



BILL NO. 17

Government Bill

*1st Session, 60th General Assembly
Nova Scotia
55 Elizabeth II, 2006*

An Act Respecting the Profits of Criminal Notoriety

CHAPTER 14
ACTS OF 2006

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 23, 2006**

The Honourable Murray K. Scott
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting the Profits of Criminal Notoriety

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Criminal Notoriety Act*.

2 The purpose of this Act is to prevent criminals from financially exploiting the notoriety of their crimes.

3 (1) In this Act,

(a) “contract for the recollection of a crime” means a contract under which

(i) a person convicted of, or charged with, a designated crime provides the person’s recollection of the designated crime, either directly or indirectly, and

(ii) consideration is payable to, or at the direction of, the convicted or accused person or the person’s agent;

(b) “convicted” includes a finding that a person was not criminally responsible on account of mental disorder and a finding of guilt in a proceeding under the *Youth Criminal Justice Act* (Canada);

(c) “court” means the Supreme Court of Nova Scotia;

(d) “designated crime” means an act or omission that

(i) is an indictable offence under the *Criminal Code* (Canada) for which the maximum penalty is imprisonment for five years or more and that involves

(A) the use or attempted use of violence against another person, or

(B) conduct that endangers or is likely to endanger the life or safety of another person or that inflicts or is likely to inflict severe psychological damage on another person,

(ii) is an offence or attempt to commit an offence under section 151, 152, 153, 271, 272 or 273 of the *Criminal Code* (Canada),

(iii) is an offence under the *Criminal Code* (Canada) that is prescribed by the regulations as a serious property offence, or

(iv) is an offence under the criminal law of a jurisdiction outside Canada, if a similar act or omission would be an offence referred to in subclause (i), (ii) or (iii) if it were committed in Canada,

whether the act or omission occurred before or after this Act comes into force;

(e) “Minister” means the Minister of Justice or a person designated by the regulations for the purpose of this Act.

(2) The following persons are deemed to be agents of a person convicted of, or charged with, a designated crime:

- (a) a personal representative of the convicted or accused person, including an executor, administrator, committee, trustee or receiver of the person;
- (b) a person to whom the convicted or accused person has assigned the convicted or accused person's rights;
- (c) a corporation to which the convicted or accused person has a substantial connection.

(3) In the absence of evidence to the contrary, the following persons are presumed to be agents of the convicted or accused person:

- (a) a spouse or common-law partner, or a former spouse or common-law partner, of the convicted or accused person;
- (b) a person who is related by birth or adoption to the convicted or accused person.

4 (1) Sections 5 to 11 apply only to a contract for the recollection of a crime

- (a) that was committed in the Province; or
- (b) that was committed outside the Province, if consideration under the contract is paid or payable to
 - (i) a resident of the Province, or
 - (ii) a person serving a sentence of imprisonment in a penitentiary or other custodial facility located in the Province.

(2) Sections 5 to 9 do not apply to any contract entered into by

- (a) a law enforcement agency; or
- (b) a federal, provincial or municipal government or any department or agency of those governments.

5 On request from the Minister, a party to a contract for the recollection of a crime shall, without delay,

- (a) give the Minister, in writing, the names and addresses of all the parties to the contract; and
- (b) give the Minister
 - (i) a copy of the contract, if it is in writing, or
 - (ii) a written summary of all terms of the contract, if it is not in writing.

6 (1) Except when permitted under this Act, no person shall pay consideration under a contract for the recollection of a crime.

(2) A person who is required under a contract to pay consideration but who is prohibited by subsection (1) from paying it shall, without delay, pay that consideration to the Minister when it becomes payable under the contract.

7 (1) Except when permitted under this Act, no person shall accept consideration under a contract for the recollection of a crime.

(2) A person to whom consideration is payable but who is prohibited by subsection (1) from accepting it shall, without delay, direct the payor to pay it to the Minister.

8 (1) A party to a contract for the recollection of a crime may apply to the court for an order authorizing consideration paid or payable under the contract to be paid in accordance with the contract.

(2) The applicant shall name the Minister as the respondent.

(3) An application may not be commenced more than two years after

(a) the date on which consideration under the contract was first paid to the Minister under subsection 6(2); or

(b) the person was convicted of the designated crime,

whichever is later.

9 (1) The court may make an order directing that some or all of the consideration paid or payable under a contract for the recollection of a crime be paid in accordance with the contract only if the applicant satisfies the court that, after taking into account the importance to society of not allowing criminals to financially exploit the notoriety of their crimes, the value to society of the recollection justifies some or all of the consideration being paid in accordance with the contract.

(2) In determining the value to society of the recollection, the court shall take into account

(a) the purpose of the recollection;

(b) the details of the crime, including the violent or sexual nature of the crime;

(c) whether, and to what degree, victims of the crime may suffer further harm from the recollection; and

(d) where the recollection has been, or is about to be, made known to the public as a result of the contract,

(i) the extent to which the publication, broadcast, public appearance or other means of dissemination deals with the recollection, and

(ii) whether the recollection, or the dissemination of it, exploits or sensationalizes the crime.

(3) Where the court determines that all, or any part of, future consideration payable under a contract should not be paid in accordance with the contract, the court shall make an order directing that consideration to be paid to the Minister when it becomes payable under the contract.

10 (1) Where the Minister is satisfied that a person convicted of, or charged with, a designated crime, or the person's agent, has sold an item

- (a) used, owned or possessed;
- (b) autographed; or
- (c) made, manufactured or produced,

by the convicted or accused person for a higher price than would have been paid for the item if the person had not been convicted of, or charged with, the designated crime, the Minister may apply to the court for an order requiring the increase in price to be paid to the Minister.

(2) The application shall identify the item with sufficient detail to make it readily identifiable.

(3) The Minister shall name the convicted or accused person, or the person's agent, as respondent to the application.

(4) The Minister may not commence an application under this Section more than two years after the day on which the Minister became aware of the sale of an item.

11 Where the court determines that the item has been sold for a higher price than would have been paid for it if the person had not been convicted of, or charged with, the designated crime, the court shall assess the amount of that increase and order the respondent to pay that amount to the Minister to be dealt with as consideration in accordance with Sections 12 to 15.

12 (1) All consideration the Minister receives under this Act is to be deposited into the Victims Assistance Fund established under the *Victims' Rights and Services Act* to be held in trust by the Minister of Finance until it is released from trust and further dealt with in accordance with this Act.

(2) Where the Minister is required to pay an amount under Section 13 or pursuant to an order under subsection 9(1), the amount is to be paid or distributed by the Minister of Finance, on the requisition of the Minister, out of the amounts held in trust under this Section.

(3) Where the consideration under a contract for the recollection of a crime is consideration other than money and the consideration is required to be paid to the Minister under this Act, the person who is required to pay the consideration to the Minister shall pay to the Minister an amount of money equal to the value of that consideration.

13 Where

- (a) a person charged with a designated crime has been acquitted and
 - (i) the time for an appeal has expired without an appeal being commenced,
- or

- (ii) the acquittal has been appealed and the acquittal is confirmed on appeal;
- or
- (b) the charges against a person accused of a designated crime have been stayed,

the Minister shall return the consideration to the person the Minister received it from along with written notice that this Act no longer applies to the designated crime to which the acquittal or stay relates.

14 (1) Consideration may be released from trust upon written notice to the Minister of Finance by the Minister if

- (a) the person has been convicted of the crime; and
- (b) in the case of consideration received under Sections 6 to 9 and Section 11,
 - (i) an application has been made under Section 8 and the consideration has not been ordered to be paid in accordance with the contract, or
 - (ii) the time for making an application under Section 8 has expired.

(2) Where consideration has been released from trust pursuant to subsection (1), the consideration shall be credited to the Victims Assistance Fund and may be dealt with in accordance with the *Victims' Rights and Services Act*.

15 (1) When consideration is credited to the Victims Assistance Fund under Section 14, the Minister's reasonable costs incurred with respect to that consideration may be deducted from the amount credited.

(2) Any amount deducted pursuant to subsection (1) forms part of the Consolidated Fund of the Province.

16 (1) In this Section, "personal information" means personal information as defined in the *Freedom of Information and Protection of Privacy Act*.

- (2)** The Minister may collect personal information
 - (a) to determine whether a proceeding should be commenced under this Act;
 - (b) to conduct a proceeding under this Act;
 - (c) to identify and locate persons who suffered losses compensable under the *Victims Rights and Services Act* in order to compensate such persons pursuant to this Act;
 - (d) to assist the Minister in the performance of duties or the exercise of powers in respect of any property that is or may be the subject of a proceeding under this Act;
 - (e) to enforce an order or comply with an order made under this Act; or
 - (f) for a purpose related to the operation and administration of this Act that is designated by the regulations.

(3) Personal information may be collected under subsection (2) directly from the individual to whom the information relates or in any other manner.

(4) The Minister shall disclose information collected under subsection (2) to a law enforcement agency or a person engaged in the administration or enforcement of the law if the Minister is of the opinion that the disclosure would assist in the administration or enforcement of the law, would be in the public interest and would not be contrary to the interests of justice.

(5) On the request of the Minister, a person who has knowledge of personal information or other information to which the *Freedom of Information and Protection of Privacy Act* applies and who acquired that knowledge in circumstances prescribed by the regulations shall, notwithstanding those Acts and notwithstanding any confidentiality provision of any other Act, disclose the information to the Minister if the Minister indicates that the disclosure would assist the Minister in the pursuit of any of the purposes set out in subsection (2).

(6) Notwithstanding any confidentiality provision of any Act, a person who has disclosed information under subsection (5) may be required to give evidence related to that information in a proceeding under this Act.

17 (1) A person who contravenes Section 5 is guilty of an offence and is liable on summary conviction to a fine of not more than ten thousand dollars.

(2) A person who contravenes Section 6 is guilty of an offence and is liable on summary conviction to a fine of not more than the greater of fifty thousand dollars or the amount of consideration that the person paid in contravention of subsection 6(1) or failed to pay to the Minister as required under subsection 6(2).

(3) The payment of a fine under subsection (2) does not relieve a person of the duty to pay consideration to the Minister under subsection 6(2).

(4) A person who contravenes Section 7 is guilty of an offence and is liable on summary conviction to a fine of not more than the greater of fifty thousand dollars or the amount of consideration accepted in contravention of subsection 7(1) or in respect of which the person failed to make a direction under subsection 7(2).

18 Where a corporation commits an offence under this Act, any officer, director, employee or agent who directed, authorized, assented to, acquiesced in or participated in the violation of this Act is guilty of the offence and, upon conviction, is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

19 A prosecution for an offence under Section 17 may not be commenced more than one year after the day on which evidence sufficient to justify a prosecution came to the knowledge of the Minister.

20 Where this Act provides for the making of an order by the court, the court may make any additional or other order that the court considers appropriate or necessary to give effect to the intent of this Act.

21 No action lies or shall be instituted against the Minister, Her Majesty in right of the Province or any person acting on behalf of, assisting or providing information to either of them under this Act for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act.

22 (1) The Governor in Council may make regulations

(a) designating a person to act on behalf and in the place of the Minister for the purpose of this Act;

(b) prescribing offences under the *Criminal Code* (Canada) for the purpose of subclause 3(1)(d)(iii);

(c) respecting costs of the Minister that may be deducted under Section 15;

(d) designating a purpose for the collection of information related to the operation and administration of this Act for the purpose of clause 16(2)(f);

(e) defining any word or expression used but not defined in this Act;

(f) respecting any other matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

23 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
