

An Act Respecting Suits against the Crown By Petition  
of Right.

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:

Short title.           1. This Act may be cited as "The Alberta Petition of  
Right Act".

INTERPRETATION.

Interpretation       2. In this Act, unless the context otherwise requires:-  
                          (a) The expression "Court" means the Supreme Court  
of the North-West Territories, or such other Court as may  
be hereafter constituted and established by law exercising  
within the province of Alberta 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.  
                          (b) The expression "Judge" means a Judge of the said  
Court, and includes the Chief Justice.  
                          (c) The expression "Relief" shall comprehend every  
species of relief claimed or prayed for in any petition  
of right whether a restitution of any incorporeal right,  
or a return of lands or chattels, or a payment of money  
or damages, or otherwise.

3. A petition of right shall be entitled in the Supreme  
Court of the North-West Territories, or in such other court  
as may hereafter be constituted and established by law  
exercising within the Province the jurisdiction, powers  
and authority at the date of the passing of this Act exer-  
cised therein by the Supreme Court of the North-West  
Territories, and shall state the place where the suppliant

proposes the petition shall be tried; and such petition shall be addressed to His Majesty in the words or to the effect of the form in Schedule A to this Act, and shall state the christian name and surname and usual place of abode of the suppliant and those of his solicitor, if any, by whom the same is presented, and shall set forth with convenient certainty the facts entitling the suppliant to relief, and shall be signed by such suppliant, his counsel or solicitor. The facts set forth in the petition shall be verified by affidavit of the suppliant, his solicitor or agent, thereto annexed.

Fiat for

4. The said petition shall be submitted for consideration to the Lieutenant Governor in Council, and upon such consideration a fiat may be granted that right be done. ~~The suppliant on so submitting the petition, shall file therewith in the office of the Clerk of the Executive Council a certificate by the clerk or deputy clerk that a bond for security for costs by the suppliant and two sufficient sureties has been deposited in his office, and until a satisfactory security bond shall have been deposited no fiat shall be granted.~~

Security  
for  
costs

Service  
of  
petition

5. Upon the Lieutenant Governor's fiat being obtained to such petition, a copy of such petition and fiat shall be left at the office of the Attorney General during office hours, with an indorsement thereon in the words or to the effect of the form in Schedule B to this Act annexed, praying for a defence or answer on behalf of His Majesty within twenty-eight days.

Notice  
to  
defend

Notice to  
last  
occupant

6. In case any such petition of right be presented for the recovery of any real or personal property of any right

of real  
estate

in or to the same, which has been granted away or disposed of by or on behalf of His Majesty or His predecessors, a copy of such petition, allowance and fiat shall be served upon, or left at the last or usual or last known place of abode of, the person in the possession, occupation or enjoyment of such property or right, indorsed with a notice in the words or to the effect of the form in Schedule C to this Act, requiring such person to file a statement of defence thereto within sixteen days after the same has been so served or left as aforesaid.

Appearance of  
third party  
and subsequent  
proceedings

7. It shall not be necessary to issue any scire facias or other process to any person so served for the purpose of requiring him to appear, plead or answer to such petition; but he shall, if he intend to contest such petition, file his statement of defence thereto within the time specified in such notice or such further time as the Court or Judge may allow.

#### PLEADINGS.

Time for  
pleading or  
answering

8. The time for defending or pleading to such petition, on behalf of His Majesty, shall be the said period of twenty-eight days after the same, with such prayer of a defence or answer as aforesaid, has been left at the office of the said Attorney General, or such further time as may be allowed by the Court or a Judge.

How petition  
may be  
answered by  
Attorney  
General for  
the Crown.

9. The petition may be answered within the time aforesaid according to the practice of the Court relating to statements of defences and counter-claims, by or in the name of His Majesty's Attorney General on behalf of His Majesty.

How petition  
may be  
answered by  
another  
person

10. The petition may be answered by or on behalf of any other person who may in pursuance thereof be called upon to plead or answer thereto in the same manner as if such petition, when prosecuted in the said Court, were a statement of claim issued therefrom; and such and the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on the behalf of His Majesty may be alleged on behalf of any such other person as aforesaid called on to plead or answer thereto.

#### PRACTICE.

Rules of  
pleading,  
evidence &c.

11. So far as the same are applicable, and except in so far as is inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing, and trial, ~~security for costs, amendment, arbitration,~~ special cases, the means of procuring and taking evidence, set off, appeal and proceedings in error, in suits between subject and subject, and the rules, orders, practice and course of procedure of the said Court, respectively, for the time being, in reference to such suits, and personal actions, shall, unless the Court otherwise orders, be applicable and apply and extend to such petition of right.

Petition  
taken pro  
confesso

12. In case of a failure on the behalf of His Majesty, or of any other person as aforesaid, called upon to answer or plead to such petition, to plead or answer in due time, either to such petition or at any subsequent stage of the proceedings thereon, the suppliant shall be at liberty to apply to the Court or a Judge for an order that the petition may be taken as confessed; and the Court or Judge, on being satisfied that there has been such

failure to plead, answer or defend in due time, may order that such petition may be taken as confessed as against His Majesty or such other party so making default; and in case of default on behalf of His Majesty or any other such person (if any) called upon as aforesaid to answer or plead thereto, a judgment may be pronounced by the court or leave may be given by the Court, on the application of the suppliant, to sign judgment in favor of the suppliant.

Setting aside  
judgment

13. The judgment in the last preceding section authorized may afterwards be set aside by such Court or a Judge in its or his discretion upon such terms as to it or him seem proper.

#### TRIAL OF ISSUES.

Trial

14. Any issue of fact or assessment of damages to be tried or had under this Act shall be tried or had by a Judge without a jury.

#### JUDGMENT.

Form of  
judgment

15. Upon every such petition of right, the judgment of the Court, whether pronounced or given upon the pleadings, or upon a default to answer or plead in time, or after hearing or verdict, or otherwise, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or such other relief as the Court thinks right, and such Court may give a judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as such Court thinks just.

Effect of  
judgment

16. In all cases in which the judgment commonly

called a judgment of amoveas manus was formerly in England pronounced or given upon a petition of right. a judgment that the suppliant is entitled to relief, as hereinbefore provided, shall be of such and the same effect as such judgment of amoveas manus.

COSTS.

Costs upon  
petition as  
against the  
suppliant

17. Upon any such petition of right, the Attorney General or other person appearing on behalf of His Majesty, and every such other person as aforesaid who defends or pleads thereto, shall be entitled respectively to recover costs against the suppliant in the same manner, and subject to the same restrictions and discretion, and under the same rules, regulations and provisions, so far as they are applicable, as are or may be usually adopted or in force, touching the payment or receipt of costs in proceedings between subject and subject; and for the recovery of such costs, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon judgments or orders shall and may be prosecuted, sued out and executed respectively by or on behalf of His Majesty and of such other person as aforesaid as defends and pleads to such petition; and any costs recovered on behalf of His Majesty shall be paid to the Provincial Treasurer, and form part of the General Revenue Fund of the Province.

Recovery of  
costs by the  
suppliant

18. Upon any such petition of right the suppliant shall be entitled to costs against His Majesty, and also against any other person defending or pleading to any such petition of right, in like manner, and subject to the same rules, regulations and provisions, restrictions and discretion, so far as they are applicable, as are or may be usually adopted or in

force, touching the right to recover costs, in proceedings between subject and subject; and for the recovery of any such costs from any such person, other than His Majesty, defending or pleading in pursuance hereof to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs, judgments or orders in actions between subject and subject shall and may be prosecuted, sued out and executed on behalf of such suppliant.

#### ENFORCING JUDGMENT AGAINST CROWN.

Judge's certificate to the Provincial Treas., when suppliant is declared entitled.

19. Whenever upon such petition of right, a judgment or order is given or made that the suppliant is entitled to relief, and there is no appeal, and whenever upon an appeal, a judgment or order is affirmed, given or made that the suppliant is entitled to relief, and whenever any judgment or order is given or made entitling the suppliant to costs, any one of the Judges of the said Court shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving or affirming of such judgment or order, certify to the Provincial Treasurer the tenor and purport of the same, in the words or to the effect of the form in Schedule D to this Act; and such certificate may be sent to or left at the office of the Provincial Treasurer during office hours.

Payment of judgment and costs

20. Upon the tenor and purport of any judgment or order being certified to him as aforesaid, the Provincial Treasurer shall pay out of any moneys in his hands, for the time being legally applicable thereto, or which may be thereafter voted by the Legislature for that purpose, the amount of any

moneys and costs awarded by such judgment or order to the suppliant in any such petition of right.

SAVING CLAUSE.

Act  
restrained

21. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing of this Act.

SCHEDULES.

Schedules.

The following are the schedules referred to in this Act:--

Schedule A.--(Section 3)

Petition.

In the Supreme Court of the North-West Territories (or such other court as the case may be)

Petition

To the King's most excellent Majesty:

Province of Alberta, ) The humble petition of A.B., of  
To Wit: ) by his attorney, E.F., of  
sheweth that (state the facts).

Conclusion.

Your suppliant therefore humbly prays, &c.

Your suppliant humbly proposes that this petition be tried at

Dated the                      day of                      , A.D. 190 .

(Signed)                      A.B.,  
(or C.D., counsel for A.B., or E.F.,  
solicitor for A.B.,)

I, A.B., the within suppliant, make oath and say that the facts and matters and things in the within named petition set forth and contained are true, to my personal knowledge.

Sworn, &c.                      (Signed)                      A.B.,



Schedule B.--(Section 5)

Indorsement on Petition.

Indorsement  
on petition

The suppliant prays for a statement of defence on behalf of His Majesty within twenty-eight days after the date hereof, or otherwise that the petition may be taken as confessed.

---

Schedule C.--(Section 6.)

Notice to Defend.

To A.B.,

Notice to  
defend

You are hereby required to file your statement of defence to the within petition in the Supreme Court of the North-West Territories (or such other court as the case may be) within sixteen days, after the date of service hereof.

Take notice that, if you fail to defend in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated, &c.

---

Schedule D.--(Section 19).

Certificate of Judgment for petitioner.

In the Supreme Court of the North-West Territories (or such other court as the case may be)

To the Honourable the Treasurer of Alberta:

Certificate of  
judgment for  
petitioner.

A.B., suppliant, ) I hereby certify that on the  
vs ) of , A.D. 19 , it was by the said  
The King. ) Supreme Court of the North-West  
Territories (or such other court as  
the case may be) adjudged (or  
ordered) that the above named suppliant

was entitled to, &c.

Dated, &c.

Judge's signature.

No. 16 )

First Session, First Legislature,  
6 Edward VII, 1906.

B I L L

An Act Respecting Suits against  
the Crown by Petition of Right.

Received and read the  
First Time.....*Jan 27 06*.....  
Second Reading.....*Monday*.....  
Third Reading.....

Mr. *C. W. A.*.....

J. MONTGOMERY  
King's Printer.  
A.D. 1906.