

2015 Bill 23

Third Session, 28th Legislature, 64 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

VICTIMS RESTITUTION AND COMPENSATION PAYMENT AMENDMENT ACT, 2015

THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 23

2015

VICTIMS RESTITUTION AND COMPENSATION PAYMENT AMENDMENT ACT, 2015

(Assented to _____, 2015)

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

Amends SA 2001 cV-3.5

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

**2 The title and chapter number are repealed and the following
is substituted:**

CIVIL FORFEITURE AND RESTITUTION ACT

Chapter C-15.2

3 Section 1 is amended

(a) in subsection (1)

**(i) by renumbering clause (a) as clause (a.01) and
adding the following before clause (a.01):**

(a) “Fund” means the Civil Forfeiture Fund;

(ii) by adding the following after clause (b):

Explanatory Notes

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

2 The title and chapter number presently read:

*VICTIMS RESTITUTION AND COMPENSATION
PAYMENT ACT
CHAPTER V-3.5*

3 Adds definitions and deeming provisions. Section 1 presently reads in part:

(3.1) A reference in this Act to an instrument of illegal activity is a reference to property that

(a) was used in carrying out an illegal act that, in turn, resulted in or was likely to or was intended to result in the acquisition of other property or in bodily harm to any person,

(b.1) “peace officer” means

- (i) a police officer under the *Police Act*, while the police officer is in the exercise or discharge of the police officer’s powers or duties,
- (ii) a peace officer appointed under the *Peace Officer Act*, while the peace officer is in the exercise or discharge of the peace officer’s powers or duties, and
- (iii) any other person employed by a public entity, a municipality or the Government of Canada for the preservation and maintenance of the public peace, while the person is in the exercise or discharge of the person’s powers and duties;

(iii) by adding the following after clause (c):

(c.1) “property victim” means a person who has been deprived of property by reason of an illegal act having been carried out by another person;

(c.2) “public entity” means

- (i) a police service,
- (ii) any department, branch or office of the Government,
- (iii) any agency, board, commission or Crown corporation, or
- (iv) a prescribed public entity;

(b) by adding the following after subsection (3.2):

(3.3) For the purposes of subsection (3.1)(a) and a legal action under Part 1.1, it is deemed that an illegal act designated by the regulations

- (a) as a specified bodily harm offence resulted in or was likely to or was intended to result in bodily harm to any person;

(b) is likely to be used in carrying out an illegal act that, in turn, would or would be likely to or be intended to result in the acquisition of other property or in bodily harm to any person, or

(c) is realized from the sale or other disposition of property referred to in clause (a) or (b).

(3.2) For the purposes of subsection (3.1)(b), proof that property was used in carrying out an illegal act that, in turn, resulted in the acquisition of other property or in bodily harm to any person is proof, in the absence of evidence to the contrary, that the property is likely to be used in carrying out an illegal act that, in turn, would or would be likely to or intended to result in the acquisition of other property or in bodily harm to any person.

(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.

- (b) as a specified property acquisition offence resulted in or was likely to or was intended to result in the acquisition of other property.

(3.4) For the purposes of subsection (3.1)(b) and a legal action under Part 1.1, it is deemed that an illegal act designated by the regulations

- (a) as a specified bodily harm offence would or would be likely to or be intended to result in bodily harm to any person;
- (b) as a specified property acquisition offence would or would be likely to or be intended to result in the acquisition of other property.

(3.5) For the purposes of subsection (3.2) and a legal action under Part 1.1, it is deemed that an illegal act designated by the regulations

- (a) as a specified bodily harm offence resulted in bodily harm to any person;
- (b) as a specified property acquisition offence resulted in the acquisition of other property.

(c) by repealing subsection (4).

4 The following is added after section 1:

Application of Act

1.01 This Act applies to property in Alberta, to illegal acts committed in Alberta and to illegal acts committed outside Alberta that would be illegal acts if committed in Alberta.

5 Section 1.1(c) is repealed.

4 Application of Act.

5 Section 1.1(c) presently reads:

1.1 In this Part,

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

6 Section 1.2(2) is amended

(a) by repealing clause (a) and substituting the following:

(a) with respect to property that is alleged to be an instrument of illegal activity, the limitation period for commencing a legal action under Part 1.1 has expired, or

(b) by striking out “or” at the end of clause (b) and repealing clause (c).

7 Section 1.3(2)(c) is amended by striking out “possession of a public body” and substituting “possession or control of a public entity”.

8 Section 1.4(2)(b) is amended

(a) in subclause (i) by adding “, if any” after “seized”;

(b) in subclause (iii) by striking out “a registered or unregistered interest” and substituting “an interest”;

(c) by repealing subclause (iv) and substituting the following:

(iv) the public entity in possession or control of the property.

6 Section 1.2(2) presently reads:

- (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.*

7 Section 1.3(2) presently reads:

- (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.*

8 Section 1.4(2) presently reads:

- (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,*

9 Section 1.5 is amended

- (a) **by striking out** “public body” **wherever it occurs and substituting** “public entity”;
- (b) **by adding** “or control” **after** “in possession”;
- (c) **by adding** “or control” **after** “maintain possession”.

10 Section 1.6 is amended

- (a) **in subsection (2)(b) by striking out** “public body” **and substituting** “public entity”;
- (b) **by adding the following after subsection (2):**
 - (3) A notice of objection is not admissible in evidence in a prosecution against the person filing the notice, except in a prosecution for perjury or for the giving of contradictory evidence.

11 Section 1.7(1) is amended by striking out “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” **and substituting** “disposition into the Fund”.

- (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.*

9 Section 1.5 presently reads:

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.

10 Section 1.6 presently reads in part:

(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).*

11 Section 1.7(1) presently reads:

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

12 Section 1.9(1) is amended by adding “46,” after “Sections”.

13 Section 3 is amended

- (a) in subsection (1)(a) by striking out “prescribed public bodies” and substituting “prescribed public entities”;**
- (b) in subsection (2)(b)(ii) by striking out “that illegal act” and substituting “an illegal act”.**

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.

12 Section 1.9(1) presently reads:

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

13 Section 3 presently reads in part:

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 application for any one or more of the following purposes:

- (a) to obtain restitution or compensation for property victims and other persons, including the Crown and prescribed public bodies;*
- (b) to remove financial incentives to commit illegal acts, including disgorging financial gains from illegal acts;*
- (c) to prevent property that has been acquired by illegal means from being used to carry out future illegal acts;*
- (d) other purposes provided for in the regulations.*

(2) The Minister may not commence an action under this Part unless

- (a) a peace officer or investigator 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 or investigator*
 - (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.*

14 Section 4 is amended

(a) in subsection (2)

(i) in clause (b.1) by striking out “or who may be affected by a property disposal order made in relation to the property”;

(ii) by repealing clause (c);

(b) in subsection (3) by adding the following after clause (a):

(a.1) the identity of any persons who the affiant believes at the time the affidavit is sworn may be affected by a property disposal order made in relation to the property;

(c) in subsection (4)(b) by adding “or (a.1)” after “(3)(a)”.

14 Section 4 presently reads in part:

(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;*
- (b.1) 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) 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;*
- (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,*
- (a.1) any person identified under subsection (2)(b.1) is to be named as a respondent, and*

15 Section 6 is amended

- (a) in subsection (3)(a) by striking out “10 days” and substituting “30 days”;**
- (b) by repealing subsection (5) and substituting the following:**

(5) If a person has turned the possession of or control over the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless

- (a) a notice of disposition in respect of the property has been received under section 1.4(2)(b)(iv), or
- (b) the Court directs otherwise.

(5.1) Where subsection (5)(a) applies, Part 1 applies to the property.

16 Section 7 is amended

- (a) by repealing subsection (1)(b);**
- (b) by adding the following after subsection (1):**

(1.1) Subject to subsection (1.2), a respondent may apply for a review of the restraint order within 30 days of being served with a copy of the restraint order.

(1.2) An application for a review of a restraint order may not be made after the commencement of the property disposal hearing in respect of the property.

- (c) by repealing subsection (2)(a);**
- (d) by adding the following after subsection (2):**

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

15 Section 6 presently reads in part:

(3) Unless sooner revoked by a peace officer, a direction given under subsection (1) expires

(a) subject to subsection (4), 10 days after the day on which the direction is given, or

(b) on the expiration of a longer period of time as directed by the Court.

(5) If a person has turned the possession of or control over the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless otherwise directed by the Court.

16 Section 7 presently reads in part:

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:

(b) a respondent may apply for a review of the restraint order;

(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;

- (2.1)** On an application under subsection (1.1), the Court may
- (a) conduct a review of the restraint order under section 8, or
 - (b) refuse to conduct a review under section 8 and direct that the matter proceed to a property disposal hearing if it would be in the interests of justice to do so.

17 Section 8 is amended

(a) in subsection (1)

- (i) by striking out “A request” and substituting “An application”;**
- (ii) by striking out “person requesting the review” and substituting “person applying for the review”;**
- (iii) by repealing clause (a) and substituting the following:**
 - (a) the nature and extent of the person’s interest in the restrained property, and
- (iv) in clause (b) by striking out “the request” and substituting “the application”;**

(b) by adding the following after subsection (1):

(1.1) The Minister may file additional evidence by affidavit in response to the application for the review.

(c) in subsection (2)

- (i) by repealing clause (a) and substituting the following:**
 - (a) dismiss the application;
- (ii) by repealing clause (b) and substituting the following:**

17 Section 8 presently reads:

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;*

- (b) allow the application in relation to the person who applied for the review, and if there is no other person who may have an interest in the restrained property,
 - (i) order that the restrained property be returned to a person entitled to possession of the property, and
 - (ii) provide for compensation for actual loss, if any, resulting directly from the restraint of the property;

(iii) by adding the following after clause (b):

- (b.1) direct the matter to a property disposal hearing if the property was not returned to a person, if the evidence is insufficient to determine an issue or if it would be in the interests of justice to do so;

(d) in subsection (3) by striking out “or” at the end of clause (a) and adding the following after clause (a):

- (a.1) the only ground for a review is a defect in form, a technical irregularity or an inadvertent error or omission, and that no substantial wrong or miscarriage of justice has occurred, or

18 Section 11(2)(a) is amended by adding “by the respondent” after “an affidavit”.

(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.

18 Section 11(2) presently reads:

(2) Subject to subsection (2.1), 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 restrained property, and

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

19 Section 12 is amended

- (a) by renumbering it as section 12(1);**
- (b) in subsection (1)**
 - (i) by striking out** “Unless the Court directs otherwise,” **and substituting** “Subject to subsection (2),”;
 - (ii) by striking out** “, without a reasonable excuse,”;
- (c) by adding the following after subsection (1):**
 - (2)** A respondent who fails to comply with any of the requirements in subsection (1) may apply to the Court to set aside the forfeiture.
 - (3)** In an application under subsection (2), the respondent must establish that
 - (a) the respondent had a reasonable excuse for the failure to comply with the requirements in subsection (1), and
 - (b) the application was made as soon as reasonably possible after the respondent learned of the forfeiture, and in any case before a property disposal order was made in respect of the property.

20 Section 13(1) is amended

- (a) in clause (b)(ii) by striking out** “the illegal act in respect of which the property was restrained” **and substituting** “an illegal act involving the restrained property”;
- (b) in clause (b.1)**
 - (i) by striking out** “the illegal act” **and substituting** “an illegal act”;
 - (ii) by striking out** “prescribed public body” **wherever it occurs and substituting** “prescribed public entity”.

19 Section 12 presently reads:

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 appointment for the purpose of being questioned on the respondent's affidavit;*
- (c) to answer questions put to the respondent during questioning 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.*

20 Section 13 presently reads in part:

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, other than a respondent referred to in clause (b.1), to establish, with respect to the restrained property,*
 - (i) the origin and the nature and extent of that respondent's interest in the property,*

21 Section 14 is amended

(a) by renumbering it as section 14(1);

(b) in subsection (1)

(i) in clause (a)

(A) in subclause (i)

(I) by striking out “is to revoke the restraint order and” **and substituting** “is to revoke the restraint order and, subject to subclause (iii),”;

(II) by striking out “the person against whom the restraint order was made” **and substituting** “a person entitled to possession of the property”;

(B) by striking out “and” at the end of subclause (i), adding “and” at the end of subclause (ii) and adding the following after subclause (ii):

(iii) may, where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed,

- (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;*
- (b.1) with respect to a respondent that is the Crown or a prescribed public body that incurred costs to protect the safety or health of persons or to protect property as a result of the illegal act in respect of which the property was restrained, the onus is on the Crown or the prescribed public body, as the case may be, to establish that it incurred those costs;*

21 Section 14 presently reads:

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*

(ii) in clause (b)

(A) in subclause (i) by striking out “provide under section 15” **and substituting** “subject to subsection (2), provide under section 15”;

(B) by repealing subclause (iii) and substituting the following:

(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;

(c) by adding the following after subsection (1):

(2) No property disposal order may be made providing for the return of restrained property or proceeds from restrained property to a respondent who has not discharged the onus in section 13(1)(b) unless the respondent establishes that failure to return the respondent’s property or the proceeds from the property would clearly be contrary to the interests of justice.

22 Section 16(2) is amended by striking out “prescribed public body” **wherever it occurs and substituting** “prescribed public entity”.

- (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 payments or grants or as otherwise provided for under Division 2 of Part 3;*
- (iv) *where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed.*

22 Section 16 presently reads in part:

(2) If, after restrained property has been dealt with under subsection (1) and section 15, all or some of the restrained property remains undisposed of or is not otherwise utilized and, in the opinion of the Court,

- (a) *the illegal act in respect of which the property was restrained also caused the Crown or a prescribed public body to incur costs to protect the safety or health of persons or to protect property, and*
- (b) *the Crown or the prescribed public body, as the case may be,*
 - (i) *has discharged the onus under section 13(1)(b.1), and*
 - (ii) *should be compensated for incurring those costs,*

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 Crown or the prescribed public

23 Section 17 is amended by striking out “to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3”.

24 Section 19 is amended

(a) by repealing subsection (1) and substituting the following:

Appeal

19(1) No application or order made or step or process taken under this Part, other than

- (a) a property disposal order or an ancillary order made in relation to a property disposal order, or
- (b) an order dismissing or allowing an application for a review of a restraint order under section 8(2)(a) or (b),

may be appealed.

(b) in subsection (2) by adding “, other than an appeal under subsection (1)(b),” after “Part”;

(c) by adding the following after subsection (2):

(3) An appeal under subsection (1)(b)

- (a) is to be made to the Court of Appeal,
- (b) may be commenced only by a party to the action,

body, or give any other directions in respect of the Crown or the prescribed public body that appear just and equitable.

23 Section 17 presently reads:

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

24 Section 19 presently reads:

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.*

- (c) must be filed and served within 15 days from the day that the order being appealed was served on the party appealing, and
 - (d) stays any order to return any restrained property.
- (4) Property may not be returned within the period referred to in subsection (3)(c).

25 Section 19.2 is amended

- (a) **in subsection (1)(a) by striking out “prescribed public bodies” and substituting “prescribed public entities”;**
- (b) **in subsection (2)(b)(ii) by striking out “or” at the end of paragraph (A), adding “or” at the end of paragraph (B) and adding the following after paragraph (B):**
 - (C) is realized from the sale or other disposition of property referred to in paragraph (A) or (B),

25 Section 19.2 presently reads in part:

19.2(1) Subject to subsection (2), the Minister may, with respect to property that is alleged to be an instrument of illegal activity, commence an action under this Part by an application for any one or more of the following purposes:

(a) to obtain restitution or compensation for victims and other persons, including the Crown and prescribed public bodies;

(2) The Minister may not commence an action under this Part unless

(a) a peace officer or investigator 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 or investigator

(i) has reasonable grounds to believe that an illegal act was or is likely to be committed,

(ii) reasonably believes that the property that is to be the subject of the application

(A) was used in carrying out an illegal act, or

(B) is likely to be used in carrying out an illegal act,

and

(iii) reasonably believes that the illegal act referred to in subclause (ii)

(A) resulted in the acquisition of other property or in bodily harm to any person, or

26 Section 19.3 is amended

(a) in subsection (2)

(i) in clause (c) by striking out “or who may be affected by a property disposal order made in relation to the property”;

(ii) by repealing clause (d);

(b) in subsection (3) by adding the following after clause (a):

(a.1) the identity of any persons who the affiant believes at the time the affidavit is sworn may be affected by a property disposal order made in relation to the property;

(c) in subsection (4)(c) by adding “or (a.1)” after “(3)(a)”.

- (B) *would or would be likely to or be intended to result in the acquisition of other property or in bodily harm to any person.*

26 Section 19.3 presently reads in part:

(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:

- (c) 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;*
- (d) the illegal act that it is alleged
 - (i) was carried out using the property, or*
 - (ii) is likely to be carried out using the property;**
- (e) the grounds for belief that the property was used or is likely to be used in carrying out an illegal act.*

(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 victim in respect of matters that are before the Court;*
- (b) whether a previous application has been made under this Act for a restraint order in respect of the property;*
- (c) whether a direction has been given by a peace officer in relation to the property pursuant to section 19.5;*
- (d) 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,*

27 Section 19.5 is amended

(a) in subsection (3)(a) by striking out “10 days” and substituting “30 days”;

(b) by repealing subsection (5) and substituting the following:

(5) If a person has turned the possession of or control over the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless

(a) a notice of disposition in respect of the property has been received under section 1.4(2)(b)(iv), or

(b) the Court directs otherwise.

(6) Where subsection (5)(a) applies, Part 1 applies to the property.

28 Section 19.6 is amended

(a) by repealing subsection (1)(b);

(b) by adding the following after subsection (1):

(1.1) Subject to subsection (1.2), a respondent may apply for a review of the restraint order within 30 days of being served with a copy of the restraint order.

(1.2) An application for a review of a restraint order may not be made after the commencement of the property disposal hearing in respect of the property.

- (b) any person identified under subsection (2)(c) is to be named as a respondent, and*
- (c) if the affidavit includes the names of persons referred to in subsection (3)(a), those persons may be included as respondents.*

27 Section 19.5 presently reads in part:

- (3) Unless sooner revoked by a peace officer, a direction given under subsection (1) expires*
 - (a) subject to subsection (4), 10 days after the day on which the direction is given, or*
 - (b) on the expiration of a longer period of time as directed by the Court.*
- (5) If a person having possession of or control over the property turns the property over to a peace officer, a civil enforcement agency or another person pursuant to a direction given under subsection (1)(b), the peace officer, civil enforcement agency or other person, as the case may be, must return the property to that person at the expiration of that direction unless otherwise directed by the Court.*

28 Section 19.6 presently reads in part:

- 19.6(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:*
- (b) a respondent may apply for a review of the restraint order;*
- (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 19.7;*

(c) by repealing subsection (2)(a);

(d) by adding the following after subsection (2):

(2.1) On an application under subsection (1.1), the Court may

- (a) conduct a review of the restraint order under section 19.7, or
- (b) refuse to conduct a review under section 19.7 and direct that the matter proceed to a property disposal hearing if it would be in the interests of justice to do so.

29 Section 19.7 is amended

(a) in subsection (1)

(i) by striking out “A request” and substituting “An application”;

(ii) by striking out “person requesting the review” and substituting “person applying for the review”;

(iii) by repealing clause (a) and substituting the following:

(a) the nature and extent of the person’s interest in the restrained property, and

(iv) in clause (b) by striking out “the request” and substituting “the application”;

(b) by adding the following after subsection (1):

(1.1) The Minister may file additional evidence by affidavit in response to the application for the review.

(c) in subsection (2)

(i) by repealing clause (a) and substituting the following:

(a) dismiss the application;

29 Section 19.7 presently reads:

19.7(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*

(ii) by repealing clause (b) and substituting the following:

- (b) allow the application in relation to the person who applied for the review, and if there is no other person who may have an interest in the restrained property,
 - (i) order that the restrained property be returned to a person entitled to possession of the property, and
 - (ii) provide for compensation for actual loss, if any, resulting directly from the restraint of the property;

(iii) by adding the following after clause (b):

- (b.1) direct the matter to a property disposal hearing if the property was not returned to a person, if the evidence is insufficient to determine an issue or if it would be in the interests of justice to do so;

(d) in subsection (3) by striking out “or” at the end of clause (a) and adding the following after clause (a):

- (a.1) the only ground for a review is a defect in form, a technical irregularity or an inadvertent error or omission and that no substantial wrong or miscarriage of justice has occurred, or

30 Section 19.91(2)(a) is amended by adding “by the respondent” after “an affidavit”.

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.*

30 Section 19.91(2) presently reads:

(2) Subject to subsection (2.1), 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.*

31 Section 19.92 is amended

(a) by renumbering it as section 19.92(1);

(b) in subsection (1)

(i) by striking out “Unless the Court directs otherwise,”
and substituting “Subject to subsection (2),”;

(ii) by striking out “, without a reasonable excuse,”;

(c) by adding the following after subsection (1):

(2) A respondent who fails to comply with any of the requirements in subsection (1) may apply to the Court to set aside the forfeiture.

(3) In an application under subsection (2), the respondent must establish that

(a) the respondent had a reasonable excuse for the failure to comply with the requirements in subsection (1), and

(b) the application was made as soon as reasonably possible after the respondent learned of the forfeiture, and in any case before a property disposal order was made in respect of the property.

32 Section 19.93(1)(b.1) is amended by striking out “prescribed public body” **wherever it occurs and substituting** “prescribed public entity”.

31 Section 19.92 presently reads:

19.92 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 appointment for the purpose of being questioned on the respondent's affidavit;*
- (c) to answer questions put to the respondent during questioning 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 19.5.*

32 Section 19.93 presently reads in part:

19.93(1) At a property disposal hearing

- (a) the onus is on the Minister to establish that the restrained property is an instrument of illegal activity;*
- (b) the onus is on a respondent, other than a respondent referred to in clause (b.1), to establish, with respect to the restrained property,*
 - (i) the origin and the nature and extent of that respondent's interest in the property,*
 - (ii) that the respondent*

33 Section 19.94 is amended

(a) by renumbering it as section 19.94(1);

(b) in subsection (1)

(i) in clause (a)

(A) in subclause (i)

(I) by striking out “is to revoke the restraint order and” **and substituting** “is to revoke the restraint order and, subject to subclause (iii),”;

(II) by striking out “the person against whom the restraint order was made” **and substituting** “a person entitled to possession of the property”;

- (A) *has not been or would not have been involved in or associated with carrying out an illegal act using, or associated with, the restrained property, and*
- (B) *did not know and would not reasonably be expected to know that the restrained property was or was likely to be used in carrying out an illegal act,*
- (iii) *if the respondent is a victim of an illegal act that the restrained property was used in carrying out, that the respondent's safety or health or property has been, in some manner, adversely affected or compromised as a result of the illegal act, and*
- (iv) *where the property was used in carrying out an illegal act and subsequent to the illegal act 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 used in carrying out an illegal act;*
- (b.1) *with respect to a respondent that is the Crown or a prescribed public body that incurred costs to protect the safety or health of persons or to protect property as a result of the restrained property having been used, or of the likelihood that it would be used, in carrying out an illegal act, the onus is on the Crown or the prescribed public body, as the case may be, to establish that it incurred those costs;*

33 Section 19.94 presently reads:

19.94 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 used and is not likely to be used in carrying out an illegal act, 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*

(B) by striking out “and” at the end of subclause (i), adding “and” at the end of subclause (ii) and adding the following after subclause (ii):

(iii) where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed;

(ii) in clause (b)

(A) in subclause (i) by striking out “provide under section 19.95” and substituting “subject to subsection (2), provide under section 19.95”;

(B) by repealing subclause (iii) and substituting the following:

(iii) provide under section 19.97 for the disposal of the restrained property and for the payment to the Crown of the proceeds from the disposal;

(c) by adding the following after subsection (1):

(2) No property disposal order may be made providing for the return of restrained property or proceeds from restrained property to a respondent who has not discharged the onus in section 19.93(1)(b) unless the respondent establishes that failure to return the respondent’s property or the proceeds from the property would clearly be contrary to the interests of justice.

34 Section 19.96(2) is amended by striking out “prescribed public body” wherever it occurs and substituting “prescribed public entity”.

(ii) may provide for compensation for actual loss, if any, resulting directly from the restraint of the property,

or

(b) was used or is likely to be used in carrying out an illegal act, the Court may grant a property disposal order and in the property disposal order

(i) provide under section 19.95 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 19.96 for the disposal or other utilization of the restrained property for the purposes of providing compensation to victims who do not qualify for compensation under section 19.95;

(iii) provide under section 19.97 for the disposal of the restrained property and for payment to the Crown of the proceeds from the disposal to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3;

(iv) where the Court determines that the restrained property may present a danger to the public or is illegal, direct that the restrained property be modified or destroyed.

34 Section 19.96(2) presently reads:

(2) If, after restrained property has been dealt with under subsection (1) and section 19.95, all or some of the restrained property remains undisposed of or is not otherwise utilized and, in the opinion of the Court,

(a) the illegal act in respect of which the property was restrained also caused the Crown or a prescribed public body to incur costs to protect the safety or health of persons or to protect property,

35 Section 19.97 is amended by striking out “to be used for the purposes of making payments or grants or as otherwise provided for under Division 2 of Part 3”.

36 Section 19.99 is amended

(a) by repealing subsection (1) and substituting the following:

Appeal

19.99(1) No application or order made or step or process taken under this Part, other than

- (a) a property disposal order or an ancillary order made in relation to a property disposal order, or
- (b) an order dismissing or allowing an application for a review of a restraint order under section 19.7(2)(a) or (b),

may be appealed.

(b) in subsection (2) by adding “, other than an appeal under subsection (1)(b),” **after** “Part”;

- (b) *the Crown or the prescribed public body, as the case may be,*
 - (i) *has discharged the onus under section 19.93(1)(b.1), and*
 - (ii) *should be compensated for incurring those costs,*

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 Crown or the prescribed public body, or give any other directions in respect of the Crown or the prescribed public body that appear just and equitable.

35 Section 19.97 presently reads:

19.97 If, after restrained property has been dealt with under section 19.95 and, if applicable in the circumstances, under section 19.96, 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 payments or grants or as otherwise provided for under Division 2 of Part 3.

36 Section 19.99 presently reads:

19.99(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.*

(c) by adding the following after subsection (2):

- (3)** An appeal under subsection (1)(b)
 - (a) is to be made to the Court of Appeal,
 - (b) may be commenced only by a party to the action,
 - (c) must be filed and served within 15 days from the day that the order being appealed was served on the party appealing, and
 - (d) stays any order to return any restrained property.
- (4)** Property may not be returned within the period referred to in subsection (3)(c).

37 Section 44 is amended

- (a) by striking out “this Act” and substituting “this Part”;**
- (b) by repealing clauses (d), (d.1) and (d.2).**

38 The following is added after section 45:

Part 3.1 Civil Forfeiture Fund

Civil Forfeiture Fund

45.1(1) The Civil Forfeiture Fund is established.

(2) Subject to subsection (3), the following shall be paid into the Fund:

37 Section 44 presently reads in part:

44 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;*
- (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);*

38 Part 3.1 Civil Forfeiture Fund.

- (a) proceeds from property forfeited to the Crown under Part 1;
- (b) money paid to the Crown under Part 1, Part 1.01 or Part 1.1;
- (c) proceeds paid to the Crown from the disposal of property under Part 1, Part 1.01 or Part 1.1;
- (d) money appropriated by the Legislature for the purposes of the Fund;
- (e) advances from the General Revenue Fund for the purposes of the Fund;
- (f) money received as repayment of any amount paid by the Minister from the Fund;
- (g) amounts paid to the Court, the Minister or the Fund in compliance with a court order or pursuant to a settlement of a legal action, or relating to administrative disposition proceedings under Part 1 or to legal actions under Part 1.01 or Part 1.1.

(3) Payments to the Crown or a prescribed public entity pursuant to section 16 or 19.96 do not form part of the Fund.

(4) The Fund is to be held and administered by the Minister in accordance with this Act and the regulations.

(5) The income earned by the Fund accrues to and forms part of the Fund.

(6) The Minister may be a participant under section 40 of the *Financial Administration Act* on behalf of the Fund.

(7) The Minister must maintain a separate accounting record of the Fund.

Use of Fund

45.2 The Minister may, in accordance with this Act and the regulations, make payments from the Fund for any one or more of the following purposes:

- (a) programs, services or activities that benefit victims;

- (b) without limiting the generality of clause (a), programs that provide counselling to children who are victims of sexual exploitation or other criminal offences causing physical or mental harm;
- (c) programs, services or activities to prevent or reduce illegal acts;
- (d) in relation to Parts 1, 1.01 and 1.1 and this Part,
 - (i) payments to respondents in compliance with a court order or pursuant to a settlement of a legal action;
 - (ii) payments to persons relating to an administrative disposition proceeding, including a settlement of an administrative disposition proceeding;
 - (iii) payments to successful claimants under section 1.8(5) or (7);
 - (iv) refunds of costs to persons who are successful in claims under section 11 or 19.91;
 - (v) payments related to preserving, managing or disposing of property subject to restraint, disposition or disposal;
 - (vi) payments related to assessing, pursuing, defending or resolving administrative disposition proceedings or legal actions;
 - (vii) payment of the expenses directly associated with the administration of those Parts of this Act by the office, agency or branch of the Government responsible for administering those Parts of this Act;
 - (viii) payments for legal services related to assessing, pursuing, defending or settling a legal action or an administrative disposition proceeding;
 - (ix) payments to enforce or comply with a court order or a settlement of a legal action or of an administrative disposition proceeding;

- (x) payment of any amounts awarded against the Crown, the Minister, any employee of the Crown or any person acting on behalf of the Crown in respect of an administrative disposition proceeding or a legal action;
- (xi) compensation for actual loss, or for repayment of expenses incurred, in relation to restrained property;
- (e) payments to operate or manage the Fund;
- (f) other purposes provided for in the regulations.

39 The following is added after section 46:

Unlawful possession of property

46.1 For the purposes of a proceeding under this Act, no person may claim to have an interest in property if under the law of Canada or Alberta it is unlawful for that person to possess that property.

40 Section 48 is amended

(a) in subsection (2)

- (i) by striking out “Costs” and substituting “Subject to subsection (2.1), costs”;**
- (ii) by striking out “14(a)(i)” and substituting “14(1)(a)(i)”;**
- (iii) by striking out “19.94(a)(i)” and substituting “19.94(1)(a)(i)”;**

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

(2.1) Costs must not be awarded against the Crown to a person to whom restrained property or proceeds from restrained property are returned in the interests of justice as established under section 14(2) or 19.94(2).

39 Unlawful possession of property.

40 Section 48(2) presently reads:

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

(a) a restraint order was made against the person, and

(b) an order was made under section 8(2)(b), 14(a)(i), 19.7(2)(b) or 19.94(a)(i) returning the restrained property to the person.

41 The following is added after section 49:

Additional applications

49.1 Nothing in this Act shall be construed as preventing the Minister from bringing more than one application for a restraint order in respect of a property or an illegal act.

42 Section 50.1 is repealed and the following is substituted:

Limitation period

50.1(1) The time limit for commencing a legal action under Part 1.1 in respect of an illegal act that has occurred is 10 years from the date on which the illegal act occurred.

(2) Notwithstanding the *Limitations Act*, no time limit applies for commencing a legal action under Part 1.01.

43 Section 52 is amended

- (a) in subsection (1.1) by striking out “a police investigation” and substituting “an investigation”;**
- (b) in subsection (2) by striking out “, subject to any direction of the Court,”.**

41 Additional applications.

42 Section 50.1 presently reads:

50.1 The time limit for commencing a legal action under Part 1.01 or, in respect of an illegal act that has occurred, under Part 1.1 is 10 years from the date on which the illegal act occurred.

43 Section 52 presently reads in part:

(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.

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

(a) an affiant who provides evidence by means of an affidavit is questioned on the affidavit, or

(b) a person who gives oral evidence is cross-examined,

44 Section 55(1) is amended

(a) by adding the following after clause (b):

- (b.1) designating illegal acts as specified property acquisition offences;
- (b.2) designating illegal acts as specified bodily harm offences;

(b) in clause (c.2) by striking out “public bodies” and substituting “public entities”;

(c) by adding the following after clause (c.3):

- (c.4) respecting the Fund, including regulations
 - (i) respecting the administration of the Fund;
 - (ii) limiting, regulating and controlling the exercise of the Minister’s discretion with respect to the Fund;
 - (iii) prescribing purposes for which the Fund may be used;
 - (iv) prescribing limits on the value of the Fund to be held and administered by the Minister;

Amends RSA 2000 cV-3

45(1) The *Victims of Crime Act* is amended by this section.

(2) Section 9(2)(c.1) is amended by striking out “*Victims Restitution and Compensation Payment Act*” and substituting “*Civil Forfeiture and Restitution Act*”.

that person may be questioned 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.

44 Section 55(1) presently reads in part:

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

(c.2) prescribing public bodies for the purposes of this Act;

(c.3) respecting the making of payments or grants under section 44 including, without limitation, regulations

(i) respecting other purposes for which a payment or grant may be made;

(ii) respecting applications for payments or grants;

(iii) respecting the conditions required to be met by any applicant for a payment or grant;

(iv) respecting the conditions on which a payment or grant is made;

(v) limiting the amount of any payment or grant or class of payment or grant that may be made;

45 Amends chapter V-3 of the Revised Statutes of Alberta 2000. Section 9(2)(c.1) presently reads:

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

(c.1) money received pursuant to the Victims Restitution and Compensation Payment Act;

46 This Act comes into force on Proclamation.

46 Coming into force.

