

Chapter 14

UNLAWFUL PROPERTY FORFEITURE ACT

(Assented to March 14, 2017)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

INTERPRETATION

Definitions

1. (1) In this Act,

"Court" means the Nunavut Court of Justice; (*Cour*)

"Director" means the Director of Forfeiture appointed under section 24; (*directeur*)

"Fund" means the Forfeiture Fund established by subsection 33(1); (*Fonds*)

"instrument of unlawful activity" means property that

- (a) has been used to engage in unlawful activity that resulted in or was likely to result in the acquisition of property, or
 - (b) is likely to be used to engage in unlawful activity that may, or is intended to, result in the acquisition of property;
- (*instrument d'activités illégales*)

"interim order" means an order made under subsection 8(2); (*ordonnance provisoire*)

"law enforcement agency" means

- (a) the Royal Canadian Mounted Police or other police force in or outside Canada,
- (b) a department, branch or agency of the Government of Nunavut or the Government of Canada, and
- (c) a prescribed agency or organization; (*organisme chargé de l'application de la loi*)

"personal property registry" means the Personal Property Registry established under the *Personal Property Security Act*; (*réseau d'enregistrement des biens mobiliers*)

"prior registered interest" means

- (a) with respect to real property, an interest, encumbrance or judgment that was filed or registered against the property in

- accordance with the *Land Titles Act* before a notice of a proceeding under section 6 was filed, and
- (b) with respect to personal property, a security interest, lien, charge or other interest in respect of which a financing statement was registered against the property in the personal property registry in accordance with the *Personal Property Security Act* before a notice of a proceeding under section 6 was filed; (*intérêt antérieur enregistré*)

"proceeds of unlawful activity" means property

- (a) acquired directly or indirectly as a result of unlawful activity,
 - (b) realized directly or indirectly from the sale or other disposition of an instrument of unlawful activity,
 - (c) that has increased in value directly or indirectly as a result of unlawful activity or the sale or other disposition of an instrument of unlawful activity, or
 - (d) that has a debt obligation against or related to it which has decreased directly or indirectly as a result of unlawful activity or the sale or other disposition of an instrument of unlawful activity;
- (*produit d'activités illégales*)

"property" means real or personal property and, for greater certainty, includes cash; (*bien*)

"protection order" means an order made under section 12; (*ordonnance de protection*)

"Sheriff" means the Sheriff appointed under the *Judicature Act*; (*shérif*)

"unlawful activity" means an act or omission, other than an act or omission prescribed by regulation,

- (a) that occurs in Nunavut, if, at the time of occurrence, the act or omission is an offence under an Act of Nunavut or an Act of Canada,
 - (b) that occurs in a province or another territory if, at the time of occurrence, the act or omission
 - (i) is an offence under an Act of Canada or an Act of the province or other territory, and
 - (ii) would be an offence in Nunavut if the act or omission had occurred in Nunavut, or
 - (c) that occurs in a jurisdiction outside Canada if, at the time of occurrence, the act or omission
 - (i) is an offence under the laws of the jurisdiction, and
 - (ii) would be an offence in Nunavut if the act or omission had occurred in Nunavut;
- (*activité illégale*)

References to property and interest in property

(2) In this Act,

- (a) a reference to property includes a reference to any interests in the property, whether held by the same or a different person; and
- (b) for greater certainty, a reference to an interest in property includes a reference to
 - (i) an ownership interest in the property; and
 - (ii) any equitable or legal right or claim in the property.

References to proceeds of unlawful activity

(3) In this Act, unless otherwise indicated, a reference to proceeds of unlawful activity includes a reference to property that is partly the proceeds of unlawful activity.

Purpose

2. The purpose of this Act is to promote safe and healthy communities in accordance with Inuit societal values by providing civil remedies that will

- (a) prevent people who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;
- (b) prevent property from being used to engage in unlawful activities; and
- (c) allow for the disposition of property derived from or used to engage in unlawful activities to socially useful purposes such as providing assistance for victims of crime and funding community-based wellness programs.

PART 2

FORFEITURE ORDERS

Proceedings for forfeiture order

3. (1) If the Director is satisfied that property is proceeds of unlawful activity or an instrument of unlawful activity, the Director may commence proceedings in the Court seeking an order forfeiting the property to the Director.

How proceedings to be commenced

(2) Proceedings under this Part may be commenced by action or application.

Nature of proceedings

(3) All proceedings under this Part are against property (*in rem*) and not against a person (*in personam*), even though the proceedings have parties.

Limitation

(4) Proceedings under this Part shall not be commenced more than 10 years after the unlawful activity occurred or is alleged to have occurred.

Same

(5) Proceedings under this Part shall not be commenced if the unlawful activity occurred before the coming into force of this Part.

Identifying property

4. (1) The statement of claim or notice of application must describe the property for which a forfeiture order is sought with sufficient detail to make it readily identifiable.

Excluded interests

(2) At the discretion of the Director, the statement of claim or notice of application may describe any interests in the property which are excluded from the action or application.

Parties

- 5.** (1) Subject to subsection (2), the following persons shall be named as parties to proceedings under this Part:
- (a) each person that the Director has reason to believe holds an interest in the property, unless the interest in question is a public highway or right-of-way or other public easement, or a utility easement as described in subsection 76(4) of the *Land Titles Act*;
 - (b) a person who is in possession of the property, unless the property is in the possession of a law enforcement agency.

Court order respecting parties

- (2) In proceedings under this Part, the Court may order, of its own initiative, that
- (a) a party be added, struck out or substituted; or
 - (b) the Director provide notice to a person affected by the proceedings.

Filing notice in land titles office

6. (1) The Director shall, as soon as practicable after commencing a proceeding seeking a forfeiture order in respect of real property, file a notice against the property in the proper land titles office in the prescribed manner.

Filing notice in personal property registry

(2) The Director may, after commencing a proceeding seeking a forfeiture order in respect of personal property, file notice of the proceeding against the property in the personal property registry in the prescribed manner.

Discharge of notice

(3) When a proceeding seeking a forfeiture order is dismissed or discontinued, the Director shall apply as soon as practicable to have a notice filed under subsection (1) or (2) discharged.

Notice to public

7. Subject to and in accordance with the regulations, the Director shall, immediately after filing a notice under section 6, provide a notice in all official languages in the community where the property was located at the commencement of the proceedings.

Interim relief

8. (1) The Director may, on motion with or without notice, seek interim relief from a judge or justice respecting property that is, or may become, the subject of a proceeding under this Part.

Interim orders

(2) Where the Director has sought interim relief under subsection (1), a judge or justice shall make one or more of the following interim orders if the judge or justice is satisfied that there are reasonable grounds to believe that the property is proceeds of unlawful activity or an instrument of unlawful activity:

- (a) an order restraining the disposition of the property;
- (b) an order for the seizure, possession, delivery or safekeeping of the property;
- (c) an order appointing a receiver or a receiver and manager for the property, if necessary to preserve the property;
- (d) an order allowing the sale, donation, destruction or other disposition of the property, if
 - (i) the property is perishable or of a rapidly depreciating nature,
 - (ii) the sale, donation or other disposition of the property would preserve the value of the property, or
 - (iii) the cost of managing or preserving the property would exceed its realizable value;
- (e) any other order respecting the preservation, management or disposition of the property that the judge or justice considers just.

Parts of property

(2.1) Under subsection (2), a judge or justice may make different interim orders with respect to different parts of the property referred to in subsection (1).

Same

- (3) In order to secure the performance of an obligation imposed by an interim order, the judge or justice may, as part of the order
- (a) make any possession or use of the property specified in the order, by a person other than the Director or a case management officer, conditional on providing the Court with a security deposit in a form acceptable to the judge or justice;
 - (b) create a lien in favour of the Director for an amount fixed by the judge or justice on the property, or on other property specified in the order; or
 - (c) impose any other conditions the judge or justice considers just.

Limitation on hearing

(4) A judge or justice hearing a motion for an interim order under this section shall limit the hearing to arguments and evidence relating to the question of whether or not he or she should make the interim order.

Motion made without notice

(5) An interim order may be made on motion without notice for a period not exceeding 60 days.

Extension

(6) If an interim order is made on a motion without notice, a motion to extend the order may be made only on notice to every party to the proceeding, unless the judge or justice is satisfied that because a party has been evading service, a party cannot be located despite reasonable efforts by the Director, or there are other exceptional circumstances, the order ought to be extended without notice to that party.

Extension without notice

(7) Where an extension is granted on a motion without notice, it may be made for a further period that the judge or justice considers reasonable.

Appeal of interim order made by justice

(8) An interim order made or extended by a justice may be appealed to the Court in accordance with sections 84 to 91 of the *Judicature Act*.

Appeal of interim order made by judge

(9) An interim order made or extended by a judge, or made or extended by a justice and confirmed or varied by the Court, may only be appealed if

- (a) the Court has ordered forfeiture under section 11; and
- (b) the interim order is appealed at the same time as the forfeiture order.

Interim order remains in force

(10) Subject to subsection (11), an interim order remains in force,

- (a) except as otherwise ordered by a judge of the Court of Appeal of Nunavut, during the appeal period specified in section 19 of the *Judicature Act* and while an appeal of a forfeiture order under section 11 is pending before the Court of Appeal of Nunavut; and
- (b) where applicable and except as otherwise ordered by a judge of the Supreme Court of Canada, during the appeal period specified in sections 58 and 59 of the *Supreme Court Act* (Canada) and while an application for leave to appeal or an appeal is pending before the Supreme Court of Canada.

Order ceases to be in force

(11) Unless the Director has commenced proceedings under this Part against property subject to an interim order, an interim order ceases to be in force if

- (a) the interim order has been in effect for 12 months, including any extensions granted under subsections (6) and (7), and
 - (i) the Director has not brought a motion to extend the interim order under subsection (12); or
 - (ii) a judge or justice has dismissed a motion brought under subsection (12) to extend the interim order; or
- (b) the extension granted for the interim order under subsection (13) has expired.

Motion to extend order

(12) The Director may, on motion with notice, seek to extend the interim order beyond the period referred to in paragraph (11)(a).

Extending interim order

(13) Where a motion has been brought under subsection (12), a judge or justice may extend the interim order for a non-renewable period of up to 12 months if the judge or justice is satisfied that

- (a) there is a reasonable justification for the delay in commencing proceedings under this Part against the property subject to the interim order; and
- (b) the Director intends to commence proceedings under this Part against the property subject to the interim order within a reasonable period of time.

Enforcement of interim orders

9. (1) An interim order, including any conditions attached to the interim order, may only be enforced by civil remedies, including remedies for civil contempt.

Order for seizure

(2) The Director may require the Sheriff to seize property subject to an order allowing seizure made under paragraph 8(2)(b).

Sheriff's obligation

(3) The Sheriff shall seize any property required to be seized under subsection (2) and deliver it in accordance with the terms of the order made under paragraph 8(2)(b).

Disposed property

(4) If property is disposed of in accordance with paragraph 8(2)(d), the cash or other property realized as a result of the disposition remains subject to proceedings under this Part.

Lien on property

(5) If a lien is created in favour of the Director under paragraph 8(3)(b), the Director may register the lien against the property in the personal property registry or the proper land titles office in the prescribed manner.

Cash to be paid into Court

(6) If an interim order relates to cash or results in cash becoming subject to the proceedings, the cash shall be paid into the Court pending the expiry of the interim order in accordance with subsection 8(10) and final disposition in accordance with this Act.

Interests to be disclosed

10. At the hearing of proceedings under this Part, the Director shall disclose to the Court

- (a) all prior registered interests in the property that is the subject of the proceeding; and
- (b) any other interests in the property that the Director has reason to believe exist.

Forfeiture order

11. (1) Subject to sections 12, 13 and 16, and unless it is shown to be clearly not in the interests of justice, the Court shall make an order forfeiting property to the Director if it finds that the property is proceeds of unlawful activity or an instrument of unlawful activity.

Cumulative impact on community

(2) In determining whether an order is clearly not in the interests of justice, the Court shall take into account all relevant factors including the cumulative impact of unlawful activities on the community as a whole.

Date of forfeiture

(3) When a forfeiture order is made, the property is forfeited as of the date the proceedings were commenced under section 3.

No assumption of mortgage or security interest

(4) Subject to section 12, the Director does not assume any covenants or other obligations under a mortgage or other security interest on forfeited property.

Protection order

12. (1) Subject to subsection (3), when property is found to be proceeds of unlawful activity or an instrument of unlawful activity, the Court shall make an order to protect, as much as reasonably practicable, interests in the property held by persons entitled to such an order under section 13 or 14.

Possible orders

- (2) Without limiting the generality of subsection (1), a protection order may
- (a) sever or partition any interest in the property or require any interest in the property to be sold or otherwise disposed of by any person;
 - (b) subject to subsection 11(4), provide that the Director takes the property subject to an existing interest;
 - (c) direct that the proceeds of the sale of the property be applied to any debt secured by a prior registered interest in the property; or
 - (d) direct an amount from the proceeds of the sale of the property be paid to a person subject to the protection order.

Exception

(3) Except as provided in subsection 13(1), the Court may refuse to issue a protection order if it considers that it would not be in the interests of justice to do so.

Protected holders

13. (1) The following are entitled to a protection order in respect of property that is found to be proceeds of unlawful activity or an instrument of unlawful activity:

- (a) the Government of Nunavut, the government of another territory, and the Crown in right of Canada or of a province;
- (b) a corporation wholly owned by the Government of Nunavut, the government of another territory, or the Crown in right of Canada or of a province;
- (c) a Designated Inuit Organization as defined in the Nunavut Land Claims Agreement, with respect to Inuit Owned Lands vested in that Designated Inuit Organization;
- (d) the holder of a interest which has been excluded from forfeiture proceedings under subsection 4(2), with respect to that interest.

Same

(2) Subject to subsection (3), the following are entitled to a protection order in respect of property that is found to be proceeds of unlawful activity or an instrument of unlawful activity:

- (a) any of the following holders of a prior registered interest in the property:
 - (i) a bank, a credit union, or a trust or loan corporation carrying on business in Nunavut,
 - (ii) an insurance company licensed under the *Insurance Act*,
 - (iii) a municipal corporation, or a municipal housing authority or housing association,
 - (iv) an Organization as defined by the Nunavut Land Claims Agreement;
 - (v) a member of a class of holders, prescribed by regulation, who are similar to the holders set out in subparagraph (i) or (ii);

- (b) the holder of an interest in the property that is
 - (i) an interest or claim referred to in section 69 of the *Land Titles Act*, whether registered or not, or
 - (ii) a prior registered interest that is prescribed by regulation.

Exception

(3) The entitlement referred to in subsection (2) does not apply if the Director proves to the Court that the holder of the interest knew or ought to have known that the property was used as an instrument of unlawful activity and did not take all reasonable action in the circumstances to prevent the property from being used to engage in unlawful activity.

Other persons entitled to protection order

(4) If property is found to be proceeds of unlawful activity or an instrument of unlawful activity, any person who acquired an interest in the property from a person referred to in subsection (2) is entitled to a protection order.

Protection order for proceeds of unlawful activity

14. (1) If property is found to be proceeds of unlawful activity, a person who holds an interest in the property is entitled to a protection order if the person proves

- (a) that he or she
 - (i) acquired the interest in the property before a notice under section 6 was filed against the property, and
 - (ii) did not, directly or indirectly, acquire the interest as a result of unlawful activity; and
- (b) that he or she
 - (i) co-owns the property with another person whose unlawful activity led to the finding that the property is proceeds of unlawful activity, but did not know and could not reasonably have known that his or her co-owner's interest in the property was acquired as a result of unlawful activity,
 - (ii) held the interest in the property before the unlawful activity occurred, and did not condone or facilitate the unlawful activity,
 - (iii) acquired the interest in the property for fair market value after the unlawful activity occurred, and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity, or
 - (iv) acquired the interest in the property from a person described in subparagraph (i), (ii) or (iii) if he or she did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity.

Protection order for instrument of unlawful activity

(2) If property is found to be an instrument of unlawful activity, a person who holds an interest in the property is entitled to a protection order if the person proves that

- (a) he or she acquired the interest in the property before a notice under section 6 was filed against the property;
- (b) if the unlawful activity occurred after he or she acquired the interest in the property,
 - (i) he or she did not know and could not reasonably have known that the property was being used to engage in unlawful activity, or
 - (ii) he or she took all reasonable action in the circumstances to prevent the property from being used to engage in unlawful activity; and
- (c) if the unlawful activity occurred before he or she acquired the interest in the property, he or she did not know and could not have reasonably known that the property was an instrument of unlawful activity at the time of acquisition.

Reasonable action

15. For the purposes of subsection 13(3) and paragraph 14(2)(b), reasonable action to prevent property from being used to engage in unlawful activity includes, but is not limited to,

- (a) promptly notifying appropriate law enforcement agencies when the person knows or ought reasonably to know that the property has been or is likely to be used to engage in unlawful activity;
- (b) refusing or withdrawing any permission that the person
 - (i) has authority to give, and
 - (ii) knows or ought to know has allowed or is likely to allow the property to be used to engage in unlawful activity; or
- (c) taking action that, in accordance with traditional Inuit societal practices, was reasonable in the circumstances to prevent the property from being used to engage in unlawful activity.

Lawful interest holders

16. (1) Subject to subsections (3) and (4) and any protection order, where the Court establishes that property forfeited under section 11 is only partly the proceeds of unlawful activity, the Court shall order that the persons who hold lawful interests in the part of the property that is not the proceeds of unlawful activity are entitled to proceeds of the sale of the property.

Priority to purchase

(2) Subject to subsections (3) and (4), the Court may order that a person who holds a lawful interest in the part of the property that is not the proceeds of unlawful activity has priority, for a period of time the Court considers reasonable, to purchase the forfeited property at fair market value, on terms and conditions that the Court considers just.

Division of proceeds

(3) The division of the proceeds of the sale between the Director and the lawful interest holders, and amongst lawful interest holders, for the purposes of subsections (1) and (2), shall be calculated in a manner that the Court determines would best serve the interests of justice.

Proof

(4) An order under subsection (1) or (2) may only be made with respect to a person who proves that

- (a) he or she is a lawful interest holder of the part of the property in question;
- (b) the part of the property in question is not the proceeds of unlawful activity; and
- (c) it is in the interests of justice that the order be made.

Person committing unlawful activity

(5) For greater certainty, the person who committed or is alleged to have committed the unlawful activity subject to the proceedings may claim as a lawful interest holder of part of the property for the purposes of this section.

Disposition of property

(6) Unless a protection order does not allow for disposition of the property and to the extent doing so is reasonable in the circumstances, the Director shall dispose of property forfeited under section 11 in a manner that reasonably maximizes the available funds to satisfy any entitlements under this section.

PART 3

CONDUCT OF PROCEEDINGS AND PRESUMPTIONS

Application of *Rules of the Nunavut Court of Justice*

17. (1) For greater certainty, except as otherwise provided in this Act, the *Rules of the Nunavut Court of Justice* apply to all proceedings under this Act.

Director may refuse to disclose certain information

(2) Despite the *Access to Information and Protection of Privacy Act*, the Director may refuse to disclose anything, including in an examination for discovery or an affidavit of documents, or at any step in a proceeding under this Act, including at a hearing, if, in his or her opinion, the disclosure may

- (a) reveal the identity of a confidential informant, or otherwise jeopardize the safety of a person; or
- (b) negatively affect
 - (i) an ongoing investigation or operation conducted by a law enforcement agency, or

- (ii) the utility of investigative or intelligence-gathering techniques used by a law enforcement agency.

Order delaying proceedings

18. (1) On motion, the Court may order that any step in a proceeding under this Act be delayed in order to permit a prosecution of an offence to be completed, if it is satisfied that the order,

- (a) is necessary to
 - (i) protect a victim of the unlawful activity in question, or
 - (ii) protect the integrity or fairness of the proceedings related to the prosecution of the offence; and
- (b) is in the interests of justice.

Terms or conditions

(2) The Court may impose any terms or conditions on an order made under this section that it considers appropriate.

Standard of proof

19. A finding of fact or the discharge of a presumption in any proceeding under this Act is to be made on a balance of probabilities.

Proof of offences

20. (1) In a proceeding under this Act, it is proof that a person engaged in unlawful activity where the person was convicted or found guilty of an offence related to the unlawful activity.

Acquittal, withdrawal or stay of charges

(2) In a proceeding under this Act, evidence that a person was charged with and acquitted of an offence, or that such a charge was withdrawn or stayed, is not relevant in making a finding of fact.

Failure to seek forfeiture in sentencing does not prevent forfeiture

21. The fact that forfeiture of property was not sought in a sentencing process does not prevent the Director from seeking forfeiture of the property under this Act.

Presumption respecting proceeds of unlawful activity

22. (1) In a proceeding under this Act in which property is alleged to be proceeds of unlawful activity, in the absence of evidence to the contrary, it is proof that the property is proceeds of unlawful activity if it is proved that

- (a) a person
 - (i) participated in unlawful activity that resulted in, or is likely to have resulted in, the person receiving a financial benefit; or
 - (ii) received a financial benefit from selling or otherwise disposing of an instrument of unlawful activity; and
- (b) the person subsequently did one or more of the following:

- (i) acquired the property that is the subject of the proceeding;
 - (ii) caused an increase in the value of the property that is the subject of the proceeding; or
 - (iii) caused a decrease in a debt obligation secured against the property that is the subject of the proceeding; and
- (c) the value of the benefit referred to in paragraph (b) is substantially similar to the financial benefit referred to in paragraph (a).

No direct link to specific unlawful act needed

(2) In a proceeding under this Act in which property is alleged to be proceeds of unlawful activity, the Court

- (a) is not required to be satisfied that the property was acquired in connection with a specific unlawful act; or
- (b) is not required to be satisfied that an increase in the value of the property or a decrease in a debt obligation secured against the property was the result of a specific unlawful act.

Appeal may be heard by single judge

23. Pursuant to section 20 of the *Judicature Act*, an appeal of an order made under this Act may be heard by a single judge of the Court of Appeal of Nunavut.

PART 4

ADMINISTRATIVE MATTERS

Appointment of Director

24. The Minister may appoint a Director of Forfeiture, who is responsible for the administration of this Act.

Director's powers and duties

25. (1) The Director may exercise the powers and shall perform the duties assigned to that office by or under this Act, and in particular is responsible for

- (a) determining whether to commence or discontinue proceedings under this Act;
- (b) commencing and conducting proceedings under this Act.

Director to take into account relevant factors

(2) In determining whether to commence, conduct, maintain or discontinue proceedings under this Act, the Director shall take into account all relevant factors, including

- (a) perspectives of Inuit traditional knowledge and societal values, particularly with respect to justice;
- (b) nature and circumstances of the particular situation;

- (c) nature and circumstances of the community where the property is located;
- (d) the possible extent or scope to which the proceedings may evolve;
- (e) the availability of resources to commence, conduct or maintain the proceedings;
- (f) whether or not a person has been or is likely to be charged with an offence related to the unlawful activity;
- (g) the conduct of persons who have alleged to have been deprived of property or whose safety or health or property is alleged to have been adversely affected or compromised as a result of the unlawful activity; and
- (h) the ability of persons who have been adversely affected by the unlawful activity to pursue other legal means of obtaining compensation.

No obligation

(3) Nothing in this Act is to be construed so as to place any obligation on the Director to commence, conduct, maintain, discontinue or otherwise deal with a proceeding under this Act.

Privative clause

(4) A decision of the Director to commence, conduct, maintain or discontinue proceedings is not reviewable in a court of law, except on the grounds of bad faith.

Forms and procedures

(5) The Director may approve forms and may establish practices and procedures necessary for effectively carrying out the Director's functions under this Act.

Exemption from *Statutory Instruments Act*

(6) The *Statutory Instruments Act* does not apply to forms approved by the Director.

Case management officers

26. (1) The Director may appoint case management officers for the purposes of this Act.

Delegation of power

(2) The Director may delegate any power or duty he or she has under this Act to a case management officer.

Definitions

27. (1) In this section,

"personal information" has the same meaning as in the *Access to Information and Protection of Privacy Act*; (*renseignements personnels*)

"public body" has the same meaning as in the *Access to Information and Protection of Privacy Act*. (*organisme public*)

Director may collect information

(2) The Director is authorized to collect information, including personal information, from a public body or other source, including an anonymous source, for the following purposes:

- (a) to determine whether proceedings should be commenced under this Act;
- (b) to conduct proceedings under this Act;
- (c) to enforce or comply with an order made under this Act.

Public body obliged to give information

(3) A public body

- (a) is authorized to disclose information, including personal information, to the Director for a purpose set out in subsection (2); and
- (b) shall provide the Director with information, including personal information, requested by the Director for a purpose set out in subsection (2).

Exception for protected information

(4) Despite subsection (3), a public body is not required to disclose to the Director information that is subject to solicitor-client privilege or protected by evidentiary rules regarding informer identity.

Confidentiality

(5) Except as authorized or required under this Act or as otherwise authorized or required by law, the Director and every person acting on behalf or under the direction of the Director shall maintain confidentiality and shall not disclose information received under this section.

Access to Information and Protection of Privacy Act

(6) Despite the *Access to Information and Protection of Privacy Act*, information collected under this section or under an agreement made pursuant to section 29 or 30 and in the custody or under the control of the Director or the office of the Director is exempt from disclosure under that Act.

Authorized disclosure

28. The Director may disclose information obtained under subsection 27(2)

- (a) in order to exercise a power or fulfil a duty under this Act;
- (b) for a purpose for which the information could be collected under that subsection;
- (c) to a person pursuant to an agreement entered into under section 29; and
- (d) as otherwise required or authorized by law.

Definitions

29. (1) In this section,

“civil forfeiture” means forfeiture under this Act or comparable forfeiture under the laws of another jurisdiction; (*confiscation civile*)

“government” means

- (a) the Government of Canada,
- (b) the government of a province or another territory,
- (c) the government of another country or a jurisdiction in another country. (*gouvernement*)

Reciprocal information exchange agreements

(2) The Minister may enter into a written agreement for the reciprocal exchange of information relating to the civil forfeiture of property with a government or agency of a government if the Minister is satisfied that that government or agency has in place adequate safeguards to ensure that information shared will only be used for purposes related to the civil forfeiture in that jurisdiction.

- (2.1) An agreement entered into under subsection (2) must
 - (a) provide for the confidentiality of information collected, used or disclosed under it that is not used for purposes related to civil forfeiture; and
 - (b) establish mechanisms for maintaining the confidentiality and security of the information referred to in paragraph (a).

Disclosure of information

(3) If the Minister has entered into an agreement with a government or agency of a government for the reciprocal exchange of information relating to the civil forfeiture of such property, the Director may disclose information obtained under this Act to a person employed by that government or agency who is assigned powers or duties by law allowing for the civil forfeiture of proceeds of unlawful activity or instruments of unlawful activity.

Agreement with law enforcement agencies

30. The Minister may enter into a written agreement with a law enforcement agency to enable the agency to provide information to the Director that will assist the Director in exercising or performing his or her powers and duties under this Act.

Managing forfeited property

31. (1) Despite the *Financial Administration Act* but subject to the terms of a court order, the Director may manage, sell or otherwise dispose of or deal with forfeited property in the manner that he or she considers appropriate.

Director's powers to manage property

(2) Without limiting the generality of subsection (1), the Director, where no receiver is appointed by the Court, may

- (a) preserve or manage forfeited property for the length of time and on the terms that he or she considers proper;
- (b) do anything that he or she considers proper for the ongoing management or operation of forfeited property before it is sold or otherwise disposed of, including making improvements to the property to maintain or increase its value;
- (c) sell, assign or otherwise dispose of forfeited property at the price and on the terms that he or she considers proper; or
- (d) donate, destroy or otherwise dispose of forfeited property, if in the opinion of the Director
 - (i) the property is perishable, of a rapidly depreciating nature or requires so much repair or improvement that a sale is not commercially viable,
 - (ii) the property has little or no commercial value,
 - (iii) the cost of managing, preserving or selling the property would exceed its realizable value, or
 - (iv) the donation or destruction of the property is otherwise in the public interest, including to protect the safety of a person.

Parts of property

(3) Where this section provides for a power with respect to property, that power may be exercised with respect to any part of the property, and different powers may be exercised with respect to different parts of the property.

Director taking property subject to orders

32. When the Director is assigned duties by the Court in relation to property that is the subject of an interim order or takes possession of property that is the subject of a protection order, the Director shall manage the property in accordance with the requirements of the order.

Establishment of Forfeiture Fund

33. (1) A fund called the Forfeiture Fund is established.

Special purpose fund

(2) The Fund is a special purpose fund as defined in the *Financial Administration Act*.

Payment into Fund

34. (1) Subject to the terms of a court order respecting forfeited property, and to subsections (2) and (3), the Director shall deposit all cash forfeited under this Act and all proceeds generated by the management, sale or other disposition of other property forfeited under this Act into the Fund.

Use of funds

(2) The Minister may authorize disbursements from the Fund, in accordance with the regulations, for

- (a) funding the operations of the office of the Director, up to the office's budget allocation approved in accordance with the *Financial Administration Act*;
- (b) compensating victims in accordance with section 35;
- (c) making payments to the Victims Assistance Fund established under the *Victims of Crime Act*; and
- (d) making payments to community wellness programs and organizations in Nunavut, after consultation with prescribed entities.

Person eligible for compensation

35. (1) A person may receive compensation from the proceeds of forfeited property if the person

- (a) suffered a pecuniary loss as a direct result of unlawful activity that led to the forfeiture of the property; and
- (b) did not, directly or indirectly, engage in or benefit from the commission of the unlawful activity.

Applying for compensation

(2) An application for compensation must be made in writing to the Director in accordance with the regulations.

Amount of compensation

(3) The amount of compensation payable to an eligible person is to be calculated or determined in accordance with the regulations.

Additional provisions re payment

- (4) The compensation payable to an eligible person may
- (a) be paid in one or more instalments; and
 - (b) be subject to such terms or conditions that the Director considers appropriate.

Annual report to Minister

36. (1) Within the first six months of each fiscal year, the Director shall prepare and submit to the Minister an annual report, for the previous fiscal year, that includes the following:

- (a) the number of forfeiture orders made within that period that resulted in the forfeiture of property within that period;
- (b) the total amount realized within that period from the disposition of property forfeited under this Act;
- (c) the operating costs of the office of the Director in administering this Act; and
- (d) any other information requested by the Minister.

Report to be tabled

(2) The Minister shall table the report submitted under subsection (1) in the Legislative Assembly during the first sitting of the Assembly after the report is submitted that provides a reasonable opportunity for tabling the report.

PART 5

MISCELLANEOUS PROVISIONS

Assistance of Sheriff

37. The Sheriff shall provide any assistance requested by the Director to enforce an order made under this Act.

Where possession unlawful

38. For the purposes of a proceeding under this Act, a person may not claim to hold an interest in property if, under the law of Canada or Nunavut, it is unlawful for that person to hold the interest in the property.

Director not compellable as witness

39. Except in a proceeding under this Act, the Director, and any person acting for or under his or her direction, cannot be compelled in court or in any other proceeding

- (a) to give evidence about information obtained by or on behalf of the Director for the purposes of this Act; or
- (b) to produce any document or other thing obtained by or on behalf of the Director for the purposes of this Act.

Protection from liability

40. Unless the government or person was acting in bad faith, no action or proceeding may be brought against the Government of Nunavut, the Minister, the Director, or any person acting under the authority of this Act for anything done, or not done, or for any neglect,

- (a) in the performance or intended performance of a duty under this Act; or
- (b) in the exercise or intended exercise of a power under this Act.

Actions not subject to review or appeal

41. Except for appeals of orders made under Part 2 pursuant to the *Rules of the Nunavut Court of Justice* and subject to subsection 25(4), no decision made or action taken by the Director, or any person acting under the authority of this Act, in respect of a proceeding is to be questioned, reviewed or restrained by means of an appeal or any proceedings in the nature of injunction, prohibition, mandamus, quo warranto or any other process or proceeding in any court or to be removed by any proceeding in the nature of certiorari or otherwise in any court.

Regulations

42. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing additional agencies or organizations for the purpose of the definition of “law enforcement agency”;
- (b) prescribing acts or omissions that do not constitute unlawful activity for the purposes of this Act;
- (c) respecting notices filed under section 6 or made under section 7;
- (d) respecting the manner of registering liens in the personal property registry or a land titles office under subsection 9(5);
- (e) prescribing classes of holders who are entitled to protection orders under subsection 13(2);
- (f) prescribing prior registered interests that entitle their holders to protection orders under subsection 13(2);
- (g) respecting the management of forfeited property;
- (h) respecting the use of funds in the Fund;
- (i) prescribing entities which must be consulted before paying funds under paragraph 34(2)(d);
- (j) respecting the community wellness programs and organizations, including criteria for determining the eligibility for and the amount of any payment from the Fund;
- (k) respecting the reports to be submitted by community wellness programs and organizations;
- (l) respecting applications for compensation and the determination of the amount of compensation that may be paid under section 34;
- (m) prescribing anything referred to in this Act as being prescribed;
- (n) respecting any other matter necessary or advisable to carry out the purposes of this Act.

Coming into force

43. This Act comes into force on a day to be fixed by order of the Commissioner.