B I L L

No. 38

An Act to amend *The Seizure of Criminal Property Act, 2009*

(Assented to)

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

Short title

1 This Act may be cited as *The Seizure of Criminal Property Amendment Act, 2021*.

SS 2009, c S-46.002 amended

2 *The Seizure of Criminal Property Act, 2009* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) in clause (e.1) by striking out "section 6**" and substituting "**section 2.3**";**

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

"(f.1) **'financial institution'** includes:

(i) a bank;

(ii) a credit union;

(iii) the issuer of a credit card;

(iv) a loan corporation as defined in *The Trust and Loan Corporations Act, 1997*;

(v) a trust corporation as defined in *The Trust and Loan Corporations Act, 1997*;

(vi) a payday lender as defined in *The Payday Loans Act*";

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

"(i.1) **'investigation order'** means an order made pursuant to section 2.3";

(d) by adding the following clause after clause (j):

"(j.1) **'law enforcement agency'** means:

(i) a police service or regional police service as defined in *The Police Act, 1990*;

(ii) the Royal Canadian Mounted Police; or

(iii) a prescribed agency or organization";

(e) by adding the following clause after clause (k.1):

"(k.2) **'personal information'** means personal information as defined in *The Freedom of Information and Protection of Privacy Act***";**

(f) by adding the following clauses after clause (m):

"(m.1) **'preliminary disclosure order'** means an order made pursuant to section 2.2;

"(m.2) **'preliminary preservation order'** means an order made pursuant to section 2.1**";**

(g) by repealing clause (o) and substituting the following:

"(o) **'prior registered interest'** means:

(i) with respect to real property, an interest that was registered against the property in accordance with *The Land Titles Act, 2000* or any former *Land Titles Act* before an interest is registered by the director pursuant to subsection 2.1(7) or section 4; and

(ii) with respect to personal property, a security interest that was registered against the property in accordance with *The Personal Property Security Act, 1993* or any former *Personal Property Security Act* before a notice is registered by the director pursuant to subsection 2.1(7), section 5 or subsection 10.2(2)**";**

(h) by repealing clause (p) and substituting the following:

"(p) **'proceeds of unlawful activity'** means any of the following:

(i) property acquired directly or indirectly, in whole or in part, as a result of unlawful activity, whether the property was acquired before or after the coming into force of this Act;

(ii) an increase in the value of property, or a decrease in a debt obligation secured against property, if the increase or decrease resulted directly or indirectly from unlawful activity;

(iii) property realized by the sale or other disposition of an instrument of unlawful activity**"; and**

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

"(t) **'respondent'** means, in the case of an application pursuant to this Act brought by notice of application, the person named as respondent in the notice of application and includes, for the purposes of sections 2.1, 2.2, 2.3 and 6, a possible respondent**".**

New Part I.1

4 The following Part is added after Part I:

"PART I.1

Preliminary and Investigation Orders

"Preliminary preservation order

2.1(1) Before commencing proceedings pursuant to Part II or II.1, the director may apply without notice to the court for one or more of the following orders:

(a) an order restraining the disposition of the property;

(b) an order for the possession, delivery or safekeeping of the property;

(c) any other order respecting the preservation, management or disposition of the property that the court considers appropriate.

(2) An application mentioned in subsection (1) must:

(a) describe the property with sufficient detail to make it readily identifiable; and

(b) name the following as respondents:

(i) any person who is in possession of the property, unless the property is in the possession of a law enforcement agency;

(ii) any person with a prior registered interest in the property;

(iii) any other person the director has reason to believe has an interest in the property.

(3) Unless it clearly would not be in the interests of justice, the court shall make a preliminary preservation order pursuant to subsection (1) if it is satisfied that there are reasonable grounds to suspect that the property is proceeds of unlawful activity or an instrument of unlawful activity.

(4) A preliminary preservation order may be made for a period not exceeding 60 days.

(5) An application to extend the order may be made only:

(a) on notice to every party to the application, unless the court is satisfied that the order ought to be extended without notice to a party because:

(i) that party has been evading service; or

(ii) there are other exceptional circumstances; and

(b) for a further period to be determined by the court or until there is a further order of the court.

(6) If requested to do so by the director, the court may assign duties respecting property to the asset manager when making a preliminary preservation order.

(7) After the court makes a preliminary preservation order:

(a) if the order is with respect to real property, section 4 applies, with any necessary modification; and

(b) if the order is with respect to personal property, section 5 applies, with any necessary modification.

"Preliminary disclosure orders

2.2(1) Before commencing proceedings pursuant to Part II, the director may apply without notice to the court for an order requiring a person to provide a statement:

(a) setting out the nature and extent of the person's interest in the property that is the subject of the proceeding;

(b) explaining the particulars of the person's acquisition of the property, including how any costs incurred in acquiring the property were met;

(c) setting out the sources and amounts of the person's lawfully obtained income and assets;

(d) if the person holds the property, or any part of the property, in trust for another person, setting out the details of the trust and the identity of the beneficial owners; and

(e) setting out any other information the director considers relevant relating to the property.

(2) An application mentioned in subsection (1) must:

(a) describe the property with sufficient detail to make it readily identifiable; and

(b) name the following as respondents:

(i) any person who is in possession of the property, unless the property is in the possession of a law enforcement agency;

(ii) any person with a prior registered interest in the property;

(iii) any other person the director has reason to believe has an interest in the property.

(3) Unless it clearly would not be in the interests of justice, the court shall make a preliminary disclosure order pursuant to subsection (1) if it is satisfied that:

(a) there are reasonable grounds to suspect:

(i) the respondent has a prior registered interest in, is the owner of, or has possession of, the property;

(ii) at the time that the application is made, the total fair market value of the property mentioned in clause (2)(a) exceeds the prescribed amount;

(iii) the known sources of the respondent's lawfully obtained income and assets would have been insufficient to enable the respondent to acquire the property; and

(iv) the respondent, or a person who does not deal with the respondent at arm's length, is, or has been, involved in unlawful activity; and

(b) the information or documents to be provided under the order would assist the director in determining whether to commence proceedings pursuant to Part II.

(4) For the purposes of clause (3)(a):

(a) the respondent is deemed to have acquired the property for a price equivalent to its fair market value;

(b) the respondent is deemed to possess the property if the property is available for use by the respondent;

(c) the known sources of the respondent's income and assets are the sources reasonably ascertainable from available information at the time the application for the order is made;

(d) more than one person may have an interest in the property;

(e) persons are deemed not to be dealing at arm's length with each other when they are deemed for the purposes of the *Income Tax Act* (Canada) not to be dealing at arm's length with each other; and

(f) the property may have been acquired before or after the coming into force of this section.

(5) A preliminary disclosure order must specify:

(a) the form and manner in which the statement pursuant to subsection (1) is to be provided;

(b) the person to whom the statement is to be given; and

(c) the place the statement is to be given or, if the statement is to be provided in writing, the address to which it is to be sent.

(6) A preliminary disclosure order may require the respondent to provide documents as specified in the order.

(7) The respondent must comply with a preliminary disclosure order within the period specified in the order, and different periods may be specified in relation to different requirements.

(8) A statement made, or a document provided, by a person in compliance with a requirement imposed under a preliminary disclosure order must not be used or disclosed except in proceedings pursuant to, or for the purposes of, this Act.

"Investigation orders

2.3(1) On an application without notice by the director, the court may make one or more of the following investigation orders respecting property that is, or may become, the subject of an application for a forfeiture order made pursuant to Part II or II.1:

(a) an order authorizing the director to investigate and inventory the property of the person named in the application without notice as the respondent or defendant;

(b) an order authorizing the director to do all or any of the following:

(i) enter and search any place or premises named in the order, including a financial institution, private business or other place of business;

(ii) stop and search any vehicle described in the order;

(iii) search any person if the director has reasonable grounds to believe that the person has concealed on his or her person anything that may be evidence of property that is proceeds of unlawful activity or an instrument of unlawful activity;

(iv) seize and remove from any place, premises or vehicle searched anything that may be evidence of property that is proceeds of unlawful activity or an instrument of unlawful activity.

(2) With an order made pursuant to clause (1)(b), the director may:

(a) enter at any time and search any place or premises named in the order;

(b) stop and search any vehicle described in the order;

(c) search any person in accordance with subclause (1)(b)(iii);

(d) open and examine the contents within any trunk, box, bag, parcel, closet, cupboard or other receptacle that the director finds in or on the place, premises or vehicle;

(e) require the production of and examine any records or property that the director believes, on reasonable grounds, may contain information related to property that is proceeds of unlawful activity or an instrument of unlawful activity;

(f) remove, for the purpose of making copies, any records examined pursuant to this section; and

(g) seize and remove from any place, premises or vehicle searched anything that may be evidence of property that is proceeds of unlawful activity or an instrument of unlawful activity.

(3) Unless it clearly would not be in the interests of justice, the court shall make an order pursuant to subsection (1) if it is satisfied that there are reasonable grounds to suspect that the property is proceeds of unlawful activity or an instrument of unlawful activity.

(4) The director may bring a new application pursuant to subsection (1) if:

(a) the court rejects a previous application pursuant to subsection (1); or

(b) the court grants a previous application pursuant to subsection (1) and the director wishes to amend, expand or vary the previous application.

(5) An order made pursuant to subsection (1) may be made for a period not exceeding 60 days.

(6) An application to extend the order may be made only:

(a) on notice to every party to the application, unless the court is satisfied that the order ought to be extended without notice to a party because:

(i) that party has been evading service; or

(ii) there are other exceptional circumstances; and

(b) for a further period to be determined by the court or until there is a further order of the court.

(7) If an order is made pursuant to clause (1)(a) or (b), the director shall, within 30 days, file with the court a report detailing the results of the investigation and inventory or search, as the case may be.

(8) On reviewing the report filed pursuant to subsection (7), the court may, on an application without notice by the director, make a further order pursuant to clauses 6(1)(a) to (f).

"Orders made in same proceeding

2.4(1) The director may apply for a preliminary preservation order, a preliminary disclosure order and an investigation order in the same application and the court may make all orders in the same proceeding.

(2) The director may apply for an investigation order and an order pursuant to section 6 in the same notice of application and the court may make all orders in the same proceeding.

"Applications sealed

2.5(1) Subject to subsection 2.2(8), an application pursuant to this Part or section 6, including any affidavit or supporting materials filed in support of or in response to the application, shall be sealed and shall not be reviewable by anyone except the court and the director.

(2) Subsection (1) does not apply to an order issued by the court with respect to an application pursuant to this Part.

(3) On an application pursuant to Part II, the director shall notify each party of any application made pursuant to this Part and sealed in accordance with this section respecting property that is the subject of the application.

(4) After the director provides notice pursuant to subsection (3), and on application by the director, a respondent or a defendant, the court may remove the seal from any application, or any portion of an application, mentioned in subsection (1), subject to any terms or conditions the court considers appropriate.

(5) The failure of the director to provide notice pursuant to subsection (3) does not invalidate an application pursuant to Part II.

(6) In an application to remove the seal mentioned in subsection (4), the court may allow the director to make submissions in camera in support of or opposition to the application.

(7) This section applies to a report mentioned in subsection 2.3(7)**".**

Section 3 amended

5(1) Subsection 3(1.1) is amended by striking out "notice of motion**" and substituting "**notice of application**".**

(2) Subclause 3(3)(b)(i) is repealed and the following substituted:

"(i) any person who is in possession of the property, unless the property is in the possession of a law enforcement agency**".**

Section 4 amended

6 The following subsection is added after subsection 4(1):

"(1.1) Subsection (1) does not apply to real property with respect to which an interest based on an application for a preliminary preservation order has been filed pursuant to subsection 2.1(7) and has not been discharged**".**

Section 5 amended

7 The following subsection is added after subsection 5(1):

"(1.1) Subsection (1) does not apply to personal property with respect to which an interest based on an application for a preliminary preservation order has been filed pursuant to subsection 2.1(7) and has not been discharged**".**

New section 6

8 Section 6 is repealed and the following substituted:

"Interim orders

6(1) On an application without notice by the director, the court may make one or more of the following interim orders respecting property that is the subject of an application for a forfeiture order made pursuant to this Part:

(a) an order restraining the disposition of the property;

(b) an order for the possession, delivery or safekeeping of the property;

(c) an order for the sale or other disposition of the property, if:

(i) the property is perishable or of a rapidly depreciating nature;

(ii) the sale or 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;

(d) an order creating a lien in favour of the Crown for an amount fixed by the court on the property, or on other property specified in the order, to secure the performance of an obligation imposed by an order made pursuant to this subsection;

(e) an order appointing a receiver or a receiver-manager for the property;

(f) any other order respecting the preservation, management or disposition of the property that the court considers appropriate.

(2) When property has been sold or otherwise disposed of pursuant to clause (1)(c), the order ceases to apply to the property and applies instead to the proceeds, if any, realized on the sale or disposition of the property.

(3) Unless it clearly would not be in the interests of justice, the court shall make an order pursuant to subsection (1) if it is satisfied that there are reasonable grounds to believe that the property is proceeds of unlawful activity or an instrument of unlawful activity.

(4) An order made pursuant to subsection (1) may be made for a period not exceeding 60 days.

(5) An application to extend the order may be made only:

(a) on notice to every party to the application, unless the court is satisfied that the order ought to be extended without notice to a party because:

(i) that party has been evading service; or

(ii) there are other exceptional circumstances; and

(b) for a further period to be determined by the court or until there is a further order of the court.

(6) If an order is made pursuant to clause (1)(d) creating a lien in favour of the Crown on personal property:

(a) *The Personal Property Security Act, 1993* applies to the lien;

(b) the lien is deemed to be a security interest that is attached for the purposes of *The Personal Property Security Act, 1993*; and

(c) the director may perfect the security interest for the purposes of *The Personal Property Security Act, 1993* by registering a financing statement pursuant to that Act.

(7) If requested to do so by the director, the court may assign duties respecting property to the asset manager when making an order pursuant to subsection (1).

(8) On oral or written application by the respondent or defendant, the court shall order that any affidavit filed by or on behalf of the respondent or defendant for the purpose of obtaining an order pursuant to this section or section 7 shall be sealed and shall not be reviewable by anyone except the court, a party to the proceedings or counsel to a party to the proceedings for the purpose of the proceedings.

(9) On application by the director, respondent or defendant, the court may vary, amend or rescind an order granted pursuant to subsection (8)**".**

Section 7 amended

9 Clause 7(3)(b) is repealed and the following substituted:

"(b) in the case of personal property:

(i) as of the date a notice of application for a preliminary preservation order is registered in the personal property registry pursuant to section 2.1, unless the notice has been discharged; or

(ii) as of the date a notice of an application for a forfeiture order is registered in the personal property registry pursuant to section 5**".**

Section 10 amended

10(1) Subclause 10(1)(a)(i) is amended by striking out "section 4, 5 or 10.2**" and substituting "**section 2.1, if that interest has not been discharged, or section 4, 5 or 10.2**".**

(2) Clause 10(2)(a) is amended by striking out "section 4, 5 or 10.2**" and substituting "**section 2.1, if that interest has not been discharged, or section 4, 5 or 10.2**".**

Section 10.2 amended

11 The following subsection is added after subsection 10.2(2):

"(2.1) Clause (2)(a) does not apply to real property with respect to which an interest based on an application for a preliminary preservation order has been filed pursuant to section 2.1 and has not been discharged**".**

Section 10.7 amended

12(1) Subsection 10.7(1) is amended:

(a) by striking out "or**" after clause (a);**

(b) by adding "or**" after clause (b); and**

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

"(c) settle the notice of dispute in accordance with section 10.71**".**

(2) The following subsection is added after subsection 10.7(2):

"(2.1) Notwithstanding subsection 10.3(3), if a notice of dispute contains an address that is different than the address mentioned in subsection 10.3(3), the director may give notice mentioned in subsection (2) to the address contained within the notice of dispute**".**

New section 10.71

13 The following section is added after section 10.7:

"Settlement re forfeiture

10.71(1) Notwithstanding any other provision of this Act, if the director receives a notice of dispute mentioned in subsection 10.7(1), the director and the person who files the notice of dispute may agree to a settlement respecting the forfeiture.

(2) For greater certainty, a settlement pursuant to subsection (1) may provide for all or any of the following:

(a) the full or partial forfeiture of property that is the subject of the proceeding;

(b) payment of a monetary amount instead of the full or partial forfeiture of the property that is the subject of the proceeding.

(3) A person who agrees to a settlement with the director shall file an amended notice of dispute with the director in the prescribed form.

(4) On receipt of an amended notice of dispute mentioned in subsection (3), and subject to any further notice of dispute that the director receives on or before the deadline date, section 10.8 applies with respect to the subject property as agreed to under the settlement pursuant to subsection (1)**".**

Section 10.8 amended

14 Subsection 10.8(2) is repealed and the following substituted:

"(2) The subject property mentioned in subsection (1) is forfeited:

(a) as of the date a notice of application for a preliminary preservation order is registered in the personal property registry pursuant to subsection 2.1(7), unless the notice has been discharged; or

(b) as of the date a notice of administrative forfeiture proceedings is registered in the personal property registry pursuant to subsection 10.2(2)**".**

Section 14 amended

15 Section 14 is amended in the portion preceding clause (a) by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 15 amended

16 Section 15 is amended in the portion preceding clause (a) by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 16 amended

17 Section 16 is amended by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 16.1 amended

18 Section 16.1 is amended by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 16.2 amended

19 Subsection 16.2(2) is amended in the portion preceding clause (a) by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 16.3 amended

20 Subsection 16.3(2) is amended in the portion preceding clause (a) by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

Section 16.4 amended

21 Subsection 16.4(2) is amended by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6,**" and substituting "**In a proceeding pursuant to this Act**".**

New section 16.5

22 The following section is added after section 16.4:

"Presumption re preliminary disclosure order

16.5 In a proceeding pursuant to this Act respecting property that is alleged to be proceeds of unlawful activity or an instrument of unlawful activity, evidence that the property is subject to a preliminary disclosure order and that the respondent or defendant failed or refused to provide all of the information and documents required to be provided under the preliminary disclosure order within the time specified in the order or any extension of time allowed by the court is admissible in evidence as proof, in the absence of evidence to the contrary, that the property is proceeds of unlawful activity or an instrument of unlawful activity**".**

Section 17 amended

23 Section 17 is amended by striking out "In an application for a forfeiture order, or for an interim order pursuant to section 6**" and substituting "**In a proceeding pursuant to this Act**".**

Section 17.1 amended

24 The following subsection is added after subsection 17.1(9):

"(10) If a person is cross-examined pursuant to subsection (8), the cross-examination materials are, on filing with the court, deemed to be sealed and not reviewable by any person except the court, a party to the proceedings or counsel to a party to the proceedings for the purpose of the proceedings**".**

Section 18 amended

25 Subsection 18(5) is amended by striking out the portion preceding clause (a) and substituting the following:

"Subject to subsection 2.1(4) or clause 6(1)(c), property that is subject to a preliminary preservation order or an order pursuant to section 6, or that is subject to a notice mentioned in subsection 10.5(1), remains subject to that order or notice until the latest of the following:**"**

New section 23.2

26 The following section is added after section 23.1:

"Information from financial institution

23.2(1) If the director has reasonable grounds to suspect that property is proceeds of unlawful activity or an instrument of unlawful activity and that a person who has a prior registered interest in, is the owner of, or has possession of the property has dealt with a financial institution, the director may, in writing, request that the financial institution provide information, including personal information, about one or more of the following:

(a) the property;

(b) the person's account or accounts with the financial institution, including the following:

(i) any information necessary to identify the account, including the account number and other particulars;

(ii) the nature and type of account;

(iii) whether the account is active;

(iv) the names and addresses of all account holders;

(c) the person's dealings with the financial institution;

(d) any other person's interest in:

(i) the property; and

(ii) the account or accounts mentioned in clause (b).

(2) A financial institution must comply with a request made pursuant to subsection (1) within the period specified in the request.

(3) A financial institution from which information is requested pursuant to this section shall not disclose to any other person that the director has requested information**".**

New section 26.2

27 The following section is added after section 26.1:

"Director's interest in property

26.2(1) If the director has registered an interest against property pursuant to this Act, the director is deemed to have an interest in the property.

(2) If property mentioned in subsection (1) is subject to any proceeding other than a proceeding pursuant to this Act, the director is entitled to receive notice of the proceeding and be represented at a hearing for the proceeding**".**

Section 27 amended

28 Subsection 27(3) is amended by adding "a preliminary preservation order pursuant to section 2.1 or**" after "**subject of**".**

New section 39.1

29 The following section is added after section 39:

"Offences

39.1(1) No person shall:

(a) in response to a preliminary disclosure order, make a statement that the person knows to be false or misleading;

(b) knowingly provide false or misleading information to the director;

(c) fail to comply with a request made pursuant to section 23.1 or 23.2;

(d) disclose information in contravention of subsection 23.2(3).

(2) Every person who contravenes any provision of subsection (1) is guilty of an offence and liable on summary conviction:

(a) in the case of an individual, to a fine of not more than $10,000; and

(b) in the case of a corporation, to a fine of not more than $25,000.

(3) If a corporation commits an offence pursuant to this Act, any director or officer 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 provided for the offence, whether or not the corporation has been prosecuted or convicted**".**

Section 40 amended

30 Section 40 is amended:

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

"(b.1) for the purpose of subclause 2.2(3)(a)(ii), prescribing the minimum fair market value of property**"; and**

(b) in clause (e) by striking out "for the purposes of Part II.1,**".**

Coming into force

31 This Act comes into force by order of the Lieutenant Governor in Council.

SECOND SESSION

Twenty-ninth Legislature

SASKATCHEWAN

B I L L

No. 38

An Act to amend *The Seizure of Criminal Property Act, 2009*

Received and read the

First time

Second time

Third time

And passed

Honourable Gordon Wyant

Printed under the authority of
The Speaker of the Legislative Assembly
of Saskatchewan
2021