under section 1.8(1),
- and
- (f) include any other prescribed information.

(6) Service of notice on a person required to be served under subsection (2)(b) may be effected by sending the notice by recorded mail to the person's last known address according to the records or other information available to the Minister and is deemed to have been effected 7 days after the date of mailing if acknowledgment of receipt is not signed by the person to whom the notice is addressed.

(7) If the Minister cannot locate an address for service of a person required to be served under subsection (2)(b), the Minister shall publish a notice in a newspaper in Alberta circulating in or near the area in which the property that is subject to disposition was found.

2013 c5 s12

Public body entitled to possession

1.5 On receiving a notice under section 1.4(2)(b)(iv), a public body in possession of any of the property referred to in the notice is entitled to maintain possession of it, notwithstanding any other claim or interest or right of possession in the property, until

(a) 30 days after the Minister notifies the public body of the direction taken under section 1.6(2), or

(b) 30 days after the Minister notifies the public body under section 1.7(3),

as the case may be.

2013 c5 s12

Notice of objection

1.6(1) A person who claims to have an interest in the property that is subject to disposition under this Part may dispute a notice of disposition under this Part by filing a notice of objection with the Minister in the prescribed form within the dispute period.

(2) Within 45 days of receiving a notice of objection under subsection (1), the Minister shall

(a) commence a legal action under Part 1.01 or Part 1.1 or withdraw from proceedings under this Act in relation to the property, and

(b) notify the public body and each other person required to be served under section 1.4(2) (b) of the direction taken under clause (a).

2013 c5 s12

Failure to file notice of objection

1.7(1) If no notice of objection is filed before the expiry of the dispute period, the property is forfeited to the Crown and the Minister may dispose of the property without commencing a legal action under Part 1.01 or Part 1.1 and shall pay the proceeds from the disposition to the Crown to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3.

(2) A person who is required to be served with a notice of disposition under section 1.4(2)(b) who does not file a notice of objection in accordance with section 1.6 is deemed to admit the facts asserted in the notice of disposition unless the person is successful in an application under section 1.8(1).

(3) The Minister shall notify any person who is required to be served under section 1.4(2)(b) of the forfeiture of the property to the Crown under this Part.

2013 c5 s12

Innocent failure to file notice of objection

1.8(1) A person who claims to have had an interest in property at the time of its forfeiture under section 1.7 but who failed to file a notice of objection in respect of the notice of disposition in accordance with section 1.6 may apply to the Court to set aside the forfeiture.

(2) In an application under subsection (1), the claimant must establish that

- (a) the claimant had a reasonable excuse for the failure to file a notice of objection in accordance with section 1.6, and
 - (b) the application was made as soon as reasonably possible after the claimant learned of the forfeiture, and in any case within 2 years of the expiry of the dispute period.
- (3) If a claimant is successful in an application under subsection (1), the Minister shall commence a legal action under Part 1.01 or Part 1.1 or withdraw from proceedings under this Act in relation to the property.
- (4) If the Minister commences a legal action under Part 1.01 or Part 1.1 pursuant to subsection (3),
- (a) where the property has not been disposed of pursuant to a forfeiture under section 1.7, the property is deemed not to have been forfeited to the Crown and must not be disposed of except in accordance with this Act, and
 - (b) where the property has been disposed of pursuant to a forfeiture under section 1.7, the proceeds from the disposition of the property are deemed to be the property that is the subject of the legal action.
- (5) If the Minister withdraws from proceedings under this Act pursuant to subsection (3),
- (a) where the property has not been disposed of pursuant to a forfeiture under section 1.7, the Minister shall return the property to the successful claimant, and
 - (b) where the property has been disposed of pursuant to a forfeiture under section 1.7, the Minister shall pay to the successful claimant the greater of
 - (i) the proceeds from the disposition of the property, and
 - (ii) the fair market value of the property at the time the property was seized as established by the successful claimant to the satisfaction of the Minister.
- (6) Subject to subsection (7), if the Minister withdraws from proceedings under this Act pursuant to subsection (3) and pays the successful claimant under subsection (5)(b), no other compensation is payable in respect of that property.
- (7) If the successful claimant disagrees with the amount paid under subsection (5)(b), the successful claimant may apply to the Court to determine the fair market value of the property at the time it was seized.

2013 c5 s12

General matters

- 1.9(1)** Sections 47 and 50 apply to a proceeding under this Part as if it were a legal action.
- (2) Subject to subsections (3) and (4), no costs and no payment of any expenses may be awarded against the Crown, the Minister, any employee of the Crown or any person acting on behalf of the Crown in respect of a proceeding under this Part.

(3) Costs may be awarded to a person against the Crown

- (a) where the person is successful in an application under section 1.8(1) and the Minister withdraws from proceedings under this Act pursuant to section 1.8(3), or
- (b) where, on an application under section 1.8(7), the Court finds that the fair market value of the property at the time it was seized was greater than the amount paid to the successful claimant under section 1.8(5)(b).

(4) Costs must be determined in accordance with the *Alberta Rules of Court* and the practice and procedure of the Court of King's Bench or the Court of Appeal, as the case may be.

2013 c5 s12;AR 217/2022

Part 1.01

Property Acquired By Illegal Means

Interpretation

2(1) In this Part,

- (a) "Court" means the Court of King's Bench;
- (b) "property disposal hearing" means a hearing referred to in section 9;
- (c) "property disposal order" means an order granted under section 14;
- (d) "restrained property" means property in respect of which a restraint order has been granted;
- (e) "restraint order" means an order granted under section 5.

(2) A reference

- (a) to a respondent under this Part is a reference to a person who is a respondent to an action under this Part, and
- (b) to the parties to an action under this Part is a reference to the applicant and the respondents to that action.

2001 cC-15.2 s2;AR 217/2022

Legal action

3(1) Subject to subsection (2), the Minister may, with respect to property that is alleged to have been acquired by illegal means, commence an action under this Part by an application for any one or more of the following purposes:

- (a) to obtain restitution or compensation for property victims and other persons, including the Crown and prescribed public bodies;
- (b) to remove financial incentives to commit illegal acts, including disgorging financial gains from illegal acts;

- (c) to prevent property that has been acquired by illegal means from being used to carry out future illegal acts;
 - (d) other purposes provided for in the regulations.
- (2) The Minister may not commence an action under this Part unless
- (a) a peace officer or investigator has carried out an investigation in respect of an illegal act, and
 - (b) as a result of the investigation referred to in clause (a) a peace officer or investigator
 - (i) has reasonable grounds to believe that an illegal act has been committed, and
 - (ii) reasonably believes that property has been acquired as a result of that illegal act.
- (3) At any time during which an action under this Part is in progress, the Minister may apply to the Court for an order directing that the action be stayed subject to any conditions that the Court considers appropriate.
- (4) Nothing in subsection (3) is to be construed so as to require the Minister to apply to stay an action.

2001 cV-3.5 s3;2009 c53 s183;2010 c12 s3

Division 1

Restraint Of Property

Application for restraint order

- 4(1)** In the application commencing an action under this Part, the Minister may apply to the Court for a restraint order under section 5.
- (2) An application made under subsection (1) is to be made ex parte and is to be supported by an affidavit deposing as to the following matters:
- (a) a description and, if known, the location of the property in respect of which the application is being made;
 - (b) the identity of the person believed to be in possession of or to have control over the property;
 - (b.1) the identity of any persons who the affiant believes at the time the affidavit is sworn may have an interest in the property or who may be affected by a property disposal order made in relation to the property;
 - (c) the illegal act that is alleged to have been carried out that resulted in the property being acquired by illegal means;
 - (d) the grounds for belief that the property was acquired by illegal means.
- (3) An affidavit referred to in subsection (2) may also include the following matters:

- (a) the identity of any person who the affiant believes at the time the affidavit is sworn may be a property victim in respect of matters that are before the Court;
- (b) repealed 2008 c41 s3;
- (c) whether a previous application has been made under this Act for a restraint order in respect of the property;
- (d) whether a direction has been given by a peace officer in relation to the property pursuant to section 6;
- (e) any other matter that the affiant considers relevant.

(4) For the purpose of making an application under subsection (1),

- (a) the person whom the applicant believes to be in possession of or to have control over the property is to be named as the respondent,
 - (a.1) any person identified under subsection (2)(b.1) is to be named as a respondent, and
 - (b) if the affidavit includes the names of persons referred to in subsection (3)(a), those persons may be included as respondents.

2001 cV-3.5 s4;2008 c41 s3;2009 c53 s183

Granting of restraint order

5(1) On hearing an application made under section 4, the Court may, if the Court is satisfied that there are reasonable grounds to believe that the property that is the subject of the application has been acquired by illegal means, grant a restraint order,

- (a) with respect to the property, doing one or more of the following:
 - (i) prohibiting any person from doing anything with respect to the property except as may be provided in the order;
 - (ii) appointing a civil enforcement agency or another person to take control of, possess, hold, handle, maintain, preserve or manage the property or to carry out any combination of those functions;
 - (iii) in the case of perishable or depreciating property or property that would be difficult to manage, authorizing the sale of the property and giving directions with respect to the handling of the proceeds of the sale;
 - (iv) requiring any person having possession of or control over the property to deliver the property to the civil enforcement agency or other person appointed under subclause (ii);
 - (v) providing for matters that are ancillary to any order or direction given under subclauses (i) to (iv);
- (b) with respect to the action, doing one or more of the following:

- (i) adding as a respondent any person who appears to be a property victim or who may have an interest in the property that is subject to the matters before the Court;
- (ii) giving directions as to whom the order is to be served on;
- (iii) giving directions as to service of and the manner of service of the order;
- (iv) setting a date by when the order must be served;
- (v) giving any other directions that the Court considers appropriate in the circumstances.

(2) In addition to the matters referred to in subsection (1), in the restraint order the Court

(a) is to set

(i) a date, not later than 45 days from the day of the granting of the restraint order, on which the Court is to commence a property disposal hearing,

(ii) the place at which the property disposal hearing is to be held, and

(iii) the time at which the property disposal hearing is to commence,

(a.1) is to set out the requirements of section 11(2) for a respondent to make a claim in respect of restrained property, and

(b) may, subject to section 10, give directions as to the manner in which notice of the property disposal hearing is to be given.

(3) With respect to an application for a restraint order,

(a) it is not necessary for the Minister to establish that any person has been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the application is made, and

(b) the Court may grant a restraint order notwithstanding that a person has not been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the application is made.

2001 cV-3.5 s5;2011 c20 s12;2013 c5 s14

Interim action by peace officer

6(1) Where, by reason of exigent circumstances, it is impractical to obtain a restraint order, a peace officer who has reasonable grounds to believe that property has been acquired by illegal means may give directions in writing doing one or more of the following:

(a) prohibiting any person from doing anything with respect to the property except as provided in the direction;

(b) directing any person having possession of or control over the property to turn that property over to a peace officer, a civil enforcement agency or another person;

- (c) providing for matters that are ancillary to any direction given under clause (a) or (b).
- (2) A peace officer must give the person to whom a direction is given under subsection (1)(b) a written receipt for any property that is turned over pursuant to that direction.
- (3) Unless sooner revoked by a peace officer, a direction given under subsection (1) expires
- (a) subject to subsection (4), 10 days after the day on which the direction is given, or
 - (b) on the expiration of a longer period of time as directed by the Court.
- (4) If the day on which a direction would expire under subsection (3)(a) is a day on which the Court does not sit, the direction does not expire until the end of the Court's business hours on the next day on which the Court sits.
- (5) If a person has turned the possession of or control over the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless otherwise directed by the Court.
- (6) A person who fails to comply with a direction given under subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.
- (7) If a peace officer has reasonable grounds to believe that a person has committed an offence under subsection (6), the peace officer may arrest the person without a warrant and seize the property in respect of which the direction was given under subsection (1).
- (8) Property that is seized by a peace officer under subsection (7) is deemed to have been turned over to the peace officer pursuant to a direction given under subsection (1)(b).

2001 cV-3.5 s6;2010 c12 s4;2011 c20 s12

Application re addition of parties, review of restraint order, conduct of proceedings, etc.

7(1) At any time after the granting of a restraint order but prior to the property disposal hearing the following applications may be made to the Court:

- (a) any person who is not a respondent but alleges
 - (i) to be a property victim in respect of the matters before the Court, or
 - (ii) to have an interest in the restrained property,may apply to be added as a respondent to the action;
- (b) a respondent may apply for a review of the restraint order;
- (c) a party to the action may apply for directions with respect to the conduct of the action or other matters related to the action;

(d) a party to the action may apply for directions with respect to the addition of other persons as respondents to the action;

(e) a party to the action may apply for directions as to whether persons other than parties to the action are to be given notice of the property disposal hearing;

(f) a party to the action may apply for an adjournment of the property disposal hearing if the party is not ready to proceed with the property disposal hearing;

(g) a party to the action may apply for an ancillary order with respect to any matter referred to in clauses (a) to (f).

(2) On an application under subsection (1) or on its own motion, the Court may do one or more of the following:

(a) conduct a review of the restraint order under section 8;

(b) add a person as a respondent to the action;

(c) give directions with respect to the conduct of the action or other matters related to the action;

(d) give directions respecting notice to be given of the property disposal hearing;

(e) grant an adjournment or subsequent adjournments of the property disposal hearing;

(f) give any other directions that the Court considers appropriate in the circumstances;

(g) make any ancillary order that the Court considers appropriate in the circumstances;

(h) subject to section 48, award costs in respect of an application.

(3) An application under this section is to be by way of an application within the action in which the restraint order was granted.

2001 cV-3.5 s7;2009 c53 s183

Review of restraint order

8(1) A request for a review of a restraint order must be supported by an affidavit by the person requesting the review setting out

(a) any evidence with respect to any matters before the Court that were not before the Court at the time of the granting of the restraint order, and

(b) any other matters that the affiant considers relevant to the request for the review.

(2) On conducting a review of a restraint order, the Court may do one or more of the following:

(a) confirm the restraint order;

(b) revoke the restraint order and order that the restrained property be returned to any person that the Court considers appropriate and may provide for compensation for actual loss, if any, resulting directly from the restraint of the property;

(c) vary any of the terms of the restraint order if the Court considers it appropriate in the circumstances to do so;

(d) direct the release of all or a portion of the restrained property if there is deposited with the Court a sum of money or other security in an amount that the Court considers appropriate to take the place of all or a portion of the restrained property;

(e) make any ancillary order that the Court considers appropriate in the circumstances;

(f) subject to section 48, award costs in respect of the review and, if the Court considers it appropriate in the circumstances, provide for the payment of expenses incurred in respect of the property as a result of the restraint order.

(3) Notwithstanding anything in this section, the Court may dismiss an application for a review of the restraint order if the Court, on considering the supporting affidavit or other representations made to the Court, is satisfied that

(a) the evidence before the Court with respect to the application to review the restraint order is the same or substantially the same as the evidence that was before the Court at the time of the granting of the restraint order, or

(b) there is not sufficient reason set out in the affidavit to cause the Court to vary or revoke the restraint order.

Division 2

Disposal Of Restrained Property

Property disposal hearing

9 At a property disposal hearing, the Court is to determine

(a) whether or not the restrained property was acquired by illegal means;

(b) what interests, if any, the respondents have in the restrained property;

(c) whether or not a property victim or other respondent is entitled

(i) to any of the restrained property,

(ii) to any proceeds from the restrained property, or

(iii) to any compensation arising out of being deprived of property;

(d) whether or not any restrained property is available to be dealt with under section 17;

(e) if the Minister has made an application under section 13(1)(b.2), whether the restrained property may present a danger to the public or is illegal and should be modified or destroyed.

2001 cV-3.5 s9;2010 c12 s5

Notice of property disposal hearing

10(1) Service of a restraint order on a respondent constitutes service on that respondent of notice of the property disposal hearing.

(2) Where the Court has given directions

(a) for the substitutional service of a restraint order on a respondent, the respondent is deemed to have been given notice of the property disposal hearing when the restraint order is served on the respondent in accordance with the Court's direction, or

(b) dispensing with service of a restraint order on a respondent, that respondent is, for the purposes of section 12, deemed to have been given notice of the property disposal hearing.

(3) When a party is granted an adjournment of a property disposal hearing, that party must serve the other parties to the action with a notice as to when the property disposal hearing is adjourned to.

(4) Unless the Court directs otherwise,

(a) service of a notice under subsection (3) may be served on a respondent in the same manner as the restraint order was served on that respondent, and

(b) if service of the restraint order on a respondent was dispensed with, service of notice under subsection (3) on that respondent is also dispensed with.

Claim to restrained property

11(1) Any claim made in respect of restrained property

(a) may be made only by a respondent, and

(b) may be established only by means of evidence provided by the respondent in accordance with this section.

(2) Subject to subsection (2.1), if a respondent wishes to make a claim in respect of restrained property, the respondent must, not less than 5 days before the day on which the property disposal hearing is to commence,

(a) file with the Court an affidavit setting out the origin and the nature and extent of the respondent's interest in the property and any other matters related to the respondent's claim to the restrained property, and

(b) serve the affidavit on the other parties to the action.

(2.1) A respondent may, at least 5 days before the day on which the property disposal hearing is to commence, apply to the Court, on notice to the Minister and to any person the Court directed the restraint order to be served on, for an extension of time for the filing and service of the affidavit under subsection (2) and for an adjournment of the property disposal hearing.

(2.2) If an application under subsection (2.1) is granted, the Court shall

(a) set

- (i) a date on which the Court is to commence the property disposal hearing,
- (ii) the place at which the property disposal hearing is to be held, and
- (iii) the time at which the property disposal hearing is to commence,

and

(b) order that the respondent file and serve the affidavit by a specific date before the commencement of the property disposal hearing.

(2.3) If an application under subsection (2.1) is granted and a respondent makes a 2nd application under subsection (2.1), the Court shall, if it grants the 2nd application, order that the respondent

(a) file and serve the affidavit by a specific date before the commencement of the property disposal hearing, and

(b) pay to the Minister before the commencement of the property disposal hearing the costs, if any, incurred by the Minister related to the application for adjournment, to a maximum of \$500.

(2.4) Any costs paid by the respondent under subsection (2.3) must be refunded to the respondent if the respondent's claim under this section to restrained property is successful in whole or in part.

(2.5) The Court shall not, without the Minister's consent, grant a respondent a 3rd extension of time to file and serve an affidavit under subsection (2) or a 3rd adjournment of a property disposal hearing if the request for adjournment is for the purpose of the filing and service of an affidavit referred to in subsection (2).

(3) Notwithstanding subsection (2), (2.1), (2.2) or (2.3), at a property disposal hearing a respondent may, with the permission of the Court, give oral evidence setting out the origin and the nature and extent of the respondent's interest in the property and any other matters related to the respondent's claim to the restrained property.

(4) Notwithstanding subsection (3), a respondent who fails to file and serve the respondent's affidavit as required under subsection (2), (2.2) or (2.3) may not give oral evidence unless the respondent provides a reasonable explanation for that failure.

(5) If the Court hears oral evidence under subsection (3), the Court shall, if requested by the Minister, adjourn the proceeding to allow the Minister to question the respondent regarding the matter, including requesting the respondent to produce materials relevant to the proceeding.

(6) If a respondent fails to file and serve the respondent's affidavit as required under subsection (2), (2.2) or (2.3) or fails to pay any costs required under subsection (2.3), the Court shall proceed with the property disposal hearing, and section 12 applies.

2001 cV-3.5 s11;2010 c12 s6;2013 c5 s15;2014 c13 s49

Forfeiture due to respondent's failure

12 Unless the Court directs otherwise, a respondent forfeits all of that respondent's rights to the restrained property if that respondent fails, without a reasonable excuse,

- (a) after being served with notice of a property disposal hearing, to attend or to be represented at the property disposal hearing;
- (b) to attend an appointment for the purpose of being questioned on the respondent's affidavit;
- (c) to answer questions put to the respondent during questioning or cross-examination;
- (d) to provide, as directed by the Court or pursuant to an undertaking given by the respondent, any information or any documentation, whether in written or electronic form;
- (e) to comply with the directions of a peace officer given under section 6.

2001 cV-3.5 s12;2009 c53 s183

Conduct of property disposal hearing

13(1) At a property disposal hearing

- (a) the onus is on the Minister to establish that the restrained property has been acquired by illegal means;
- (b) the onus is on a respondent, other than a respondent referred to in clause (b.1), to establish, with respect to the restrained property,
 - (i) the origin and the nature and extent of that respondent's interest in the property,
 - (ii) that the respondent has not been involved in the commission of the illegal act in respect of which the property was restrained, and
 - (iii) where the property had been acquired by illegal means and subsequent to the acquisition of the property by illegal means the property was acquired by the respondent, that the respondent did not know and would not reasonably be expected to know that the property had been acquired by illegal means;
- (b.1) with respect to a respondent that is the Crown or a prescribed public body that incurred costs to protect the safety or health of persons or to protect property as a result of the illegal act in respect of which the property was restrained, the onus is on the Crown or the prescribed public body, as the case may be, to establish that it incurred those costs;
- (b.2) the Minister may, on the basis that the restrained property may present a danger to the public or is illegal, apply for an order directing that the restrained property
 - (i) be modified before being returned, disposed of or utilized under this Part, or
 - (ii) be destroyed;
- (c) the parties to the action may make representations in respect of matters before the Court and any other person who is not a party to the action may, with the permission of the

Court, make representations to the Court in respect of matters before the Court;

(d) with the permission of the Court, any respondent or other person may give oral evidence.

(2) At any time during the conduct of a property disposal hearing a person may, with the permission of the Court, apply to be added as a respondent to the action and, on considering the application, the Court may, subject to any terms that the Court considers appropriate in the circumstances, add that person as a respondent to the action if the Court considers that it would be just and equitable to do so.

(3) If the Court is satisfied that there is other property that was acquired by the same illegal act or by an illegal act that is related to the illegal act by which the restrained property was acquired, the Court may at the property disposal hearing deal with that other property in the same manner as if it were restrained property.

(4) For the purposes of a property disposal hearing, it is not necessary for the Minister to establish that any person has been charged with, found guilty of, or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the property disposal hearing is being conducted.

2001 cV-3.5 s13;2010 c12 s7;2014 c13 s49

Determination of the Court re property disposal hearing

14 If at the conclusion of a property disposal hearing the Court determines, based on a balance of probabilities, that the restrained property

(a) was not acquired by illegal means, the Court

(i) is to revoke the restraint order and direct that the restrained property be returned to the person against whom the restraint order was made or to any other person that the Court considers appropriate or as otherwise directed by the Court, and

(ii) may provide for compensation for actual loss, if any, resulting directly from the restraint of the property,

or

(b) was acquired by illegal means, the Court may grant a property disposal order and in the property disposal order

(i) provide under section 15 for the return of the restrained property to the respondents or otherwise dispose of the restrained property or the proceeds from the restrained property among the respondents;

(ii) provide under section 16 for the disposal or other utilization of the restrained property for the purposes of providing compensation to property victims who do not qualify for compensation under section 15;

(iii) provide under section 17 for the disposal of the restrained property and for the payment to the Crown of the proceeds from the disposal to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3;

(iv) where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed.

2001 cV-3.5 s14;2010 c12 s8

Property victims who have interest in the restrained property

15 On determining that the restrained property has been acquired by illegal means, the Court may, with respect to the respondents that have discharged the onus set out in section 13(1)(b), declare the nature and extent of the respondents' interest in the restrained property and do one or more of the following:

- (a) direct the return of restrained property to one or more of the respondents;
- (b) direct that the restrained property be disposed of and give directions as to the distribution of the proceeds from the disposal to one or more of the respondents;
- (c) if 2 or more respondents have established a claim to restrained property, direct that the restrained property be disposed of and give directions as to the distribution of the proceeds from the disposal among those respondents and the proportion, if any, to which each respondent is entitled;
- (d) if, in respect of restrained property, any income, increase in value or other gain was derived, give directions as to which respondents are entitled to that income, increase or gain and the proportion, if any, to which each respondent is entitled;
- (e) if the Court is satisfied that, as a result of restrained property being acquired by illegal means, the respondent's interest in that property or the value of that interest has been reduced or otherwise diminished, direct that any restrained property that has not been disposed of under clauses (a) to (d) be utilized, through being disposed of or otherwise, to provide compensation to the respondent with respect to the reduction or diminishment in that interest or in the value of that interest;
- (f) give any directions with respect to restrained property that appear just and equitable with respect to the claims of the respondents.

Other property victims, the Crown and prescribed public bodies

16(1) If after restrained property has been dealt with under section 15, all or some of the restrained property remains undisposed of or is not otherwise utilized under section 15 and, in the opinion of the Court,

- (a) the illegal act for which the restrained property was restrained also caused or contributed to a property victim's being deprived of property that is not restrained property, and

(b) the property victim, with respect to that property that the property victim was deprived of,

(i) has discharged the onus under section 13(1)(b) as if that property were restrained property, and

(ii) should be compensated for the loss of that property,

the Court may establish the amount of that compensation and direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal up to the value of that amount of compensation be turned over to the property victim, or give any other directions in respect of that property victim that appear just and equitable.

(2) If, after restrained property has been dealt with under subsection (1) and section 15, all or some of the restrained property remains undisposed of or is not otherwise utilized and, in the opinion of the Court,

(a) the illegal act in respect of which the property was restrained also caused the Crown or a prescribed public body to incur costs to protect the safety or health of persons or to protect property, and

(b) the Crown or the prescribed public body, as the case may be,

(i) has discharged the onus under section 13(1)(b.1), and

(ii) should be compensated for incurring those costs,

the Court may establish the amount of that compensation and direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal up to the value of that amount of compensation be turned over to the Crown or the prescribed public body, or give any other directions in respect of the Crown or the prescribed public body that appear just and equitable.

2001 cV-3.5 s16;2010 c12 s9

Restrainted property to be used for making payments or grants

17 If, after restrained property has been dealt with under section 15 and, if applicable in the circumstances, under section 16, all or some of the restrained property remains undisposed of or is not otherwise utilized, the Court may direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal be paid to the Crown to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3.

2001 cV-3.5 s17;2010 c12 s10

Other matters respecting property disposal order

18(1) In the property disposal order or in an ancillary order the Court may also do one or more of the following:

(a) where the Court determines, with respect to restrained property, that there are bona fide intervening or other legal or equitable interests in the restrained property, give directions with

respect to priorities concerning those interests and the preservation or disposition of those interests or as to how those interests are to be otherwise dealt with;

- (b) give directions as to the transferring of title or otherwise dealing with the title to the restrained property;
- (c) direct that restrained property be turned over to a respondent;
- (d) make the order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) give any ancillary directions that the Court considers appropriate in the circumstances;
- (f) stay a property disposal order or ancillary order or any portion of it pending an appeal under section 19;
- (g) subject to section 48, award costs with respect to the proceedings;
- (h) subject to section 48, direct the payment of any expenses incurred or services provided in respect of the management, preservation, handling, maintenance or disposal of the restrained property or dealing with the title to the restrained property as a result of the restraint order or as a result of the property disposal order.

(3) On the coming into effect of a property disposal order, any restraint order that was granted in respect of the property is revoked unless the Court directs otherwise.

(4) The Court may grant a property disposal order notwithstanding that a person has not been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the property disposal order is being granted.

Appeal

19(1) No application or order made or step or process taken under this Part, other than a property disposal order or an ancillary order made in respect of a property disposal order, may be appealed.

(2) An appeal under this Part

- (a) is to be made to the Court of Appeal,
- (b) may be commenced only by a party to the action, and
- (c) must be filed and served within 30 days from the day that the order being appealed was served on the party appealing.

Part 1.1 Instrument of Illegal Activity

Interpretation

19.1(1) In this Part,

- (a) “Court” means the Court of King’s Bench;
- (b) “property disposal hearing” means a hearing referred to in section 19.8;
- (c) “property disposal order” means an order granted under section 19.94;
- (d) “restrained property” means property in respect of which a restraint order has been granted;
- (e) “restraint order” means an order granted under section 19.4.

(2) A reference in this Part to a victim is a reference to a person whose safety, health or property has been, in some manner, adversely affected or compromised by reason of an illegal act being carried out by another person using an instrument of illegal activity.

(3) A reference

- (a) to a respondent under this Part is a reference to a person who is a respondent to an action under this Part, and
- (b) to the parties to an action under this Part is a reference to the applicant and the respondents to that action.

2008 c41 s4;2010 c12 s11;AR 217/2022

Legal action

19.2(1) Subject to subsection (2), the Minister may, with respect to property that is alleged to be an instrument of illegal activity, commence an action under this Part by an application for any one or more of the following purposes:

- (a) to obtain restitution or compensation for victims and other persons, including the Crown and prescribed public bodies;
- (b) to remove financial incentives to commit illegal acts, including disgorging financial gains from illegal acts;
- (c) to prevent property that has been used or is likely to be used in carrying out an illegal act from being used to carry out future illegal acts;
- (d) other purposes provided for in the regulations.

(2) The Minister may not commence an action under this Part unless

- (a) a peace officer or investigator has carried out an investigation in respect of an illegal act, and
- (b) as a result of the investigation referred to in clause (a) a peace officer or investigator
 - (i) has reasonable grounds to believe that an illegal act was or is likely to be committed,

- (ii) reasonably believes that the property that is to be the subject of the application
 - (A) was used in carrying out an illegal act, or
 - (B) is likely to be used in carrying out an illegal act,and

(iii) reasonably believes that the illegal act referred to in subclause (ii)

- (A) resulted in the acquisition of other property or in bodily harm to any person, or
- (B) would or would be likely to or be intended to result in the acquisition of other property or in bodily harm to any person.

(3) At any time during which an action under this Part is in progress, the Minister may apply to the Court for an order directing that the action be stayed subject to any conditions that the Court considers appropriate.

(4) Nothing in subsection (3) is to be construed so as to require the Minister to apply to stay an action.

2008 c41 s4;2009 c53 s183;2010 c12 s12

Division 1

Restraint of Property

Application for restraint order

19.3(1) In the application commencing an action under this Part, the Minister may apply to the Court for a restraint order under section 19.4.

(2) An application made under subsection (1) is to be made *ex parte* and is to be supported by an affidavit deposing as to the following matters:

(a) a description and, if known, the location of the property in respect of which the application is being made;

(b) the identity of the person believed to be in possession of or to have control over the property;

(c) the identity of any persons who the affiant believes at the time the affidavit is sworn may have an interest in the property or who may be affected by a property disposal order made in relation to the property;

(d) the illegal act that it is alleged

(i) was carried out using the property, or

(ii) is likely to be carried out using the property;

(e) the grounds for belief that the property was used or is likely to be used in carrying out an illegal act.

(3) An affidavit referred to in subsection (2) may also include the following matters:

- (a) the identity of any person who the affiant believes at the time the affidavit is sworn may be a victim in respect of matters that are before the Court;
- (b) whether a previous application has been made under this Act for a restraint order in respect of the property;
- (c) whether a direction has been given by a peace officer in relation to the property pursuant to section 19.5;
- (d) any other matter that the affiant considers relevant.

(4) For the purpose of making an application under subsection (1),

- (a) the person whom the applicant believes to be in possession of or to have control over the property is to be named as the respondent,
- (b) any person identified under subsection (2)(c) is to be named as a respondent, and
- (c) if the affidavit includes the names of persons referred to in subsection (3)(a), those persons may be included as respondents.

2008 c41 s4;2009 c53 s183

Granting of restraint order

19.4(1) On hearing an application made under section 19.3, the Court may, if the Court is satisfied that there are reasonable grounds to believe that the property that is the subject of the application is an instrument of illegal activity, grant a restraint order,

- (a) with respect to the property, doing one or more of the following:
 - (i) prohibiting any person from doing anything with respect to the property except as may be provided in the order;
 - (ii) appointing a civil enforcement agency or another person to take control of, possess, hold, handle, maintain, preserve or manage the property or to carry out any combination of those functions;
 - (iii) in the case of perishable or depreciating property or property that would be difficult to manage, authorizing the sale of the property and giving directions with respect to the handling of the proceeds of the sale;
 - (iv) requiring any person having possession of or control over the property to deliver the property to the civil enforcement agency or other person appointed under subclause (ii);
 - (v) providing for matters that are ancillary to any order or direction given under subclauses (i) to (iv);
- (b) with respect to the action, doing one or more of the following:

- (i) adding as a respondent any person who appears to be a victim or who may have an interest in the property that is subject to the matters before the Court;
- (ii) giving directions as to whom the order is to be served on;
- (iii) giving directions as to service of and the manner of service of the order;
- (iv) setting a date by when the order must be served;
- (v) giving any other directions that the Court considers appropriate in the circumstances.

(2) In addition to the matters referred to in subsection (1), in the restraint order the Court

(a) is to set

(i) a date, not later than 45 days from the day of the granting of the restraint order, on which the Court is to commence a property disposal hearing,

(ii) the place at which the property disposal hearing is to be held, and

(iii) the time at which the property disposal hearing is to commence,

(a.1) is to set out the requirements of section 19.91(2) for a respondent to make a claim in respect of restrained property, and

(b) may, subject to section 19.9, give directions as to the manner in which notice of the property disposal hearing is to be given.

(3) With respect to an application for a restraint order,

(a) it is not necessary for the Minister to establish that any person has been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the application is made, and

(b) the Court may grant a restraint order notwithstanding that a person has not been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the application is made.

2008 c41 s4;2011 c20 s12;2013 c5 s16

Interim action by peace officer

19.5(1) Where, by reason of exigent circumstances, it is impractical to obtain a restraint order, a peace officer who has reasonable grounds to believe that property is an instrument of illegal activity may give directions in writing doing one or more of the following:

(a) prohibiting any person from doing anything with respect to the property except as provided in the direction;

(b) directing any person having possession of or control over the property to turn that property over to a peace officer, a civil enforcement agency or another person;

- (c) providing for matters that are ancillary to any direction given under clause (a) or (b).
- (2) A peace officer must give the person to whom a direction is given under subsection (1)(b) a written receipt for any property that is turned over pursuant to that direction.
- (3) Unless sooner revoked by a peace officer, a direction given under subsection (1) expires
- (a) subject to subsection (4), 10 days after the day on which the direction is given, or
 - (b) on the expiration of a longer period of time as directed by the Court.
- (4) If the day on which a direction would expire under subsection (3)(a) is a day on which the Court does not sit, the direction does not expire until the end of the Court's business hours on the next day on which the Court sits.
- (5) If a person having possession of or control over the property turns the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless otherwise directed by the Court.
- (6) A person who fails to comply with a direction given under subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.
- (7) If a peace officer has reasonable grounds to believe that a person has committed an offence under subsection (6), the peace officer may arrest the person without a warrant and seize the property in respect of which the direction was given under subsection (1).
- (8) Property that is seized by a peace officer under subsection (7) is deemed to have been turned over to the peace officer pursuant to a direction given under subsection (1)(b).

2008 c41 s4;2010 c12 s13;2011 c20 s12

Application re addition of parties, review of restraint order, conduct of proceedings, etc.

19.6(1) At any time after the granting of a restraint order but prior to the property disposal hearing the following applications may be made to the Court:

- (a) any person who is not a respondent but alleges
 - (i) to be a victim in respect of the matters before the Court, or
 - (ii) to have an interest in the restrained property,may apply to be added as a respondent to the action;
- (b) a respondent may apply for a review of the restraint order;
- (c) a party to the action may apply for directions with respect to the conduct of the action or other matters related to the action;

(d) a party to the action may apply for directions with respect to the addition of other persons as respondents to the action;

(e) a party to the action may apply for directions as to whether persons other than parties to the action are to be given notice of the property disposal hearing;

(f) a party to the action may apply for an adjournment of the property disposal hearing if the party is not ready to proceed with the property disposal hearing;

(g) a party to the action may apply for an ancillary order with respect to any matter referred to in clauses (a) to (f).

(2) On an application under subsection (1) or on its own motion, the Court may do one or more of the following:

(a) conduct a review of the restraint order under section 19.7;

(b) add a person as a respondent to the action;

(c) give directions with respect to the conduct of the action or other matters related to the action;

(d) give directions respecting notice to be given of the property disposal hearing;

(e) grant an adjournment or subsequent adjournments of the property disposal hearing;

(f) give any other directions that the Court considers appropriate in the circumstances;

(g) make any ancillary order that the Court considers appropriate in the circumstances;

(h) subject to section 48, award costs in respect of an application.

(3) An application under this section is to be by way of an application within the action in which the restraint order was granted.

2008 c41 s4;2009 c53 s183

Review of restraint order

19.7(1) A request for a review of a restraint order must be supported by an affidavit by the person requesting the review setting out

(a) any evidence with respect to any matters before the Court that were not before the Court at the time of the granting of the restraint order, and

(b) any other matters that the affiant considers relevant to the request for the review.

(2) On conducting a review of a restraint order, the Court may do one or more of the following:

(a) confirm the restraint order;

(b) revoke the restraint order and order that the restrained property be returned to any person that the Court considers appropriate and may provide for compensation for actual loss, if any, resulting directly from the restraint of the property;

(c) vary any of the terms of the restraint order if the Court considers it appropriate in the circumstances to do so;

(d) direct the release of all or a portion of the restrained property if there is deposited with the Court a sum of money or other security in an amount that the Court considers appropriate to take the place of all or a portion of the restrained property;

(e) make any ancillary order that the Court considers appropriate in the circumstances;

(f) subject to section 48, award costs in respect of the review and, if the Court considers it appropriate in the circumstances, provide for the payment of expenses incurred in respect of the property as a result of the restraint order.

(3) Notwithstanding anything in this section, the Court may dismiss an application for a review of the restraint order if the Court, on considering the supporting affidavit or other representations made to the Court, is satisfied that

(a) the evidence before the Court with respect to the application to review the restraint order is the same or substantially the same as the evidence that was before the Court at the time of the granting of the restraint order, or

(b) there is not sufficient reason set out in the affidavit to cause the Court to vary or revoke the restraint order.

2008 c41 s4

Division 2

Disposal of Restrained Property

Property disposal hearing

19.8 At a property disposal hearing, the Court is to determine

(a) whether or not the restrained property is an instrument of illegal activity;

(b) what interests, if any, the respondents have in the restrained property;

(c) whether or not a victim or other respondent is entitled

(i) to any of the restrained property,

(ii) to any proceeds from the restrained property, or

(iii) to any compensation arising out of the respondent's safety or health or property being, in some manner, adversely affected or compromised by an illegal act carried out with the instrument of illegal activity;

(d) whether or not any restrained property is available to be dealt with under section 19.97;

(e) if the Minister has made an application under section 19.93(1)(b.2), whether the restrained property may present a danger to the public or is illegal and should be modified or

destroyed.

2008 c41 s4;2010 c12 s14

Notice of property disposal hearing

19.9(1) Service of a restraint order on a respondent constitutes service on that respondent of notice of the property disposal hearing.

(2) Where the Court has given directions

(a) for the substitutional service of a restraint order on a respondent, the respondent is deemed to have been given notice of the property disposal hearing when the restraint order is served on the respondent in accordance with the Court's direction, or

(b) dispensing with service of a restraint order on a respondent, that respondent is, for the purposes of section 19.92, deemed to have been given notice of the property disposal hearing.

(3) When a party is granted an adjournment of a property disposal hearing, that party must serve the other parties to the action with a notice as to when the property disposal hearing is adjourned to.

(4) Unless the Court directs otherwise,

(a) service of a notice under subsection (3) may be served on a respondent in the same manner as the restraint order was served on that respondent, and

(b) if service of the restraint order on a respondent was dispensed with, service of notice under subsection (3) on that respondent is also dispensed with.

2008 c41 s4

Claim to restrained property

19.91(1) Any claim made in respect of restrained property

(a) may be made only by a respondent, and

(b) may be established only by means of evidence provided by the respondent in accordance with this section.

(2) Subject to subsection (2.1), if a respondent wishes to make a claim in respect of restrained property, the respondent must, not less than 5 days before the day on which the property disposal hearing is to commence,

(a) file with the Court an affidavit setting out the origin and the nature and extent of the respondent's interest in the property and any other matters related to the respondent's claim to the property, and

(b) serve the affidavit on the other parties to the action.

(2.1) A respondent may, at least 5 days before the day on which the property disposal hearing is to commence, apply to the Court, on notice to the Minister and to any person the Court directed the

restraint order to be served on, for an extension of time for the filing and service of the affidavit under subsection (2) and for an adjournment of the property disposal hearing.

(2.2) If an application under subsection (2.1) is granted, the Court shall

(a) set

(i) a date on which the Court is to commence the property disposal hearing,

(ii) the place at which the property disposal hearing is to be held, and

(iii) the time at which the property disposal hearing is to commence,

and

(b) order that the respondent file and serve the affidavit by a specific date before the commencement of the property disposal hearing.

(2.3) If an application under subsection (2.1) is granted and a respondent makes a 2nd application under subsection (2.1), the Court shall, if it grants the 2nd application, order that the respondent

(a) file and serve the affidavit by a specific date before the commencement of the property disposal hearing, and

(b) pay to the Minister before the commencement of the property disposal hearing the costs, if any, incurred by the Minister related to the application for adjournment, to a maximum of \$500.

(2.4) Any costs paid by the respondent under subsection (2.3) must be refunded if the respondent's claim under this section to restrained property is successful in whole or in part.

(2.5) The Court shall not, without the Minister's consent, grant a respondent a 3rd extension of time to file and serve an affidavit under subsection (2) or a 3rd adjournment of a property disposal hearing if the request for adjournment is for the purpose of the filing and service of an affidavit referred to in subsection (2).

(3) Notwithstanding subsection (2), (2.1), (2.2) or (2.3), at a property disposal hearing a respondent may, with the permission of the Court, give oral evidence setting out the origin and the nature and extent of the respondent's interest in the restrained property and any other matters related to the respondent's claim to the property.

(4) Notwithstanding subsection (3), a respondent who fails to file and serve the respondent's affidavit as required under subsection (2), (2.2) or (2.3) may not give oral evidence unless the respondent can provide a reasonable explanation for that failure.

(5) If the Court hears oral evidence under subsection (3), the Court shall, if requested by the Minister, adjourn the proceeding to allow the Minister to question the respondent regarding the matter, including requesting the respondent to produce materials relevant to the proceeding.

(6) If a respondent fails to file and serve the respondent's affidavit as required under subsection (2), (2.2) or (2.3) or fails to pay any costs required under subsection (2.3), the Court shall proceed with the property disposal hearing, and section 19.92 applies.

2008 c41 s4;2010 c12 s15;2013 c5 s17;2014 c13 s49

Forfeiture due to respondent's failure

19.92 Unless the Court directs otherwise, a respondent forfeits all of that respondent's rights to the restrained property if that respondent fails, without a reasonable excuse,

- (a) after being served with notice of a property disposal hearing, to attend or to be represented at the property disposal hearing;
- (b) to attend an appointment for the purpose of being questioned on the respondent's affidavit;
- (c) to answer questions put to the respondent during questioning or cross-examination;
- (d) to provide, as directed by the Court or pursuant to an undertaking given by the respondent, any information or any documentation, whether in written or electronic form;
- (e) to comply with the directions of a peace officer given under section 19.5.

2008 c41 s4;2009 c53 s183

Conduct of property disposal hearing

19.93(1) At a property disposal hearing

- (a) the onus is on the Minister to establish that the restrained property is an instrument of illegal activity;
- (b) the onus is on a respondent, other than a respondent referred to in clause (b.1), to establish, with respect to the restrained property,
 - (i) the origin and the nature and extent of that respondent's interest in the property,
 - (ii) that the respondent
 - (A) has not been or would not have been involved in or associated with carrying out an illegal act using, or associated with, the restrained property, and
 - (B) did not know and would not reasonably be expected to know that the restrained property was or was likely to be used in carrying out an illegal act,
 - (iii) if the respondent is a victim of an illegal act that the restrained property was used in carrying out, that the respondent's safety or health or property has been, in some manner, adversely affected or compromised as a result of the illegal act, and
 - (iv) where the property was used in carrying out an illegal act and subsequent to the illegal act the property was acquired by the respondent, that the respondent did not know and

would not reasonably be expected to know that the property had been used in carrying out an illegal act;

(b.1) with respect to a respondent that is the Crown or a prescribed public body that incurred costs to protect the safety or health of persons or to protect property as a result of the restrained property having been used, or of the likelihood that it would be used, in carrying out an illegal act, the onus is on the Crown or the prescribed public body, as the case may be, to establish that it incurred those costs;

(b.2) the Minister may, on the basis that the restrained property may present a danger to the public or is illegal, apply for an order directing that the restrained property

(i) be modified before being returned, disposed of or utilized under this Part, or

(ii) be destroyed;

(c) the parties to the action may make representations in respect of matters before the Court, and any other person who is not a party to the action may, with the permission of the Court, make representations to the Court in respect of matters before the Court;

(d) with the permission of the Court, any respondent or other person may give oral evidence.

(2) At any time during the conduct of a property disposal hearing a person may, with the permission of the Court, apply to be added as a respondent to the action and, on considering the application, the Court may, subject to any terms that the Court considers appropriate in the circumstances, add that person as a respondent to the action if the Court considers that it would be just and equitable to do so.

(3) If the Court is satisfied that there is other property that was used in carrying out the same illegal act that the restrained property was used in carrying out or that is likely to be used in addition to the restrained property in carrying out an illegal act, the Court may at the property disposal hearing deal with that other property in the same manner as if it were restrained property.

(4) For the purposes of a property disposal hearing, it is not necessary for the Minister to establish that any person has been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the property disposal hearing is being conducted.

2008 c41 s4;2010 c12 s16;2014 c13 s49

Determination of the Court re property disposal hearing

19.94 If at the conclusion of a property disposal hearing the Court determines, based on a balance of probabilities, that the restrained property

(a) was not used and is not likely to be used in carrying out an illegal act, the Court

(i) is to revoke the restraint order and direct that the restrained property be returned to the person against whom the restraint order was made or to any other person that the Court considers appropriate or as otherwise directed by the Court, and

(ii) may provide for compensation for actual loss, if any, resulting directly from the restraint of the property,

or

(b) was used or is likely to be used in carrying out an illegal act, the Court may grant a property disposal order and in the property disposal order

(i) provide under section 19.95 for the return of the restrained property to the respondents or otherwise dispose of the restrained property or the proceeds from the restrained property among the respondents;

(ii) provide under section 19.96 for the disposal or other utilization of the restrained property for the purposes of providing compensation to victims who do not qualify for compensation under section 19.95;

(iii) provide under section 19.97 for the disposal of the restrained property and for payment to the Crown of the proceeds from the disposal to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3;

(iv) where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed.

2008 c41 s4;2010 c12 s17

Victims with an interest in the restrained property

19.95 On determining that the restrained property is an instrument of illegal activity, the Court may, with respect to the respondents who are victims and who have discharged the onuses set out in section 19.93(1)(b)(i) to (iii), declare the nature and extent of the respondents' interests in the restrained property and do one or more of the following:

(a) direct the return of restrained property to one or more of the respondents;

(b) direct that the restrained property be disposed of and give directions as to the distribution of the proceeds from the disposal to one or more of the respondents;

(c) if 2 or more respondents have established a claim to restrained property, direct that the restrained property be disposed of and give directions as to the distribution of the proceeds from the disposal among those respondents and the proportion, if any, to which each respondent is entitled;

(d) if, in respect of restrained property, any income, increase in value or other gain was derived, give directions as to which respondents are entitled to that income, increase or gain and the proportion, if any, to which each respondent is entitled;

(e) if the Court is satisfied that, as a result of restrained property being used in carrying out an illegal act, the respondent's interest in that property or the value of that interest has been reduced or otherwise diminished, direct that any restrained property that has not been disposed of under clauses (a) to (d) be utilized, through being disposed of or otherwise, to provide

compensation to the respondent with respect to the reduction or diminishment in that interest or in the value of that interest;

(f) give any directions with respect to restrained property that appear just and equitable with respect to the claims of the respondents.

2008 c41 s4

Other victims, the Crown and prescribed public bodies

19.96(1) If after restrained property has been dealt with under section 19.95, all or some of the restrained property remains undisposed of or is not otherwise utilized under section 19.95 and, in the opinion of the Court,

(a) the illegal act for which the restrained property was restrained caused or contributed to a respondent's safety or health or property being, in some manner, adversely affected or compromised, and

(b) the respondent

(i) is a victim,

(ii) does not have an interest in the restrained property,

(iii) has discharged the onus under section 19.93(1)(b)(ii) and (iii), and

(iv) should be compensated for the adverse effect on or compromising of the respondent's safety or health or property,

the Court may establish the amount of that compensation and direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal up to the value of that amount of compensation be turned over to the respondent, or give any other directions in respect of that respondent that appear just and equitable.

(2) If, after restrained property has been dealt with under subsection (1) and section 19.95, all or some of the restrained property remains undisposed of or is not otherwise utilized and, in the opinion of the Court,

(a) the illegal act in respect of which the property was restrained also caused the Crown or a prescribed public body to incur costs to protect the safety or health of persons or to protect property,

(b) the Crown or the prescribed public body, as the case may be,

(i) has discharged the onus under section 19.93(1)(b.1), and

(ii) should be compensated for incurring those costs,

the Court may establish the amount of that compensation and direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal up to the value of that amount of

compensation be turned over to the Crown or the prescribed public body, or give any other directions in respect of the Crown or the prescribed public body that appear just and equitable.

2008 c41 s4;2010 c12 s18

Restrained property to be used for making payments or grants

19.97 If, after restrained property has been dealt with under section 19.95 and, if applicable in the circumstances, under section 19.96, all or some of the restrained property remains undisposed of or is not otherwise utilized, the Court may direct that the restrained property or a portion of it be disposed of and the proceeds from the disposal be paid to the Crown to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3.

2008 c41 s4;2010 c12 s19

Other matters respecting property disposal order

19.98(1) In the property disposal order or in an ancillary order the Court may also do one or more of the following:

(a) where the Court determines, with respect to restrained property, that there are bona fide intervening or other legal or equitable interests in the restrained property, give directions with respect to priorities concerning those interests and the preservation or disposition of those interests or as to how those interests are to be otherwise dealt with;

(b) give directions as to the transferring of title or otherwise dealing with the title to the restrained property;

(c) direct that restrained property be turned over to a respondent;

(d) make the order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) give any ancillary directions that the Court considers appropriate in the circumstances;

(f) stay a property disposal order or ancillary order or any portion of it pending an appeal under section 19.99;

(g) subject to section 48, award costs with respect to the proceedings;

(h) subject to section 48, direct the payment of any expenses incurred or services provided in respect of the management, preservation, handling, maintenance or disposal of the restrained property or dealing with the title to the restrained property as a result of the restraint order or as a result of the property disposal order.

(2) On the coming into effect of a property disposal order, any restraint order that was granted in respect of the property is revoked unless the Court directs otherwise.

(3) The Court may grant a property disposal order notwithstanding that a person has not been charged with, found guilty of or convicted of or otherwise held responsible for any illegal act in relation to any matter related to the property in respect of which the property disposal order is being granted.

Appeal

19.99(1) No application or order made or step or process taken under this Part, other than a property disposal order or an ancillary order made in respect of a property disposal order, may be appealed.

(2) An appeal under this Part

- (a) is to be made to the Court of Appeal,
- (b) may be commenced only by a party to the action, and
- (c) must be filed and served within 30 days from the day that the order being appealed was served on the party appealing.

2008 c41 s4

Part 2 Repealed 2020 c37 s6.

Part 3

Payment Of Compensation When The Victims Are Not Specified

31 Repealed 2020 c37 s6.

Division 1 Repealed 2020 c37 s6.

Division 2

Payment Of Compensation

43 Repealed 2010 c12 s23.

Payments and grants

44 Subject to the regulations, the Minister may make payments or grants from money that is paid to the Crown under this Act for any one or more of the following purposes:

- (a) compensation of victims;
- (b) programs that benefit victims;
 - (b.1) without limiting the generality of clause (b), programs that provide counselling to children who are victims of sexual exploitation or other criminal offences causing physical or mental harm;
- (c) prevention of illegal acts;
- (d) provision of compensation to the Crown or prescribed public bodies for costs incurred to protect the safety or health of persons or to protect property as a result of illegal acts;

- (d.1) refunds of costs to persons who are successful in applications under section 1.8(1) or (7), 11 or 19.91;
- (d.2) payments to successful claimants under section 1.8(5)(b);
- (d.3) police training and operations;
- (e) other purposes provided for in the regulations.

2001 cV-3.5 s44;2010 c12 s24;2013 cC-12.5 s23;2013 c5 s18;
2020 c37 s6

Operational costs

44.1 The Minister may reimburse the General Revenue Fund from the money that is paid to the Crown under this Act for costs and expenses related to the administration of this Act, including costs and expenses related to

- (a) administrative disposition proceedings under Part 1, applications under section 1.8, actions under Part 1.01 or 1.1 and any related proceedings,
- (b) the management, preservation, handling, maintenance or disposal of property for the purposes of this Act, and
- (c) the employment of persons to assist the Minister in carrying out the Minister's functions under this Act.

2020 c37 s6

Victims of Crime and Public Safety Fund

45 If, in respect of an illegal act, money is paid under this Act to the Crown for the purposes of being used under this Division but, in the opinion of the Minister, it is not possible or reasonably practicable to make a payment or grant under section 44, that money is to be paid by the Crown into the Victims of Crime and Public Safety Fund to be used under the *Victims of Crime and Public Safety Act*.

2001 cV-3.5 s45;2010 c12 s25;2020 c18 s28

Part 4 General Matters

Discretion of Minister

46(1) Nothing in this Act or at law is to be construed so as to place any obligation on the Minister to commence, advance, maintain, discontinue or otherwise deal with a legal action.

(2) Where, with respect to a legal action under Part 1.01, 1.1 or 2, the Minister decides not to commence a legal action or not to advance or continue a legal action, the Minister may, subject to any terms or conditions that the Minister considers appropriate, authorize another person to commence, advance or maintain the legal action in the place of the Minister, and in the authorization the Minister may stipulate whether the person is acting on behalf of the Minister or on the person's own behalf in respect of the legal action.

(3) Notwithstanding that the Minister has given an authorization under subsection (2) in respect of a legal action, the Minister may at any time with respect to that legal action

- (a) vary or revoke any terms or conditions or impose any terms or conditions to which the authorization is subject;
- (b) give directions with respect to any aspect of the legal action;
- (c) withdraw the authorization and take over carriage of the legal action and deal with the legal action in the same manner as if the Minister had commenced the legal action.

(4) Any decision of the Minister made in respect of a legal action or in the commencement, advancement, maintenance or discontinuance of a legal action is in the sole discretion of the Minister.

(5) In making any decision in respect of the commencement, advancement, maintenance or discontinuance of a legal action or any other matter respecting a legal action, the Minister may take into account any factors that the Minister considers appropriate, including but not limited to the following:

- (a) the nature of the circumstances surrounding the matters related to the legal action;
- (b) the possible extent or scope to which the proceedings in the legal action may evolve;
- (c) the conduct of a person who is alleged to have been deprived of property or whose safety or health or property is alleged to have been, in some manner, adversely affected or compromised as a result of an illegal act;
- (d) the ability of a person who is alleged to have been deprived of property or whose safety or health or property is alleged to have been, in some manner, adversely affected or compromised as a result of an illegal act to pursue other legal remedies in respect of the matter;
- (e) the availability of resources to the Minister that may be used to commence, advance and maintain legal actions;
- (f) the fact that a person has been charged or has the potential to be charged with an offence in respect of an illegal act related to the legal action.

(6) Except as provided in sections 19 and 19.99, no decision made or action taken by the Minister in respect of a legal action is to be questioned, reviewed or restrained by means of an appeal or any proceedings in the nature of injunction, prohibition, mandamus, quo warranto or any other process or proceeding in any court or to be removed by any proceeding in the nature of certiorari or otherwise in any court.

2001 cV-3.5 s46;2008 41 s5;2013 c5 s22;2020 c37 s6

No action against the Crown, etc.

47 Except as provided for under this Act, no action lies or order or judgment may be made against the Crown, the Minister, any employee of the Crown or any person acting on behalf of the Crown for anything done or omitted to be done under this Act, for any decision made in respect of the

commencement, advancement, maintenance or discontinuance of a legal action or for any other matter respecting a legal action, or with respect to any matter under this Act concerning property that is dealt with under this Act.

Costs

48(1) Subject to subsections (2) and (3), no costs and no payment of any expenses may be awarded against the Crown, the Minister, any employee of the Crown or any person acting on behalf of the Crown in respect of a legal action.

(2) Costs may be awarded to a person against the Crown if

(a) a restraint order was made against the person, and

(b) an order was made under section 8(2)(b), 14(a)(i), 19.7(2)(b) or 19.94(a)(i) returning the restrained property to the person.

(3) Costs must be determined in accordance with the *Alberta Rules of Court* and the practice and procedure of the Court of King's Bench or the Court of Appeal, as the case may be.

2001 cV-3.5 s48;2010 c12 s26;AR 217/2022

May proceed under another Part

49(1) With respect to a legal action commenced under a Part of this Act, nothing under this Act or at law is to be construed so as to prohibit or otherwise restrict the Minister, with respect to the subject-matter dealt with in that legal action, from discontinuing that legal action under that Part and commencing a legal action and proceeding under another Part of this Act in respect of that subject-matter.

(1.1) Nothing in this Act or at law is to be construed so as to prohibit or otherwise restrict the Minister from commencing and continuing concurrent legal actions under different Parts of this Act with respect to the same subject-matter.

(2) Where a legal action commenced under Part 1.01 or Part 1.1 has been discontinued and a legal action has been commenced in its place under another Part of this Act in respect of the same or substantially the same subject-matter, the restraint order granted under Part 1.01 or Part 1.1 in respect of the legal action that was discontinued remains in effect unless the Court that granted the restraint order directs otherwise.

2001 cV-3.5 s49;2008 c41 s6;2013 c5 s22

Preservation of rights

50 Subject to section 47 and except as otherwise provided for in this Act, nothing in this Act nor anything done or any decision made by the Minister or any other person with respect to a legal action is to be construed so as

(a) to prohibit or affect a person's right to pursue any other action or remedy that that person may have outside of this Act with respect to any matter related to that legal action, or

(b) to prohibit or affect the Crown's right to pursue any other action or remedy that the Crown may have outside of this Act with respect to any matter related to that legal action.

Limitation period

50.1 The time limit for commencing a legal action under Part 1.01 or, in respect of an illegal act that has occurred, under Part 1.1 is 10 years from the date on which the illegal act occurred.

2008 c41 s7;2013 c5 s22

Civil procedure

51 Except as otherwise provided for in this Act or the regulations,

- (a) the rules and procedure that apply to civil matters apply to a legal action;
- (b) the *Alberta Rules of Court* apply to a legal action;
- (c) the laws of evidence that apply to civil matters apply to a legal action;
- (d) the standard of proof that applies to civil matters applies to a legal action.

Evidence

52(1) In a legal action the Court may accept oral or affidavit evidence from any of the parties, and that evidence may be based on matters that come within the personal knowledge of the witness or affiant or that come within the knowledge of the witness or affiant based on information and belief.

(1.1) In a legal action under Part 1.01 or Part 1.1, unless the contrary is proven on a balance of probabilities, cash or other negotiable instruments with a value greater than \$10 000 found in the course of a police investigation are presumed to be proceeds of illegal activity when the cash or other negotiable instruments are found

- (a) with, near or in conjunction with drugs or drug paraphernalia,
- (b) in a bulk quantity or otherwise not associated with the packaging, storage, records, receipts or other evidence typical of legitimate business activity, or
- (c) in circumstances prescribed by regulation.

(1.2) In subsection (1.1), "drug" means a controlled substance and an analogue as defined in the *Controlled Drugs and Substances Act* (Canada) or anything a peace officer or investigator reasonably believes to be a drug.

(2) Where, in respect of a legal action,

- (a) an affiant who provides evidence by means of an affidavit is questioned on the affidavit, or
- (b) a person who gives oral evidence is cross-examined,

that person may be questioned or cross-examined, as the case may be, in respect of that evidence and also, subject to any direction of the Court, on anything that relates directly or indirectly to any matter that concerns or otherwise touches on any event, business, affair, transaction or other subject that is related in any way to any matter in the legal action.

2001 cV-3.5 s52;2009 c53 s183;2013 c5 s19

Time periods

53 Where this Act, other than section 56, provides for a period of time within which something is to be done or a step is to be taken in a legal action, the Court may abridge or extend that period of time.

Order is a King's Bench judgment

54 If the Provincial Court makes an order directing the payment of money or the transfer of property under this Act, that order may be filed in the Court of King's Bench and on being filed in the Court of King's Bench that order becomes a judgment of the Court of King's Bench.

2001 cC-15.2 s54;AR 217/2022

Access, use and disclosure of information

54.1(1) The Minister may enter into information-sharing agreements that are reasonably required by the Minister to exercise powers or perform functions and duties under this Act with the following:

- (a) the government of Canada or of any province or territory or another jurisdiction in or outside of Canada or an agency of any government, or
- (b) a public body.

(2) The Minister is entitled to information, including personal information, that is

- (a) in the custody or control of a public body, and
- (b) reasonably required by the Minister to exercise powers or perform functions or duties under this Act.

(3) A public body must, on request, disclose to the Minister information to which the Minister is entitled under subsection (2).

(4) The Minister may

- (a) use information obtained under this section only for the purpose of exercising a power or carrying out functions or duties under this Act, and
- (b) disclose information obtained under this section only
 - (i) for a purpose referred to in clause (a), or
 - (ii) as required by law.

(5) In this section,

(a) “personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act*;

(b) “public body” means public body as defined in the *Freedom of Information and Protection of Privacy Act*.

2008 c41 s8

Regulations

55(1) The Lieutenant Governor in Council may make regulations

- (a) repealed 2020 c37 s6;
- (a.1) designating persons or classes of persons as investigators;
- (b) repealed 2020 c37 s6;
- (c) establishing or otherwise modifying any rules or procedures that apply to legal actions;
 - (c.1) prescribing other purposes for which an action may be commenced under section 3(1) or 19.2(1);
 - (c.2) prescribing public bodies for the purposes of this Act;
 - (c.3) respecting the making of payments or grants under section 44 including, without limitation, regulations
 - (i) respecting other purposes for which a payment or grant may be made;
 - (ii) respecting applications for payments or grants;
 - (iii) respecting the conditions required to be met by any applicant for a payment or grant;
 - (iv) respecting the conditions on which a payment or grant is made;
 - (v) limiting the amount of any payment or grant or class of payment or grant that may be made;
- (d) repealed 2020 c37 s6;
- (e) providing for forms to be used under this Act and respecting the use of those forms;
 - (e.1) respecting the collection, use or disclosure of personal information;
 - (e.2) prescribing for the purposes of section 52(1.1)(c) circumstances in which cash or other negotiable instruments are presumed to be proceeds of illegal activity;
 - (e.3) respecting the filing in the Personal Property Registry of notice of disposition under Part 1;
 - (e.4) respecting information to be included in notices of disposition for the purposes of section 1.4(5)(f);

- (f) for the purposes of legal actions,
 - (i) modifying any of the rules of the *Alberta Rules of Court*,
 - (ii) making rules to apply in the place of one or more of the rules of the *Alberta Rules of Court*;
 - (iii) specifying that one or more of the rules of the *Alberta Rules of Court* do not apply;
 - (iv) prescribing that only specific rules of the *Alberta Rules of Court* apply.

(2) Repealed 2020 c37 s6.

2001 cV-3.5 s55;2008 c41 s9;2010 c12 s27;
2011 c20 s12;2013 c5 s20;2020 c37 s6

Transitional Provisions, Consequential Amendments and Coming into Force

Transitional

56(1) Parts 1, 1.01 and 1.1 apply in respect of an illegal act whether that illegal act takes place before or after the coming into force of Part 1, Part 1.01 or Part 1.1, as the case may be.

(2), (3) Repealed 2020 c37 s6.

2001 cV-3.5 s56;2008 c41 s10;2013 c5 s21;2020 c37 s6

57 (*This section amends the Victims of Crime Act; the amendment has been incorporated into that Act.*)

Coming into force

58 This Act comes into force on Proclamation.

(NOTE: Section 1 and Parts 2, 3 and 4 proclaimed in force September 1, 2004. Part 1.01 proclaimed in force September 1, 2008.)