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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 25

VICTIMS RESTITUTION AND COMPENSATION PAYMENT ACT

THE MINISTER OF JUSTICE
AND ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

11 MAY 2001

BILL 25

2001

VICTIMS RESTITUTION AND COMPENSATION PAYMENT ACT

(Assented to , 2001)

Table of Contents

Interpretation	1
Part 1	
Property Acquired by Illegal Means	
Interpretation	2
Legal action	3
Division 1	
Restraint of Property	
Application for restraint order	4
Granting of restraint order	5
Interim action by peace officer	6
Application re addition of parties, review of restraint order, conduct of proceedings, etc.	7
Review of restraint order	8
Division 2	
Disposal of Restrained Property	
Property disposal hearing	9
Notice of property disposal hearing	10
Claim to restrained property	11
Forfeiture due to respondent's failure	12
Conduct of property disposal hearing	13
Determination of the Court re property disposal hearing	14
Property victims who have interest in the restrained property	15
Other property victims	16
Restrained property to be used for making grants	17
Other matters respecting property disposal order	18
Appeal	19

Part 2
Restitution Assistance

Interpretation	20
Restitution assistance order	21
Interim order re property	22
Directions with respect to proceedings	23
Attendance at restitution assistance hearing	24
Property and revenue statement	25
Restitution assistance hearing	26
Restitution payment order	27
Warrant	28
Appeal	29
Failure by offender to comply	30

Part 3
Payment of Compensation when the Victims
are not Specified

Interpretation	31
----------------	----

Division 1
Determination of Compensation

Compensation order	32
Compensation assistance order	33
Interim order re property	34
Directions with respect to proceedings	35
Attendance at compensation assistance hearing	36
Property and revenue statement	37
Compensation assistance hearing	38
Compensation payment order	39
Warrant	40
Appeal	41
Failure by offender to comply	42

Division 2
Payment of Compensation

Interpretation	43
Grants	44
Victims of Crime Fund	45

Part 4
General Matters

Discretion of Minister	46
No action against the Crown, etc.	47
Costs	48
May proceed under another Part	49
Preservation of rights	50

Civil procedure	51
Evidence	52
Time periods	53
Order is a Queen's Bench judgment	54
Regulations	55

Transitional Provisions, Consequential
Amendments and Coming into Force

Transitional	56
Consequential amendment	57
Coming into force	58

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) "legal action" means

- (i) an action under Part 1 and includes any application or order made or step or process taken in respect of that action;
- (ii) a proceeding under Part 2 and includes any application or order made or step or process taken in respect of that proceeding;
- (iii) a proceeding under Part 3 and includes any application or order made or step or process taken in respect of that proceeding;

(b) "Minister" means

- (i) with respect to a legal action related to illegal acts that come under the *Criminal Code* (Canada), the *Young Offenders Act* (Canada) or an enactment of Alberta, the Minister of Justice and Attorney General for Alberta, and
- (ii) with respect to a legal action related to illegal acts other than those referred to in subclause (i), the Attorney General for Canada,

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 Fund” means the Victims of Crime Fund under the *Victims of Crime Act*.
- (2) A reference in this Act to an illegal act is a reference to
- (a) anything done or carried out in contravention of, or that constitutes an offence under, the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada);
 - (b) subject to clause (a), anything done or carried out in contravention of, or that constitutes an offence under, an enactment of Canada or a provision of an enactment of Canada that is specified by regulation as an enactment or a provision to which this Act applies;
 - (c) anything done or carried out in contravention of, or that constitutes an offence under, an enactment of Alberta or a provision of an enactment of Alberta that is specified by regulation as an enactment or a provision to which this Act applies.
- (3) A reference in this Act to property acquired by illegal means is a reference to property that has been acquired or derived directly or indirectly through an illegal act.
- (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.

PART 1

PROPERTY ACQUIRED BY ILLEGAL MEANS

- Interpretation **2(1)** In this Part,
- (a) “Court” means the Court of Queen’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.
- 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 originating notice for the purposes of obtaining restitution or compensation for property victims and other respondents.
- (2)** The Minister may not commence an action under this Part unless
- (a) a peace officer 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
 - (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.

Division 1 Restraint of Property

Application for
restraint order

4(1) In the originating notice 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;
- (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) 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) 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, and

(b) if the affidavit includes the names of persons referred to in subsection (3)(a) or (b), those persons may be included as respondents.

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 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 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,

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.

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 or a civil enforcement agency;
- (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) on the expiration of 72 hours from the time that the direction is given, or
- (b) on the expiration of a longer period of time as directed by the Court.

(4) Notwithstanding subsection (3), if with respect to a direction given under subsection (1) the 72-hour period expires on a day on which the Court does not sit, that direction continues in effect until the end of the Court's business hours on the first day that the Court sits following the expiration of the 72-hour period.

(5) If a person has turned the possession of or control over the property over to a peace officer or a civil enforcement agency pursuant to a direction given under subsection (1)(b), the peace officer or the civil enforcement agency, 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).

Application re
addition of
parties, review
of restraint
order, conduct
of pro-
ceedings, 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 a notice of motion within the action in which the restraint order was granted.

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.

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) 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 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.

(3) Notwithstanding subsection (2), at a property disposal hearing a respondent may, with the leave of the Court, give oral evidence setting out 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.

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 examination for the purposes of being examined on the respondent's affidavit;
- (c) to answer questions put to the respondent on examination 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.

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 to establish, with respect to the restrained property,
 - (i) the nature and extent of that respondent's claim to any 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;

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

(d) with the leave 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 leave 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.

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 grants or as otherwise provided for under Division 2 of Part 3.

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

16 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.

Restrained
property to be
used for
making 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 grants or as otherwise provided for under Division 2 of Part 3.

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 2

RESTITUTION ASSISTANCE

Interpretation

20(1) In this Part,

- (a) “Court” means the court before which the offender was convicted of the offence arising out of an illegal act;
- (b) “offender” means a person against whom a restitution order has been made;
- (c) “property and revenue statement” means a statement referred to in section 25;
- (d) “restitution assistance hearing” means a hearing conducted under section 26;
- (e) “restitution assistance order” means an order made under section 21;
- (f) “restitution order” means an order of restitution made pursuant to section 738 or 739 of the *Criminal Code* (Canada);
- (g) “restitution payment order” means an order made under section 27.

(2) A reference

- (a) to a respondent under this Part is a reference to
 - (i) the offender,

- (ii) the property victim in whose favour a restitution order has been made, and
 - (iii) any person not referred to in subclause (i) or (ii) who is added as a respondent to the proceeding;
- (b) to the parties to a proceeding under this Part is a reference to the Minister and the respondents to the proceeding.

Restitution
assistance
order

21(1) If a restitution order has been made in respect of a property victim, the Court may, on the Court's own motion or on the application of the Minister made at the time of or at any time following the making of the restitution order, make a restitution assistance order directing that a restitution assistance hearing be conducted for the purposes of determining matters respecting the making of restitution by the offender to the property victim.

(2) In a restitution assistance order, the Court is to set

- (a) a date, not sooner than 60 days from the day of the conviction that gave rise to the making of the restitution assistance order, on which the Court is to commence a restitution assistance hearing,
- (b) the place at which the restitution assistance hearing is to be held, and
- (c) the time at which the restitution assistance hearing is to commence.

(3) Notwithstanding subsection (2), where the Court directs that a restitution assistance hearing be conducted, the Court may, on the request of the Minister following the giving of that direction, if the Court considers it appropriate to do so, proceed to conduct a restitution assistance hearing immediately following the conviction and the sentencing, if any, or at any other time within the 60-day period referred to in subsection (2) and grant a restitution payment order pursuant to that restitution assistance hearing.

Interim order
re property

22 At the time of or at any time following the making of a restitution assistance order, the Court may make an order

- (a) prohibiting the disposition or wasting of any of the offender's property, or
- (b) directing a person to take possession or custody of any of the offender's property,

pending the determination of the matters for which the restitution assistance hearing is to be conducted.

Directions with respect to proceedings

23 The Court may, on the application of a party to the proceedings or on the Court's own motion,

- (a) add a person as a respondent to the proceedings;
- (b) give directions as to the conduct of the proceedings;
- (c) deal with any matters not referred to in clause (a) or (b) that are ancillary to the matters before the Court.

Attendance at restitution assistance hearing

24 Unless the Court directs otherwise, the offender in respect of whom a restitution assistance order is made must attend the restitution assistance hearing in person.

Property and revenue statement

25(1) For the purposes of determining matters at a restitution assistance hearing, the offender must, subject to any direction of the Court, file with the Court and provide to the Minister a property and revenue statement verified under oath setting out the information specified by regulation with respect to the offender's property and the offender's income and other revenue.

(2) The offender must, subject to any direction of the Court, include as an attachment to the property and revenue statement any documentary evidence that the offender has respecting the offender's property and the offender's income and other revenue.

(3) For the purposes of this Act, a property and revenue statement is considered to be an affidavit.

Restitution assistance hearing

26(1) At a restitution assistance hearing the Court is to determine the means by which the offender is to pay to the property victim the amount set out in the restitution order.

(2) At a restitution assistance hearing

- (a) the onus is on the Minister to establish that the offender has not paid the total amount that is to be paid pursuant to the restitution order;
- (b) the parties to the proceeding may make representations to the Court in respect of the matters before the Court and any other person who is not a party to the proceedings

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

(c) with the leave of the Court any respondent or other person may give oral evidence.

(3) The Minister, or any other party with the leave of the Court, may cross-examine the offender at the restitution assistance hearing.

(4) If the offender or any other respondent fails to attend a restitution assistance hearing, the Court may nevertheless conduct the hearing and make a restitution payment order.

Restitution
payment order

27(1) At the conclusion of a restitution assistance hearing, the Court may make a restitution payment order doing one or more of the following:

- (a) with respect to any property of the offender, setting aside a transfer or other disposal of any property or any charge or encumbrance placed on or against any of the property if, in the opinion of the Court,
 - (i) the transfer or other disposal of the property or the charge or encumbrance was placed on or against the property subsequent to the commission of the offence that gave rise to the making of the restitution assistance order, and
 - (ii) the transfer or disposal of the property or the charging or encumbering of the property was not made for reasonable consideration in an arm's length transaction;
- (b) directing that any property of the offender up to the amount provided for under the restitution order be transferred or otherwise turned over by the offender, or by any other person having possession of or control over the property, to the property victim in whose favour the restitution order was made;
- (c) directing that any property of the offender be disposed of and the proceeds from the disposal up to the amount provided for under the restitution order be distributed to the property victim;
- (d) where property that the property victim was deprived of by the offender is in the possession of the offender, directing that the property be returned to the property victim and

making a determination as to whether all, a portion or any of the amount owing under the restitution order has been satisfied by the return of the property.

(2) The Court, in making a restitution payment order under subsection (1), may also do one or more of the following:

- (a) make the order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (b) give directions as to the transferring of title or otherwise dealing with the title to the property;
- (c) where the Court determines, with respect to property that is being dealt with under this section, that there are bona fide intervening or other legal or equitable interests in the 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;
- (d) give any ancillary directions that the Court considers appropriate in the circumstances;
- (e) subject to section 48, award costs with respect to the proceeding;
- (f) subject to section 48, direct the payment of any expenses incurred with respect to any matter concerning the property, including dealing with the title to the property.

Warrant

28(1) If an offender is required to appear under this Part and does not do so without a reasonable excuse, the Court may issue a warrant for the arrest of the offender to have the offender brought before the Court.

(2) When an offender is brought before the Court on a warrant, the Court may bind the offender over to appear at the proceeding that the offender was required to attend and failed to attend.

Appeal

29(1) No application or order made or step or process taken under this Part, other than a restitution payment order, may be appealed.

(2) An appeal under this Division

- (a) is to be made to the Court having jurisdiction to hear an appeal from the sentence given in respect of the offence that gave rise to the order that is being appealed, and
- (b) must be filed or served within 30 days from the day that the order being appealed was entered in the Court making that order.

Failure by
offender to
comply

30(1) A person is guilty of an offence if that person

- (a) fails to comply with a restitution assistance order or a restitution payment order,
- (b) subject to the directions of the Court, fails to provide a property and revenue statement, or
- (c) subject to the directions of the Court, fails to attend a restitution assistance hearing as required pursuant to section 24.

(2) A person who is guilty of an offence under subsection (1) is liable

- (a) to a fine that is not greater than double the amount set out in the restitution order, or
- (b) to imprisonment for not more than 6 months,

or to both a fine and imprisonment.

PART 3

PAYMENT OF COMPENSATION WHEN THE VICTIMS ARE NOT SPECIFIED

Interpretation

31(1) In this Part,

- (a) “compensation assistance hearing” means a hearing conducted under section 38;
- (b) “compensation assistance order” means an order made under section 33;
- (c) “compensation order” means an order made under section 32;

- (d) "compensation payment order" means an order made under section 39;
 - (e) "Court" means the court before which the offender was convicted of the offence arising out of an illegal act;
 - (f) "offender" means a person who
 - (i) has been convicted of an offence, or
 - (ii) has been convicted of an offence and has been granted a discharge under section 730 of the *Criminal Code* (Canada) in respect of that offence;
 - (g) "property and revenue statement" means a statement referred to in section 37;
 - (h) "restitution order" means an order of restitution made pursuant to section 738 or 739 of the *Criminal Code* (Canada).
- (2) A reference
- (a) to a respondent under this Part is a reference to
 - (i) the offender, and
 - (ii) any person not referred to in subclause (i) who is added as a respondent to the proceeding;
 - (b) to the parties to a proceeding under this Part is a reference to the Minister and the respondents to the proceeding.

Division 1

Determination of Compensation

Compensation order **32** If

- (a) an offender has been convicted of an offence arising out of an illegal act,
- (b) the Court, during the trial or other proceeding that led to the conviction, had made a determination as to the amount of gain made or the value of property acquired by the offender by virtue of carrying out the illegal act, and

- (c) in respect of that offence a restitution order has not been made or the offence was not one in respect of which a restitution order may be made,

the Court may, on the application of the Minister, make a compensation order directing that the offender pay to the Crown an amount, not greater than the amount referred to in clause (b), to be used for the purposes of making grants or as otherwise provided for under Division 2.

Compensation
assistance
order

33(1) If a compensation order has been made, the Court may, on the Court's own motion or on the application of the Minister made at the time of or at any time following the making of the compensation order, make a compensation assistance order directing that a compensation assistance hearing be conducted for the purposes of determining matters respecting the payment of compensation by the offender to the Crown to be used for the purposes of making grants or as otherwise provided for under Division 2.

(2) In a compensation order the Court

(a) is to set

- (i) a date, not sooner than 60 days from the day of the making of the compensation order, on which the Court is to commence a compensation assistance hearing,
- (ii) the place at which the compensation assistance hearing is to be held, and
- (iii) the time at which the compensation assistance hearing is to commence,

and

(b) may give directions as to the manner in which notice of the compensation assistance hearing is to be given.

(3) Notwithstanding subsection (2), where the Court directs that a compensation assistance hearing be conducted, the Court may, on the request of the Minister following the giving of that direction, if the Court considers it appropriate to do so, proceed to conduct a compensation assistance hearing immediately following the making of the compensation order or at any other time within the 60-day period referred to in subsection (2) and grant a compensation payment order pursuant to that compensation assistance hearing.

Interim order
re property

34 At the time of or at any time following the making of a compensation assistance order, the Court may make an order

- (a) prohibiting the disposition or wasting of any of the offender's property, or
- (b) directing a person to take possession or custody of any of the offender's property,

pending the determination of the matters for which the compensation assistance hearing is to be conducted.

Directions with
respect to
proceedings

35 The Court may, on the application of a party to the proceedings or on the Court's own motion,

- (a) add a person as a respondent to the proceedings;
- (b) give directions as to the conduct of the proceedings;
- (c) deal with any matters not referred to in clause (a) or (b) that are ancillary to the matters before the Court.

Attendance at
compensation
assistance
hearing

36 Unless the Court directs otherwise, the offender in respect of whom a compensation assistance order is made must attend the compensation assistance hearing in person.

Property and
revenue
statement

37(1) For the purposes of determining matters at a compensation assistance hearing, the offender must, subject to any direction of the Court, file with the Court and provide to the Minister a property and revenue statement verified under oath setting out the information specified by regulation with respect to the offender's property and the offender's income and other revenue.

(2) The offender must, subject to any direction of the Court, include as an attachment to the property and revenue statement any documentary evidence that the offender has respecting the offender's property and the offender's income and other revenue.

(3) For the purposes of this Act, a property and revenue statement is considered to be an affidavit.

Compensation
assistance
hearing

38(1) At a compensation assistance hearing the Court is to determine the means by which the offender is to pay the amount set out in the compensation order.

(2) At a compensation assistance hearing

- (a) the onus is on the Minister to establish that the offender has not paid the total amount provided for under the compensation order;
 - (b) the Minister may make recommendations as to the method and form in which the payment should be made and whether the payment should be made in instalments;
 - (c) the parties to the proceeding may make representations in respect of matters before the Court and any other person who is not a party to the proceedings may, with the leave of the Court, make representations to the Court in respect of the matters before the Court;
 - (d) with the leave of the Court any respondent or other person may give oral evidence.
- (3)** The Minister, or any other party with the leave of the Court, may cross-examine the offender at the compensation assistance hearing.
- (4)** If the offender or any other respondent fails to attend a compensation assistance hearing, the Court may nevertheless conduct the hearing and make a compensation payment order.

Compensation
payment order

39(1) At the conclusion of a compensation assistance hearing, the Court may make a compensation payment order doing one or more of the following:

- (a) with respect to any property of the offender, setting aside a transfer or other disposal of any property or any charge or encumbrance placed against any of the property if, in the opinion of the Court,
 - (i) the transfer or other disposal of the property or any charge or encumbrance was placed on or against the property subsequent to the commission of the offence that gave rise to the making of the compensation order, and
 - (ii) the transfer or disposal of the property or the charging or encumbering of the property was not

made for reasonable consideration in an arm's length transaction;

- (b) directing that any money of the offender, up to the amount provided for under the compensation order, be paid by the offender, or by any other person having possession or control over the money, to the Crown to be used for the purposes of making grants or as otherwise provided for under Division 2;
 - (c) directing that any property of the offender be disposed of and the proceeds from the disposal, up to the amount provided for under the compensation order, be paid to the Crown to be used for the purposes of making grants or as otherwise provided for under Division
 - (d) directing the offender to make payments to the Crown by means of instalments, the total amount of the instalments not to exceed the amount provided for under the compensation order, to be used for the purposes of making grants or as otherwise provided for under Division 2.
- (2) The Court, in making a compensation payment order under subsection (1), may also do one or more of the following:
- (a) make the order subject to any terms or conditions that the Court considers appropriate in the circumstances;
 - (b) give directions as to the transferring of title or otherwise dealing with the title to the property;
 - (c) where the Court determines, with respect to property that is being dealt with under this section, that there are bona fide intervening or other legal or equitable interests in the 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;
 - (d) give any ancillary directions that the Court considers appropriate in the circumstances;
 - (e) subject to section 48, award costs with respect to the proceedings;
 - (f) subject to section 48, direct the payment of any expenses incurred with respect to any matter concerning the property, including dealing with the title to the property.

- Warrant**
- 40(1)** If an offender is required to appear under this Part and does not do so without a reasonable excuse, the Court may issue a warrant for the arrest of the offender to have the offender brought before the Court.
- (2)** When an offender is brought before the Court on a warrant, the Court may bind the offender over to appear at the proceeding that the offender was required to attend and failed to attend.
- Appeal**
- 41(1)** No application or order made or step or process taken under this Part, other than a compensation order or compensation payment order, may be appealed.
- (2)** An appeal under this Part
- (a) is to be made to the Court having jurisdiction to hear an appeal from the sentence given in respect of the offence that gave rise to the order that is being appealed, and
 - (b) must be filed and served within 30 days from the day that the order being appealed was entered in the Court making that order.
- Failure by offender to comply**
- 42(1)** A person is guilty of an offence if that person
- (a) fails to comply with a compensation order, a compensation assistance order or a compensation payment order,
 - (b) subject to the directions of the Court, fails to provide a property and revenue statement, or
 - (c) subject to the directions of the Court, fails to attend a compensation assistance hearing as required pursuant to section 36.
- (2)** A person who is guilty of an offence under subsection (1) is liable
- (a) to a fine that is not greater than double the amount set out in the compensation order, or
 - (b) to imprisonment for not more than 6 months,
- or to both a fine and imprisonment.

Division 2

Payment of Compensation

Interpretation **43(1)** In this Division, “Minister” means the Minister of Justice and Attorney General for Alberta.

(2) A reference in this Division to a victims program is a reference to a program, undertaking or arrangement the purpose of which is, or one of the primary purposes of which is, in the opinion of the Minister,

- (a) to provide assistance in relation to persons who have or are suffering from addictions, abuses, afflictions or similar conditions that are, in some manner, attributable or contributed to or fostered by the carrying out of an illegal act,
- (b) to provide assistance to persons whose safety or health has been, in some manner, adversely affected or compromised as a result of the carrying out of an illegal act, or
- (c) to provide assistance to persons whose property has been, in some manner, adversely affected or compromised as a result of the carrying out of an illegal act.

(3) A reference in this Division to persons suffering a loss arising out of an illegal act is a reference to

- (a) persons who, in the opinion of the Minister, have suffered from or are suffering from addictions, abuses, afflictions or similar conditions that are, in some manner, attributable or contributed to or fostered by the carrying out of an illegal act,
- (b) persons whose safety or health, in the opinion of the Minister, has been, in some manner, adversely affected or compromised as a result of the carrying out of an illegal act, or
- (c) persons whose property, in the opinion of the Minister, has been, in some manner, adversely affected or compromised as a result of the carrying out of an illegal act.

(4) A reference in this Division to money being paid by an offender under this Part to the Crown includes property of the offender being turned over to the Crown for the purposes of being disposed of and the proceeds from the disposal being used under this Division.

(5) A reference in this Division to the provision of assistance includes the provision of treatment, care, rehabilitation or compensation.

Grants

44(1) Where, in respect of an illegal act, money is paid under this Act to the Crown for the purposes of being used under this Division, that money is to be used to make grants for the benefit of or in relation to a victims program that, in the opinion of the Minister, provides assistance to persons suffering loss arising out of illegal acts that are the same as or similar in nature to the illegal act in respect of which the payment was made to the Crown.

(2) For the purposes of subsection (1), the Minister by order may

- (a) specify or otherwise provide for the determination of those victims programs that are eligible to receive grants under this Division;
- (b) specify or otherwise provide for the determination of those illegal acts or classes of illegal acts in respect of which money may be paid to the Crown under this Act to be used for making grants under this Division;
- (c) specify or otherwise provide for the determination of persons or organizations operating victims programs that are eligible to receive grants under this Division;
- (d) specify or otherwise provide for the determination of particular victims programs that are to receive grants from money paid to the Crown under this Act in respect of particular illegal acts or classes of illegal acts.

(3) The Minister may, subject to any terms or conditions that the Minister may impose, authorize an employee of the Crown who is under the administration of the Minister to act on behalf of the Minister in carrying out any duty or function of the Minister under this Division.

(4) The *Regulations Act* does not apply to an order made under subsection (2).

Victims of
Crime 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,

- (a) it is not possible or reasonably practicable to make a grant in accordance with section 44, or

- (b) the money or the circumstances in respect of which the money was paid are not dealt with under an order made under section 44(2),

that money is to be paid by the Crown into the Victims of Crime Fund to be used under the *Victims of Crime Act*.

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 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 as a result of an illegal act;
- (d) the ability of a person who is alleged to have been deprived of property 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, 29 and 41, 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.

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 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.

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.

(2) Where a legal action commenced under Part 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 in respect of the legal action that was discontinued remains in effect unless the Court that granted the restraint order directs otherwise.

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.

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.

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

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

that person may be examined 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.

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 Queen'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 Queen's Bench and on being filed in the Court of Queen's Bench that order becomes a judgment of the Court of Queen's Bench.

Regulations **55** The Lieutenant Governor in Council may make regulations

- (a) specifying enactments of Canada or provisions of those enactments to which this Act applies;
- (b) specifying enactments of Alberta or provisions of those enactments to which this Act applies;
- (c) establishing or otherwise modifying any rules or procedures that apply to legal actions;
- (d) specifying or otherwise prescribing the information and documentary evidence to be provided in respect of a property and revenue statement given under Part 2 or 3;
- (e) providing for forms to be used under this Act and respecting the use of those forms;
- (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.

Transitional Provisions, Consequential Amendments and Coming into Force

Transitional	<p>56(1) Part 1 applies in respect of an illegal act whether that illegal act takes place before or after the coming into force of Part 1.</p> <p>(2) Part 2 applies in respect of any restitution order as defined in that Part</p> <ul style="list-style-type: none"> (a) made after Part 2 comes into force, or (b) made before Part 2 comes into force but is still in effect after Part 2 comes into force. <p>(3) Part 3 applies in respect of any conviction that takes place</p> <ul style="list-style-type: none"> (a) after Part 3 comes into force, or (b) within 90 days before Part 3 comes into force.
Amends SA 1996 cV-3.3	<p>57 The <i>Victims of Crime Act</i> is amended in section 9(2) by adding the following after clause (c):</p> <ul style="list-style-type: none"> (c.1) money received pursuant to the <i>Victims Restitution and Compensation Payment Act</i>;
Coming into force	<p>58 This Act comes into force on Proclamation.</p>

Explanatory Notes

57 Amends chapter V-3.3 of the Statutes of Alberta, 1996. Section 9(2)(c) presently reads:

(2) The following must be deposited into the Fund:

(c) money received by the Crown for the purpose of assisting victims;