



### **Plain Language Summary for Bill 45: Civil Forfeiture Act**

The Minister of Justice has introduced the Civil Forfeiture Act in the Legislative Assembly.

The Northwest Territories (NWT) has some of the highest crime and victimization rates in Canada. The NWT does not currently have civil forfeiture legislation, and the Minister of Justice's mandate letter for the 20<sup>th</sup> Assembly included developing this legislation. Civil forfeiture legislation provides the GNWT with a way to disrupt the flow of money from criminal activity but is distinct from criminal prosecutions. This legislation is authorized under the GNWT's power to legislate property and civil rights in the NWT.

The Act would work like the legislation found in nine other Canadian jurisdictions, authorizing the GNWT to pursue civil forfeiture of property obtained by unlawful activity. This ensures that people engaged in unlawful activity do not profit from crime and reduces the likelihood that they will engage in further criminal behaviour.

#### **1. What the Act Does**

The Act lets the GNWT apply to court, or use an administrative process in some cases, to permanently take ("forfeit") property that is:

- Proceeds of unlawful activity (things gained from illegal acts, like money or assets bought with crime related funds), or
- Instruments of unlawful activity (things used to commit illegal acts, like vehicles, buildings, or equipment).

Property which can be taken through the Act includes personal property, such as cash, vehicles or crypto assets, and real property, such as buildings or land. The Act includes specific evidentiary and procedural rules, which promotes consistency in the application of civil forfeiture. The Act also sets out rules for managing seized property and for how forfeited funds can be used.

#### **2. Definitions**

The Act will define key concepts in civil forfeiture, such as "property", "unlawful activity", "instrument of unlawful activity", and "proceeds of unlawful activity".

#### **3. Protection of Aboriginal Rights**

The Act includes a non-derogation clause to clarify that the Act cannot be used to reduce or take away any Aboriginal or treaty rights, that civil forfeiture must be carried out in accordance with any land, resources and self-government agreements, and that a land, resources and self-government agreement prevails where there is a conflict or inconsistency with the Act or its regulations.

#### **4. Forfeiture Through the Courts**

The Act will allow the Director of Civil Forfeiture to apply to the Supreme Court of the NWT to have property forfeited if the Director is satisfied that the property is proceeds or an instrument of unlawful activity. To start a forfeiture proceeding in court, the Director must:

- Describe the property in detail to make it identifiable,
- Identify and notify anyone who might have an interest in the property, and
- Register a notice against the property in the appropriate land titles office or personal property registry.

The Court can make various interim orders while the case is ongoing, including:

- Freezing or taking possession of property,
- Appointing a receiver,
- Selling or disposing of property if it is perishable or rapidly losing value, or it costs more to manage the property than it is worth, and
- Creating a lien in favor of the GNWT.

If the Court decides the property is proceeds or an instrument of unlawful activity, it must order forfeiture unless doing so would clearly not be in the interests of justice. The Court may also order only part of the property to be forfeited, if forfeiting the whole property would clearly not be in the interests of justice.

The Court can also issue protection orders to safeguard the interests of those who were not involved or complicit in the unlawful activity. Some examples of protected interests under the Act include:

- Prior registered interest holders (e.g., banks, insurance companies, and governments),
- Innocent co-owners, and
- People who bought property at fair market value without knowing of the illegal activity.

#### **5. Administrative Forfeiture**

The Act creates an administrative process to forfeit seized cash or personal property worth \$125,000 or less, if:

- The property is being held by law enforcement,
- Everyone with a prior registered interest consents, and
- The property isn't already in court proceedings.

The administrative process starts once the Director:

1. Files a notice in the Personal Property Registry,

2. Sends written notice to anyone who might have an interest, and
3. Publishes a public notice.

Anyone with an interest in the property can dispute administrative forfeiture within the 60-days dispute period from when notice is given. If no one disputes administrative forfeiture the property is automatically forfeited to the GNWT after 60 days.

If someone disputes administrative forfeiture within the 60-day period, the Director must either:

- Start a forfeiture proceeding in court, or
- Stop the administrative process and return the property.

There is a limited ability for a person with an interest in the property to seek compensation through a court action within two years after the property was forfeited administratively if a person missed the deadline for reasons beyond their control. The Act creates preconditions and statutory defences that would apply to a court action in these circumstances.

## **6. Conduct of Proceedings**

The Act clarifies procedural rules that apply in civil forfeiture proceedings, such as the following:

- The Director may refuse to disclose information to protect the identity of a confidential informant, a person's safety, or a police investigation,
- The civil standard of proof applies to findings of fact and discharging presumptions,
- Proof that a person was convicted, found guilty or not criminally responsible because of a mental disorder is proof a person committed an offence, and
- The GNWT may seek forfeiture of property even if it wasn't sought during sentencing of a related criminal offence.

The Act gives the Director the ability to ask the Court for an order to delay any step in a proceeding if there is an ongoing prosecution.

## **7. Presumptions**

The Act includes rebuttable presumptions for proceeds of unlawful activity and instruments of unlawful activity, meaning that certain facts automatically count as evidence unless they are disproven.

Some examples of those presumptions are:

### Proceeds of Unlawful Activity Presumptions

The property is presumed to be proceeds if:

- A person engaged in unlawful activity that likely gave them a financial benefit, and
- They later acquired or improved the property or paid down debt on it.

The Director does not need to prove that property was obtained from a specific illegal act or that any improvement or debt payment arose from a specific illegal act.

Cash is presumed to be proceeds if found:

- Near controlled substances (drugs),
- Packaged unusually (e.g., bundled in non-banking ways), or
- Mailed or shipped with no or false sender information.

Members of criminal organizations also face presumptions that their property is proceeds of unlawful activity.

#### Instruments of Unlawful Activity Presumptions

Vehicles may be presumed to be instruments of unlawful activity if:

- They contain restricted or prohibited firearms, quantities of drugs consistent with drug trafficking, after-market hidden compartments, or drug trafficking equipment, or
- A driver flees police in a way that risks serious bodily harm to a person.

Buildings with drugs in quantities or circumstances consistent with trafficking are also presumed to be instruments of unlawful activity, and this can include a house.

### **8. Civil Forfeiture Fund**

The Act creates a Civil Forfeiture Fund (the Fund) that all forfeited cash and proceeds from selling forfeited property go into.

Under the Act, money in the Fund can be used to:

1. Pay costs of forfeiture proceedings,
2. Pay costs of managing or selling any property,
2. Compensate victims of unlawful activity,
3. Support programs and services that benefits victims,
4. Fund crime prevention and crime reduction initiatives, or
5. Support other community safety programs prescribed by regulation.

### **9. Director of Civil Forfeiture and Asset Manager Roles**

The Act creates two positions, one for the Director of Civil Forfeiture and one for the Asset Manager. The Director is responsible for deciding whether to start proceedings, conduct them, and requesting payments from the Fund. The Asset Manager takes possession of and manages all forfeited property or property under a court order.

Together, the Director and Asset Manager are responsible for preparing a public annual report, which includes information about the number of forfeitures, the total amount of money received from forfeitures, and information about how the money in the Fund was used.

## **10. Information and Offence Provisions**

The Act gives the Director the statutory right to collect information from a member of the public, a public body (a GNWT department, agency, or a municipality) or a person with a registered interest in property. Public bodies must share relevant information with the Director, subject to privacy and privilege protections. The Act creates offences for failing to comply with the information collection provisions.

Under the Act, it is an offence to:

- Give false information to the Director,
- Fail to comply with requests for information, or
- Disclose that the Director has requested information.

Penalties include fines up to \$10,000 or imprisonment for up to six months for individuals or fines of up to \$25,000 for corporations.

The Director can only share or disclose information as permitted under the Act. For example, if the GNWT has entered an information sharing agreement with another government, the Director may share information with that government's civil forfeiture program to allow them to seek forfeiture of property obtained through illegal activity that is now located within the other government's borders.

## **11. No Limitation Periods**

Finally, the Act sets out that there is no limitation period for proceedings under the Act. Meaning, the Director may start an administrative or court proceedings at any time and the Act applies to property that was obtained by unlawful activity that took place before the Act came into force.

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