

No. 55

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5th Session, 13th Legislature, Alberta  
7 Elizabeth II, 1959

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## **BILL 55**

A Bill respecting Proceedings Against the Crown

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HON. MR. MANNING

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## **Explanatory Note**

This Bill enacts a new Act from the Uniform Act recommended in 1950 by the Conference of Commissioners on Uniformity of Legislation in Canada and since that date adopted with some modifications in the following manner: Manitoba (1951); New Brunswick (1952—in part); Ontario (1952—with slight modification, but not proclaimed to 1958); Saskatchewan (1952—with slight modification); Nova Scotia (1951—similar provisions). This Bill follows the Uniform Act with modifications either required by local circumstances or suggested by the experience of other provinces.

The Bill will simplify the procedure governing civil litigation against the Crown by abolishing proceedings by way of petition of right and substituting the ordinary procedure applicable to actions between subjects, in most cases. It also dispenses with one of the ancient immunities of the Crown by making the Crown in right of Alberta subject to an action in tort.

### **2. Definitions.**

### **3. (1) Subject to certain Acts.**

#### **(2) Saving clause.**

# BILL

No. 55 of 1959

An Act respecting Proceedings Against the Crown

(Assented to \_\_\_\_\_, 1959)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** This Act may be cited as "*The Proceedings Against the Crown Act*".

**2.** In this Act,

- (a) "agent" when used in relation to the Crown includes an independent contractor employed by the Crown;
- (b) "Crown" means Her Majesty the Queen in right of the Province of Alberta;
- (c) "officer", in relation to the Crown, includes a Minister of the Crown and any servant of the Crown;
- (d) "order" includes a judgment, decree, rule, award and declaration;
- (e) "person" does not include the Crown;
- (f) "proceedings against the Crown" includes a claim by way of set-off or counterclaim raised in proceedings by the Crown and interpleader proceedings to which the Crown is a party;
- (g) "rules of court" means the rules of the Supreme Court of Alberta made under the authority of *The Judicature Act*.

**3.** (1) This Act is subject to *The Workmen's Compensation Act*, *The Land Titles Act*, as to claims against the assurance fund, *The Succession Duty Act*, *The Income Tax Act*, *The Alberta Corporation Income Tax Act*, and *The Alberta Corporation Income Tax Act, 1949*, section 24 of *The Judicature Act* and such other enactments as may be designated by the Lieutenant Governor in Council.

(2) Except as otherwise provided in this Act, nothing in this Act

- (a) subjects the Crown to greater liability in respect of the acts or omissions of an independent contractor employed by the Crown than that to which the Crown would be subject in respect of such acts or omissions if it were a private person,

4. Right to sue Crown.

5. Liability of Crown in tort.

- (b) subjects the Crown, in its capacity as a highway authority, to any greater liability than that to which a city under *The City Act* is subject in that capacity,
- (c) affects any right of the Crown to intervene in proceedings affecting its rights, property or profits,
- (d) subjects the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown, or
- (e) subjects the Crown to proceedings under this Act in respect of any thing done in the due enforcement of the criminal law or the penal provisions of any Act of the Legislature.

4. Except as provided in section 26, a claim against the Crown that, if this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the Lieutenant Governor, may be enforced as of right by proceedings against the Crown in accordance with this Act, without the grant of a fiat by the Lieutenant Governor.

5. (1) Except as otherwise provided in this Act and notwithstanding section 13 of *The Interpretation Act, 1958*, the Crown is subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its officers or agents,
- (b) in respect of any breach of those duties that a person owes to his servants or agents by reason of being their employer,
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property, and
- (d) under any statute or under any regulation or by-law made or passed under the authority of any statute.

(2) No proceedings lie against the Crown under clause (a) of subsection (1) in respect of any act or omission of an officer or agent of the Crown unless the Act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his personal representative.

(3) Where a function is conferred or imposed upon an officer of the Crown as such, either by any rule of the common law or by statute and that officer commits a tort in the course of performing or purporting to perform the function, the liability of the Crown in respect of the tort is such as it would have been if the function had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

**6. Application of indemnity and contribution rules.**

**7. Proceedings against Crown.**

**8. Proceedings in district court.**

**9. Appeals and stay of executions and proceedings.**

**10. Small debts proceedings prohibited.**

(4) An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of any tort committed by that officer, in the case of proceedings against the Crown under this section in respect of a tort committed by that officer, applies in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

(5) Where property vests in the Crown by virtue of any rule of law that operates independently of the acts or the intentions of the Crown, the Crown is not, by virtue of this Act, subject to liability in tort by reason only of the property being so vested, but this subsection does not affect the liability of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of the property or entered into occupation thereof.

(6) No proceedings lie against the Crown under this section in respect of any thing done or omitted to be done by any person while discharging or purporting to discharge responsibilities of a judicial nature vested in him or responsibilities that he has in connection with the execution of judicial process.

**6.** The law relating to indemnity and contribution is enforceable by and against the Crown in respect of any liability to which it is subject as if the Crown were a person of full age and capacity.

**7.** Except as otherwise provided in this Act, all proceedings against the Crown in the Supreme Court of Alberta shall be instituted and proceeded with in accordance with *The Judicature Act*.

**8.** Except as otherwise provided in this Act and subject to any enactment limiting the jurisdiction of a district court, any proceedings against the Crown may be instituted in a district court and proceeded with in accordance with *The District Courts Act*.

**9.** Except as otherwise provided in this Act, all enactments and rules of court relating to appeals and stay of execution or proceedings, with necessary modifications, apply to proceedings against the Crown.

**10.** Nothing in this Act authorizes proceedings against the Crown under *The Small Debts Act* or *The Masters and Servants Act*.

**11.** Discovery and inspection of documents.

**12.** Designation of Crown.

**13.** Service on Crown.

**14.** Trial without a jury.

**15.** Interpleader.

**16.** Rights of parties.

**17.** (1) Injunction; specific performance not to lie against Crown;

(2) or against Crown officers in certain cases.



**11.** In proceedings against the Crown the rules of the court as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that the Crown may refuse to produce a document or to make answer to a question on discovery on the ground that the production thereof or the answer would be injurious to the public interest.

**12.** In proceedings under this Act the Crown shall be designated "Her Majesty the Queen in right of Alberta".

**13.** A document to be served on the Crown shall be served by leaving a copy with the Attorney General or the Deputy Attorney General or any barrister or solicitor employed in the Department of the Attorney General.

**14.** In proceedings against the Crown the trial shall be without a jury.

**15.** The Crown may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner as a person may obtain relief by way of such proceedings or be made a party thereto, notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer, and subject to this Act, the provisions relating to interpleader proceedings under *The Judicature Act* and *The District Courts Act* shall have effect accordingly.

**16.** Except as otherwise provided in this Act, in proceedings against the Crown the rights of the parties are as nearly as possible the same as in a suit between person and person and the court may make any order, including an order as to costs, that it may make in proceedings between persons and may otherwise give such appropriate relief as the case may require.

**17.** (1) Where in proceedings against the Crown any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance the court shall not, as against the Crown, grant an injunction or make an order for specific performance but may, in lieu thereof, make an order declaratory of the rights of the parties.

(2) The court shall not in any proceedings grant an injunction or make an order against an officer of the Crown where the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown but may, in lieu thereof, make an order declaratory of the rights of the parties.

**18.** Order for recovery of land not to lie.

**19.** (1) Set-off and counterclaim.

(2) Exception.

**20.** Information in advance of proceeding.

**21.** (1) Defence by Crown.

(2) Default judgment.

**22.** Proceedings in rem.

**23.** Interest on judgments.

**24.** Certificates of orders against Crown.

**18.** In proceedings against the Crown in which the recovery of real or personal property is claimed the court shall not make an order for its recovery or delivery but in lieu thereof may make an order declaring that the claimant is entitled as against the Crown to the property claimed or to the possession thereof.

**19.** (1) No person may avail himself of any set-off or counter-claim in proceedings by the Crown for the recovery of taxes, duties or penalties or avail himself, in proceedings of any other nature by the Crown, of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(2) Subject to subsection (1) a person may avail himself of any set-off or counterclaim in proceedings by the Crown if the subject matter of the set-off or the counterclaim relates to a matter under the administration of the particular government department with respect to which proceedings are brought by the Crown.

**20.** Before taking any step in proceedings against the Crown, the Crown may require the claimant to provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

**21.** (1) In proceedings against the Crown, any defence that, if the proceedings were between persons, could be relied upon by the defendant as a defence to the proceedings or otherwise may be relied upon by the Crown.

(2) In proceedings against the Crown judgment shall not be entered against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown.

**22.** Nothing in this Act authorizes proceedings *in rem* in respect of any claim against the Crown or the seizure, attachment, arrest, detention or sale of any property of the Crown.

**23.** A judgment debt due to or from the Crown bears interest in the same way as a judgment debt due from one person to another.

**24.** (1) Subject to this Act, where in proceedings against the Crown an order for costs or any other order is made by a court against the Crown, the proper officer of the court, on an application in that behalf, shall issue a certificate thereof.

(2) Where the court so directs a separate certificate shall be issued with respect to the costs, if any, ordered to be paid to the applicant.

**25.** No execution process against Crown.

**26.** (1) Pending petition of right proceedings.

(2) Petition of right abolished.

**27.** Matters arising before Act.

**28.** Uniform interpretation provision.

**29.** R.S.A. 1955, chapter 231 repealed.

Commencement—1st July, 1959. (R.S.A. 1955, c. 320, s. 4(4)).

(3) A certificate issued under this section may be served upon the person for the time being named in the record as the solicitor, or as the person acting as solicitor, for the Crown.

(4) Where the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate shall state the amount so payable, and except as hereinafter provided, the Provincial Treasurer, shall pay out of the General Revenue Fund to the person entitled or to his order the amount appearing by the certificate to be due together with the interest, if any, lawfully due thereon.

(5) The court by which such an order is made or a court to which an appeal against the order lies may direct that pending an appeal or otherwise, payment of the whole of the amount so payable or any part thereof shall be suspended and if the certificate has not been issued may order the direction to be inserted therein.

**25.** No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of money or costs.

**26.** (1) This Act does not affect proceedings against the Crown by petition of right that have been instituted before the commencement of this Act, and for the purposes of this section proceedings against the Crown by petition of right shall be deemed to have been instituted if a petition of right with respect to the matter in question has been left with the Clerk of the Executive Council before the commencement of this Act.

(2) Subject to subsection (1), proceedings against the Crown by petition of right are abolished.

**27.** No proceedings shall be brought against the Crown under this Act in respect of any act or omission, transaction, matter or thing occurring or existing before the commencement of this Act.

**28.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

**29.** *The Alberta Petition of Right Act*, being chapter 231 of the Revised Statutes is repealed.

No. 55

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FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

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**BILL**

An Act respecting Proceedings  
Against the Crown

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MANNING

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