

No. 70

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

BILL 70

A Bill to amend The Small Debts Act

HON. MR. MANNING

Explanatory Note

1. This Bill amends chapter 314 of the Revised Statutes.

2. Section 5 reads:

5. A person having any claim that may be adjudicated upon under this Act may obtain from a magistrate a summons in Form A in Schedule I.

3. Section 7, subsection (1) presently reads:

7. (1) The plaintiff shall, before the summons is issued, deposit with the magistrate the sum of three dollars by way of a deposit on the taxable fees of the magistrate and his bailiff.

4. Section 10 and section 13, subsection (2) presently reads:

10. Upon any summons being returned unserved the magistrate
(a) shall postpone the hearing for not more than sixty days and may further postpone the hearing from time to time by endorsing a memorandum on the summons and a copy of the summons, and
(b) shall notify the plaintiff of the postponement by letter addressed to him at the address furnished in the claim.

13. (1)

(2) All summonses shall be served at least ten days before the date appointed therein for the hearing of the case.

5. Section 11, subsection (1) presently reads:

11. (1) A defendant having a counterclaim shall file particulars of the same with the magistrate and serve the plaintiff with a copy of the particulars six days at least before the day fixed for the trial in the summons or endorsement thereon.

Form J is added to the Schedule by clause 14 of this bill.

BILL

No. 70 of 1965

An Act to amend The Small Debts 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 Small Debts Act* is hereby amended.

2. Section 5 is amended by renumbering the section as subsection (1) and by adding the following subsections:

(2) Notwithstanding subsection (1), a magistrate may refuse to issue a summons if

(a) by reason of the distance between the residences of the proposed parties to the proceedings, or

(b) for any other reason,

he considers that it is not in the interest of either party that the claim be adjudicated upon under this Act.

(3) The refusal of a magistrate to issue a summons does not prejudice the right of the person having a claim to proceed thereon in any manner authorized by law.

3. Section 7, subsection (1) is amended by striking out the word "three" and by substituting the word "four".

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

10. Where a summons

(a) is not served, or

(b) is not served within the time limited by subsection (2) of section 13,

a magistrate, upon application or upon his own motion, may issue a new summons and fix a new day for the hearing of the claim.

5. Section 11 is amended by striking out subsection (1) and by substituting the following:

11. (1) A defendant having a counterclaim may file with the magistrate particulars of his counter claim in Form J

6. Service of documents on a Sunday or holiday.

7. Section 15, clause (c) reads:

15. The service of any summons, counterclaim, notice, paper or other document may be proved

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(c) by an affidavit of service proving the mailing by registered mail and exhibiting the acknowledgment on receipt of the registered letter purporting to be signed by the person to be served, or by any person receiving the same on his behalf.

8. Section 21, subsection (1), clause (a) and subsection (2) read:

21. (1) At the time mentioned in the summons or last endorsement of postponement thereon, if the summons was duly served, or if the summons was served less than ten days before the hearing then on some day to which the hearing is adjourned, a claim shall be tried or determined before

- (a) the magistrate who issued the summons, or
.....

(2) Notwithstanding subsection (1), no claim shall, except with the consent of the defendant, be tried or adjudicated upon by a magistrate unless the summons has been served at least ten days before the trial.

The section is amended to conform with the change to section 10 of the Act. See clause 4 of this Bill.

9. Section 26 presently reads:

26. A magistrate may adjourn the hearing from day to day if necessary to finish the business and may in the absence of necessary and material witnesses, or for other good cause appearing on oath or affidavit, adjourn the hearing on such terms as seem to him just.

10. Section 28 presently reads:

28. (1) The presiding magistrate shall take down in writing the evidence offered on the trial, and shall read over to each witness the evidence given by him and the witness shall subscribe his name thereto, and the magistrate shall certify the evidence.

(2) Such evidence shall be taken on oath and the parties and witnesses are subject to cross-examination and re-examination.

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in Schedule I and shall serve a copy of the counterclaim so filed on the plaintiff at least six days before the day fixed in the summons for the trial.

6. Section 13 is amended by adding the following subsection after subsection (2) :

(3) The service of any process paper or document on a Sunday or on a holiday is void.

7. Section 15 is amended by adding the word "or" at the end of clause (c) and by adding the following clause after clause (c) :

(d) where the service was affected by the magistrate or an officer of his court by registered mail, by producing the acknowledgment on receipt of the registered letter purporting to be signed by the person to be served or by the person receiving the letter on his behalf.

8. Section 21 is amended

(a) as to subsection (1) by striking out the words "or last endorsement of postponement thereon, if the summons was duly served, or if the summons was served less than ten days before the hearing then on some day to which the hearing is adjourned",

(b) by striking out subsection (2).

9. Section 26 is struck out and the following is substituted:

26. A magistrate may adjourn a trial from time to time if necessary to complete the hearing and he may, for any cause he considers sufficient, adjourn a trial for such periods as he considers necessary.

10. Section 28 is struck out and the following is substituted:

28. (1) The evidence offered at a trial shall be taken on oath and all persons giving evidence are subject to cross-examination and re-examination.

(2) If the evidence given at a trial is not taken as permitted by subsection (3), the magistrate shall cause the evidence of each witness to be taken down in writing in a summary fashion and

(a) the magistrate shall read over to each witness the written summary of the witness's evidence, and

(b) the witness shall subscribe his name to the written summary, and

11. Section 30 of the Act reads:

30. When the defendant does not appear and defend, the plaintiff may prove his case and judgment may be given against the defendant in his absence unless for good cause, as provided in section 26, the magistrate decides to adjourn the hearing.

The summons by which proceedings are commenced may be served by double registered mail. Where it is accepted by a representative of the defendant it is possible for judgment to be obtained before the defendant has actual notice of the proceedings. ,

12. Section 34 reads:

34. (1) Where a judgment debtor fails to appear in answer to a summons issued pursuant to section 33, the magistrate may issue a warrant to compel his attendance at a place and time to be set out in the warrant.

(2) A warrant

(a) shall be under the hand and seal of a magistrate issuing the same, and

(b) may be directed to any constable by name, or to such constables or all other constables within the territorial jurisdiction of the magistrate issuing it, or generally to all constables within such jurisdiction.

(3) The warrant shall name or otherwise describe the judgment debtor and shall order the officer or officers, to whom it is directed, to apprehend the offender and bring him before the magistrate issuing the warrant, or before some other magistrate, to answer to the summons and to be further dealt with according to law.

13. Form B of Schedule I revised.

(c) the magistrate shall then certify thereon that it is a summary of the evidence given by that witness at the trial.

(3) The evidence offered at a trial may be taken by means of a sound recording machine as provided under *The Mechanical Recording of Evidence Act* or by a court reporter appointed in accordance with the Consolidated Rules of the Supreme Court.

11. The following section is added after section 30 :

30a. Where a judgment is given against a defendant in his absence, the magistrate,

(a) upon the application of the defendant made within thirty days after the judgment is given, and

(b) upon being satisfied by such evidence as he may require that the summons was not in fact received by the defendant,

may set aside the judgment and, without the issue of a summons but on such notice to the parties as he considers proper, fix a date for a trial and the matters in issue shall then be determined in accordance with this Act.

12. Section 34 is repealed.

13. Form B in Schedule I is struck out and the following is substituted :

FORM B
(Section 6)

CLAIM

(*The Small Debts Act*)

CANADA }
Province of Alberta }
TO WIT :

The claim of of
in the Province of Alberta,, made the
(*occupation*)
day of, 19....., who saith that
of, in the Province is indebted to him

14. Form J is added to Schedule I to conform with the amendments to section 11 of the Act.

15. Commencement of Act.

in the sum of \$..... (here give particulars of claim or refer to them as attached).

And I,
(Complainant or someone conversant with the facts)
do swear that, to the best of my knowledge and belief, the above claim is correct, and the said..... is indebted to in the sum of \$..... as aforesaid.

Sworn before me the day and year first above mentioned at in }
the Province of Alberta. }

.....
(Magistrate, Justice of the Peace, Notary Public or Commissioner for taking Affidavits)

14. Schedule 1 is further amended by adding the following after Form I:

FORM J
(Section 11)
COUNTERCLAIM
(The Small Debts Act)

Between
Plaintiff

and

.....
Defendant
The Counterclaim of of
in the Province of Alberta filed the

(Occupation)

day of, 19..., with, one of Her Majesty's Justices of the Peace (or Magistrates, as the case may be) who saith that..... of in the said Province, plaintiff, is indebted to him, the said defendant, in the sum of \$..... particulars of which indebtedness are as follows:

(Here give particulars or refer to them as attached)

.....
(Signature of Defendant or his authorized agent or attorney)

15. This Act comes into force on a date to be fixed by Proclamation.

No. 70

SECOND SESSION

FIFTEENTH LEGISLATURE

13 ELIZABETH II

1965

BILL

An Act to amend The Small
Debts Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING