

1906

An Act Respecting Sheriffs and Deputy Sheriffs

(Assented to

His Majesty by and with the advice and consent of the  
Legislative Assembly of the Province of Alberta enacts  
as follows:-

- Short title.                    1. This Act may be cited as the Sheriffs Act.
- Appointment and security.        2. The Lieutenant Governor in Council shall from  
time to time as occasion may require appoint a Sheriff  
and a Deputy Sheriff in each judicial district, who shall  
hold office during pleasure and shall discharge all the  
duties connected with their respective offices, and also  
such other duties as may be assigned to them, or appertain  
to their respective offices by law; and each such Deputy  
Sheriff shall be required to give security to the Sheriff  
of the said district in the sum of \$1000.00, conditioned  
for the due and proper discharge of the duties as such  
Deputy Sheriff. The Lieutenant Governor in Council may at  
pleasure cancel the appointments of all persons as Sheriff  
or Deputy Sheriff in the province.
- Cancellation of appointments.    3. Every Sheriff and Deputy Sheriff before he enters  
upon the duties of his office shall take and subscribe  
the oaths of allegiance and of office in the form of  
Schedule "A" to this Act, and shall not be bound or  
required to subscribe or take any other oaths, or make  
any other declaration or subscription except as hereinafter
- Oaths to be taken on appointment.

provided, and every such oath respectively shall be filed in the office of the Clerk of the Supreme Court of the North-West Territories (or such other court as may hereafter be constituted, exercising within the Province the jurisdiction, powers and authority at the date of the passing of this Act exercised therein by the Supreme Court of the North West Territories) for the judicial district to which it relates.

Amount of  
security to  
be given.

4. The Lieutenant Governor in Council may, from time to time, by Order in Council, fix and determine the amount of security to be given by every Sheriff as hereinafter mentioned; but such amount shall be in no case less than \$5000.00 for the Sheriff, and not less than \$2500.00 for each surety named in the covenant hereinafter mentioned, where there are two sureties, and not less than \$1250.00 for each surety, where there are four sureties named in the covenant.

Security  
to be given  
by Sheriffs.

5. Every Sheriff shall, before he is so sworn into office and within one month after his appointment, execute and enter into a joint and several covenant in duplicate, with two or four sureties, for such amounts respectively as may be fixed and determined by order in council in that behalf as aforesaid; the said duplicate covenant shall be in the form Schedule B to this Act, or to the like effect, and to each of the duplicate covenants respectively shall be attached an affidavit by each of the covenantors therein named respectively, in the form of Schedule C to this Act, or to the like effect.

Form

Affidavit  
of sufficiency.

Form

Additional  
security in  
certain cases

(2) Where a Sheriff is unable to justify in the amount required to be named in the covenant, the Lieutenant Governor in Council may accept such additional security as he considers requisite and in that case the

affidavit required by this section shall be varied as to such Sheriff in accordance with the facts.

Covenant to  
be filed.

6. One of the duplicate covenants, with the affidavits thereto attached, shall within the periods hereinbefore limited respectively, be filed in the office of the Clerk of the Supreme Court of the North-West Territories (or such other court as may hereafter be constituted, exercising within the Province the jurisdiction, powers and authority at the date of the passing of this Act, exercised therein by the Supreme Court of the North-West Territories) for the judicial district to which it relates and the other duplicate covenant, with the affidavits attached to the same respectively, and an affidavit of the filing of such first mentioned duplicate and affidavits in the office of the said Clerk shall, within the same periods respectively, be transmitted to the office of the Provincial Secretary and by him be submitted for the approval of the Lieutenant Governor in Council.

Transmitted  
for approval  
of Lieutenant  
Governor.

7. In case the covenant is approved of by the Lieutenant Governor in Council, it shall be forthwith deposited in the office of the Treasurer of the Province and notice of such approval shall be given to the Sheriff by the Provincial Secretary, but in case the covenant is disapproved of by the Lieutenant Governor in Council, the Provincial Secretary shall forthwith give notice to the Sheriff of such disapproval, and in such case the Sheriff shall, within one month thereafter, furnish and transmit another covenant in lieu of the covenant so disapproved of as aforesaid, to the satisfaction of the Lieutenant Governor in Council.

Proviso in  
case of  
disapproval

Sureties not  
discharged by  
non-approval

(2) The sureties named in any covenant so disapproved of as aforesaid shall not be discharged from Liability by such disapproval, but shall be and continue liable for any defaults or misfeasanances made, done or committed previous to the approval by the Lieutenant Governor in Council of any securities that may be furnished in lieu of the same.

Renewal of  
security.

8. The Lieutenant Governor in Council may at any time require a Sheriff to renew his covenants or securities or to furnish others in lieu of the same as to him may appear expedient for the protection of the interests of the Crown, or of the parties to legal proceedings, which new or substituted covenants or securities the Sheriff shall be bound to transmit to the Provincial Secretary within three months after notice of the Order in Council in that behalf.

Form of  
renewed  
security.

9. Every renewal or substituted covenant or security shall be in the same form, and executed and accompanied by the same formalities and affidavits, and subject to the same approval as the original covenants or security.

Liability  
of former  
sureties in  
case of  
renewal.

10. In case a new security is given or substituted as aforesaid, the former sureties shall not be liable for or on account of defaults and misfeasanances suffered or committed by the Sheriff previous to the perfecting of the new security and the approval thereof by the Lieutenant Governor in Council, and not as to any subsequent default or misfeasance.

Sheriff need  
not be dis-  
missed for  
inability  
to justify.

11. In case a Sheriff has given the security and made the affidavit of justification required to be made under Section 5 of this Act, but has subsequently to his

Further security may be given.

appointment, on account of additional security being required, become unable to make an affidavit of justification in accordance with the provisions of Section 8 of this Act, this Act shall not be construed as rendering necessary the dismissal of the Sheriff from his office, but he shall, under pain of forfeiture of his office, be required to furnish such additional security as the Lieutenant Governor in Council may consider requisite.

Death, insolvency etc.  
of surety

12. Every Sheriff shall give notice in writing, to the attorney general of the death, discharge, bankruptcy, insolvency, or residence out of the Province, of any surety or person bound with him in such security, within one month after the fact comes to his knowledge; and in every such case the Sheriff shall furnish the security of a new surety, to be approved of as aforesaid, in lieu of the surety so dying, being discharged, becoming bankrupt or insolvent, or residing without this Province, and shall complete and transmit to the attorney general the necessary covenants or security and affidavits in that behalf within one month after such notice.

Surety may  
withdraw

13. Any person who has become surety for a Sheriff, and who is no longer disposed to continue such responsibility, may give notice thereof to the sheriff and to the Provincial Secretary, and in such case the sheriff shall furnish the security of a new surety in lieu of the surety so giving notice and shall complete and transmit the necessary covenants or security and affidavits in that behalf to the Provincial Secretary, within one month after such notice; and all accruing responsibility on the part of the person giving such notice shall cease upon and after the perfecting and approval of the new security.

Forfeiture for  
neglect to  
furnish  
security

14. Every Sheriff who neglects to give and furnish any of the securities, or give any notice required by this Act, within the periods hereinbefore in that behalf respectively limited, shall be liable to forfeit his office, and his appointment and commission shall be void from and after the time when the Lieutenant Governor declares the same to be avoided under this Act, but such avoidance shall not annul or make void any act or order or other matter or thing done by the Sheriff during the time he actually held office.

When forfeit-  
ure may be  
remitted

15. The Lieutenant Governor ~~in~~ Council may remit the forfeiture in any case in which the failure to give the security or to perfect or transmit the instruments required by this Act, within the periods hereinbefore ~~limited~~ respectively in that behalf, has not arisen from the wilful neglect of the Sheriff, and if it appears to the Lieutenant Governor that such respective periods are in any case insufficient in consequence of accident, casualty, loss of papers in the transmission thereof, illness or other particular circumstance, the Lieutenant Governor in Council may allow such further period, not in any case exceeding two months, for perfecting and transmitting such securities, as to him may appear reasonable and proper.

When securi-  
ties may be  
approved, al-  
though not  
perfected in  
time

16. The Lieutenant Governor may approve of any security, or securities, although the same may not have been perfected and transmitted respectively within the time limited by this Act, and in such case the office or commission of the Sheriff shall not be deemed to have been avoided by such default, but to have remained in full force and effect; and the securities, when approved of as aforesaid, shall be held and construed to be valid and effectual, in the same manner and to the same extent as if they had been perfected and approved

respectively within the time limited by this Act.

Neglect,  
omission, etc.  
in giving bonds  
not to avoid  
them

17. No neglect, omission or irregularity in giving or renewing any covenant or security required by this Act, nor in observing the formalities hereinbefore prescribed, or any of them, shall vacate or make void any such covenant or security, or discharge any party or surety from the obligations thereof.

Change in  
territory to  
which bond  
relates not  
to affect it.

18. No such covenant or security shall be in any wise impaired, discharged or avoided, nor shall any Sheriff or any surety named therein be released, exonerated or acquitted from the obligation assumed thereby, by reason of the addition to the original area of the judicial district to which it relates of any other territory, or by the separation therefrom of any portion of such original area, by legislative authority or otherwise.

Searching  
covenant and  
taking copies

19. Any person may examine the covenant of the Sheriff and his sureties, and the clerk in possession thereof shall, on demand, deliver to any person who desires the same a copy thereof, on payment of the following fees:

For search and examination of covenant	\$.25
For copy of covenant.....	1.00

Liability of  
sureties

20. The sureties of the sheriff shall be liable to indemnify the party or parties to any legal proceedings against any omission or default of the sheriff in not paying over moneys received by him and against any damage sustained by any such party or parties in consequence of the sheriff's wilful or neglectful misconduct in his office and the sheriff shall be joint defendant in any action to be brought upon the covenant or security given by the sheriff.

Default of  
sheriff

21. Any person sustaining any damage by reason of any such default or misconduct of any sheriff may bring and maintain an action upon the said covenant or security for such default or misconduct and such action shall not be barred by reason of any prior recovery by the same party upon the covenant or security or of any judgment rendered for the defendant in any prior action upon the same covenant or security or by reason of any other action being then depending upon the same either at the suit of the same plaintiff or of any other party for any other distinct cause of action.

Action on  
security

Limitation of  
surety's  
liability

22. If upon the trial of any action upon any such covenant or security it is made to appear that the plaintiff is entitled to recover and that the amount which such surety has paid or become liable to pay as hereinafter mentioned is not equal to the full amount for which he became surety the court after deducting from such full amount the sums which he has so paid or become liable to pay as aforesaid shall render judgment against him for any sum not exceeding the balance of the sum for which he became surety.

When surety  
discharged  
from liability

23. Where any such surety actually and bona fide and of his own proper moneys and effects had paid or become liable by virtue of a judgment or judgments recovered against him upon his said covenant or security to pay an amount equal to the amount specified in the said covenant or security for which he became surety such covenant or security shall as to him be deemed to be discharged and satisfied and no other or further sum shall be recovered against him.



On proof of  
payment proceed-  
ings may be  
stayed

24. It shall be competent for the Supreme Court of the North-West Territories (or such other court as may hereafter be constituted, exercising within the Province the jurisdiction, powers and authority at the date of the passing of this Act exercised therein by the Supreme Court of the North-West Territories) or a Judge thereof upon proof to the satisfaction of the court or judge of such payment or liability in a summary manner and at any stage of the cause by stay of proceedings or otherwise to prevent the recovery against any such surety of any further sum than the amount specified in his covenant or security and for which he may have become surety.

When judgment  
recovered  
upon security  
levy to be  
on sheriff's  
goods first

25. Upon every writ of execution under a judgment recovered on such covenant or security the plaintiff or his advocate shall by an indorsement on the writ direct the coroner or other officer charged with the execution of such writ to levy the amount thereof upon the goods and chattels of the sheriff in the first place and in default of goods and chattels of the sheriff to satisfy the amount then to levy the same or the residue thereof on the goods and chattels of the other defendant or defendants in such writ and so in like manner with any writ against lands and tenements upon a judgment on any such covenant or security.

Sheriff liable  
until successor  
takes office

26. Notwithstanding a sheriff may have forfeited his office and become liable to be removed therefrom the liability of himself and his sureties shall remain until a new sheriff has been appointed and sworn into office.

Sheriff, etc.  
may not purchase  
under execution

27. No sheriff, deputy sheriff, baliff or constable shall directly or indirectly purchase any goods or chattels, lands or tenements by him exposed to sale under execution.

Liability for  
misconduct in  
execution of

28. If any baliff or constable entrusted with the execution of any writ, warrant, process, mesne or final wilfully misconducts himself in the execution of the same or wilfully makes any false return to such writ, warrant or process, unless by the consent of the party in whose favour the process issued, he shall answer in damages to any party aggrieved by such misconduct or false return.

Sheriff's  
office hours

29. It shall be the duty of every sheriff to keep his office open between the hours of ten in the forenoon and four in the afternoon on all days except Sundays and holidays and except Saturdays when the same may be closed at one o'clock in the afternoon.

Fees received  
to be  
recorded

30. Every sheriff shall keep a separate book in which he shall enter from day to day all fees and emoluments received by him in virtue of his office showing separately the fees received for each service performed and such further facts and information as the Lieutenant Governor may from time to time require.

Annual state-  
ment of fees

31. Every sheriff shall on or before the fifteenth day of January in each year make up a statement in duplicate from such book and return the same to the attorney general verified under oath; and such statement shall set forth the total amount of fees which have been received during the twelve months ended on the thirty-first day of December next preceding.

Books open  
to public  
inspection

32. The sheriff shall keep in his office open to the inspection of any person the following books, namely:

Process  
Books

(a) Process books-in which shall be entered a memorandum of every process other than writs of execution or writs in the nature of writs of execution received by the sheriff, the court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the advocate by whom issued, the date of the return and the nature of the return made thereto or what was thereunder or therewith done respectively;

Execution  
Books

(b) Execution books for goods and lands respectively in which shall be entered a memorandum of every writ of execution or writ in the nature of a writ of execution, the court out of which the same issued, the names of the parties thereto, the advocate by whom issued, the date of return and the nature of the return made thereto or what was done thereunder or therewith; and

Cash Book.

(c) A cash book in which shall be entered all cash received or paid away by the sheriff in his official capacity or in connection with his office for any service whatever-for fees, poundage, service of process and papers, attendance at court, moneys levied under execution or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment and the cause, matter or service in which or on account of which the same was received or paid away.

Seal of  
office.

(2) And a seal of office.

Supplying  
books and  
seal

33. The said books and seal shall be supplied out of the general revenue fund of the Province.

Books, records etc.,  
to be property  
of Government

34. All books, accounts, records, papers, writs, warrants, processes, moneys and other matters and things in the possession or under the control of any sheriff by virtue of or appertaining to his office as sheriff shall be the property of the Government of the Province and the same and every of them shall immediately upon the resignation, removal from office or death of any such sheriff be, by the party in whose possession or control they may come or happen to be, handed over to and taken possession of by the successor in office or such sheriff or such person as the judge usually exercising jurisdiction in the judicial district may appoint to receive the same.

Possession  
of books, etc.  
after vacancy

35. No person except the successor in office of the sheriff so resigning, being removed or dying, or the person so to be appointed by the judge as aforesaid shall take, have or hold any such books, accounts, records, papers, writs, warrants, process, moneys or

Refusal to  
give up  
possession

other matters or things; any any person having or holding any of the matters aforesaid shall forthwith on demand deliver over the same and every of them to the said succeeding sheriff or to the person so to be appointed as aforesaid; and upon any such person neglecting or refusing so to do on conviction thereof before a Judge of the Supreme Court (or such other court as may hereafter be constituted, exercising within the Province the jurisdiction powers and authority at the date of the passing of this Act exercised therein by the Supreme Court of the North-West Territories) he shall be liable to pay a penalty not exceeding \$100.

Ex-sheriff  
to have  
access to  
books

36. The sheriff after resigning office or renewal from office, or his heirs, executors or administrators shall or may at any and at all time or times thereafter have the

right and be at liberty to have access to search and examine into any or all accounts, books, papers, warrants, and processes of whatever kind and all other matters or things which were formerly in the possession of him the said sheriff before his resignation or removal and which at the time of making or requiring to make such search or examination are in the possession or control of the succeeding sheriff, free of all costs, charges and expenses.

Sale of  
lands by  
sheriff  
Procedure  
When vacancy  
occurs

37. In case of the death, resignation or removal of the sheriff, or of any deputy where there is no sheriff, after he has made a sale of lands but before he has made a transfer of the same to the purchaser such transfer shall be made to the purchaser by the sheriff or the deputy sheriff who is in office acting as sheriff as aforesaid at the time when the deed of conveyance is made.

Sheriff  
vacating  
successor to  
continue  
process

38. If the sheriff goes out of office during the currency of any writ of execution against lands and before the sale, such writ shall be executed and the sale and transfer of the lands be made by his successor in office and not by the former sheriff,

Restoration  
of documents  
etc. to  
sheriff

39. Every deputy sheriff, baliff or other sheriff's officer or clerk entrusted with the custody of any writ or process or of any book, paper or document belonging to the said sheriff or his office shall upon demand upon him by such sheriff restore and return such writ, process, book, paper or document to the custody of the said sheriff and in case of any neglect or refusal to return and restore the same as aforesaid the party so neglecting or refusing may be required by an order of the Supreme Court (or such other court as may hereafter be constituted, exercising within the province the jurisdiction, powers and authority at the date of the

Enforcement  
of return

passing of this Act exercised therein by the Supreme Court of the North-West Territories) or of any judge of such court to return and restore such writ, process, book, paper, or document to such sheriff and if he disobeys such order may be further proceeded against by attachment as in other cases of contumacy to orders or rules of court.

Sheriff's  
officer to  
deliver  
process to  
sheriff  
when required

40. If any deputy sheriff, bailiff or sheriff's officer shall have in his possession, custody or control any writ of summons, fieri facias or other writ or any bench warrant or process whatsoever and shall upon demand made by the sheriff from whom the same may have been received or his successor in office or by any other party entitled to the possession of the same neglect or refuse to deliver up the same, such sheriff or his successor in office or the party entitled to the possession of the same may proceed by summons and order before any judge having jurisdiction in the court out of which such writ of process issued to compel the production thereof; which order may be enforced in the same manner as like orders for the return of writs against sheriffs and with or without costs or be discharged with costs against the party applying in the discretion of the judge aforesaid.

Provision in  
case of death  
resignation  
or removal  
of sheriff

41. In case a sheriff dies, resigns his office and his resignation is accepted or is removed therefrom the deputy sheriff shall nevertheless continue the office of sheriff and execute the same and all things belonging thereto in the name of the sheriff so dying, resigning or being removed until another sheriff has been appointed and sworn into office; and the said deputy sheriff shall be answerable for the execution of the said office in all respects and to all intents and purposes whatsoever during such interval as the sheriff so dying, resigning

or having been removed would by law have been if he had been living or continuing in office and the security given to the sheriff so deceased, resigning or being removed by his said deputy sheriff and his pledges as well as the security given by the said sheriff shall remain and be a security to the King, His Heirs and Successors and to all persons whatsoever for the due and faithful performance of the duties of his office during such interval by the said deputy sheriff.

42. No sheriff or deputy sheriff while holding office shall practice as an advocate of the Province, or be a member of any firm of advocates practicing in the Province.

SCHEDULE A.

OATH OF ALLEGIANCE.

I, .....  
of .....  
in the Province of Alberta do sincerely promise and swear  
that I will be faithful and bear true allegiance to His  
Majesty King Edward the Seventh as lawful Sovereign of the  
United Kingdom of Great Britain and Ireland and of this  
Province dependent on and belonging to the said Kingdom;  
and that I will defend him to the utmost of my power against  
all traitorous conspiracies or attempts whatsoever which may  
be made against His Person, Crown and Dignity; and that I  
will do my utmost endeavour to disclose and make known to  
His Majesty, His Heirs or Successors, all treason or traitor-  
ous conspiracies and attempts which I may know to be against  
him or any of them. And all this I do swear without any  
equivocation, mental evasion or secret reservation. So help  
me God.

Sworn before me )  
at..... ) .....  
this.....day of )  
.....A.D.190.. )

OATH OF OFFICE.

Province of Alberta )  
Judicial District of )  
 )  
 )

I, A.B., of ..... in the judicial  
district of .....  
Esquire, having been appointed Sheriff (or Deputy Sheriff)  
of the judicial district of .....  
do swear that I will well, truly and faithfully perform  
and execute all the duties required of me under the laws  
of this Province pertaining to the said office of  
Sheriff (or Deputy Sheriff) so long as I continue therein,  
and that I have not given directly or indirectly, or author-  
ized any person to give any money, gratuity or reward  
whatsoever for procuring the said office for me.

Sworn before me at ..... )  
in the judicial district of ..... )  
....., the ..... )  
day of ..... A.D.19.. ) ..... A.B.  
..... C.D., ..... )

Judge, Notary Public, Commissioner, or J.P. as the case may be.



SCHEDULE B.

Form of Covenant.

Know all men by these presents. That we, A.B., Sheriff  
of the Judicial District of  
Esquire, C.D., of  
in the Province of Alberta, and E.F., of  
in the Province of Alberta (where four sureties are  
given the names of the other two to be inserted here in  
like manner) do hereby jointly and severally, for  
ourselves and for each of our heirs, executors and admin-  
istrators, covenant and promise that the said A.B.,  
as Sheriff of the Judicial District of  
shall well and truly pay over to the person or persons  
entitled to the same, ~~all such moneys as he shall receive~~  
by virtue of his ~~said office of Sheriff,~~ and that neither  
he nor his deputy shall wilfully misconduct himself in  
his said office to the damage of any person being a party  
in any legal proceedings. Nevertheless it is hereby  
declared ~~that~~ no greater sum shall be recovered  
under this covenant against the several parties hereto  
than as follows, that is to say: Against the said A.B., in  
the whole, \$ (the amount fixed by Order in Council);  
against the said C.D., in the whole, \$ (the amount fixed by  
Order in Council); against the said E.F. in the whole, \$ (the  
amount fixed by Order in Council). If more than two  
sureties, add the names and amounts in like manner.)

In witness whereof, we have to these presents set  
our hands and seals this                      day of  
in the year of our Lord 19..

Signed, sealed and delivered )	A.B. (L.S.)
in the presence of )	C.D. (L.S.)
L.M. )	E.F. (L.S.)
N.O.	etc., etc.

SCHEDULE C

Affidavit of Justification.

Province of Alberta, )  
Judicial District of )  
TO WIT: )

I, A.B., (follow the description given in the covenant),  
the principal covenantor in the annexed covenant named (or  
one of the sureties in the annexed covenant), do make oath  
and say as follows:

1. That I am seised and possessed to my own use of  
real estate in Alberta of the actual value of  
dollars ( the amount for which the party making the affidavit  
is liable by the covenant) over and above all charges upon  
or incumbrances affecting the same.

2. The said real estate consists of (describe the  
property).

3. I am worth                dollars (the amount for which  
the party has become liable by the covenant) over and above  
my just debts.

4. My post office address is as follows: (insert  
the name of post office).

Sworn before me at                )  
in the Province of                )  
Alberta, the                day    )  
of                19..                )  
P.T.                )

A.B.

Judge, N.P. Commissioner or J.P. (as the case may be).

No. 5

Fifth Session, Fifth Legislature  
of Edward VII., 1906.

B I L L

An Act Respecting Sheriffs and  
Deputy Sheriffs.

Received and read the 1st time...  
1st Reading...  
2nd Reading...  
3rd Reading...

Mr. *W. A. G. G.*

EDMONTON.

King's Printer.

1906.