



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 11
(2007, chapter 34)

**An Act respecting the forfeiture,
administration and appropriation of
proceeds and instruments of unlawful
activity**

**Introduced 15 June 2007
Passed in principle 7 November 2007
Passed 14 December 2007
Assented to 18 December 2007**

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EXPLANATORY NOTES

This bill introduces a new scheme for the civil forfeiture of property derived from or used to engage in unlawful activity so that persons who, in whatever capacity, hold rights in such property or use such property are not allowed to keep the resulting benefit, unless they are in good faith.

Thus, the Attorney General is authorized to make a forfeiture application to a court of civil jurisdiction. Under the new scheme, which is subject to civil rules of evidence and procedure, the court may order the forfeiture of property to the State if it is convinced that the property is connected in some way to unlawful activity and, in the case of property used to engage in unlawful activity, that the defendant participated in or was aware of the unlawful activity.

The new scheme also allows the Attorney General to file an incidental application requesting the court to declare rights in the forfeited property to be unenforceable given their fictitious or simulated nature, which nature may be presumed under certain circumstances. The scheme contains measures to protect the rights of third persons in good faith, and sets rules for the registration and the cancellation of the registration of rights in forfeited property as well as rules on prescription as it applies to forfeited property.

The bill provides for the administration of the proceeds and instruments of unlawful activity forfeited under the new scheme, and clarifies the current rules for the administration of property seized, restrained or forfeited under federal laws. It expands those rules by adding a provision under which the registration of rights in forfeited property may be cancelled if the holder of those rights has not confirmed them.

While the bill maintains the current rules for the appropriation of the proceeds and instruments of unlawful activity and applies them to the new civil forfeiture scheme, it alters them in such a way as to allow property administered by the Attorney General to be destroyed or alienated free of charge in certain cases. As well, the bill adds certain government departments and certain bodies to the list of organizations that may receive a share of the proceeds from forfeited property.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1);
- Public Curator Act (R.S.Q., chapter C-81);
- Act respecting the Director of Criminal and Penal Prosecutions (R.S.Q., chapter D-9.1.1);
- Act respecting the Ministère de la Justice (R.S.Q., chapter M-19).

Bill 11

AN ACT RESPECTING THE FORFEITURE, ADMINISTRATION AND APPROPRIATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

PURPOSE AND SCOPE

1. The purpose of this Act is to provide for the civil forfeiture of property derived from or used to engage in unlawful activity so that persons who, in whatever capacity, hold rights in such property or use such property are not allowed to keep the resulting benefit, unless they are in good faith.

The purpose of this Act is also to provide for the administration of forfeited property or of property seized, restrained or forfeited under federal laws, and to allow the appropriation of such property or of the proceeds from the disposition of such property to socially useful purposes such as providing assistance for victims of crime and preventing, detecting and repressing crime.

2. An act or omission that is an offence under the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19) is unlawful activity for the purposes of this Act.

A penal offence under an Act listed in Schedule 1 is also unlawful activity for the purposes of this Act.

3. This Act applies to property that is in Québec.

It is applicable to unlawful activity committed in Québec and to unlawful activity engaged in outside Québec that would also be unlawful activity if engaged in in Québec.

DIVISION II

CIVIL FORFEITURE OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

4. The Attorney General may apply to a court of civil jurisdiction for forfeiture to the State of any property that is in whole or in part directly or indirectly derived from or used to engage in unlawful activity.

The Attorney General may also file an incidental application requesting the court to declare rights in the property unenforceable because they are of a fictitious or simulated nature or because they were acquired out of the proceeds of unlawful activity.

An application under this section is filed and heard according to the rules of the Code of Civil Procedure (R.S.Q., chapter C-25), and the rules of evidence in the proceedings are those applicable in civil matters.

5. Property to which improvements paid for out of the proceeds of unlawful activity have been made is proceeds of unlawful activity.

Property whose acquisition created a debt any part of which was repaid out of the proceeds of unlawful activity is also proceeds of unlawful activity.

6. The forfeiture application is served on the owner of the property, if known, and on any possessor or holder of the property at the time the application is filed or at the time the property was seized by a police force or another authority empowered to do so.

It is also served on any other known person whose rights in the property are likely to be affected by the application.

7. The court grants the forfeiture application if it is convinced that the property is proceeds or an instrument of unlawful activity. In the case of an instrument of unlawful activity, the court must also be convinced that the owner participated in the unlawful activity, was aware that the property was used to engage in such activity or could not reasonably have been unaware that the property was so used.

In all cases where the alleged unlawful activity is a penal offence under an Act listed in Schedule 1, the court must also be convinced that the activity resulted in substantial economic gain for the owner, possessor or holder.

The court may, according to the evidence presented before it, grant the forfeiture application only for some of the property for which the forfeiture application is filed.

8. When ruling on the forfeiture application or the incidental application, the court may prescribe any measure it deems necessary or appropriate in the interests of justice, including the remittal to the defendant of any amount by

which the proceeds of the alienation of forfeited property exceeds the value of the part of the forfeited property that is derived from unlawful activity.

The court may also prescribe any measure it deems necessary or appropriate to protect the rights of persons in good faith, to declare the nature and extent of their rights or to specify, on the application of the Attorney General, the amount of any claims guaranteed by a security they hold on the forfeited property.

9. Property that is proceeds of unlawful activity retains that nature into whatever hands it may come, unless the owner proves that he, she or it was not or could not reasonably have been aware of its nature at the time the rights in the property were acquired.

10. If the court grants the forfeiture application and the Attorney General has filed an incidental application for a declaration of unenforceability, the court rules on the incidental application. It declares unenforceable all rights proved to be fictitious or simulated or proved to be acquired out of the proceeds of unlawful activity, and orders that their registration in the land register or register of personal and movable real rights be cancelled.

A right is presumed to be fictitious or simulated when its holder is a person related to the owner of the forfeited property, such as the owner's spouse, a blood relative of the owner up to the second degree, a person connected to the owner by marriage or a civil union up to the second degree, a person living under the same roof as the owner, a partner of the owner or a legal person of which the owner is a director or that the owner controls.

11. The property for which the application is filed is presumed to be proceeds of unlawful activity if the defendant's legitimate income is significantly disproportionate to the defendant's patrimony or lifestyle or both, and the defendant

(1) frequently participates in unlawful activity likely to result in personal economic benefit;

(2) participates in the unlawful activity of a criminal organization within the meaning of the Criminal Code or acts in association with such an organization; or

(3) is a legal person one of whose directors or officers participates in the unlawful activity of a criminal organization within the meaning of the Criminal Code or a legal person in which a person who participates in such activity holds a substantial interest.

A person convicted of a criminal organization offence within the meaning of the Criminal Code is presumed to participate in the unlawful activity of or to act in association with a criminal organization.

12. A person convicted of a criminal offence in connection with unlawful activity alleged in the application is presumed to have participated in the unlawful activity except if the person has been discharged.

13. The forfeiture order is equivalent to a title of the State to the forfeited property and has all the effects of such a title. The forfeiture order strips the forfeited property of its nature as proceeds of unlawful activity.

14. The Attorney General may, at any time during or even before the proceedings, apply to a judge for authorization to seize before judgment the property for which an application has been or is to be filed if there is reason to fear that the forfeiture of the property would otherwise be jeopardized or that the property would otherwise be destroyed, severely damaged or squandered.

The application must be supported by an affidavit affirming that the property is proceeds or an instrument of unlawful activity, stating the facts giving rise to the seizure and indicating, if applicable, the deponent's sources.

The rules of the Code of Civil Procedure apply to the seizure.

15. Extinctive prescription may not be invoked against an application filed under this division.

However, acquisitive prescription in favour of an owner in good faith of the property for which an application is filed under this division or that person's predecessors may be invoked against the application.

DIVISION III

ADMINISTRATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

§1. — *Applicability*

16. The Attorney General administers property acquired by the State through civil forfeiture.

The Attorney General also administers property seized, restrained or forfeited under the provisions of the Criminal Code or the Controlled Drugs and Substances Act or any other rule of law, in connection with suits or proceedings brought by the Attorney General, namely,

(1) seized property entrusted to the Attorney General, at the Attorney General's request, by the competent judicial authority or another person holding that property;

(2) property seized under section 462.32 of the Criminal Code;

(3) property that is the subject of a restraint order and entrusted to the Attorney General by the competent judicial authority, at the Attorney General's request; and

(4) property forfeited to the State and fines corresponding to the value of that property.

§2. — *Rules*

17. The Attorney General has the full administration of property acquired by the State through civil forfeiture and property referred to in subparagraph 4 of the second paragraph of section 16.

The Attorney General administers property referred to in subparagraphs 1, 2 and 3 of the second paragraph of section 16 as stipulated in the order made by the competent judicial authority.

18. The Attorney General may entrust the Centre de services partagés du Québec or any other person the Attorney General designates with the mandate to administer certain property under the Attorney General's administration and with the responsibility for alienating forfeited property.

19. The Attorney General may apply for the cancellation of the registration, in the land register or register of personal and movable real rights, of rights in property referred to in subparagraph 4 of the second paragraph of section 16 if no order declaring that they are not affected by the forfeiture and declaring their nature and extent has been made in accordance with the provisions governing forfeiture.

The application for cancellation must be filed with a certificate attesting that fact issued by the clerk of the court that made the forfeiture order. The clerk of the court issues such a certificate if

(1) the clerk is presented with proof that prior notice of the forfeiture order in the form prescribed in Schedule 2 was given to the holder of the rights concerned, and with proof of service of the order;

(2) the forfeiture order has become *res judicata*; and

(3) where applicable, the decision dismissing the application for the order referred to in the first paragraph has become *res judicata*.

DIVISION IV

APPROPRIATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

20. The Attorney General may, on the conditions determined by the Government, make a short-term loan to the consolidated revenue fund of all or

part of the sums under the Attorney General's administration. A loan made to the consolidated revenue fund is repayable out of that fund.

21. If the public interest so requires, the Attorney General may destroy forfeited property or alienate it free of charge. Forfeited property may be alienated free of charge in favour of such parties as police forces for research or training purposes, or in favour of non-profit bodies devoted to historical, educational or other purposes.

22. The proceeds, for a fiscal year, of the alienation of property acquired by the State through civil forfeiture are equal to the sum of the proceeds of the alienation, during that year, of property acquired by the State through civil forfeiture and the amounts collected for costs during that year, minus, for that year,

(1) expenditures related to the administration and alienation of property for which a civil forfeiture application was filed or property acquired by the State through civil forfeiture, determined in accordance with generally recognized accounting practices;

(2) judicial and other costs paid by the Attorney General;

(3) expenditures or advances to cover amounts awarded against persons to whom the Attorney General entrusted the administration of property; and

(4) expenditures made or advances paid by the Ministère de la Justice in connection with civil forfeiture-related activities.

23. The proceeds, for a fiscal year, of the alienation of property forfeited under the Criminal Code or the Controlled Drugs and Substances Act are equal to the sum of the proceeds of the alienation, during that year, of property referred to in subparagraph 4 of the second paragraph of section 16 and the fines corresponding to the value of that property that were collected during that year, minus, for that year,

(1) expenditures related to the administration and alienation of property referred to in subparagraphs 1 to 4 of the second paragraph of section 16, determined in accordance with generally recognized accounting practices;

(2) compensation paid in accordance with undertakings given by the Attorney General under subsection 6 of section 462.32 or subsection 7 of section 462.33 of the Criminal Code; and

(3) expenditures or advances to cover amounts awarded against persons to whom the Attorney General entrusted the administration of property.

24. The proceeds of the alienation of property acquired by the State through civil forfeiture and of property forfeited under the Criminal Code or the Controlled Drugs and Substances Act are, subject to section 25, paid into the

consolidated revenue fund on the dates and to the extent determined by the Government.

25. The Government may, in the circumstances and according to the proportions it determines, allow the proceeds referred to in section 24 to be wholly or partly shared with one or more of the following government departments, bodies or organizations:

(1) the Fonds d'aide aux victimes d'actes criminels;

(2) municipal bodies or native communities whose police forces, including special constables under the authority of native communities, participated in the operations that led to the forfeiture of the property or to the imposition of the fines and, if the police forces that participated in the operations are not subject to the Police Act (R.S.Q., chapter P-13.1), the authorities responsible for them as well as community organizations, designated by the Government, whose purpose is to facilitate such operations;

(3) community organizations whose primary purpose is to prevent unlawful activity, particularly among young people;

(4) the Ministère de la Sécurité publique, if the Sûreté du Québec participated in the operations that led to the forfeiture of the property or to the imposition of fines;

(5) the Ministère de la Justice;

(6) government departments responsible for the enforcement of an Act listed in Schedule 1 whose agents participated in the operations that led to the civil forfeiture of the property; and

(7) bodies or organizations responsible for the administration of an Act listed in Schedule 1 whose agents participated in the operations that led to the civil forfeiture of the property.

The Attorney General pays into the Fonds d'aide aux victimes d'actes criminels or to the bodies or organizations referred to in subparagraphs 2, 3 and 7 of the first paragraph the sums allotted to them according to the shares determined. The Attorney General pays into the consolidated revenue fund the sums allotted to government departments and any balance remaining.

26. The sums allotted to the different government departments under section 25 constitute, for all intents, supplementary appropriations for the fiscal year in which they are paid into the consolidated revenue fund and are to be used by the departments for the purpose of preventing, detecting or repressing unlawful activity.

27. The Minister reports on the proceeds and fines referred to in section 24 and on their allotment under section 25 in the annual report tabled in the

National Assembly under the Act respecting the Ministère de la Justice (R.S.Q., chapter M-19).

The Minister also reports on the destruction of property and on the appropriation of any property alienated free of charge during the Attorney General's administration.

DIVISION V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

28. The Government may amend Schedule 2 to this Act by order.

29. The Minister of Justice is responsible for the administration of this Act.

30. Section 6 of the Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1) is amended by replacing “the property referred to in section 32.17 of the Act respecting the Ministère de la Justice (chapter M-19)” at the end by “the property referred to in section 17 of the Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (2007, chapter 34)”.

31. Section 24 of the Public Curator Act (R.S.Q., chapter C-81) is amended by replacing “Division III.2 of the Act respecting the Ministère de la Justice (chapter M-19)” at the end of subparagraph 5 of the first paragraph by “the Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (2007, chapter 34)”.

32. Section 14 of the Act respecting the Director of Criminal and Penal Prosecutions (R.S.Q., chapter D-9.1.1) is amended by replacing “Act respecting the Ministère de la Justice (chapter M-19)” in the second and third lines of the first paragraph by “Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (2007, chapter 34)”.

33. Division III.2 of the Act respecting the Ministère de la Justice (R.S.Q., chapter M-19), comprising sections 32.11 to 32.22, is repealed.

The administration of property seized, restrained or forfeited under that division is continued under this Act.

Order in Council 349-99 (1999, G.O. 2, 1300, in French) respecting the allotment of the proceeds of property under section 32.19 of the Act respecting the Ministère de la Justice, amended by Orders in Council 1223-2000 (2000, G.O. 2, 6864, in French), 462-2001 (2001, G.O. 2, 2990, in French) and 376-2005 (2005, G.O. 2, 1776, in French), continues to apply, with the necessary modifications, as if it were made for the allotment of the proceeds of property forfeited under the Criminal Code or the Controlled Drugs and Substances Act.

34. The provisions of this Act, as they come into force, apply even to unlawful activity engaged in before 18 December 2007 and to property derived from unlawful activity that was acquired before that date.

This section may not, however, operate to confer the nature of proceeds of unlawful activity to property acquired by a person in good faith before 14 June 2006.

35. This Act comes into force on 18 December 2007, except Division II, which comes into force on the date to be set by the Government but not later than 1 September 2008.

SCHEDULE 1

(Section 2)

Acts under which penal offences are unlawful activity within the meaning of this Act

- Building Act (R.S.Q., chapter B-1.1);
- Act respecting the conservation and development of wildlife (R.S.Q., chapter C-61.1);
- Act respecting offences relating to alcoholic beverages (R.S.Q., chapter I-8.1);
- Food Products Act (R.S.Q., chapter P-29);
- Consumer Protection Act (R.S.Q., chapter P-40.1), but only as regards offences relating to contracts of credit and contracts entered into by itinerant merchants;
- Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20);
- Securities Act (R.S.Q., chapter V-1.1);
- Radiocommunication Act (Revised Statutes of Canada, 1985, chapter R-2);
- Tobacco Act (Statutes of Canada, 1997, chapter 13).

SCHEDULE 2

(Section 19)

Notice to holders of rights in property for which a forfeiture application has been filed

To: (Name)

(Address)

Take notice that, on _____, in accordance with sections (*insert the relevant sections of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or of the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19)*), the Attorney General of Québec will apply to a judge of the _____ (*name of court*), for the district of _____, for an order for the forfeiture of the following property:

— (*details of property*)

According to the (*land register or register of personal and movable real rights*), you hold the following rights in property to which the order is to apply:

— (*details of registered rights (date, registration number, etc.)*).

If the court orders the forfeiture of property in which you hold rights, take notice that, unless you obtain an order under the (*Criminal Code or Controlled Drugs and Substances Act*) declaring that the rights you hold are not affected by the forfeiture and declaring their nature and extent, the Attorney General will request that their registration be cancelled in accordance with section 19 of the Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (2007, chapter 34).

You are advised to consult a lawyer for more information on this notice.

(*signature and identification of signatory*)

