

BILL 46

2005

CRIMINAL NOTORIETY ACT

(Assented to , 2005)

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

Part 1 Introductory Matters

Interpretation

1(1) In this Act,

- (a) “agent”, with respect to a person convicted of a serious crime, includes
 - (i) a personal representative of that person, including an executor, administrator, attorney under a power of attorney, trustee or receiver of the person,
 - (ii) any person or entity who, by the person’s own designation or by operation of law, has been assigned that person’s right to receive consideration under a contract for the recounting of a crime, and
 - (iii) a corporation to which that person has a substantial connection or in which that person has a substantial interest;
- (b) “consideration” means
 - (i) money, fees, royalties, real property or any other consideration of any and every kind or nature paid or

payable to a person convicted of a serious crime or to an agent of that person under a contract for the recounting of a crime, or

- (ii) property acquired, directly or indirectly, in whole or in part, from money, fees, royalties, real property or other consideration referred to in subclause (i);
- (c) “contract for the recounting of a crime” means a contract under which
- (i) any person agrees to provide a recounting of a serious crime, either directly or indirectly, and
 - (ii) consideration is payable to, or at the direction of, the person who provides the recounting of the serious crime or an agent of that person,

whether the contract was entered into before or after the coming into force of this Act;

- (d) “Court” means the Court of Queen’s Bench;
- (e) “Crown” means the Crown in right of Alberta;
- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “person convicted of a serious crime” includes
- (i) a person so convicted who has received an absolute or conditional discharge or a conditional pardon, and
 - (ii) a person in respect of whom a finding of guilt has been made relating to a serious crime under the *Youth Criminal Justice Act* (Canada);
- (h) “recounting” includes the recollection and retelling of circumstances relating to a serious crime, an expression of thoughts or feelings about a serious crime and a re-enactment of a serious crime;
- (i) “serious 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 5 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 indictable offence under the *Crimes Against Humanity and War Crimes Act* (Canada) for which the maximum penalty is imprisonment for 5 years or more,
- (iv) is an indictable offence under the *Controlled Drugs and Substances Act* (Canada) for which the maximum penalty is imprisonment for 7 years or more,
- (v) 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 subclauses (i) to (iv) if it were committed in Canada, or
- (vi) is prescribed as an offence in the regulations made under section 16(a),

whether the act or omission occurred before or after the coming into force of this Act.

(2) In the absence of evidence to the contrary, the following are presumed to be agents of a person convicted of a serious crime:

- (a) a spouse or adult interdependent partner, or a former spouse or adult interdependent partner, of the person convicted of a serious crime;

- (b) a person who, through birth or adoption, is a parent, child, brother, sister, aunt, uncle or cousin of the person convicted of a serious crime.

Application of this Act

2(1) This Act applies to a contract for the recounting of a crime only where consideration under the contract

- (a) is paid or payable after the coming into force of this Act, and
- (b) is paid or payable
 - (i) to a resident of Alberta or a person serving a sentence of imprisonment in a penitentiary or other correctional institution located in Alberta, or
 - (ii) by a resident of Alberta.

(2) Where under a contract for the recounting of a crime

- (a) the person who agrees to provide the recounting of a serious crime is convicted of that crime on or before the date the contract is entered into, this Act applies to the contract on and after the date the contract is entered into;
- (b) the person who agrees to provide the recounting of a serious crime has not been convicted of that crime on the date the contract is entered into but is convicted of that crime after the date the contract is entered into, this Act applies to the contract on and after the date of the conviction.

(3) This Act does not apply to a contract for the recounting of a crime entered into for law enforcement purposes or in support of crime prevention programs or victims programs

- (a) by a law enforcement agency,
- (b) by a federal or provincial government, or
- (c) by any agency or body designated in the regulations.

Part 2 Contracts for the Recounting of a Crime

Requirement to give notice of contract

3(1) Each party to a contract for the recounting of a crime must, without delay, give to the Minister

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

(2) A person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50 000.

(3) No prosecution may be commenced under this section later than 2 years following the date on which the Minister becomes aware of the existence of the contract.

Payment of consideration prohibited

4(1) Except when permitted under this Act, no person shall pay consideration under a contract for the recounting of a crime.

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

(3) A person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$50 000.

(4) Each payment of consideration in contravention of this section is a separate offence.

(5) No prosecution may be commenced under this section later than 2 years following the date on which the Minister becomes aware that consideration has been paid in contravention of this section.

Acceptance of consideration prohibited

5(1) Except when permitted under this Act, no person shall accept consideration under a contract for the recounting of a crime.

(2) A person to whom consideration is payable under a contract for the recounting of a crime but who is prohibited by subsection (1) from accepting it shall, without delay, direct the payor to pay the consideration to the Crown when it becomes payable under the contract.

(3) A person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$50 000.

(4) Each acceptance of consideration in contravention of this section is a separate offence.

(5) No prosecution may be commenced under this section later than 2 years following the date on which the Minister becomes aware that consideration has been accepted in contravention of this section.

Application for order authorizing payment of consideration to Crown

6(1) The Minister may apply to the Court by originating notice for one or more of the following orders:

- (a) an order directing a person who is required to pay consideration under a contract for the recounting of a crime to pay the consideration to the Crown when it becomes payable under the contract;
- (b) an order directing a person who has paid consideration in contravention of section 4 to pay an amount equal to that consideration to the Crown;
- (c) an order requiring a person to whom consideration is payable under a contract for the recounting of a crime to direct the payor to pay the consideration to the Crown when it becomes payable under the contract;
- (d) an order directing a person who has accepted consideration in contravention of section 5 to pay an amount equal to that consideration to the Crown.

(2) On hearing an application under subsection (1), the Court may make the order applied for.

(3) Where an application relates to consideration that has been paid in contravention of section 4 or that has been accepted in contravention of section 5, the application may not be commenced under this section later than 2 years following the date on which the Minister becomes aware that the contravention has occurred.

Application for order authorizing payment of consideration in accordance with contract

7(1) A party to a contract for the recounting of a crime may apply to the Court by originating notice for an order authorizing some or all of the consideration paid or payable under the contract to be paid in accordance with the contract.

(2) The applicant

- (a) must name the Minister as a respondent to the application, and
- (b) must provide at least 30 days' notice to the Minister of the date, time and location of the application.

(3) Where the application relates to consideration that has been paid to the Crown under section 4(2), the application may not be commenced under this section later than 2 years following the date on which the consideration was paid to the Crown.

Order re payment of consideration in accordance with contract

8(1) On hearing an application under section 7, the Court may make the order applied for, subject to subsection (2).

(2) An order may be made under subsection (1) only if the applicant satisfies the Court that, after taking into account the importance to society of not allowing criminals to profit from the notoriety of their crimes, the value to society of the recounting of the serious crime justifies some or all of the consideration being paid in accordance with the contract.

(3) In determining the value to society of the recounting of a crime, the Court must take into account

- (a) the purpose of the recounting,

- (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 and their families may suffer further harm from the recounting, and
- (d) if the recounting 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 recounting, and
 - (ii) whether the recounting, or the dissemination of it, exploits or sensationalizes the crime.

(4) If the Court determines that all or any part of future consideration payable under the contract should not be paid in accordance with the contract, the Court may make an order directing the consideration to be paid to the Crown when it becomes payable under the contract.

(5) Where the Court makes an order under subsection (1) in respect of a portion of the consideration paid or payable under a contract for the recounting of a crime, the Court may also order that future consideration payable under the contract is to be paid in accordance with the contract.

Part 3 Criminal Memorabilia

Application for order re increase in price

9(1) In this Part, “sale” includes lease, licence and transfer, and “sold” has a corresponding meaning.

(2) If the Minister is satisfied that a person convicted of a serious crime, or an agent of that person, has sold an item

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

by the person convicted of a serious crime for a higher price than would have been paid for the item if the person had not been convicted of the serious crime, the Minister may apply to the Court by originating notice for an order requiring the increase in price to be paid to the Crown.

(3) The application must describe the item in sufficient detail to make it readily identifiable.

(4) No application may be commenced under this section later than 2 years following the date on which the Minister becomes aware of the sale.

Order for payment of increase to the Crown

10 If 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 the serious crime, the Court must assess the amount of that increase and order the respondent to pay that amount to the Crown.

Part 4 Grants

Use of money paid to the Crown

11 Where

- (a) consideration is paid or forfeited to the Crown under this Act, or
- (b) a fine referred to in this Act is paid to the Crown under the *Provincial Offences Procedure Act*,

the Minister may, subject to section 13 of the *Government Organization Act*, use the consideration and fines to make grants for the benefit of victims of crime and their families.

Part 5 General Provisions

Return of consideration on acquittal or stay

12 Where

- (a) a person charged with a serious crime has been acquitted, and
 - (i) the time for an appeal has expired without an appeal being commenced, or
 - (ii) if the acquittal has been appealed, the acquittal is confirmed on appeal,
- or
- (b) the charges against a person accused of a serious crime have been stayed and the time for lifting the stay and proceeding on the charges has expired without that having occurred,

the Crown must return any consideration received by the Crown pursuant to this Act to the person from whom it was received.

Value of consideration to be paid

13 Where

- (a) consideration under a contract for the recounting of a crime is consideration other than money, and
- (b) the consideration is required to be paid to the Crown pursuant to this Act,

the person required to pay the consideration to the Crown must pay an amount of money equal to the value of the consideration to the Crown.

Power of Court to make orders

14 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.

Immunity

15 No action may be brought against a person that includes a claim for compensation for any real or perceived loss or damage resulting from an action carried out in compliance with this Act.

Regulations

16 The Minister may make regulations

- (a) prescribing an act or omission under any Act as a serious crime for the purposes of this Act;
- (b) defining any word or phrase used but not defined in this Act;
- (c) designating agencies or bodies for the purposes of section 2(3)(c);
- (d) respecting any other matter that the Minister considers necessary or advisable to carry out the purposes of this Act.

Directors and officers of corporation liable to pay fine

17 If a corporation commits an offence under this Act, a director or officer of the corporation who directed, authorized, participated in, assented to or acquiesced in the commission of the offence is guilty of the offence and on conviction is liable to pay the fine provided for, whether or not the corporation has been prosecuted or convicted.

Fines

18 The payment of a fine imposed by this Act does not relieve a person of the duty to pay to the Crown in accordance with this Act the consideration in respect of which a contravention of this Act occurred and the fine was imposed.

Coming into force

19 This Act comes into force on Proclamation.