

# Civil Forfeiture in Canada



**2015-2016**



**The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.**

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Charitable Number: 86617 6654 RR0001  
The CCF is also a 501(c)(3) public charity in the U.S.

# Foreword

You may not know anything about “civil forfeiture laws.” And you may see no reason to change that. These laws sound like something that only affects criminals, and indeed that was how they were initially sold to the public: as a means for government to take criminals’ property and fight organized crime.

Unfortunately, civil forfeiture laws allow provincial governments to seize property not only from criminals, but also from people who have never been charged with, or even suspected of, a crime. All the government has to show is that the property at issue was used by someone (anyone) as “an instrument of crime,” or was “the proceeds of crime” and they may take that property from its rightful owner with no compensation.

These laws are not fair. In fact, the Canadian Constitution Foundation believes they are unconstitutional and we’d welcome your support in fighting them.

We hope this report will help raise awareness that civil forfeiture laws affect all Canadians, including you.

Yours truly,

A handwritten signature in black ink, reading "Marni Soupcoff". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Marni Soupcoff  
Executive Director  
Canadian Constitution Foundation



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**About us**





## **Freedom's Defence Team**

The Canadian Constitution Foundation protects the constitutional freedoms of Canadians through education, communication and litigation.

The Canadian Constitution Foundation is grateful for the help and support given by our donors (both big and small), volunteers, clients, board and advisory board members, and staff. We consider all of them members of Freedom's Defence Team.

## **Our Priorities:**

**Individual freedom** — the “fundamental freedoms” in section 2 of the Charter:

- Freedom of association;
- Freedom of peaceful assembly;
- Freedom of conscience and religion;
- Freedom of thought, belief, opinion and expression.

**Economic liberty:** the right to earn a living and to own and enjoy property.

**Equality before the law:** Section 15 of the Charter of Rights and Freedoms guarantees equal rights and equal opportunities for all Canadians, special privileges for none.

**About us**



The Institute for Liberal Studies (ILS) offers a non-partisan conduit for the discussion of the values of a free society. Our seminars and programs help students to learn about economics, philosophy history and public policy in Canada. Our student seminars feature academics and policy experts who share a common appreciation for the importance of free markets, individual liberty, and entrepreneurship. We aim to teach students about the classical liberal foundations of Canadian society and the application of these ideas to current issues.

If you would like to see the ILS visit your city or campus – and especially if you represent a university centre or student club that would like to partner with us – please [contact us](#). In addition to our on-campus events we also host short conferences and conduct occasional [contests](#) for students, which offer cash prizes and trips to attend conferences.

# Summary

Canada's provincial civil forfeiture laws were originally intended to deter crime and compensate victims. In Canada today, civil forfeiture is not exclusively used to satisfy these objectives. It has instead become a supplement or alternative to the criminal law. This transformation has had a profound impact on many of the most important rights enjoyed by Canadians.

Revenues generated through successful forfeiture proceedings are returned to provincial governments and their law enforcement agencies. This incentivizes these authorities to seek the forfeiture of ever more property without regard to the original objectives of deterring crime and compensating victims. Forfeitures are now sought for the purpose of raising funds.

Ontario often seeks the forfeiture of property on the merest suspicion of an unlawful act—at times even seeking the forfeiture of property belonging to individuals known to be innocent of unlawful acts. In B.C., the government often seeks the forfeiture of highly valuable assets for relatively insignificant offences. And other provinces—with few exceptions—seem poised to follow Ontario's and B.C.'s lead on this.

To protect the rights and freedoms of Canadians from abusive civil forfeiture laws, the Canadian Constitution Foundation makes the following recommendations:

- Civil forfeiture should only be available after a property owner has been found guilty of a provincial offence.
- Judges must have sufficient discretion to craft proportionate forfeiture orders that satisfy the objectives of deterring illegal acts and compensating victims.
- Civil forfeiture should only be available for property used or acquired by an owner convicted of a corresponding provincial offence and that resulted in an identifiable victim being harmed.
- Revenue collected by successful civil forfeitures should compensate victims that suffered harm as a result of a convicted property owner's acts.
- Each provincial civil forfeiture office should provide a full and accurate annual report detailing the revenues raised and compensation disbursed.

**What is  
civil forfeiture?**

Canada's civil forfeiture laws allow provincial governments to seize and transfer ownership of property without compensation when the property is suspected of being used to commit an illegal act or is suspected of having been acquired by committing an illegal act.

Originally intended to make committing such illegal acts less profitable and to provide compensation to victims, Canada's civil forfeiture laws rarely accomplish these stated goals and are fraught with irreparable problems.

There are eight provinces in Canada that have civil forfeiture laws on the books. [Ontario](#) was the first to enact this sort of legislation in 2001 with [Alberta](#) following shortly after in the same year. Other provinces soon enacted similar laws: [Manitoba](#) (2004), [British Columbia](#) (2005), [Saskatchewan](#) (2005), [Nova Scotia](#) (2007), [Quebec](#) (2007), and [New Brunswick](#) (2010). To date, Prince Edward Island and Newfoundland and Labrador have not enacted civil forfeiture statutes. Also, not one of the territories has yet enacted similar legislation.

The provinces routinely use their civil forfeiture laws to circumvent important procedural protections that have been developed for centuries by the courts and our Common Law tradition. Because of this, these laws represent a profound reversal of many important legal rights.

In 2001, before Ontario passed its legislation, Karen Selick—former litigation director for the Canadian Constitution Foundation—[testified](#) before a legislative committee about the dangers of civil forfeiture laws. She warned that “this bill will give the government a stake—a very big stake—in the continued existence of organized crime. In effect, it will make the government a senior silent partner to organized crime”. Ms. Selick's warnings went unheeded.

Civil forfeiture proceedings are initiated “against the thing” instead of “against the person”. Courts have characterized this type of proceeding as *in rem* (against the object), as opposed to *in personam* (against the person). This is why civil forfeiture cases from Canada, and elsewhere, name the property at issue as the defendant.

## **YUKON SAYS 'NO THANKS' TO CIVIL FORFIETURE**

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**In 2010, the Yukon government  
decided not to follow through on  
its plan to enact civil forfeiture  
legislation due to concerns  
about civil liberties and the  
potential for the abuse of power.**

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## **STANDARDS OF PROOF**

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**Criminal standard of proof –  
“beyond a reasonable doubt” –  
no reasonable person would  
doubt the accused was guilty.  
This is a high standard and more  
difficult for the Crown to  
establish in court.**

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Some examples of civil forfeiture cases:

- *Ontario (Attorney General) v. 714 Railton Avenue*;
- *Ontario (Attorney General) v. \$29,020 in Canadian Currency*;
- *United States v. Approximately 64,695 lbs of Shark Fins*; and
- *United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls*.

*In rem* legal proceedings have a long history in the Common Law. In feudal England, a person's property was the object of forfeiture to the Crown when the property was the instrument of a human fatality. That royal cause of action was known as "deodand" and was based on the religious belief that objects that cause death are somehow tainted by wrongdoing. Under the law in feudal England, the property was figuratively "given to God", yet it was the Crown who confiscated title. By the nineteenth century, deodand forfeitures simply became another source of Crown revenue until their abolition in 1846.

Canada's provincial civil forfeiture laws require that the Crown establish its case relying upon a relatively low standard of proof. In a criminal proceeding, a court must be satisfied that the accused is guilty beyond a reasonable doubt. But in a civil forfeiture proceeding, the Crown only need prove its case on the balance of probabilities. This reliance upon a low standard of proof creates a dilemma. Criminal proceedings can be lengthy and difficult to prosecute, whereas civil forfeiture proceedings are relatively easier due to the lower standard of proof. The result is that the provinces often choose to initiate civil forfeiture proceedings against individuals in circumstances where there is not enough evidence to merit criminal charges, let alone result in a conviction.

A province may initiate a civil forfeiture proceeding using an expedited legal process called an application. In [Ontario](#), the process begins when police submit a case to the Crown. If the decision to proceed is made, the Crown can ask a judge to forfeit the property in question on application to a court. If the judge is convinced on the balance of probabilities, the property owner is stripped of his property and it is transferred to the Crown without compensation.

## **DOUBLE JEOPARDY**

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**In Ontario (Attorney General) v. 714 Railton Avenue three years after a defendant had been convicted, sentenced to a \$10,000 fine, and forfeited \$8,000 in property in a criminal proceeding, the Ontario government applied to seize this same person's home. The court did not permit the forfeiture because the criminal proceedings had created a reasonable assumption in the defendant that his home was not in jeopardy in a second legal proceeding.**

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Many legal scholars in Canada were initially skeptical of the constitutionality of civil forfeiture laws since these laws have many of the same characteristics as criminal law. Under [section 91\(27\)](#) of the [Constitution Act, 1867](#), the federal government has exclusive authority to enact criminal laws, and it was therefore unclear whether civil forfeiture legislation was within provincial jurisdiction.

In 2009, [Robin Chatterjee](#) challenged the constitutionality of Ontario's civil forfeiture law at the Supreme Court of Canada (SCC). He argued that the [Civil Remedies Act](#) was criminal legislation and therefore outside of Ontario's jurisdiction.

Chatterjee was found in possession of \$29,020 in cash and equipment suspected to be used for cultivating marijuana. Police seized the cash and equipment even though no drugs were found and Chatterjee was not charged with any related criminal offence. The SCC upheld Ontario's civil forfeiture law, finding that it was remedial, not criminal, in nature. And so Chatterjee's constitutional challenge failed.

Despite the SCC deciding otherwise, the philosophical foundation of civil forfeiture is inseparably tied to criminal law. While it was being ushered through the Ontario legislature by then Attorney General Jim Flaherty, civil forfeiture was touted as a means to make crime less profitable and to help alleviate the social costs of criminal activities borne by victims. This is evident from the original title of Ontario's legislation when it was first introduced: the "[Remedies for Organized Crime and Other Unlawful Activities Act](#)"—now amended to the "[Civil Remedies Act](#)". The title was amended to its current form in 2007 as Chatterjee's constitutional challenge was working its way up through the Ontario Courts. Some other provinces' legislation still bears a similar reference to criminality: Manitoba's legislation is called the "[Criminal Property Forfeiture Act](#)" and Saskatchewan's the "[Seizure of Criminal Property Act](#)".

In practice, Canada's provincial civil forfeiture laws most often function as a supplement or alternative to criminal law and it's difficult to understand how the two could be viewed as entirely distinct.

## **THE REILLYS**

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Margaret and Terry Reilly owned two rooming houses that they rented below the market rate to low-income people. Some of their tenants allegedly sold illegal drugs while renting from the Reillys. Ontario brought an application to forfeit the houses as the proceeds of crime because the Reillys received rent payments from the tenants. This matter is still before the courts.

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## **PRESUMPTION OF GUILT**

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Alberta's civil forfeiture law presumes that cash of \$10,000 or more has been illegally acquired when it is found during a police investigation.

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**PROBLEM: You can lose your property and be completely innocent**

No province requires that individuals whose property is targeted by civil forfeiture proceedings be convicted of or even be charged with committing an illegal act. In fact, [section 2](#) of New Brunswick's law states this explicitly, and even adds that an individual acquitted of committing an illegal act may still face civil forfeiture proceedings. This means the provincial Crowns may seek the forfeiture of property belonging to individuals who have not been convicted of committing an illegal act. Other owners subject to forfeiture applications may lose their property merely for being suspected of and yet never charged with committing an illegal act. And still others might be completely innocent third parties.

In Alberta, if a property owner appears in court to oppose a forfeiture application against his property, he is required to be cross-examined by the Crown's lawyers upon request. This can lead to so-called "[fishing expeditions](#)" for evidence about the property owner's involvement in any illegal activity, and this evidence may be used against the property owner in a subsequent criminal proceeding.

All of this seems contrary to the procedural protections in [subsections 11\(c\), \(d\), and \(h\)](#) of the *Canadian Charter of Rights and Freedoms* given to individuals charged with an offence. But since the SCC has decided that civil forfeiture proceedings are non-criminal in nature, individuals defending their property against forfeiture applications do not even have the same level of procedural protections that accused criminals do.

**RECOMMENDATION:** Civil forfeiture should be available only after a property owner has been found guilty of a provincial offence.

## FERARRIS, NOT CIVICS

It's common for the BC government to seek the forfeiture of expensive cars used to commit traffic offences. Some of these offences are serious enough to merit criminal charges, yet civil forfeiture is used as a supplement or alternative to the criminal process when the car at issue is valuable.

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## DAVID MIHALYKO

David Mihalyko was caught selling \$60 worth of Oxycontin (which he was legally entitled to possess) to an undercover police officer. He was short on cash and was selling the drug to buy gas to get to work. The Saskatchewan government applied to forfeit his \$7,500 truck as an instrument of crime because of the \$60 drug deal.

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**PROBLEM: Proportionality and judicial discretion**

Civil forfeiture makes it possible for the provincial Crowns to seize and forfeit any property used as an instrument for an illegal act regardless of the value of the property or the severity of the illegal act. As a result, it is permissible for highly valuable property to be forfeited when it is suspected of being used for relatively minor offences. Also problematic is that the provincial Crowns' forfeiture efforts have become focussed on acquiring property of high value instead of furthering the proper goals of crime deterrence and victim compensation.

Some judges have recognized this lack of regard for proportionality in Canada's civil forfeiture laws as a significant problem. Canadians would be best served if judges had sufficient discretion to tailor forfeiture orders that are proportionate to the severity of the illegal act and culpability of the property owner.

B.C., Saskatchewan, Manitoba, and Ontario each have weak protections for proportionality in their legislation, stating only that forfeiture should not occur if it is "clearly not in the interests of justice". The word "clearly" makes it far more difficult for a property owner to successfully argue that the forfeiture order the Crown is seeking is disproportionate. Nova Scotia and New Brunswick do not use the word "clearly", which makes it less difficult for property owners to argue against the proportionality of the forfeiture order the Crown is seeking. Alberta and Quebec lack similar provisions, but both grant judges the discretion to craft appropriate forfeiture orders.

**RECOMMENDATION:** Judges must have sufficient discretion to craft proportionate forfeiture orders that satisfy the objectives of deterring illegal acts and compensating victims.

## **THE VAN DUSENS**

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**Marlowe and Patricia Van Dusen's 12-unit apartment building was seized because of the illegal activities of their tenants. Ontario initiated a forfeiture application arguing that the building was an instrument of crime. The application judge decided the Van Dusens were not "responsible owners" under Ontario's *Civil Remedies Act* because they had not evicted the tenants who were allegedly performing illegal acts. The Van Dusens lost their building valued at \$400,000, even though they were not even accused of any illegal activity**

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**PROBLEM: Breadth of power to forfeit**

Each province has the power to subject property to forfeiture if it is suspected of being used as an instrument or of being acquired as proceeds of an illegal act.

Except for Quebec and Alberta, each civil forfeiture law in Canada permits the Crown to impose forfeiture on property related to any federal or provincial offence. Quebec's and Alberta's legislation stipulates that forfeiture can be imposed for *Criminal Code* and *Controlled Drug and Substances Act* offences, and other federal and provincial offences that are incorporated by regulation or otherwise stipulated. To date, Quebec has added 11 federal and provincial statutes, and Alberta has added none.

Many illegal acts—whether federal or provincial offences—have no identifiable victim and result in no harm, yet these illegal acts may still result in the forfeiture of property. Since civil forfeiture laws are intended to provide compensation and are supposed to be remedial in nature, forfeiture should only be available when there is an identifiable victim who has suffered a loss as a direct result of the convicted person's illegal acts. In many of these instances, no victim is likely to come forward to claim he or she was harmed by the offence. Drug offences generally involve the consenting participation of both sides to the transaction.

Further, if forfeiture proceedings have been initiated by one level of government for the commission of an illegal act, no other level of government should be permitted to seek the forfeiture of the same or more property for the commission of that same illegal act. Currently, the same property may be claimed in both federal criminal forfeiture and provincial civil forfeiture proceedings even though it is suspected of being the instrument of, or being acquired by, a single illegal act.

**RECOMMENDATION:** Civil forfeiture should only be available for property used or acquired by an owner convicted of a corresponding provincial offence that resulted in harm to an identifiable victim.

## **SPECIAL BENEFITS**

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**Even though Ontario's Civil Remedies Act is intended to deter crime and compensate victims, the Peel Police Services Board bought tens of thousands of dollars worth of tickets to mayoral galas using funds acquired from civil forfeiture applications.**

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**PROBLEM: Compensation and stripping profitability**

Canada's civil forfeiture laws create jobs for prosecutors, police officers, and other bureaucrats involved in enforcement or working at a provincial civil forfeiture office. And even though these regimes are often presented as cost-neutral or even profit generating, there is no clear evidence of this.

There is evidence that civil forfeiture does make some illegal acts unprofitable, particularly for those individuals who have their property forfeited. And the availability of civil forfeiture does increase the financial risk involved in performing illegal activities. But increased risks can result in increased profits for those individuals who don't get caught and therefore forfeit nothing. Research from the US, Australia, and the UK has found that civil forfeiture regimes have little impact upon these types of criminal organizations. This means increased profits for those criminals who are able to adapt their practices to remain a step ahead of law enforcement.

Currently, because of poor financial transparency, it is difficult to know how much money collected by successful civil forfeiture applications goes towards compensating victims. Instead, it seems that much is used to purchase equipment for the police or is spent on trivial and improper expenses. Perhaps most troublesome is that much of the money collected has not been allocated for any particular purpose or has been used to pay for the cost of maintaining the civil forfeiture regime.

While some provinces have made limited efforts to provide compensation for victims, much of the money collected is granted to unrelated third party non-profit and charitable organizations. This can lead to what is known as a "charity wash". A charity wash occurs when a provincial civil forfeiture office attempts to insulate itself from criticism by making it seem that those opposed to civil forfeiture also oppose the charitable work of the grant recipient.

**RECOMMENDATION:** Revenue collected by successful civil forfeitures should compensate victims that suffered harm as a result of a convicted property owner's acts.

## **WHERE THE MONEY GOES**

**From 2006 until 2012, all of the funds collected by the BC Civil Forfeiture Office on successful applications were used to pay for the province's civil forfeiture regime and none were used to provide compensation to victims.**

**PROBLEM: Transparency and accountability**

No province has surveyed whether its forfeiture regime is meeting its statutory goals of deterring illegal acts and compensating victims. And instead of conducting such an evaluation in an open and transparent fashion, it is common for civil forfeiture offices to point to the assets seized and the funds distributed as evidence of success. Of course, this is completely unsatisfactory for the reasons discussed previously. To date, none of Canada's provincial civil forfeiture regimes have been subjected to an auditor general's review.

No province requires that its civil forfeiture office release an accurate financial accounting of how much money is annually collected through civil forfeiture applications and how much is paid out to compensate victims for their losses. A bureaucrat at Alberta's Civil Forfeiture Office responded to our request to see how much money has been disbursed to individual victims through the civil forfeiture process by admitting that the "office does not maintain statistics of this nature". Without this sort of information, it is impossible for provincial governments to keep civil forfeiture offices accountable to their statutory goal of compensating victims.

**RECOMMENDATION:** Each provincial civil forfeiture office should provide a full and accurate annual report detailing the revenues raised and compensation disbursed.

In the interim, each provincial Auditor General should perform an audit of his or her respective civil forfeiture office to thoroughly examine how much it costs to operate the office, how the office is funded, the value of property forfeited, and how much compensation is distributed to victims.

# Grading

The provincial statutes in force across the country are all very similar and share most of the same problems. In grading the provinces, the CCF attempts to highlight distinctions in civil forfeiture legislation across Canada.

The CCF assesses provincial civil forfeiture legislation based upon the following criteria:

- Can the province use civil forfeiture to strip owners of their property under the mere suspicion of an illegal act or when they are innocent third parties?
- How much discretion is afforded to judges to craft forfeiture orders that are proportionate and satisfy the objectives of deterring illegal acts and compensating victims?
- For what offences can a province initiate civil forfeiture proceedings?
- Do the revenues collected by successful civil forfeiture proceedings go towards victim compensation?
- Does the province provide a clear and transparent financial disclosure of all revenues raised through civil forfeiture proceedings and of the compensation provided to victims?





# British Columbia

Legislation: [Civil Forfeiture Act \(2005\)](#)

Grade: F

- British Columbia's civil forfeiture program has a reputation for being one of the most aggressive in the country. Despite opening three years after the Ontario program, by 2014 the program had seized more property as measured in dollars.
- B.C.'s legislation grants a wide scope to civil forfeiture proceedings and requires no prior criminal conviction.
- Civil forfeiture may be used for any provincial or federal offence in B.C., with few exceptions.
- The director has a ten-year time limit from the date of the alleged illegal activity or omission to commence proceedings.
- According to the Executive Director of the Civil Forfeiture Office last July, around \$1.5 million had been paid in Victim Compensation payments since the Office's inception. The Office seized over \$41 million worth in property by 2015.
- The B.C. Civil Forfeiture Office is making a concerted effort to use the statutory forfeiture tools provided to it by the B.C. legislature to acquire valuable property without regard to its statutory purposes of deterring crime and providing victims with compensation.
- The Ministry of Justice releases grant recipient lists each year on their website.
- There are positive signs in recent case law that might allow for more judicial discretion in future operations of the program.

c

# Alberta

Legislation: [Victims Restitution and Compensation Payment Act \(2001\)](#)

Grade: **C**

- Alberta's civil forfeiture regime does not require a prior conviction.
- Civil forfeiture can be used for any activity or omission that is an offence under the Criminal Code, the Controlled Drugs and Substances Act and acts as specified by regulation. This limits the scope considerably in comparison to other jurisdictions.
- Between 2008 and 2015, Alberta's Civil Forfeiture Office forfeited more than \$12.7 million in property. This suggests less use than the much higher figure in neighbouring British Columbia.
- The name of this civil forfeiture act implies a purpose to compensating victims more than any other jurisdiction.
- \$2.8 million was distributed in Civil Forfeiture Fund grants in 2013-14 to charities, family services and law enforcement.
- According to the Director, the Civil Forfeiture Office does not "keep statistics" regarding how much money has been disbursed to individual victims.
- The Ministry of Justice and Solicitor General posted an 'Approved CFO Projects' grant recipient list for 2014 but it is not clear what reporting schedule they follow.
- Alberta's courts have much more discretion than other jurisdictions to craft forfeiture orders that are proportionate and satisfy the objectives of deterring illegal acts and compensating victims.

D+

# Saskatchewan

Legislation: [Seizure of Criminal Property Act \(2009\)](#)

Grade: **D+**

- Saskatchewan's civil forfeiture legislation is very similar to B.C.'s. It has very limited built-in discretion and it requires no prior conviction.
- Civil forfeiture can be used for any activity or omission that is an offence under an act of any province or an act of Canada.
- According to the director, there are no public listings of disbursements from the Civil Forfeiture Fund.
- There is a built-in requirement of the Act to match any disbursement to police agencies with the same amount to the Ministry's Victims fund.
- Money paid into the fund may also be used "...for any other prescribed purpose."

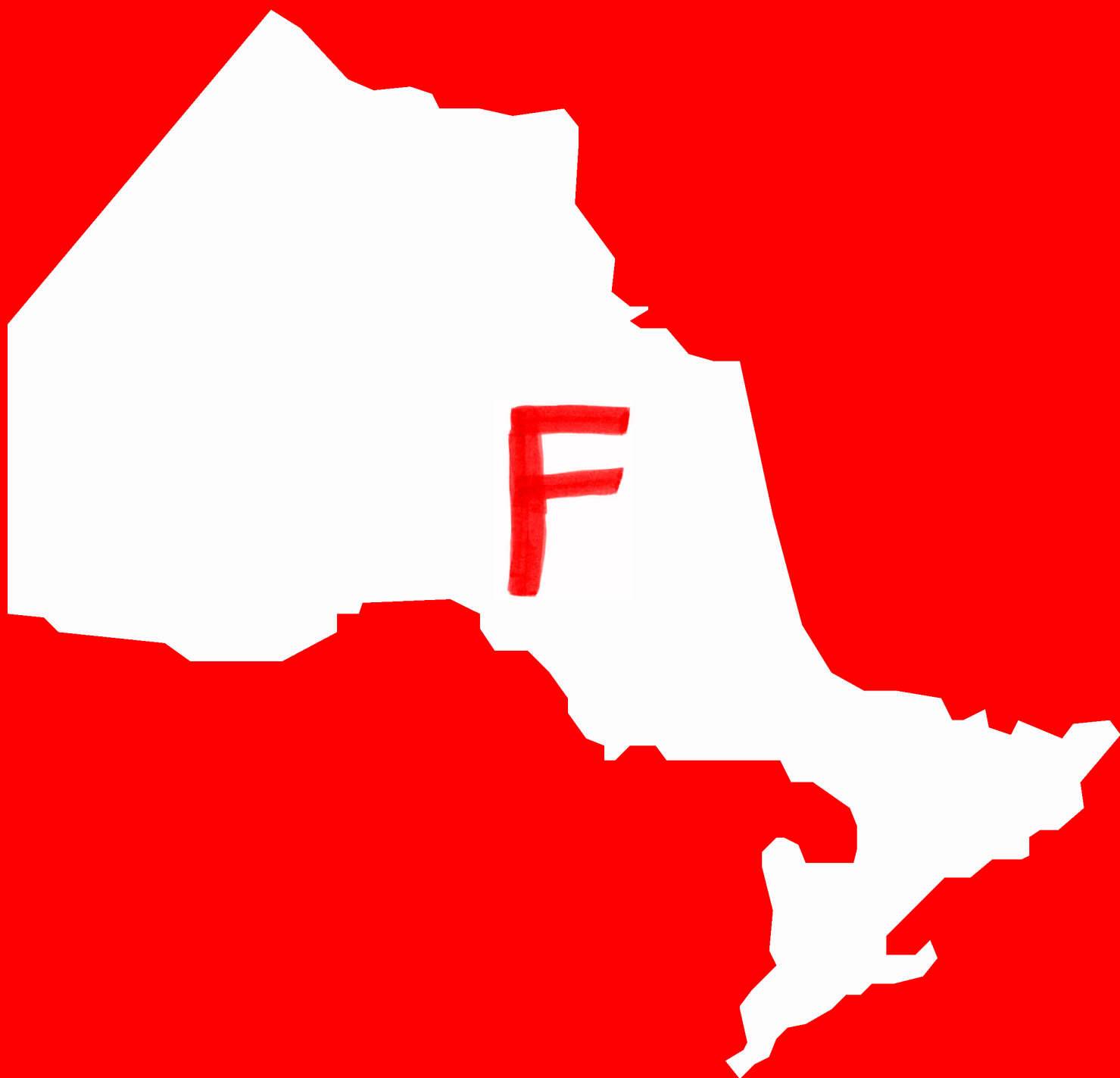
F

# Manitoba

Legislation: [Criminal Property Forfeiture Act \(2004\)](#)

Grade: **F**

- Manitoba's civil forfeiture legislation requires no prior conviction. Civil forfeiture can be used for any activity or omission that is an offence under an Act of any province or an Act of Canada.
- The Act allows only minimal judicial discretion.
- Manitoba has at times initiated civil forfeiture proceedings in parallel with criminal proceedings, including those involving violent crimes. In those instances, civil forfeiture functions as a supplement or alternative to the criminal law, while lacking the same procedural protections afforded to criminals.
- In fiscal year 2013-14, the Ministry of Justice reported that no compensation was disbursed to any identifiable victims of crime from the proceeds of civil forfeiture even though \$3 million in assets were forfeited. \$861,627 was committed to support law enforcement agencies in that same fiscal year.
- In fiscal years where compensation is paid to identifiable victims, it is always a much lower amount than what is paid in grants to law enforcement and other agencies.





# Ontario

Legislation: [Civil Remedies Act \(2001\)](#)

Grade: **F**

- Ontario's Act was the first provincial civil forfeiture statute introduced in Canada.
- The Act requires no prior conviction and allows only minimal judicial discretion.
- Civil forfeiture can be used for any activity or omission that is an offence under an Act of any province or an Act of Canada.
- According to government reports, a total of \$21.2 million has been distributed to victims to since 2003. Yet in 2013-14 alone, over \$22.9 million was forfeited.
- Ontario's civil forfeiture regime has received wide criticism. The province routinely uses its power to forfeit property in circumstances where there is insufficient evidence to merit criminal charges.
- Ontario also uses its power to pursue the property of third parties not suspected of any wrongdoing.
- Ontario's Civil Remedies for Illicit Activities Office has offered to settle with respondents demanding a large lump sum payment be made and that the respondent not speak of the details of the settlement. Effectively, respondents are extorted and gagged.

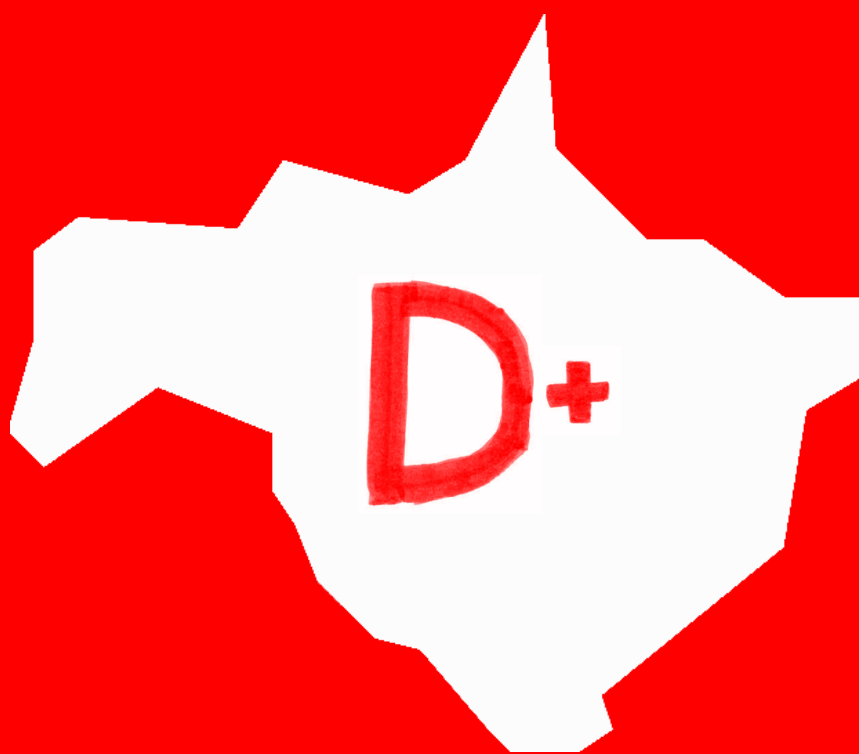


# Quebec

Legislation: [An Act Respecting the Forfeiture, Administration and Appropriation of Proceeds and Instruments of Unlawful Activity \(2007\)](#)

Grade: **C-**

- Quebec is unique in Canada as the only jurisdiction to have a legal system which operates under Civil Law. Despite this, Quebec's civil forfeiture regime is thought to be 'informed by other jurisdictions like Ontario.'
- The Act does not require a criminal conviction but gives more discretion to judges than in other jurisdictions.
- Civil forfeiture can be used for any activity or omission that is an offence under the Criminal Code, the Controlled Drugs and Substances Act or offences in legislation listed under the schedules of the Act. This limits the scope considerably in comparison to other jurisdictions.
- Disbursements are made at the discretion of the government to victims funds, law enforcement agencies and other government bodies.
- We could not find any public listings regarding disbursements, grants and payments made to identifiable victims.



# New Brunswick

Legislation: [Civil Forfeiture Act \(2010\)](#) & [Management of Seized and Forfeiture Property Act \(2012\)](#)

Grade: **D+**

- New Brunswick does not require a prior conviction.
- Civil forfeiture can be used for any activity or omission that is an offence under an Act of any province or an Act of Canada.
- New Brunswick courts can refuse to grant an order, limit the application or put conditions on the order when the forfeiture, in whole or in part would “not be in the interests of justice”. This allows for more discretion and makes it easier for property owners to defend themselves than it does in jurisdictions where forfeiture will be denied only when it would be “clearly” not in the interests of justice.
- There is a ten-year time limit from the date of the alleged illegal activity or omission to commence proceedings.
- New Brunswick consolidates net revenue raised from both civil and criminal property forfeiture into a “Proceeds of Crime Trust Fund”.
- The mixing of these revenues raises important transparency questions as it may make it unclear how civil forfeiture revenue is specifically used. Payments out of the Fund may be made for crime prevention/law enforcement, victim restitution and the administration of criminal justice. Funds are disbursed to these causes at the discretion of the government.
- New Brunswick does not clearly publicize how much money is raised or disbursed through civil forfeiture.



# Nova Scotia

Legislation: [Civil Forfeiture Act \(2007\)](#)

Grade: **D+**

- Nova Scotia's Act requires no prior conviction. In fact, the government's website openly admits the intention of using civil forfeiture where "...there is evidence of wrong-doing but criminal charges are not laid..."
- The Act allows for more judicial discretion in issuing orders than most other provinces.
- Civil forfeiture can be used for any activity or omission that is an offence under an Act of any province or an Act of Canada.
- There is a ten-year time limit from the date of the alleged unlawful act to commence proceedings.
- The Act does provide some protection for third parties. The court must make protection orders necessary to protect the interest in the property held by the "uninvolved interest holder".
- According to the government's website, revenue made from the sale and seizure of property through civil forfeiture will "...provide financial support for crime prevention and victim services programs, and also fund the civil forfeiture unit." No mention is made of victim restitution or payments to identifiable victims.





## Newfoundland & Labrador

Legislation: n/a

The government of Newfoundland & Labrador has not enacted any civil forfeiture legislation.

## Prince Edward Island

Legislation: n/a

The government of Prince Edward Island has not enacted any civil forfeiture legislation.

## The Territories

Legislation: n/a

Not one of the territories has enacted any civil forfeiture legislation. However, Nunavut is [considering](#) civil forfeiture legislation.

## **A REPLY FROM ALBERTA'S CIVIL FORFEITURE OFFICE**

...

**Thank you for contacting us.**

**You have asked how much money has been disbursed to individual victims through the civil forfeiture process. As our office does not maintain statistics of this nature, we are unable to provide this information.**

...

**Yours truly,  
Director  
Civil Forfeiture Office  
Alberta**

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## Concluding remarks

The Canadian Constitution Foundation is concerned about the problems identified in this report and will continue to monitor and report on the activities of Canada's provincial civil forfeiture offices, any new developments in the law, and any relevant legislative changes.

Until these recommendations contained in this report can be implemented, the Canadian Constitution Foundation asks that each provincial Auditor General perform an audit of his or her respective civil forfeiture office in order to thoroughly examine how much it costs to operate the office, how the office is funded, the value of property forfeited through successful civil forfeiture applications, and how much compensation is distributed to victims.



Photo of a seized vehicle courtesy of the [Province of British Columbia](#) under [CC 2.0](#)

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### **ONTARIO:**

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## Contact us

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

Have you been affected by one of Canada's civil forfeiture regimes? We want to learn about the experiences of Canadians with law enforcement and civil forfeiture offices across the country. Please contact us to let us know YOUR story.

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