

2013 Bill 16

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First Session, 28th Legislature, 62 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 16**

**VICTIMS STATUTES AMENDMENT ACT, 2013**

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THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 16

2013

### VICTIMS STATUTES AMENDMENT ACT, 2013

(Assented to \_\_\_\_\_, 2013)

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

#### Part 1 Victims of Crime Act

Amends RSA 2000 cV-3

**1** The *Victims of Crime Act* is amended by this Part.

**2** Section 7.1 is amended

(a) in subsection (1) by striking out “13” and substituting  
“13, 13.01”;

(b) in subsection (2.1) by striking out “an application” and  
substituting “a request”;

(c) in subsection (7) by striking out “2 remaining members”  
and substituting “remaining member or members”;

(d) by adding the following after subsection (9):

(10) A panel and each member of a panel have all the powers  
of a commissioner under the *Public Inquiries Act*.

(11) A panel may

## Explanatory Notes

### Part 1 Victims of Crime Act

**1** Amends chapter V-3 of the Revised Statutes of Alberta 2000.

**2** Section 7.1 presently reads:

*7.1(1) The Review Board shall, subject to and in accordance with the regulations, review decisions of the Director made under section 13 or 15.*

*(2) Where a review is required under this Act, the chair must designate up to 3 members of the Review Board, who may include the chair, to sit as a panel to conduct the review.*

*(2.1) A member of the Review Board, including the chair, is not eligible to sit as a member of a panel to conduct a review of the same matter in respect of which that member has evaluated an application under section 14(4).*

*(3) A decision or action made or taken by a panel is a decision or action of the Review Board.*

- (a) request persons with special technical knowledge to advise the panel on matters relevant to a review, and
- (b) identify further medical information that is required for the review and request that a victim consent to undergo a medical examination by a physician named or approved by the panel.

**3 Section 9(2)(g) is amended by striking out “a financial benefit” and substituting “financial benefits or a death benefit”.**

**4 Section 12.2(1) is repealed and the following is substituted:**

**Application for benefits**

**12.2(1)** An application under section 12 may be made only if the offence was reported to a police service within a reasonable period of time after the date the victim first knew or in the circumstances ought to have known that the offence occurred.

**(1.1)** An application under section 12.1 may be made only if the offence was reported to a police service within a reasonable period of time after the offence occurred.

*(4) A panel of the Review Board may exercise and perform all the powers and duties of the Review Board under this Act.*

*(5) For the purposes referred to in subsection (4), any reference in this Act to the Review Board is a reference to a panel of the Review Board.*

*(6) If the chair is not a member of a panel, the chair must designate one of the members of the panel to preside over the panel.*

*(7) When a review is conducted by a panel and one of the members of the panel for any reason does not attend on any day or part of a day, the 2 remaining members present may exercise the powers and perform the duties of the panel with respect to that review.*

*(8) Panels may sit simultaneously or at different times.*

*(9) The Review Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing the Board's and a panel's procedure and reviews.*

**3** Section 9(2)(g) presently reads:

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

*(g) money received as repayment of a financial benefit that is a debt due to the Crown pursuant to section 16(3);*

**4** Section 12.2(1) presently reads:

*12.2(1) An application under section 12 or 12.1 may be made only if the offence was reported to a police service within a reasonable period of time after the offence occurred.*

**5 Section 14 is amended**

**(a) in subsection (1) by striking out** “a person may apply to the Review Board in writing” **and substituting** “an applicant may make a written request to the Review Board”;

**(b) in subsection (2) by striking out** “application” **and substituting** “receipt of a request”;

**(c) by repealing subsection (3) and substituting the following:**

**(3)** On receipt of a request for review, the chair of the Review Board, or a member designated by the chair, must notify the Director of the request for review.

**(3.1)** The Director, on being notified of the request for review, must provide the chair or the member designated by the chair with a copy of all information collected or generated by the Director in respect of the application for financial benefits or a death benefit, the Director’s decision and reasons for the decision.

**(d) by repealing subsection (4) and substituting the following:**

**(4)** The chair or the member designated by the chair must evaluate the request and all material provided by the Director under subsection (3.1) to determine whether the request

(a) is frivolous, vexatious or made in bad faith, or

(b) has no grounds.

**(e) in subsection (5) by striking out** “application” **wherever it occurs and substituting** “request”;

**(f) by repealing subsections (6) to (12) and substituting the following:**

**(6)** The Review Board, chair or member designated by the chair, as the case may be, may refer an application for financial benefits or a death benefit back to the Director for reconsideration of the Director’s decision if at any time before the Review Board makes a decision under section 14.01(1) it

**5** Section 14 presently reads:

*14(1) Within 30 days of receiving a copy of the Director's decision under section 15.1, a person may apply to the Review Board in writing for a review of a decision of the Director made under section 13, 13.01 or 15.*

*(2) The Review Board may, on application made before or after the expiry of the period of time referred to in subsection (1), extend that period of time where the Review Board is of the opinion that there are sufficient grounds for doing so.*

*(3) On receipt of an application for review, the chair of the Review Board, or a member designated by the chair, must notify the Director of the application for review, and the Director, on receiving notice of the application for review, must provide the chair or the member designated by the chair with a copy of all evidence considered by the Director and the Director's notes, decision and reasons for the decision.*

*(4) The chair or member designated by the chair must evaluate the application and all material provided by the Director under subsection (3) and determine whether the application*

*(a) is frivolous, vexatious or made in bad faith,*

*(b) has no grounds, or*

*(c) contains new material information.*

*(5) If the chair or member designated by the chair determines under subsection (4)(a) that the application is frivolous, vexatious or made in bad faith, or determines under subsection (4)(b) that the application has no grounds, the chair or member designated by the chair may dismiss the application and notify the applicant and the Director of the decision.*

*(6) If the chair or member designated by the chair determines under subsection (4)(c) that the application contains new material information, the chair or member designated by the chair must refer the matter back to the Director for reconsideration of the Director's decision in light of the new material information and must notify the applicant of the referral.*

*(7) If the application is neither dismissed under subsection (5) nor referred back to the Director under subsection (6), the chair or*

is determined that significant new information exists respecting the application.

**(6.1)** The Review Board, chair or member designated by the chair, as the case may be, must notify the applicant of a referral made under subsection (6).

**(7)** If a request is not dismissed under subsection (5) and the application is not referred back to the Director under subsection (6), the chair or the member designated by the chair must refer the matter to the Review Board for review in accordance with section 7.1 and must

- (a) notify the Director of the referral, and
- (b) notify the applicant of
  - (i) the referral, and
  - (ii) the applicant's right to choose whether the review will be conducted orally or in writing.

**(8)** Prior to providing the applicant with a copy of or access to the information collected or generated by the Director in respect of the application for financial benefits or a death benefit, the Review Board must consult with the source from which the information was collected.

**(9)** After consultation under subsection (8), the Review Board may remove any information that the source from which the information was collected has identified as confidential.

**(10)** If information is removed under subsection (9), the Review Board must inform the applicant

- (a) that the information has been removed,
- (b) of the reason for the removal, and
- (c) that the information removed will not be used or considered by the Review Board.

*member designated by the chair must refer the matter to the Review Board for review in accordance with section 7.1 and must*

- (a) notify the Director of the referral, and*
- (b) notify the applicant of*
  - (i) the referral,*
  - (ii) the applicant's right to request access to or to receive a copy of all evidence considered by the Director and the Director's notes, decision and reasons for the decision within 15 days of receiving notice of the referral, and*
  - (iii) the applicant's right to provide written submissions to the Review Board.*

*(8) If the applicant requests access to or requests a copy of the evidence considered by the Director and the Director's notes, decision and reasons for the decision, the applicant has 30 days from the date the applicant receives access to or receives a copy of the evidence, notes, decision and reasons for the decision to provide written submissions to the Review Board.*

*(9) If the applicant does not request access to or request a copy of the evidence considered by the Director and the Director's notes, decision and reasons for the decision, the applicant has 30 days from the expiry of the 15-day period referred to in subsection (7)(b)(ii) to provide written submissions to the Review Board.*

*(10) The chair or member designated by the chair may, on application by the applicant made before or after the expiry of the period of time referred to in subsection (7)(b)(ii), extend that period of time where the chair or member designated by the chair is of the opinion that there are sufficient grounds for doing so.*

*(11) Notwithstanding subsection (7)(b)(iii), the chair or member designated by the chair may permit the applicant to make oral submissions if the chair or member designated by the chair is of the opinion that there are sufficient grounds for doing so, and must notify the Director of the permission.*

*(12) If, at any stage of the review process, the chair or member designated by the chair determines new material information exists, the chair or member designated by the chair must refer the matter*

**6 Section 14.01 is repealed and the following is substituted:**

**Decision of Review Board**

**14.01(1)** The Review Board, after conducting a review, may

- (a) rescind, confirm or vary an order made under the former Act,
- (b) rescind or confirm a decision of the Director respecting the eligibility of the applicant to receive financial benefits or a death benefit,
- (c) rescind or confirm a decision of the Director made under section 13(3)(b) or (c), or
- (d) confirm the determination of the Director or vary the determination of the Director as to the amounts of financial benefits or the amount of the death benefit determined in accordance with the regulations by increasing or decreasing the amounts to be paid.

**(2)** If, under subsection (1), the Review Board rescinds a decision of the Director, the Review Board must refer the matter back to the Director for reconsideration.

**(3)** The Review Board must notify the applicant and the Director of the Review Board's decision under subsection (1).

**(4)** Subject to section 14.1, a decision of the Review Board under subsection (1) is final.

*back to the Director for reconsideration of the Director's decision in respect of the new material information.*

**6** Section 14.01 presently reads:

*14.01(1) On receiving an applicant's written submissions pursuant to section 14(8) or (9), if any, the Review Board must provide a copy of the applicant's written submissions to the Director and notify the Director that the Director may provide submissions in response to the applicant's submissions within 15 days of receiving a copy of the applicant's submissions.*

*(2) On receiving the Director's written submissions, if any, the Review Board must provide a copy of the written submissions to the applicant.*

*(3) If the applicant receives permission to make oral submissions to the Review Board, the Director may, if the Director chooses, also make oral submissions to the Review Board on a date to be determined by the Review Board.*

*(4) The Review Board, after reviewing the application, the evidence considered by the Director and the Director's notes, decision and reasons for the decision and all submissions made by the applicant and the Director, may*

*(a) rescind, confirm or vary an order made under the former Act,*

*(b) rescind or confirm a decision of the Director respecting the eligibility of the applicant to receive financial benefits or a death benefit,*

*(c) rescind or confirm a decision of the Director made under section 13(3)(b) or (c), or*

*(d) confirm the determination of the Director or vary the determination of the Director as to the amounts of financial benefits or the amount of the death benefit determined in accordance with the regulations by increasing or decreasing the amounts to be paid.*

*(5) If the Review Board rescinds a decision of the Director under subsection (4), the Review Board must refer the matter back to the Director for reconsideration and must notify the applicant and the Director of the Review Board's decision.*

**7 Section 15.1 is repealed and the following is substituted:**

**Director's decision**

**15.1** After making a decision under section 13, 13.01 or 15, the Director must

- (a) provide the applicant with a copy of the decision and reasons for the decision, and
- (b) advise the applicant that the applicant may request that the Review Board review the Director's decision.

**8 Section 16 is amended**

- (a) in subsection (1) by adding “, a death benefit” after “benefits”;
- (b) in subsection (3) by adding “, death benefit” after “benefits”.

**9 Section 17(m) is amended by adding “or a death benefit” after “financial benefits” wherever it occurs.**

*(6) Subject to section 14.1, a decision of the Review Board under subsection (4) is final.*

*(7) If, at any stage of the review process, the Review Board determines new material information exists, the Review Board must refer the matter back to the Director for reconsideration of the Director's decision in respect of the new material information.*

**7** Section 15.1 presently reads:

*15.1 After making a decision under section 13, 13.01 or 15, the Director must provide the applicant with a copy of the decision and must advise the applicant*

- (a) that the applicant may apply to have the Director's decision reviewed by the Review Board, and*
- (b) that the applicant may request that the review be conducted in person or by written submission.*

**8** Section 16 presently reads:

*16(1) No person shall make a false or misleading statement in an application for financial benefits or a grant.*

*(2) A person who contravenes subsection (1) is guilty of an offence.*

*(3) If a person is convicted of an offence under this section, any financial benefits or grant paid to that person under this Act may be recovered by the Minister as a debt due to the Crown.*

**9** Section 17(m) presently reads:

*17 The Lieutenant Governor in Council may make regulations*

- (m) respecting terms and conditions to be imposed on the payment of financial benefits and how and when the payments of financial benefits are to be made;*

**10 The following is added after section 20:**

**Transitional**

**21(1)** In this section, “former section 14(7)” means section 14(7) as it read immediately before the coming into force of this section.

**(2)** Where an applicant applied for a review pursuant to section 14(1) on or after October 1, 2011 and before the coming into force of this section and the application was referred to the Review Board pursuant to the former section 14(7), the Review Board must notify the applicant that the applicant has a right to choose whether the review will be conducted orally or in writing.

**Part 2  
Victims Restitution and  
Compensation Payment Act**

**Amends SA 2001 cV-3.5**

**11** The *Victims Restitution and Compensation Payment Act* is amended by this Part.

**12 The following is added after section 1:**

**Part 1  
Administrative Disposition  
Procedure**

**Definitions**

**1.1** In this Part,

- (a) “Court” means the Court of Queen’s Bench;
- (b) “dispute period” means the 30-day period from the later of
  - (i) the date all parties required to be served with a notice of disposition under section 1.4(2)(b) are served or are deemed to have been served, and
  - (ii) the last date of publication, if any, of a notice of disposition under section 1.4(7);

**10** Transitional.

**Part 2**  
**Victims Restitution and**  
**Compensation Payment Act**

**11** Amends chapter V-3.5 of the Statutes of Alberta, 2001.

**12** Administrative disposition.

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

**Application of Part**

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

**(2)** This Part does not apply if

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

**Administrative disposition proceeding**

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

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

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

- (a) the Minister has reason to believe that the property is property acquired by illegal means or is an instrument of illegal activity,



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

**Notice of administrative disposition**

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

**(2)** An administrative disposition proceeding may be commenced by

- (a) registering notice of disposition in the Personal Property Registry with respect to the property that is subject to disposition under this Part, unless notice of disposition in respect of the property would be refused registration in the Personal Property Registry, and
- (b) serving a notice of disposition on each of the following:
  - (i) the person from whom the property was seized,
  - (ii) any other person claiming an interest in the property,
  - (iii) a person who the Minister has reason to believe may have a registered or unregistered interest in the whole or a portion of the property, and
  - (iv) the public body, if any, in possession of the property.

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

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

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



- (5) A notice under subsection (2)(b) must
- (a) describe the property that is subject to disposition under this Part,
  - (b) state why the property is subject to disposition under this Part,
  - (c) state that the property and all interests in the property may be affected by disposition under this Part,
  - (d) state that the person on whom the notice is served may dispute disposition under this Part and where information relating to the dispute process can be found,
  - (e) state that the person on whom the notice is served will be deemed to admit the facts asserted in the notice unless the person
    - (i) files a notice of objection in accordance with section 1.6, or
    - (ii) is successful in an application under section 1.8(1),and
  - (f) include any other prescribed information.

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

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

**Public body entitled to possession**

**1.5** On receiving a notice under section 1.4(2)(b)(iv), a public body in possession of any of the property referred to in the



notice is entitled to maintain possession of it, notwithstanding any other claim or interest or right of possession in the property, until

- (a) 30 days after the Minister notifies the public body of the direction taken under section 1.6(2), or
- (b) 30 days after the Minister notifies the public body under section 1.7(3),

as the case may be.

#### **Notice of objection**

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

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

- (a) commence a legal action under Part 1.01 or Part 1.1 or withdraw from proceedings under this Act in relation to the property, and
- (b) notify the public body and each other person required to be served under section 1.4(2)(b) of the direction taken under clause (a).

#### **Failure to file notice of objection**

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

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



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

**Innocent failure to file notice of objection**

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

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

- (a) the claimant had a reasonable excuse for the failure to file a notice of objection in accordance with section 1.6, and
- (b) the application was made as soon as reasonably possible after the claimant learned of the forfeiture, and in any case within 2 years of the expiry of the dispute period.

(3) If a claimant is successful in an application under subsection (1), the Minister shall commence a legal action under Part 1.01 or Part 1.1 or withdraw from proceedings under this Act in relation to the property.

(4) If the Minister commences a legal action under Part 1.01 or Part 1.1 pursuant to subsection (3),

- (a) where the property has not been disposed of pursuant to a forfeiture under section 1.7, the property is deemed not to have been forfeited to the Crown and must not be disposed of except in accordance with this Act, and
- (b) where the property has been disposed of pursuant to a forfeiture under section 1.7, the proceeds from the disposition of the property are deemed to be the property that is the subject of the legal action.

(5) If the Minister withdraws from proceedings under this Act pursuant to subsection (3),



- (a) where the property has not been disposed of pursuant to a forfeiture under section 1.7, the Minister shall return the property to the successful claimant, and
- (b) where the property has been disposed of pursuant to a forfeiture under section 1.7, the Minister shall pay to the successful claimant the greater of
  - (i) the proceeds from the disposition of the property, and
  - (ii) the fair market value of the property at the time the property was seized as established by the successful claimant to the satisfaction of the Minister.

(6) Subject to subsection (7), if the Minister withdraws from proceedings under this Act pursuant to subsection (3) and pays the successful claimant under subsection (5)(b), no other compensation is payable in respect of that property.

(7) If the successful claimant disagrees with the amount paid under subsection (5)(b), the successful claimant may apply to the Court to determine the fair market value of the property at the time it was seized.

#### **General matters**

**1.9(1)** Sections 47 and 50 apply to a proceeding under this Part as if it were a legal action.

(2) Subject to subsections (3) and (4), no costs and no payment of any expenses may be awarded against the Crown, the Minister, any employee of the Crown or any person acting on behalf of the Crown in respect of a proceeding under this Part.

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

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



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

**13 The heading preceding section 2 is amended by striking out "Part 1" and substituting "Part 1.01".**

**14 Section 5(2) is amended by striking out "and" at the end of clause (a) and by adding the following after clause (a):**

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

**15 Section 11 is amended**

**(a) in subsection (2) by striking out "If" and substituting "Subject to subsection (2.1), if" ;**

**(b) by adding the following after subsection (2):**

**(2.1)** A respondent may, at least 5 days before the day on which the property disposal hearing is to commence, apply to the Court, on notice to the Minister and to any person the Court directed the restraint order to be served on, for an extension of

**13** The heading preceding section 2 presently reads:

*Part 1*  
*Property Acquired By Illegal Means*

**14** Section 5(2) presently reads:

*(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.*

**15** Section 11 presently reads:

*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,*

time for the filing and service of the affidavit under subsection (2) and for an adjournment of the property disposal hearing.

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

(a) set

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

and

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

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

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

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

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

- (a) file with the Court an affidavit setting out the origin and the nature and extent of the respondent's interest in the property and any other matters related to the respondent's claim to the restrained property, and*
  - (b) serve the affidavit on the other parties to the action.*
- (3) Notwithstanding subsection (2), at a property disposal hearing a respondent may, with the leave of the Court, give oral evidence setting out the origin and the nature and extent of the respondent's interest in the property and any other matters related to the respondent's claim to the restrained property.*

the purpose of the filing and service of an affidavit referred to in subsection (2).

**(c) in subsection (3) by adding “, (2.1), (2.2) or (2.3)” after “(2)”;**

**(d) by adding the following after subsection (3):**

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

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

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

**16 Section 19.4(2) is amended by striking out “and” at the end of clause (a) and by adding the following after clause (a):**

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

**16** Section 19.4(2) presently reads:

*(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*

**17 Section 19.91 is amended**

**(a) in subsection (2) by striking out “If” and substituting**  
“Subject to subsection (2.1), if” ;

**(b) by adding the following after subsection (2):**

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

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

(a) set

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

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

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

and

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

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

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

**17** Section 19.91 presently reads:

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

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

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

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

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

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

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

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

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

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

**(c) in subsection (3) by adding “, (2.1), (2.2) or (2.3)” after “(2)”;**

**(d) by adding the following after subsection (3):**

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

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

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



**18 Section 44(1) is amended**

- (a) by renumbering it as section 44;**
- (b) by adding the following after clause (d):**
  - (d.1) refunds of costs to persons who are successful in applications under section 1.8(1) or (7), 11 or 19.91;
  - (d.2) payments to successful claimants under section 1.8(5)(b);

**19 Section 52 is amended by adding the following after subsection (1):**

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

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

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

**20 Section 55(1) is amended by adding the following after clause (e.1):**

- (e.2) prescribing for the purposes of section 52(1.1)(c) circumstances in which cash or other negotiable instruments are presumed to be proceeds of illegal activity;

**18** Section 44(1) presently reads in part:

*44(1) Subject to the regulations, the Minister may make payments or grants from money that is paid to the Crown under this Act for any one or more of the following purposes:*

- (d) provision of compensation to the Crown or prescribed public bodies for costs incurred to protect the safety or health of persons or to protect property as a result of illegal acts;*

**19** Section 52(1) presently reads:

*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.*

**20** Section 55(1)(e.1) presently reads:

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

- (e.1) respecting the collection, use or disclosure of personal information;*

- (e.3) respecting the filing in the Personal Property Registry of notice of disposition under Part 1;
- (e.4) respecting information to be included in notices of disposition for the purposes of section 1.4(5)(f);

**21 Section 56(1) is amended**

- (a) **by striking out** “Parts 1” **and substituting** “Parts 1, 1.01”;
- (b) **by striking out** “Part 1” **and substituting** “Part 1, Part 1.01”.

**22 The following provisions are amended by striking out “Part 1” wherever it occurs and substituting “Part 1.01”:**

section 1(1)(a.1)(i);  
section 46(2);  
section 49(2);  
section 50.1.

**Coming into Force**

**23 This Act comes into force on Proclamation.**

**21** Section 56(1) presently reads:

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

**22** Updates references.

### **Coming into Force**

**23** Coming into force.





