

No. 63

2nd Session, 15th Legislature, Alberta
13 Elizabeth II

BILL 63

A Bill to amend The Magistrates and Justices Act

HON. MR. MANNING

Explanatory Note

1. This Bill will amend The Magistrates and Justices Act which is chapter 186 of the Revised Statutes.

2. The proposed subsection (3) adds a new provision to the Act. The proposed subsection (4) is a revision of the present subsections (3) and (4). The proposed subsections (5) and (5a) are a revision of the present subsection (5). The proposed subsection (7) is a revision of the present subsection (7). The proposed subsection (8) adds a new provision to the Act. The present subsection (8) is repealed as it is no longer applicable to present day circumstances. Subsections (3), (4), (5) and (8) presently read:

(3) Where a magistrate ceases for any reason to be a magistrate and another magistrate is appointed as his successor, the magistrate so appointed may do all the acts and things, with respect to any information, complaint, matter or thing pending before the first mentioned magistrate, that the first mentioned magistrate might have done in his capacity as magistrate had he not ceased to be a magistrate.

(4) Where a magistrate ceases for any reason to be a magistrate and no person is appointed to succeed him, any other magistrate appointed under the provisions of this Act may, whenever directed to do so by the Attorney General and to the extent that he is so directed, to do all the acts and things, with respect to any information, complaint, matter or thing pending before the first mentioned magistrate, that the first mentioned magistrate might have done in his capacity as magistrate had he not ceased to be a magistrate.

(5) No magistrate and no partner or clerk of a magistrate shall act as agent, solicitor or counsel

(a) in any cause, matter, prosecution or proceeding of a criminal nature, or

(b) in a case that by law may be investigated or tried before a magistrate or justice of the peace.

.....

(8) A magistrate appointed under this Act is entitled to receive the same fees and emoluments as are paid to justices of the peace.

BILL

No. 63 of 1965

An Act to amend The Magistrates and Justices Act

(Assented to _____, 1965)

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

1. *The Magistrates and Justices Act* is hereby amended.
2. Section 2 is amended
 - (a) by striking out subsections (3), (4) and (5) and by substituting the following:
 - (3) A magistrate may resign at any time by delivering to the Attorney General a letter of resignation as a magistrate signed by him.
 - (4) Where a magistrate ceases for any reason to be a magistrate, any other magistrate appointed under this Act may do all the acts and things with respect to any information, complaint, matter or thing pending before the first mentioned magistrate that the first mentioned magistrate might have done in his capacity as magistrate had he not ceased to be a magistrate.
 - (5) A magistrate shall not act as agent, solicitor or counsel in any proceedings of a criminal nature before another magistrate or a justice of the peace.
 - (5a) A magistrate shall not permit a partner, articled student, employee or business associate of his to act as agent, solicitor or counsel in any proceedings before him.
 - (b) by striking out subsections (7) and (8) and by substituting the following:
 - (7) The Lieutenant Governor in Council may
 - (a) fix the salaries to be paid magistrates,
 - (b) fix the amount to be paid magistrates per day or per half day for each day services are required, and
 - (c) in respect of magistrates and justices of the peace, prescribe fees to be paid for each proceedings or specified services performed.

3. Three new self-explanatory sections are added.

(8) Unless otherwise authorized by the Lieutenant Governor in Council, a magistrate who is employed on a salary as a full time magistrate shall not carry on or practise any business, profession, trade or occupation but shall devote his time to the performance of his duties as a magistrate.

3. The following sections are added after section 2:

2a. The Attorney General may

- (a) designate the place at which a magistrate shall establish his residence,
- (b) designate the place or places at which a magistrate shall hold court,
- (c) designate the place or places at which a magistrate shall establish an office,
- (d) designate the day or days on which a magistrate shall hold court at any place,
- (e) designate the place or places and the area or areas within which or in respect of which the magistrate shall exercise his jurisdiction,
- (f) require a magistrate to change his place of residence, or to change the place or places at which he is to hold court, or to change the day or days on which he is to hold court at any place, or to establish an office at a different place than the place at which he has an office,
- (g) change the place or places or the area or areas within which or in respect of which a magistrate is to exercise his jurisdiction, and
- (h) require a magistrate to act during the absence of another magistrate in the place and stead of the magistrate who is absent.

2b. (1) The Attorney General may direct that a magistrate have supervision of the administration of the magistrates' courts within a district determined by the Attorney General.

(2) A direction under this section does not affect a magistrate's jurisdiction in and for the Province.

2c. (1) Subject to this section, no person who is seventy years of age or over may be appointed a magistrate and, unless sooner revoked, the appointment of a magistrate terminates when he reaches the age of seventy years.

(2) The Lieutenant Governor in Council may

- (a) extend the appointment of a magistrate whose appointment is about to terminate under subsection (1), or

4. New provisions similar to some of those being made with respect to magistrates are added with respect to justices of the peace.

5. A new section is added stating a present practice.

6. Section 7 presently reads:

7. A magistrate or justice of the peace before he is gazetted and takes upon himself to act as such shall take and subscribe the oath of allegiance and the judicial oath prescribed by The Oaths of Office Act before a person authorized to administer oaths and declarations in the Province.

The words being omitted presumably refer to the publication of a notice of the appointment in The Alberta Gazette. The condition is omitted as it may cause unnecessary delays.

7. Section 11 deals with various forms and returns that are to be made by magistrates and justices of the peace. The subject matter of the section will be dealt with by regulations under section 16.

8. See note to clause 7.

(b) re-appoint as a magistrate a former magistrate whose appointment has terminated under subsection (1),

but in either case, unless sooner terminated or revoked the appointment terminates when the magistrate reaches the age of seventy-five years.

(3) Unless sooner revoked, the appointment of a magistrate

(a) who was a magistrate, and

(b) who was seventy years of age or over,

on the first day of July, 1965, terminates when he reaches the age of seventy-five years.

4. Section 3 is amended by renumbering the section as subsection (1) and by adding the following after the renumbered subsection (1) :

(2) A justice of the peace may resign at any time by delivering to the Attorney General a letter of resignation as a justice of the peace signed by him.

(3) No person seventy-five years of age or over may be appointed a justice of the peace and, unless sooner revoked, the appointment of a justice of the peace terminates when he reaches the age of seventy-five years.

(4) The appointment of a justice of the peace who has reached the age of seventy-five years before the first day of July, 1965, terminates on that date.

5. The following section is added after section 3 :

3a. No justice of the peace, other than one who is also a magistrate, may hold a preliminary inquiry within the meaning of the *Criminal Code*.

6. Section 7 is amended by striking out the words "is gazetted and".

7. Section 11 is repealed.

8. Section 12 is amended by striking out the words "section 11" wherever they occur in subsections (1) and (3) and by substituting the words "the regulations".

9. A provision is added to provide some protection to magistrates and justices of the peace who make mistakes while acting in good faith.

10. Section 16 which authorizes the making of regulations is revised and expanded to authorize regulations on the matters presently dealt with in section 11 and other matters.

11. The Schedule of forms is struck out as they will be provided for under section 16.

12. Commencement of Act.

9. Section 15 is amended by adding the following subsection:

(3) No action may be brought against a magistrate or justice of the peace for any act done in the execution of his duty or in a matter in which he lacked or has exceeded his jurisdiction, unless it is proved that the magistrate or justice acted maliciously and without reasonable and probable cause.

10. Section 16 is struck out and the following is substituted:

16. The Lieutenant Governor in Council may make regulations

- (a) requiring and governing the making of returns and reports by magistrates and justices of the peace,
- (b) prescribing statements, forms and returns for reporting to the Deputy Attorney General any matter of any nature whatsoever which is commenced, tried, heard, revised or adjudicated upon, and for the accounting of all fines, penalties, forfeitures or other sums of money,
- (c) requiring magistrates and justices of the peace to deposit fines, penalties, forfeitures or other sums of money in a trust account,
- (d) governing the dates and times when statements, forms and returns are to be made and fines, penalties, forfeitures or other sums of money transmitted by magistrates and justices of the peace,
- (e) providing for the safe-keeping, inspection and destruction of books, documents and papers of magistrates and justices of the peace,
- (f) providing for the services of stenographic reporters to take down evidence before magistrates,
- (g) defining the classes of cases and conditions in which stenographic reporters may be utilized, and
- (h) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

11. The Schedule is struck out.

12. This Act comes into force on the first day of October, 1965.

No. 63

SECOND SESSION

FIFTEENTH LEGISLATURE

13 ELIZABETH II

1965

BILL

An Act to amend The Magistrates
and Justices Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
