

BILL

No. 94

An Act respecting the Profits of Criminal Notoriety

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(Assented to)

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

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Profits of Criminal Notoriety Act*.

Interpretation

2(1) In this Act:

(a) **“contract for the recounting of a crime”** means a contract entered into before, on or after the coming into force of this Act under which:

(i) a person convicted of, or charged with, a designated crime provides or agrees to provide a recounting of the designated crime, either directly or indirectly; and

(ii) consideration is payable to, or at the direction of, the convicted or accused person or the person’s agent;

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- (b) **“convicted”** includes a finding that a person was not criminally responsible on account of mental disorder and a finding of guilt in a proceeding pursuant to the *Youth Criminal Justice Act* (Canada);
- (c) **“court”** means the Court of Queen’s Bench;
- (d) **“designated crime”** means an act or omission that occurred before, on or after the coming into force of this Act and that:
- (i) is an indictable offence pursuant to the *Criminal Code* for which the maximum penalty is imprisonment for five years or more and that involves:
 - (A) the use or attempted use of violence against another person; or
 - (B) conduct that endangers or is likely to endanger the life or safety of another person or that inflicts or is likely to inflict severe psychological damage on another person;
 - (ii) is an offence or attempt to commit an offence pursuant to section 151, 152, 153, 163.1, 172.1, 271, 272 or 273 of the *Criminal Code*;
 - (iii) is an offence pursuant to the *Criminal Code*, any other Act or Act of the Parliament of Canada that is prescribed by the regulations; or
 - (iv) is an offence pursuant to the law of a jurisdiction outside Canada, if a similar act or omission would be an offence mentioned in subclause (i), (ii) or (iii) if it were committed in Canada;
- (e) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (f) **“recounting”** includes the recollection and retelling of circumstances relating to a designated crime, an expression of thoughts or feelings about a designated crime and a re-enactment of a designated crime;
- (g) **“spouse”** means, with respect to a person:
- (i) the legally married spouse of the person; or
 - (ii) another person who has cohabited with the person as spouses continuously for a period of not less than two years;
- (h) **“victims’ fund”** means the victims’ fund continued pursuant to section 6 of *The Victims of Crime Act, 1995*.
- (2) For the purposes of this Act, the following persons are deemed to be agents of a person convicted of, or charged with, a designated crime:
- (a) a personal representative of the person convicted of, or charged with, a designated crime, including an executor, administrator, property guardian, trustee or receiver of the person;
 - (b) a person to whom the person convicted of, or charged with, a designated crime has assigned his or her rights;
 - (c) a corporation to which the person convicted of, or charged with, a designated crime has a substantial connection or in which the convicted or accused person has a substantial interest.
- (3) For the purposes of this Act, in the absence of evidence to the contrary, the following persons are presumed to be agents of a person convicted of, or charged with, a designated crime:

- (a) a spouse or a former spouse of the person convicted of, or charged with, a designated crime;
- (b) a relative of the person convicted of, or charged with, a designated crime.

Purpose

3 The purpose of this Act is to prevent persons convicted of, or charged with, a designated crime from financially exploiting the notoriety of their crimes and to:

- (a) compensate victims of those crimes or their family members; and
- (b) support victims of crime.

Application of Act

4(1) This Act applies only to a contract for the recounting of a crime, if the crime:

- (a) was committed in Saskatchewan; or
- (b) was committed outside of Saskatchewan, if consideration under the contract is paid or payable:
 - (i) to or by a resident of Saskatchewan; or
 - (ii) to a person serving a sentence of imprisonment in a penitentiary, correctional facility or other custodial facility located in Saskatchewan.

(2) This Act does not apply to any contract for the recounting of a crime entered into:

- (a) for law enforcement purposes;
- (b) in support of crime prevention; or
- (c) in support of victim services programs.

PART II

Contracts for the Recounting of a Crime

Information to be provided to the minister

5(1) Each party to a contract for the recounting of a crime shall immediately provide the minister with:

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

(2) Subject to the regulations, each party to a contract for the recounting of a crime entered into on or after June 1, 2007 and before this section comes into force shall comply with subsection (1) not later than 15 days after this section comes into force.

Prohibition on payment of consideration

6(1) Except as allowed pursuant to this Act, no person shall pay consideration under a contract for the recounting of a crime.

(2) A person who is required under a contract to pay consideration but who is prohibited by subsection (1) from paying it shall immediately pay that consideration to the minister when it becomes payable under the contract.

Prohibition on acceptance of consideration

7(1) Except as allowed pursuant to this Act, no person shall accept consideration under a contract for the recounting of a crime.

(2) A person to whom consideration is payable but who is prohibited by subsection (1) from accepting it shall immediately direct the payor to pay it to the minister.

(3) Subject to the regulations, if consideration has been paid on or after June 1, 2007 to a person who is prohibited by subsection (1) from accepting it, that person shall, not later than 15 days after this section comes into force, pay the consideration to the minister.

Application to court for payment of consideration

8(1) A party to a contract for the recounting of a crime may apply to the court for an order authorizing consideration paid or payable under the contract to be paid in accordance with the contract.

(2) The applicant shall name the minister as the respondent.

(3) An application is not to be commenced more than two years after the later of:

(a) the date on which consideration under the contract was first payable to the minister pursuant to subsection 6(2) or 7(3); and

(b) the date the person was convicted of the designated crime.

Power of court to order that consideration be paid

9(1) The court may make an order directing that some or all of the consideration paid or payable under a contract for the recounting of a crime be paid in accordance with the contract only if the applicant satisfies the court that, after taking into account the importance to society of not allowing persons convicted of, or charged with, a designated crime to financially exploit the notoriety of their crimes, the value to society of the recounting justifies some or all of the consideration being paid in accordance with the contract.

(2) In determining the value to society of the recounting, the court shall take into account:

(a) the purpose of the recounting;

(b) the details of the crime, including the violent or sexual nature of the crime;

(c) whether, and to what degree, victims of the crime or their family members may suffer further harm from the recounting; and

(d) if the recounting has been, or is about to be, made known to the public as a result of the contract:

(i) the extent to which the publication, broadcast, public appearance or other means of dissemination deals with the recounting; and

(ii) whether the recounting, or the dissemination of it, exploits or sensationalizes the crime.

(3) If the court determines that all, or any part of, future consideration payable under a contract for the recounting of a crime should not be paid in accordance with the contract, the court shall make an order directing that consideration to be paid to the minister when it becomes payable under the contract.

(4) If the court determines that all, or any part of, any consideration paid under a contract for the recounting of a crime should not have been paid under the contract, the court shall make an order directing that one or all of the parties shall pay an amount of money equal to the value of consideration paid under the contract to the minister.

(5) The court may make any additional or other order that the court considers appropriate or necessary to give effect to the purpose of this Act.

Consideration other than money

10 If the consideration under a contract for the recounting of a crime is consideration other than money and the consideration is required to be paid to the minister pursuant to this Act, the person who is required to pay the consideration to the minister shall pay to the minister an amount of money equal to the value of that consideration.

PART III Memorabilia

Application to court for increase in price

11(1) In this Part and in section 17:

(a) **“item”** means an item used, owned, possessed, autographed, made, manufactured or produced by a person convicted of, or charged with, a designated crime;

(b) **“sell”** includes to lease, to license or to otherwise dispose of.

(2) If the minister is satisfied that a person convicted of, or charged with, a designated crime, or the person’s agent, has sold an item for a higher price than would have been paid for the item if the person had not been convicted of, or charged with, the designated crime, the minister may apply to the court for an order requiring an amount of money equal to the increase in price to be paid to the minister.

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

(4) The minister shall name the person convicted of, or charged with, a designated crime, or the person’s agent, as respondent to the application.

(5) The minister shall not commence an application pursuant to this section more than two years after the day on which the minister became aware of the sale of the item.

Order for payment of increase to the minister

12 If the court determines that an item has been sold for a higher price than would have been paid for it if the person had not been convicted of, or charged with, the designated crime, the court shall assess the amount of that increase and order the respondent to pay that amount to the minister.

PART IV
Consideration

Interpretation of Part

13 In this Part and Part V, “**consideration**” means:

- (a) all consideration under a contract for the recounting of a crime that is paid to the minister pursuant to Part II; and
- (b) all amounts paid to the minister pursuant to section 12.

Consideration held in trust

14(1) All consideration the minister receives pursuant to this Act is to be paid to the Minister of Finance to be held in trust by the Minister of Finance until it is released from trust and further dealt with in accordance with this Act.

(2) If the minister is required to pay an amount pursuant to section 15 or an order pursuant to subsection 9(1), the amount is to be released from trust and paid or distributed by the Minister of Finance, as directed by the minister, out of the amounts held in trust by the Minister of Finance pursuant to this section.

Return of consideration on acquittal or stay

15 The minister shall return the consideration to the person from whom the minister received it along with written notice that this Act no longer applies to the designated crime to which the acquittal, stay or withdrawal relates, if:

- (a) a person charged with a designated crime is acquitted and:
 - (i) the time for an appeal has expired without an appeal being commenced; or
 - (ii) the acquittal has been appealed and the acquittal is confirmed on appeal;
- (b) the charges against a person accused of a designated crime have been stayed and the time for recommencement has expired; or
- (c) the charges against a person accused of a designated crime have been withdrawn.

Release of consideration from trust

16(1) Consideration may be released from trust by the Minister of Finance as directed by the minister if:

- (a) the person has been convicted of the designated crime and:
 - (i) the time for an appeal has expired without an appeal being commenced; or
 - (ii) the conviction has been appealed and the conviction is confirmed on appeal; and
- (b) in the case of consideration paid or received pursuant to Part II:
 - (i) an application has been made pursuant to section 8 and the consideration has not been ordered to be paid in accordance with the contract; or
 - (ii) the time for making an application pursuant to section 8 has expired.

(2) Subject to any regulations, if consideration has been released from trust pursuant to subsection (1), the minister may direct that consideration be:

- (a) paid to any victims of a designated crime or their family members as directed by the minister; or
- (b) credited to the victims' fund to be dealt with in accordance with *The Victims of Crime Act, 1995*.

PART V

Administration and Enforcement

Personal information

17(1) In this section:

- (a) **“government institution”** means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;
 - (b) **“local authority”** means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*;
 - (c) **“personal information”** means personal information as defined in *The Freedom of Information and Protection of Privacy Act*.
- (2) The minister is authorized to collect information, including personal information:
- (a) to determine whether a proceeding should be commenced pursuant to this Act;
 - (b) to conduct a proceeding pursuant to this Act;
 - (c) to identify and locate victims or their family members in order to compensate those persons pursuant to this Act;
 - (d) to assist the minister in the performance of duties or the exercise of powers with respect to any consideration, item or other property that may become the subject of a proceeding pursuant to this Act;
 - (e) to enforce an order or comply with an order made pursuant to this Act;
 - (f) to determine the ownership of an item with respect to which an application pursuant to Part III may be made; or
 - (g) for a purpose related to the operation and administration of this Act that is prescribed by the regulations.
- (3) A government institution or a local authority:
- (a) is authorized to disclose information, including personal information, to the minister for a purpose set out in subsection (2); and
 - (b) must provide the minister with information requested by the minister for a purpose set out in subsection (2).
- (4) The minister may make and maintain records of any information received pursuant to subsection (2).
- (5) The minister may disclose personal information collected pursuant to this section to a law enforcement agency or a person engaged in the administration or enforcement of the law if the minister is of the opinion that the disclosure:
- (a) would assist in the administration or enforcement of the law; and
 - (b) would be in the public interest.

Recovery of consideration owing

18(1) If there is consideration owing to the minister pursuant to Part II or III, the minister may file in the office of the local registrar of the court at any judicial centre a certificate that is signed by the minister and that sets out:

- (a) the amount owing;
 - (b) the respondent from whom the amount owing is recoverable; and
 - (c) the minister's address for service.
- (2) If the minister files a certificate pursuant to subsection (1), the minister shall cause a copy of the certificate to be served on the respondent.
- (3) The certificate filed pursuant to subsection (1) is conclusive evidence of the amount owing to the minister by the respondent.
- (4) A certificate filed pursuant to this section has the same effect as if it were a judgment obtained in the court for the recovery of a debt in the amount specified in the certificate, together with any reasonable costs and charges with respect to its filing.
- (5) A respondent who is served with a copy of a certificate pursuant to subsection (2) may, within 30 days after receiving the copy, make written representations to the minister requesting the minister to reconsider the amount owing.
- (6) On receipt of written representations pursuant to subsection (5), the minister may:
- (a) withdraw the certificate;
 - (b) vary the amount owing and, for that purpose, withdraw the certificate and file a new certificate with the new amount owing; or
 - (c) confirm the certificate.
- (7) The minister shall notify the respondent of the minister's decision as soon as is reasonably practicable after making the decision.

Power of court to order compliance

19(1) If the minister is of the opinion that a person has failed to comply with this Act, the minister may apply to the court for one or both of the following:

- (a) an order directing the person to comply with this Act or restraining that person from contravening this Act;
 - (b) any other order, relief or remedy that the minister may request.
- (2) Unless it clearly would not be in the public interest, the court shall make an order requested pursuant to subsection (1) if it is satisfied that there are reasonable grounds to believe that the person has failed to comply with this Act.
- (3) On an application pursuant to subsection (1), the court may make any order that the court considers appropriate or necessary.

Offence and penalty

20(1) No person shall fail to comply with any provision of this Act or the regulations made pursuant to this Act.

- (2) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding the greater of:

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- (a) \$50,000; and
 - (b) the amount of consideration accepted or paid in contravention of this Act or with respect to which the person failed to make a direction pursuant to this Act.
- (3) The payment of a fine pursuant to subsection (2) does not relieve a person of the duty to pay consideration to the minister pursuant to this Act.
- (4) If a corporation commits an offence pursuant to this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalty mentioned in this section whether or not the corporation has been prosecuted or convicted.

Limitation on prosecution

21 No prosecution for a contravention of this Act or the regulations is to be commenced more than two years after the facts on which the alleged contravention is based first came to the knowledge of the minister.

Immunity

22 No action or proceeding lies or shall be commenced against the Crown, the minister, or any other person if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

Regulations

23 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of subclause 2(1)(d)(iii), prescribing offences under the *Criminal Code*, any other Act or Act of the Parliament of Canada;
- (c) setting a date prior to June 1, 2007 for the purposes of subsections 5(2) and 7(3) and if a date is set specifying a period after the date is set within which the parties must comply with sections 5 and 7;
- (d) governing the distribution of consideration by the minister pursuant to subsection 16(2);
- (e) for the purposes of clause 17(2)(g), prescribing a purpose for the collection of information related to the operation and administration of this Act;
- (f) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART VI

Coming into Force

Coming into force

24 This Act comes into force on assent.

SECOND SESSION

Twenty-sixth Legislature

SASKATCHEWAN

B I L L

No. 94

An Act respecting the Profits of Criminal Notoriety

Received and read the

First time

Second time

Third time

And passed

Honourable Don Morgan
