



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 36

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

Introduction

**Introduced by
Mr. Yvon Marcoux
Minister of Justice**

**Québec Official Publisher
2006**

EXPLANATORY NOTES

This bill introduces a new scheme for the civil forfeiture of property derived from or used to engage in unlawful activities so that persons who, in whatever capacity, hold unlawfully acquired rights in such property or use such property for unlawful purposes are prevented from keeping it.

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 an unlawful activity and, in the case of property used to engage in unlawful activities, that the defendant participated in or was aware of the activities.

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, simulated or unlawful nature, which may be presumed under certain circumstances. The scheme contains measures to protect the rights of third parties 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 activities 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 activities 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:

- Public Curator Act (R.S.Q., chapter C-81);
- Act respecting the Ministère de la Justice (R.S.Q., chapter M-19);
- Act respecting the Centre de services partagés du Québec (2005, chapter 7);
- Act respecting the Director of Criminal and Penal Prosecutions (2005, chapter 34).

Bill 36

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

PURPOSE AND SCOPE

1. The purpose of this Act is to allow the civil forfeiture of property derived from or used to engage in unlawful activities so that persons who, in whatever capacity, hold unlawfully acquired rights in such property or use such property for unlawful purposes may not keep that property.

The purpose of this Act is also to provide for the administration of civilly 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 alienation of such property to socially useful purposes such as providing assistance for victims of crime and preventing, detecting and repressing crime.

2. Activities that are offences 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) are unlawful activities for the purposes of this Act.

Penal offences under an Act determined by government order are also unlawful activities for the purposes of this Act.

3. This Act applies to property situated in Québec.

It is applicable to activities engaged in in Québec and to activities engaged in outside Québec which, if engaged in in Québec, would be unlawful.

DIVISION II

CIVIL FORFEITURE OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITIES

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 activities.

The Attorney General may also file an incidental application requesting the court to declare rights in the property unenforceable given their fictitious or simulated nature or the unlawful nature of their acquisition or use.

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 evidence in the proceedings is governed by the rules applicable to civil matters.

5. The application for civil forfeiture 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 by law 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.

6. The court grants the forfeiture application if it is convinced that the property for which it is filed is derived from or used to engage in unlawful activities. In the case of property used to engage in unlawful activities, the court must also be convinced that the owner, possessor or holder participated in the unlawful activities or was aware that the property was used to engage in such activities.

If the alleged unlawful activities are penal offences under an Act determined by government order, the court must, in all cases, also be convinced that commission of the offences 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 it is filed.

7. Property derived from unlawful activities retains its unlawful nature into whatever hands it may come, unless the owner, possessor or holder proves that he, she or it was not or could not reasonably have been aware of its unlawful nature at the time the rights in the property were acquired.

8. If the court grants the forfeiture application and the Attorney General has filed an incidental application for a declaration of unenforceability, the court declares unenforceable all rights in the forfeited property proven to be fictitious, simulated or unlawful, and orders that their registration be cancelled. A right is presumed to be fictitious, simulated or unlawful when its holder is a person related to the owner, possessor or holder of the forfeited property, such as that person's spouse, a blood relative of that person up to the second degree, a person connected to that person by marriage or a civil union up to the second degree, a person living under the same roof as that person, that person's partner or a legal person of which that person is a director or which that person controls.

9. When ruling on the forfeiture application or the incidental application, the court may prescribe any measure it deems necessary or appropriate to serve the interests of justice, to protect the rights of third persons in good faith or to declare the nature and extent of their rights. The court may also, on the application of the Attorney General, specify the amount of any debts secured by the rights of those third persons.

10. The property for which the application is filed is presumed to have been derived from unlawful activities if the value of the defendant's patrimony is significantly disproportionate to the defendant's lawful income and the defendant

(1) frequently participates in unlawful activities likely to result in personal economic gain;

(2) participates in the unlawful activities of a criminal organization within the meaning of the Criminal Code;

(3) acts in association with such an organization; or

(4) is a legal person one of whose directors or officers is a person described in subparagraph 2 or a legal person in which a person described in subparagraph 2 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 activities of or to act in association with a criminal organization.

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

12. 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 also strips the forfeited property of its unlawful nature.

13. If there is reason to fear that the purpose of this Act would otherwise be jeopardized, the Attorney General may, at any time during or even before the proceedings and in accordance with the rules of the Code of Civil Procedure, apply to a judge for authorization to seize the property for which an application has been or is to be filed.

14. Extinctive prescription may not be invoked against an application filed under this division. However, acquisitive prescription in favour of a person or a person's predecessors may be invoked against such an application in relation to the property for which it is filed.

DIVISION III

ADMINISTRATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITIES

§1. — Applicability

15. The Attorney General administers civilly forfeited property.

The Attorney General also administers property seized, restrained or forfeited under the provisions of the Criminal Code or the Controlled Drugs and Substances Act, in connection with offences under federal laws that are prosecuted by the Attorney General, namely,

(1) seized property entrusted to the Attorney General by a justice of the peace or the competent judicial authority in accordance with the law, at the Attorney General's request;

(2) property seized under section 462.32 of the Criminal Code that is under the Attorney General's control;

(3) property restrained under 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

16. The Attorney General has the full administration of civilly forfeited property. The Attorney General also has the full administration of property forfeited to the State under the provisions of the Criminal Code or the Controlled Drugs and Substances Act and of the fines corresponding to the value of that property.

The Attorney General administers property referred to in subparagraphs 1, 2 and 3 of the second paragraph of section 15 as stipulated in the seizure or restraint order.

17. 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 custody and with the responsibility for alienating forfeited property.

18. 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 15 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 the schedule 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 ACTIVITIES

19. 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 the fund.

20. 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 training purposes or non-profit bodies devoted to historical, educational or other purposes.

21. The proceeds, for a fiscal year, of the alienation of civilly forfeited property are equal to the sum of the proceeds of the alienation, during that year, of property that became property of the State and the amounts collected for costs during that year, minus, for that year,

(1) expenditures related to the administration and alienation of property under the Attorney General's control, 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 or advances by the Ministère de la Justice and the Director of Criminal and Penal Prosecutions in connection with civil forfeiture-related activities.

22. The proceeds, for a fiscal year, of the alienation of property forfeited under the provisions of 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 15 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 under the Attorney General's control, 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.

23. The proceeds of the alienation of civilly forfeited property and the proceeds of the alienation of property forfeited under the provisions of the Criminal Code or the Controlled Drugs and Substances Act are, subject to section 24, paid into the consolidated revenue fund on the dates set and to the extent determined by the Government.

24. The Government may, in the circumstances and according to the proportions it determines, allow the proceeds referred to in section 23 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 crime prevention, particularly among young people, or that are devoted to other socially useful purposes under an Act determined by government order;

(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; and

(6) the government departments responsible for the enforcement of Acts determined by government order 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 and 3 of the first paragraph the sums allotted to them according to the shares determined. In addition, the Attorney General pays into the consolidated revenue fund the sums allotted to the government departments and any balance remaining.

25. The sums allotted to the different government departments under section 24 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 activities.

26. The Minister reports on the proceeds and fines referred to in section 23 and on their sharing under section 24 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 alienation of property free of charge during the Attorney General's administration.

DIVISION V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

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

28. 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 sharing 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 under section 24 of this Act.

29. Section 24 of the Public Curator Act (R.S.Q., chapter C-81), amended by section 37 of chapter 44 of the statutes of 2005, is again 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 activities (*insert the year and chapter number of this Act*)".

30. Section 6 of the Act respecting the Centre de services partagés du Québec (2005, chapter 7) 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 activities (*insert the year and chapter number of this Act*)”.

31. Section 14 of the Act respecting the Director of Criminal and Penal Prosecutions (2005, chapter 34) is amended by replacing “Act respecting the Ministère de la Justice (R.S.Q., 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 activities (*insert the year and chapter number of this Act*)”.

32. The provisions of this Act, as they come into force, apply even to unlawful activities engaged in before (*insert the date of coming into force of this section*).

33. The provisions of this Act come into force on the date or dates to be set by the Government.

SCHEDULE
(Section 18)

Notice to holders of rights in forfeited property

To: (Name)
(Address)

Take notice that, on 20...., in accordance with 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*), Division, 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 18
of the Act respecting the forfeiture, administration and appropriation of proceeds
and instruments of unlawful activities (*insert the year and chapter number of
this Act*).

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

(*signature and identification of signatory*)

