



BILL NO. 11

Government Bill

*2nd Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007*

An Act Respecting Civil Forfeiture of Property

CHAPTER 27
ACTS OF 2007

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 13, 2007**

The Honourable Cecil P. Clarke
Minister of Justice

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

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An Act Respecting Civil Forfeiture of Property

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Civil Forfeiture Act*.
- 2 The purpose of this Act is to provide civil remedies that will assist in
 - (a) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activity; and
 - (b) preventing property from being used to engage in unlawful activity.
- 3 (1) In this Act,
 - (a) "court" means the Supreme Court of Nova Scotia;
 - (b) "forfeiture order" means an order made under subsection 7(1) or (2);
 - (c) "instrument of unlawful activity" means property that
 - (i) has been used to engage in unlawful activity that, in turn,
 - (A) resulted in the acquisition of property or an interest in property, or
 - (B) caused serious bodily harm to a person, or
 - (ii) is likely to be used to engage in unlawful activity that is intended to
 - (A) result in the acquisition of property or an interest in property, or
 - (B) cause serious bodily harm to a person;
 - (d) "interest in property" or "interest in the property" means a right, title, interest, estate or claim to or in property;
 - (e) "interim preservation order" means an order made under subsection 10(3);
 - (f) "Manager" means the person who is designated as the Manager of Assets under subsection 2(1) of the *Assets Management and Disposition Act*;
 - (g) "personal property registry" means the personal property registry established under the *Personal Property Security Act*;
 - (h) "proceeds of unlawful activity" means any of the following:
 - (i) the whole or a portion of an interest in property if the whole or the portion of the interest, as the case may be, is acquired directly or indirectly as a result of unlawful activity,
 - (ii) the whole or a portion of an interest in property that is equivalent in value to the amount of an increase in value of the whole or the portion of the

interest in property if the increase in value results directly or indirectly from unlawful activity,

(iii) the whole or a portion of an interest in property that is equivalent in value to the amount of a decrease in a debt obligation secured against the interest or the portion of the interest in property if the decrease in debt obligation results directly or indirectly from unlawful activity;

(i) "property" means real property or tangible or intangible personal property and, for greater certainty, includes cash;

(j) "protection order" means an order made by a court under subsection 15(1);

(k) "receiver manager" means a person who is appointed as a receiver manager under clause 10(3)(c);

(l) "security interest" means a security interest as defined in the *Personal Property Security Act*;

(m) "unlawful activity" means an act or omission described in one of the following subclauses:

(i) where an act or omission occurs in the Province, the act or omission, at the time of occurrence, is an offence under an Act of the Parliament of Canada or of the Province,

(ii) where an act or omission occurs in another province of Canada, the act or omission, at the time of occurrence,

(A) is an offence under an Act of the Parliament of Canada or of the other province, as applicable, and

(B) would be an offence in the Province if the act or omission had occurred in the Province,

(iii) where an act or omission occurs in a jurisdiction outside of Canada, the act or omission, at the time of occurrence,

(A) is an offence under an Act of that jurisdiction, and

(B) would be an offence in the Province if the act or omission had occurred in the Province,

but does not include an act or omission that is an offence under an enactment of any jurisdiction if the enactment or the jurisdiction is prescribed under this Act.

(2) For the purpose of the definition of "proceeds of unlawful activity", "equivalent in value" means equivalent in value as determined or established by the regulations.

4 (1) This Act applies to an unlawful activity occurring before, on or after the date this Act comes into force.

(2) This Act applies to proceeds of unlawful activity whether or not

(a) the acquisition of the whole or the portion of an interest in property;

(b) the increase in the value of the whole or the portion of an interest in property; or

(c) the decrease in the debt obligation as referred to in the definition of "proceeds of unlawful activity",

occurred before, on or after the coming into force of this Act.

5 (1) The Manager may apply to the court for an order forfeiting to Her Majesty in right of the Province

(a) the whole of an interest in property that is proceeds of unlawful activity; or

(b) the portion of an interest in property that is proceeds of unlawful activity.

(2) The Manager may apply to the court for an order forfeiting to Her Majesty in right of the Province property that is an instrument of unlawful activity.

(3) An application for a forfeiture order under this Section applies only with respect to property or an interest in property located in the Province.

6 (1) In proceedings commenced under subsection 5(1), the Manager shall name as a party

(a) in relation to real property,

(i) the registered owner within the meaning of the *Land Registration Act*, or

(ii) the person appearing from a search of the records at the registry of deeds to be the owner,

of the whole or the portion of the interest in property that is subject of the application for forfeiture; and

(b) in relation to personal property, a person who the Manager has reason to believe is an owner of the whole or the portion of the interest in property that is subject of the application for forfeiture.

(2) In proceedings commenced under subsection 5(2), the Manager shall name as a party

(a) in relation to real property,

(i) the registered owner within the meaning of the *Land Registration Act*, or

(ii) the person appearing from a search of the records at the registry of deeds to be the owner,

of the property that is subject of the application for forfeiture; and

(b) in relation to personal property, a person who the Manager has reason to believe is an owner of the property that is subject of the application for forfeiture.

- (3)** In proceedings commenced under subsection 5(1) or (2), the Manager shall
- (a) notify a person if required to do so by the court or the regulations; and
 - (b) notify a person in the manner established by the regulations unless the court orders a different manner of notification.

7 (1) Subject to Section 8, where proceedings are commenced under subsection 5(1), the court shall make an order forfeiting to Her Majesty in right of the Province the whole or the portion of an interest in property that the court finds is proceeds of unlawful activity.

(2) Subject to Section 8 and subsection 15(1), where proceedings are commenced under subsection 5(2), the court shall make an order forfeiting to Her Majesty in right of the Province property that the court finds is an instrument of unlawful activity.

8 Where the court determines that the forfeiture of property or the whole or a portion of an interest in property under this Act is not in the interests of justice, the court may

- (a) refuse to issue a forfeiture order;
- (b) limit the application of a forfeiture order; or
- (c) put conditions on a forfeiture order.

9 A forfeiture order made with respect to property or the whole or a portion of an interest in property, as applicable, is effective,

- (a) in the case of real property,
 - (i) at the time a notice is filed under subsection 24(1) with respect to the property or the whole or a portion of an interest in property, or
 - (ii) at the time the forfeiture order is filed in the registry of deeds with respect to the property or the whole or a portion of an interest in property if no notice is filed under subsection 24(1); and
- (b) in the case of personal property or the whole or a portion of an interest in personal property,
 - (i) at the time a notice is registered under subsection 24(2) with respect to the property or the whole or a portion of an interest in the property, or
 - (ii) where the court determines that registration in the personal property registry is not required, on the date the court makes the forfeiture order.

10 (1) As part of a proceeding under subsection 5(1) for forfeiture of the whole or a portion of an interest in property, the Manager may make an application to court for one or more interim preservation orders in relation to

- (a) the whole or the portion of the interest in property; or
- (b) the property in which the whole or the portion of interest in property is held.

(2) As part of a proceeding under subsection 5(2) for forfeiture of property, the Manager may make an application to court for one or more interim preservation orders in relation to the property.

(3) On application under subsection (1) or (2), the court may make one or more of the following orders for preservation of property or the whole or a portion of an interest in property:

(a) an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;

(b) an order for the possession, delivery to the Manager or safekeeping of property;

(c) an order appointing a person to act as a receiver manager for property or the whole or a portion of an interest in property;

(d) an order for the disposition of the property or the whole or the portion of the interest in property in order to better preserve the value of the property or the whole or the portion of the interest in property;

(e) for the purpose of securing performance of an obligation imposed by an order made under this Act, an order granting to the Manager a lien for an amount set by the court on property or the whole or the portion of an interest in property;

(f) any other order that the court considers just for the preservation of

(i) the property or the whole or the portion of an interest in the property,

(ii) the value of the property or of the whole or the portion of an interest in the property, or

(iii) the rights of creditors and other interest holders;

(g) any other order that the court considers appropriate in the circumstances.

(4) The amount set out by the court under clause (3)(e) is deemed for the purpose of the *Personal Property Security Act* to

(a) be the full value of the property or the whole or portion of the interest in property that is the subject of the proceedings, unless the court orders otherwise; and

(b) include the expenses referred to in clause 60(3)(a) of the *Personal Property Security Act*.

(5) Unless it is not in the interests of justice, the court shall make an interim preservation order applied for under this Section if the court is satisfied that there are reasonable grounds to believe that

(a) the whole or the portion of the interest in property that is the basis of the application under subsection (1) is proceeds of unlawful activity; or

(b) the property that is the basis of the application under subsection (2) is an instrument of unlawful activity.

(6) An application with respect to an interim preservation order applies only with respect to property or an interest in property located in the Province.

(7) The Manager may file a release of lien referred to in clause (3)(e) in the registry of deeds without court order.

11 (1) Subject to subsection (2), a court may make an interim preservation order under Section 8 without notice to any person.

(2) An order made without notice under subsection (1) may not be made for a period greater than thirty days.

(3) The court may grant one or more extensions to an order referred to in subsection (2) only if notice of the application to extend the order is given to every person who is required by the court to be given notice of the application other than a person who, in the opinion of the court,

- (a) has been evading service;
- (b) is unable to be located in spite of the Manager's reasonable efforts; or
- (c) need not be served because of exceptional circumstances.

12 (1) A person appointed to act as a receiver manager under clause 10(3)(c) is the receiver manager of the property or the whole or a portion of the interest in property specified by the court.

(2) Where directed by the court, a receiver manager

(a) may receive and hold property or the whole or a portion of an interest in property and dispose of property or the whole or a portion of an interest in property in the ordinary course of business;

(b) has the authority to manage the business and affairs conducted in relation to the property or the whole or a portion of the interest in property of the person named; and

(c) has all the incidental powers necessary to hold and manage the property or the whole or a portion of the interest in property.

13 (1) Subject to this Section, the *Personal Property Security Act* applies with respect to a lien granted under this Act and the enforcement of a lien granted under this Act on personal property or the whole or a portion of an interest in property that is personal property.

(2) Section 65 of the *Personal Property Security Act* does not apply to a receiver manager appointed under Section 10 of this Act.

(3) Where an order under Section 10 gives the Manager a lien on personal property or the whole or a portion of an interest in property that is personal property,

(a) the lien is deemed to be a security interest taken in the personal property or the whole or a portion of the interest in property, as applicable, to secure the payment of the amount of the lien granted by a court under Section 10; and

(b) the lien is deemed to continue until it is discharged by the Manager.

(4) The Manager, by registration of the lien under the *Personal Property Security Act*, perfects the lien as if the lien were a security interest perfected under that Act.

(5) Subsections 59(3) to (7) and Section 63 of the *Personal Property Security Act* do not apply to this Act.

14 In Sections 15 and 16, "uninvolved interest holder" means a person who

(a) owns, at the time of application for an order under Section 5, the whole or a portion of an interest in property that is an instrument of unlawful activity; and

(b) did not directly or indirectly engage in the unlawful activity that is the basis of the application referred to in clause (a).

15 (1) Subject to subsection (3), where a court finds

(a) that property is an instrument of unlawful activity; and

(b) that a person is an uninvolved interest holder with respect to that property,

the court shall make the orders necessary to protect the interest in the property held by the uninvolved interest holder.

(2) A protection order issued with respect to property that is subject to a forfeiture order has effect from the date that the forfeiture order is effective unless the court orders otherwise.

(3) A court may refuse to issue a protection order if the issuance is not in the interests of justice.

16 On application, a court may make, at the time of or subsequent to making a forfeiture order under Section 7, one or more of the following orders:

(a) an order requiring

(i) the disposition or transmission of property or the whole or the portion of the interest in property forfeited, or

(ii) the disposition or transmission of property that includes the whole or the portion of the interest in property forfeited;

(b) an order directing the manner of disposition of property or the whole or the portion of the interest in property referred to in subclause (a)(i) or (ii), including the appointment of a receiver manager to manage and dispose of the property or the whole or the portion of the interest in property;

(c) an order directing that the money arising from the disposition of property or the whole or the portion of the interest in property referred to in subclause (a)(i) or (ii) is

applied in accordance with the direction of the court after taking into account all encumbrances;

(d) an order requiring the severing or partition of property, or the whole or a portion of an interest in property;

(e) an order requiring the cancellation of the whole or a portion of an interest in property;

(f) an order providing that, subject to the interest of an uninvolved interest holder or another person, Her Majesty in right of the Province, on forfeiture, may take possession of or seize

(i) the property forfeited or the property in which an interest in property or a portion of an interest in property is forfeited, or

(ii) the interest in property or a portion of an interest in property that is forfeited;

(g) any other order that the court considers appropriate in the circumstances.

17 Findings of fact in proceedings under this Act and the discharge of any presumption are to be made on the balance of probabilities.

18 In proceedings under this Act, proof that a person was convicted, found guilty or found not criminally responsible on account of a mental disorder in respect of an offence that constitutes an unlawful activity is proof that the person engaged in the unlawful activity.

19 In proceedings under this Act, an unlawful activity may be found to have occurred even if

(a) no person has been charged with an offence that constitutes the unlawful activity; or

(b) a person charged with an offence that constitutes the unlawful activity was acquitted of all charges in proceedings before a criminal court or the charges are withdrawn or stayed or otherwise do not proceed.

20 In an application for forfeiture made under Section 5(1), proof that a person

(a) participated in an unlawful activity that resulted in or is likely to have resulted in the person receiving a financial benefit; and

(b) subsequently did one or more of the following:

(i) acquired the whole or the portion of an interest in property that is the subject of the application,

(ii) caused an increase in the value of the interest or the portion of the interest in property that is the subject of the application,

(iii) caused a decrease of a debt obligation secured against the interest or the portion of the interest in property that is the subject of the application,

is proof, in absence of evidence to the contrary, that the whole or the portion of the interest in property that is the subject of the application is proceeds of unlawful activity as a result of the unlawful activity referred to in clause (a).

21 For the purpose of this Act, the presumption of advancement does not apply to a transfer of property or of an interest or a portion of an interest in property.

22 (1) In this Section, "public body" means public body as defined in the *Freedom of Information and Protection of Privacy Act*.

(2) The Manager is responsible for

(a) collecting and managing the use and disclosure of information and maintaining records for the purpose of this Act and, on the basis of information collected, determining if proceedings should be commenced under this Act; and

(b) commencing and conducting proceedings under this Act.

(3) The Manager may enter into information-sharing agreements that are reasonably required by the Manager in order to exercise the Manager's powers or perform the Manager's functions and duties under this Act with the following:

(a) the government of Canada, a province of Canada or another jurisdiction in or outside of Canada;

(b) a public body; or

(c) a law enforcement agency.

(4) For the purpose of exercising the Manager's powers or to perform the Manager's functions and duties under this Act, the Manager is entitled to information

(a) in the custody or control of a public body or law enforcement agency; and

(b) from any other source about the ownership of property or the whole or the portion of the interest in property in respect of which an application under this Act may be made.

(5) A person or public body that has custody or control of information to which the Manager is entitled under subsection (4) must, on request, disclose that information to the Manager and give the Manager a copy of the document or record in which the information is contained, if applicable.

(6) This Section applies notwithstanding any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

(7) The Manager may disclose information obtained under this Section to a person, court, tribunal, government department, government agency, local government body or law enforcement agency.

23 (1) The Manager may delegate any responsibility or power under this Act to a person or class of persons.

(2) The delegation under subsection (1) must be in writing and may include any terms or conditions the Manager considers advisable.

24 (1) After commencing proceedings under Section 5 that relate to real property or the whole or a portion of an interest in property that is real property, the Manager may file, in the prescribed manner in the registry of deeds, the prescribed form of notice setting out that the proceedings commenced may affect the real property or the whole or a portion of an interest in the property that is the real property referred to in the notice.

(2) After commencing proceedings under Section 5 that relate to personal property or the whole or a portion of an interest in property that is personal property, the Manager may register, in the prescribed manner in the personal property registry, the prescribed form of notice setting out that the proceedings commenced may affect the personal property or the whole or a portion of an interest in the property that is the personal property referred to in the notice.

(3) The Manager may amend, extend or cancel a notice referred to in subsection (1) or (2) by filing or registering, in the same manner as the notice was filed or registered, the amendment, extension or cancellation in the registry of deeds or the personal property registry, as applicable.

25 For the purpose of a proceeding under this Act, a person may not claim to have an interest in property if, under the law of Canada or the Province, it is unlawful for that person to possess the property.

26 Where property or the whole or a portion of an interest in property is forfeited under this Act, Her Majesty in right of the Province does not, as a result of the forfeiture, assume responsibility for any covenants, debts or other obligations under an encumbrance, a lien or another security interest to which the property or the whole or the portion of the interest in property is subject.

27 The time limit for commencing an application under this Act is ten years from the date on which the unlawful activity occurred.

28 (1) All proceedings under this Act are *in rem* and not *in personam*.

(2) Subsection (1) applies even though there are parties to the proceedings.

(3) Except as otherwise provided in this Act or the regulations, the *Civil Procedure Rules* apply to applications under this Act.

(4) The *Civil Procedure Rules* apply with necessary modifications to the court's jurisdiction to make an order in respect of any party or other person in any proceeding as if the proceeding were *in personam* and such party or person were a named party in the proceeding.

29 (1) The Governor in Council may make regulations

(a) governing the giving of notice of proceedings under this Act, including service of notice and deemed service of notice and setting out the persons or classes of persons who are to be notified;

- (b) respecting the registration under the *Personal Property Security Act* of a notice under subsection 24(2) of this Act and the legal effect of that registration;
- (c) respecting the disposition of
 - (i) a property forfeited or a property in which an interest in property or a portion of an interest in property is forfeited, or
 - (ii) an interest in property or a portion of an interest in property that is forfeited;
- (d) respecting the forfeiture account and payments from that account;
- (e) prescribing fees that are to be paid under this Act;
- (f) prescribing forms for the purpose of this Act;
- (g) establishing one or more methods or formulas for determining the interest or portion of an interest in property that is equivalent in value for the purpose of the definition of "proceeds of unlawful activity";
- (h) defining any word or expression used but not defined in this Act;
- (i) respecting any matter or thing that 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*.

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