

The Seizure of Criminal Property Act

being

Chapter S-46.001 of *The Statutes of Saskatchewan, 2005*
(effective November 3, 2005).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER S-46.001

An Act respecting the Forfeiture of Property Acquired by or Used in Criminal Activities

PART I Title and Interpretation

Short title

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

Interpretation

2 In this Act:

- (a) **“court”** means the Court of Queen’s Bench;
- (b) **“criminal organization”** means a criminal organization as defined in the *Criminal Code*;
- (c) **“criminal organization offence”** means a criminal organization offence as defined in the *Criminal Code*;
- (d) **“forfeiture order”** means an order made pursuant to section 7;
- (e) **“instrument of unlawful activity”** means property that is likely to be used to engage in unlawful activity that, in turn, would be likely to or is intended to result in the acquisition of other property or in serious bodily harm to a person;
- (f) **“personal property”** means personal property as defined in *The Personal Property Security Act, 1993*;
- (g) **“police chief”** means:
 - (i) a chief as defined in *The Police Act, 1990*; or
 - (ii) the officer in charge of a detachment for the Royal Canadian Mounted Police;and includes a person to whom the person mentioned in subclause (i) or (ii) has delegated his or her authority;
- (h) **“prescribed”** means prescribed in the regulations;
- (i) **“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 based on an application for forfeiture was registered pursuant to 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 notice of an application for forfeiture was registered pursuant to section 5;

(j) **“proceeds of unlawful activity”** means 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;

(k) **“property”** means real or personal property, and includes any interest in real or personal property;

(l) **“protection order”** means an order made pursuant to section 8;

(m) **“respondent”** means a person named as a respondent in an application made pursuant to this Act;

(n) **“unlawful activity”** means an act or omission that is an offence pursuant to:

(i) an Act of any province or territory of Canada or an Act of the Parliament of Canada; or

(ii) an Act of a jurisdiction outside Canada, if a similar act or omission would be an offence pursuant to an Act or an Act of the Parliament of Canada if it were committed in Saskatchewan.

2005, c.S-46.001, s.2.

PART II Forfeiture of Property

Application

3(1) A police chief may apply to the court for a forfeiture order if the police chief is satisfied that property is proceeds of unlawful activity or an instrument of unlawful activity.

(2) A police chief may apply for a forfeiture order:

(a) with respect to property located anywhere in Saskatchewan; and

(b) in any judicial centre in Saskatchewan, regardless of whether the property that is the subject of the application is located in that judicial centre.

(3) An application for a forfeiture order must:

(a) describe the property for which the forfeiture order is sought with sufficient detail to make it readily identifiable; and

- (b) name the following as respondents:
 - (i) the owner of the property;
 - (ii) any person, other than the owner, who is in possession of the property;
 - (iii) a person with a prior registered interest in the property;
 - (iv) any other person known to the police chief to have an interest in the property.

2005, c.S-46.001, s.3.

Notice of application re real property

4(1) After filing an application for a forfeiture order respecting real property, the police chief shall apply to the Registrar of Titles to register an interest based on the application against the affected title, interest or share in the Land Registry.

(2) An application pursuant to subsection (1) must be accompanied by a copy of the application for a forfeiture order containing the legal description of the land affected by the order.

(3) After an interest based on an application for a forfeiture order is registered, the police chief:

- (a) may, at any time, apply to the Registrar of Titles to discharge the registration of the interest; and
- (b) shall apply to the Registrar of Titles to discharge the registration of the interest if the application is dismissed or discontinued.

(4) The registration of an interest may be discharged pursuant to subsection (3) with respect to:

- (a) all of the titles, interests or shares described in the application for a forfeiture order; or
- (b) any portion of the titles, interests or shares described in the application for a forfeiture order.

(5) Without limiting the generality of section 25, no action lies or shall be commenced against the police chief for any loss or damage suffered by any person by reason of:

- (a) the registration of an interest pursuant to this section;
- (b) the amendment of an interest pursuant to this section;
- (c) the failure of the police chief:
 - (i) to register an interest pursuant to this section; or
 - (ii) to discharge an interest pursuant to this section.

2005, c.S-46.001, s.4.

Notice of application re personal property

5(1) After filing an application for a forfeiture order respecting personal property, the police chief shall register a notice of the application against the property in the Personal Property Registry.

(2) An application pursuant to subsection (1) must be made by submitting a financing statement for registration in the Personal Property Registry in accordance with *The Personal Property Security Act, 1993*.

(3) Part IV of *The Personal Property Security Act, 1993* applies, with any necessary modification, to the registration of a financing statement pursuant to this section.

(4) The financing statement mentioned in subsection (2) must:

- (a) name as the debtor the person who owns or is in possession of the personal property that is the subject of the application;
- (b) name as the secured party the police chief who made the application; and
- (c) specify as the collateral the personal property that is the subject of the application.

(5) If an application for a forfeiture order is dismissed or discontinued, the notice registered pursuant to subsection (1) must be discharged by the police chief as soon as is practicable.

2005, c.S-46.001, s.5.

Interim order for preservation of property

6(1) On application by the police chief, the court may make one or more of the following interim orders to preserve 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 appointing a receiver or a receiver and manager for the property;
- (d) any other order for the preservation of the property that the court considers appropriate.

(2) 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.

(3) An order made pursuant to subsection (1):

- (a) may be made without notice; and
- (b) may be made for a period not exceeding 10 days.

- (4) If an order pursuant to subsection (1) is made without notice, 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 not exceeding 10 days from the date the extension is granted.

2005, c.S-46.001, s.6.

Forfeiture order

7(1) Subject to section 8, and unless it clearly would not be in the interests of justice, the court shall make an order forfeiting property to the Crown in right of Saskatchewan if the court finds that the property is proceeds of unlawful activity or an instrument of unlawful activity.

(2) If a forfeiture order is made pursuant to subsection (1), the property is forfeited to the Crown in right of Saskatchewan:

- (a) in the case of real property, as of the date a transfer based on the forfeiture order is registered in the Land Titles Registry; or
- (b) in the case of personal property, as of the date a notice of an application for a forfeiture order is registered in the Personal Property Registry pursuant to section 5.

(3) Notwithstanding any other Act or law, the Crown in right of Saskatchewan does not assume, and is not bound by, any covenants or other obligations under a mortgage or other interest affecting the forfeited property.

2005, c.S-46.001, s.7.

Protection order

8(1) If property is found to be proceeds of unlawful activity or an instrument of unlawful activity, the court shall make an order to protect interests in the property held by persons entitled to a protection order pursuant to section 9 or 10.

(2) Without limiting the generality of subsection (1), a protection order may:

- (a) authorize an application to 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 7(3), provide that the Crown in right of Saskatchewan takes the property subject to the interest of a person;
- (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 that any other measures be taken that the court considers necessary to reasonably protect any interest in the property.

2005, c.S-46.001, s.8.

Protected holders of prior registered interests

9(1) The following holders of a prior registered interest in property that is found to be proceeds of unlawful activity or an instrument of unlawful activity are entitled to a protection order:

- (a) a trust corporation, a loan corporation or a financing corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997*;
 - (b) a bank to which the *Bank Act* (Canada) applies;
 - (c) a credit union incorporated or registered pursuant to *The Credit Union Act, 1998*, Credit Union Deposit Guarantee Corporation or Credit Union Central;
 - (d) an insurance company licensed pursuant to *The Saskatchewan Insurance Act*;
 - (e) a retail association to which the *Cooperative Credit Associations Act* (Canada) applies;
 - (f) the Crown in right of Canada, the Crown in right of Saskatchewan or a municipality;
 - (g) the holder of a right or interest:
 - (i) mentioned in subsection 47(3) of *The Land Titles Act, 2000* or the relevant provision of any former *Land Titles Act* respecting similar subject matter; or
 - (ii) registered pursuant to *The Personal Property Security Act, 1993* or any former *Personal Property Security Act*;
 - (h) the holder of any other prescribed right or interest;
 - (i) any class of prescribed persons whose members are similar to the holders set out in clauses (a) to (e).
- (2) If property is found to be proceeds of unlawful activity or an instrument of unlawful activity, any person who acquired the property or an interest in the property from a person mentioned in subsection (1) is entitled to a protection order.

2005, c.S-46.001, s.9.

Other persons entitled to protection order

10(1) If property is found to be proceeds of unlawful activity, a person who owns or has an interest in the property is entitled to a protection order if the person proves:

- (a) that the person:
 - (i) acquired the property or an interest in the property before an interest was registered pursuant to section 4 or 5, as the case may be; and
 - (ii) did not, directly or indirectly, acquire the property or an interest in the property as a result of an unlawful activity; or

- (b) that the person:
 - (i) co-owns the property with another person whose unlawful activity led to the finding that the property is proceeds of unlawful activity, and did not know and could not reasonably have known that the co-owner's interest in the property was acquired as a result of unlawful activity;
 - (ii) owned or had an interest in the property before the unlawful activity occurred, and was deprived of the property or the benefit of the interest in the property as a result of the unlawful activity;
 - (iii) acquired the property or an 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 property or an interest in the property from a person described in subclause (i), (ii) or (iii).
- (2) If property is found to be an instrument of unlawful activity, a person who owns or has an interest in the property is entitled to a protection order if the person proves that he or she:
 - (a) acquired the property or an interest in the property before an interest was registered pursuant to section 4 or 5, as the case may be; and
 - (b) did all that he or she could reasonably have done in the circumstances to prevent the property from being used to engage in unlawful activity.
- (3) For the purposes of clause (2)(b), and without limiting the generality of that clause, a person can prevent property from being used to engage in unlawful activity by actions including:
 - (a) promptly notifying the appropriate law enforcement agencies whenever the person knows that the property has been or is likely to be used to engage in unlawful activity; or
 - (b) refusing or withdrawing any permission that the person has authority to give and that the person knows has facilitated or is likely to facilitate the property's being used to engage in unlawful activity.

2005, c.S-46.001, s.10.

Forfeited property to be sold

- 11(1) Subject to subsection (2), the Crown in right of Saskatchewan shall sell all property forfeited to it pursuant to this Act, other than cash, in the prescribed manner.
- (2) The Crown in right of Saskatchewan may destroy, donate or otherwise dispose of any forfeited property that in its opinion:
 - (a) has little or no commercial value; or
 - (b) requires so much repair or improvement that a sale is not commercially viable.

2005, c.S-46.001, s.11.

Distribution of proceeds

12 Subject to any protection order, forfeited property that is cash and the proceeds of a sale of forfeited property must be distributed in the following order:

- (a) to the Crown in right of Saskatchewan to pay any costs incurred in selling the forfeited property;
- (b) to the police chief to reimburse him or her for expenses incurred in bringing the application for the forfeiture order;
- (c) to any other prescribed entity or for any other prescribed purpose.

2005, c.S-46.001, s.12.

PART III
Conduct of Proceedings

Standard of proof

13 Except as otherwise provided in this Act, in an application made pursuant to this Act, the standard of proof is to be on the balance of probabilities.

2005, c.S-46.001, s.13.

Disclosure of interests

14 At the hearing of an application for a forfeiture order made pursuant to section 3, the police chief must advise the court of all prior registered interests in the property that is the subject of the application and any other interests in the property known to the police chief.

2005, c.S-46.001, s.14.

Presumption for members of criminal organization

15 In an application for forfeiture of property that is alleged to be proceeds of unlawful activity, evidence that the property is owned or possessed by any of the following is admissible in evidence as proof, in the absence of evidence to the contrary, that the property is proceeds of unlawful activity:

- (a) a member of a criminal organization;
- (b) a corporation, if a member of a criminal organization is one of its officers or directors or has a significant ownership interest in it;
- (c) a person to whom the property was transferred for consideration that was significantly less than fair market value at the time of transfer, if the transferor was a person described in clause (a) or (b).

2005, c.S-46.001, s.15.

Presumption for instruments of unlawful activity

16 In an application for a forfeiture order respecting property that is alleged to be an instrument of unlawful activity, evidence that the property was used to engage in unlawful activity that, in turn, resulted in the acquisition of other property or in serious bodily harm to a person is admissible in evidence as proof, in the absence of evidence to the contrary, that the property is an instrument of unlawful activity.

2005, c.S-46.001, s.16.

Presumption re offences

17 In an application made pursuant to this Act:

- (a) there is a rebuttable presumption that a person is a member of a criminal organization if he or she has been found guilty or convicted of a criminal organization offence;
- (b) evidence that a person was found guilty, convicted or found not criminally responsible on account of mental disorder with respect to an offence is admissible in evidence as proof that the person committed the offence; and
- (c) 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.

2005, c.S-46.001, s.17.

Appeal of order

18(1) Subject to section 21, an order made pursuant to this Act may only be appealed to the Court of Appeal:

- (a) on a question of law; and
 - (b) with leave of a judge of the Court of Appeal.
- (2) An application for leave to appeal must be made within 14 days after the day the order of the court is pronounced or within any further time the Court of Appeal may allow.
- (3) A notice of appeal must be served on the parties to the original application within 14 days after an order has been served.
- (4) The police chief is a party to any appeal and is entitled to be heard, by counsel or otherwise, on the appeal.

2005, c.S-46.001, s.18.

Decision by Court of Appeal

19(1) On the hearing of an appeal, the Court of Appeal may:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms;
- (d) vary the order of the court; or
- (e) make any other order that the Court of Appeal considers appropriate.

(2) The Court of Appeal may make any order as to costs that the Court of Appeal considers appropriate.

2005, c.S-46.001, s.19.

No further appeal

20 The decision of the Court of Appeal is final and there is no further appeal.

2005, c.S-46.001, s.20.

No appeal of forfeiture order

21 There is no appeal of a forfeiture order.

2005, c.S-46.001, s.21.

PART IV General

Other remedies reserved

22 Any rights provided pursuant to this Act are in addition to, and do not derogate from, the right to commence any other action or proceeding that exists at common law or pursuant to any other Act.

2005, c.S-46.001, s.22.

Crown acting in place of police chief

23(1) For the purposes of any application made pursuant to this Act, the Crown in right of Saskatchewan may act in the place of the police chief.

(2) If the Crown in right of Saskatchewan is acting pursuant to subsection (1), all duties, powers and responsibilities of a police chief as described in this Act apply, with any necessary modification, to the actions of the Crown in right of Saskatchewan.

2005, c.S-46.001, s.23.

No interest in property

24 In an application made pursuant to this Act, a person cannot claim to have an interest in property if it would be an offence under the law of Canada or Saskatchewan for the person to possess the property.

2005, c.S-46.001, s.24.

Immunity

25 No action or proceeding lies or shall be commenced against a police chief, any member of a police service, a board of police commissioners or the Crown in right of Saskatchewan 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.

2005, c.S-46.001, s.25.

Regulations

26 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 clause 9(1)(h), prescribing rights and interests;
- (c) for the purposes of clause 9(1)(i), prescribing a class of prescribed persons;
- (d) prescribing the manner in which forfeited property is to be sold by the Crown in right of Saskatchewan, including authorizing sheriffs to sell forfeited property on behalf of the Crown in right of Saskatchewan;
- (e) respecting the expenses that the Crown in right of Saskatchewan or a sheriff may claim for selling forfeited property;
- (f) respecting the expenses that a police chief may claim for bringing an application pursuant to this Act;
- (g) respecting the process for and legal effect of any registration, amendment or removal of any interest authorized by this Act in the Land Registry or the Personal Property Registry;
- (h) for the purposes of clause 12(c), prescribing entities to whom or purposes for which the proceeds of the forfeited property are to be distributed;
- (i) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (j) respecting any other matter or thing the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2005, c.S-46.001, s.26.

PART V
Coming into Force

Coming into force

27 This Act comes into force on proclamation.

2005, c.S-46.001, s.27.