

Backgrounder Unlawful Property Forfeiture Act

Civil Forfeiture Legislation

The *Unlawful Property Forfeiture Act* received assent on March 14, 2017. The purpose of the Act is to deter profit-driven unlawful activities that are damaging to the health and safety of our communities by taking the financial incentive out of committing these harmful acts, like bootlegging and drug dealing. The legislation is based on the civil forfeiture model adopted by many other jurisdictions but has many aspects that are unique to Nunavut.

The new legislation allows the Government of Nunavut to seek a court order forfeiting property that is proven by evidence to be proceeds of unlawful activity or instruments of unlawful activity. A "proceed" of unlawful activity is money or other property gained (directly or indirectly) as a result of an unlawful activity. An example is cash from a drug deal. An "instrument" of unlawful activity is property used (or likely to be used) to commit an unlawful activity for gain. An example is a vehicle used to bootleg illegal alcohol.

The *Act* is not yet in force. It will be brought into force in two stages starting with the administrative provisions followed by enforcement powers. This will allow for the establishment of the new Forfeiture Office within the Department of Justice and hiring the director of forfeiture. The office will be staffed by a director and possibly case management officers.

Receipt of Cases

The Forfeiture Office will receive potential cases from referrals from the law enforcement agencies, such as the RCMP, other government agencies or from the public. The director will review the file and decide whether it is a good candidate for civil forfeiture. The director will consider several factors in deciding whether a case is a good candidate including the nature of the unlawful activity, the value of the property in question, and perspectives of Inuit traditional knowledge and societal values.

Before starting a claim, the director will confirm with prosecutors that the civil proceeding will not jeopardize or conflict with any ongoing criminal case.

If the director decides the case is appropriate for civil forfeiture, a claim is filed with the Nunavut Court of Justice. The claim must clearly identify the property that is the subject of the proceeding. The claim is then served on any known or suspected owners of the property. Any property owner can challenge the claim by filing a defence.

Court Proceedings

At the beginning of the proceeding, the court may impose conditions on the use and storage of the subject property to preserve its value pending a final hearing. This interim preservation order can be made by a judge or justice of the peace.

The court will then hear evidence from the director and any property owners and decide whether the subject property is proceeds or an instrument of unlawful activity and whether forfeiture is in the interests of justice. If the judge decides in favour of the director, the property will be forfeited to the Government of Nunavut. If not, the property will be returned to the original owners.

Disposal of Forfeited Property and Use of Funds

If the forfeited property is cash, it will be deposited into the forfeiture fund. For all other forfeited assets, the director will be able to sell it and deposit the money into the forfeiture fund. In appropriate cases, the director may also break the property down into parts for sale, donate the forfeited asset, or, in rare cases, the director may destroy the property if it would be in the public interest. For example, destruction may be in the public interest if selling or donating it could lead to conflict in the community.

The Act allows the forfeiture funds to be used to: Help pay the costs of the Forfeiture Office in prosecuting forfeiture cases; Directly compensate victims of the unlawful activities; Support victims of crime through the Victims Assistance Fund; and Support community wellness programs.

Innocent Third Parties

If the director commences a forfeiture case, the court is required to make orders protecting the property interests of people who were not involved in the unlawful activity and did not gain from it. In the case of multiple owners, the court must protect innocent property interests even if it finds that the property is proceeds or an instrument of

unlawful activity. In those cases only the portion of the property that is proceeds or an instrument of unlawful activity can be forfeited.

However, with respect to instruments of unlawful activity, if people know that their property is being used to commit an offence and do not take reasonable steps to prevent it, the judge may deny them a protection order if it is in the interests of justice to do so.