

EXPLANATORY NOTES

B I L L

No. 3

An Act to amend *The Safer Communities and Neighbourhoods Act*

Clause of Bill

- 1 This Act may be cited as *The Safer Communities and Neighbourhoods Amendment Act, 2024*
- 2 *The Safer Communities and Neighbourhoods Act, 2004* – SS 2004, c S-0.1 amended

3 Existing Provision

Interpretation of Part

4(1) In this Part:

...

(f) “**specified use**” means, in relation to property, the use of property for:

...

(vi.2) the accommodation, aid, assistance or support of any nature of a gang or criminal organization or any of its activities or the facilitation of any of its activities; or

2004, c.S-0.1, s.4; 2005, c.41, s.4; 2006,
c.R-22.0001, s.100; 2021, c27, s.4.

Explanation

The amendments to clause 4(1)(f) will allow the director of SCAN (director) to pursue Community Safety Orders against properties:

- with ongoing incidents of graffiti that adversely affects the neighbourhood or community; or
- that are used to store, sell or exchange stolen goods.

4 Existing Provision

When court may make community safety order

8(1) The court may make a community safety order if:

(a) it is satisfied that:

(i) activities have been occurring on or near the property named in the application that give rise to a reasonable inference that it is being habitually used for a specified use; and

(ii) the community or neighbourhood is adversely affected by the activities; or

(b) it is satisfied that the activities about which an application is made are a serious and immediate threat to the health, safety and security of one or more occupants of the property or persons in the community or neighbourhood.

...

2004, c.S-0.1, s.8.

Explanation

The amendments to section 8 clarify that, in an application for a community safety order, if the court is satisfied that a property is habitually being used for a specified purpose, there is a presumption that the community or neighbourhood is adversely affected.

5 Existing Provision

Application by complainant for order

14(1) A complainant may apply to the court for a community safety order if:

(a) the complainant has made a complaint to the director pursuant to section 5; and

(b) the director:

(i) has decided not to act or continue to act on the complaint; or

(ii) has discontinued any application to the court.

(2) The complainant must file with the court the director's written notice provided pursuant to subsection 6(2).

2004, c.S-0.1, s.14.

Explanation

Subsection 14(2) is repealed. Under this subsection, a complainant who applies directly to the court for a community safety order must include the director's

written notice that the director is not acting on a complaint; however, the requirement for the director to provide written notice was repealed in 2021.

6 Existing Provision

Service

22(1) The director shall, as soon as possible after a community safety order is made:

(a) serve a copy of the order on the respondent; and

(b) post a copy of the order in a conspicuous place on the property with respect to which the order is made.

...

(5) A community safety order is effective on the date it is served on the respondent.

2004, c.S-0.1, s.22; 2021, c27, s.9.

Explanation

Section 22 is amended to remove the rule that a community safety order is effective on the date it is served.

A new subsection is also added to provide that the failure of the director to serve a community safety order does not impact the validity of the order.

7 Existing Provision

Respondent must pay cost of closing property

28(1) The respondent shall, on demand from the director, pay to the Minister of Finance the cost of closing, securing and keeping the property closed, in the amount certified by the director pursuant to section 29.

2004, c.S-0.1, s.28.

Explanation

Subsection 28(1) is amended to remove the reference to “securing.” This term is not used elsewhere in the Act.

8 Existing Provision

Warrant authorizing entry

43(1) If the inspector, pursuant to section 41, requires entry to a building and

the owner or occupant of the building refuses or neglects to permit investigation, the inspector may apply without notice to a justice of the peace or a judge of the provincial court for a warrant authorizing a person named in the warrant to:

(a) enter and search any building named in the warrant for the purposes of administering and enforcing this Part.

...

(2) A justice of the peace or judge of the provincial court may issue a warrant authorizing an inspector and any other person named in the warrant to enter and inspect the building and the property on which the building is located and to seize and take possession of any record if the justice of the peace or judge of the provincial court is satisfied on oath of the inspector that there are reasonable grounds to believe that:

(a) a building is a fortified building.

2004, c.S-0.1, s.43; 2018, c42, s.65.

Explanation

The amendment to subsection 43(1) clarifies that an inspector can apply for a warrant where there are reasonable grounds to believe entry will not be provided.

The amendment to subsection 43(2) clarifies that an inspector can provide information on oath or affirmation.

9 **Existing Provision**

Removal order

45(2) A removal order issued pursuant to subsection (1) must contain:

(a) a provision stating that a closure order for the building will be issued if the specified fortifications are not removed by the date set out in the removal order.

2004, c.S-0.1, s.45.

Explanation

The amendment to clause 45(2)(a) clarifies that the director has discretionary authority to order closure of a building.

10 **Existing Provision**

None

Explanation

New Part III.1 provides the director authority to address nuisance properties.

Division 1 and section 59.1 contains definitions for the purposes of this Part.

Division 2 contains general rules respecting applications by the director under this Part.

Section 59.11 allows the director to apply to the Court for a rehabilitation order under Division 3 or a forfeiture order under Division 4, if the director believes a property is a nuisance property.

Section 59.12 clarifies that the director may take initial steps to encourage an owner to restore a nuisance property before making an application under this Part.

Section 59.13 sets out various factors the Court can consider when determining if a property is a nuisance property.

Division 3 sets out rules and requirements respecting rehabilitation orders.

Section 59.2 sets out the requirements for a rehabilitation application.

Section 59.21 requires the director to register an interest based on an application for rehabilitation in the Land Titles Registry.

Section 59.22 provides the Court discretionary authority to grant an interim order that allows an owner to restore a nuisance property. If the owner does not comply with the order, the court shall proceed with granting a rehabilitation order to the director below.

Section 59.23 requires the Court to grant a rehabilitation order if the Court finds that the subject property is a nuisance property. The Court maintains discretion to not grant an order if it is clearly not be in the interests of justice.

Subsection (2) sets out the requirements of a rehabilitation order. Under an order, the director shall be granted authority to:

- demolish structures on the nuisance property;
- take other necessary steps to prepare for the demolition on the nuisance property;
- take other necessary steps to restore the nuisance property; and
- enter adjacent properties, where necessary.

Subsection (3) grants the Court discretion, under a rehabilitation order, to terminate any leases, and include any other terms considered appropriate.

Subsection (4) provides that, if a lease on a nuisance property is terminated, the government is not bound by any term, penalty or obligation respecting the termination.

Subsection (5) provides that a rehabilitation order is effective on the date it is registered against the affected title or interest.

Section 59.3 allows the director to apply to the Court to vary a rehabilitation order.

Section 59.31 makes the respondent responsible for the cost of demolishing and restoring a nuisance property under a rehabilitation order and makes that amount a debt due and owing to the province.

Section 59.32 allows the director to file a certificate with the Court respecting the costs and expenses incurred in relation to a rehabilitation order. Once filed, the certificate can be enforced in the same manner as a judgment of the Court. The respondent may request the director to reconsider the amount of costs in a certificate.

Section 59.33 allows a respondent to further appeal a costs certificate to the court.

Division 4 contains rules and requirements respecting forfeiture orders.

Section 59.4 sets out the requirements for a forfeiture application.

Section 59.41 requires the director to register an interest based on an application for forfeiture in the Land Titles Registry.

Section 59.42 provides the Court discretionary authority to grant an interim order that allows an owner to restore a nuisance property.

Section 59.43 requires the Court to grant a forfeiture order if the Court finds that the subject property is a nuisance property. The court maintains discretion to not grant an order if it is clearly not in the interests of justice.

Subsection (2) provides that property is forfeited to the province on the date a transfer based on the forfeiture order is registered in the Land Titles Registry.

Subsection (3) provides that the province does not assume any covenants or other obligations under a mortgage, lease or other interest affecting the forfeited property.

Section 59.5 requires the court to make a protection order for certain persons that hold an interest in the subject property that was registered prior to the application being made. The court may also refuse to issue a protection order in appropriate cases.

Section 59.51 sets out certain prior registered interest owners, such as banks, that are automatically entitled to a protection order.

Section 59.52 provides that other persons not covered by the section above are entitled to a protection order if the person:

- Acquired their interest in the property before the director registered an interest based on the forfeiture application; and
- Did all the person could reasonably have done in the circumstances to prevent the property from becoming a nuisance property.

Division 5 contains appeal provisions for this Part.

Section 59.53 allows a court order under this Part to be appealed to the Court of Appeal. Application for leave to appeal must be made within 14 days after the date of the order.

Section 59.6 provides that an appealed rehabilitation order or forfeiture order is stayed, pending the outcome of the appeal.

Section 59.61 prohibits a person from commencing other actions or proceedings for the purposes of interfering with this Part.

Division 6 contains rules and requirements respecting investigations under this Part.

Section 59.62 allows the director to designate persons as investigators for the purposes of this Part.

Section 59.63 sets out the powers of investigators during an investigation and limits the ability of investigators to enter a dwelling place unless they have the owner's consent, a warrant, or a court order.

Section 59.7 allows investigators to copy records for the purposes of investigations and certify those records to be admissible as evidence in proceedings.

Section 59.71 allows investigators to apply for a warrant to enter property for the purposes of an investigation under this Part.

Section 59.72 provides the director authority to collect information for the purposes of this Part. Information may be disclosed by the director:

- For the purposes related to rehabilitation orders or forfeiture orders; and
- To government institutions or law enforcement agencies if it is in the public interest or the information may disclose criminal conduct.

Division 7 contains general provisions for the purposes of this Part.

Section 59.73 provides that, if a person is aware of an application under this Part, and then transfers their interest in the subject property to another person, they must provide notice of the application to the other person.

Subsection (2) provides that a person who receives an interest in property that is subject to an application under this Part is deemed to be a respondent to the application, and that any order made under this Part is binding on that person.

Section 59.8 sets out rules for the director to serve parties under this Part.

Section 59.81 provides that a respondent or other person with rights to a property is deemed to waive their rights to the property if they fail, without reasonable excuse, to take part in certain steps of a rehabilitation application or forfeiture application.

Section 59.82 clarifies that the director and his or her delegates are not compellable in court proceedings to give evidence obtained for the purposes of this Part.

Section 59.83 clarifies that the director may obtain assistance from peace officers to remove persons from a property that is subject to a rehabilitation order or forfeiture order.

Section 59.9 clarifies that the director may obtain assistance from tradespersons and other workers to carry out rehabilitation orders and forfeiture orders, or for any other purposes under this Part.

Section 59.91 contains offence provisions for the purposes of this Part.

Section 59.92 provides that this Part prevails where there is a conflict with *The Residential Tenancies Act, 2006*.

11 Existing Provision

Assistance of peace officer

60 Any of the following persons may request the assistance of a peace officer in the performance of that person's duties pursuant to the Act, and if so requested,

the peace officer shall provide any assistance required:

- (a) the director;
- (b) persons designated as investigators pursuant to subsection 4.1(1) or who have contracted with or are authorized by the director pursuant to subsection 31(4) to investigate a complaint;
- (c) an inspector as defined in section 38.

2021, c27, s.14.

Explanation

Section 60 is amended to clarify that all investigators under the Act, including investigators under new Part III.1, are authorized to obtain assistance from peace officers.

12 Existing Provision

Limitation on prosecution

61 No prosecution for a contravention of Part II or III of this Act is to be commenced more than two years from the date the facts on which the alleged contravention is based first come to the knowledge of the director.

2004, c.S-0.1, s.61.

Explanation

Section 61 is amended to clarify that the limitation period on prosecutions under the Act applies to new Part III.1.

13 Existing Provision

Regulations

64 The Lieutenant Governor in Council may make regulations:

...

- (d) for the purposes of subclause 38(1)(b)(v), prescribing other methods or materials of fortification;

...

2004, c.S-0.1, s.64; 2021, c27, s.16

Explanation

Section 64 is amended to make new regulation-making powers for the purposes of new Part III.1.

14 Coming into force.

This Act comes into force by Order in Council.

Prepared by the Ministry of Corrections, Policing and Public Safety