

No. 98

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 98

A Bill to amend The Small Debts Act

HON. MR. MANNING

Explanatory Note

1. This Bill amends chapter 314 of the Revised Statutes.
2. This new definition is added in view of expanded jurisdiction.

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

3. (1) A magistrate has in the judicial district in which he resides jurisdiction to try and to adjudicate upon any claim for a debt, whether payable in money or otherwise,

(a) where the amount claimed does not exceed three hundred dollars, or

(b) where the amount originally claimed exceeded three hundred dollars, but has been reduced by payment or abandonment to that sum or less,

but such jurisdiction does not extend to any case in which the Crown is a party or in which the title to land is involved.

This change increases the debt jurisdiction by \$200 and adds a jurisdiction in tort up to a \$200 limit.

4. This new section sets out the exceptions to the new jurisdiction added by clause 3 of this Bill.

BILL

No. 98 of 1966

An Act to amend The Small Debts Act

(Assented to _____, 1966)

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 2 is amended by adding the following clause after clause (a) :

(a1) "claim" includes

- (i) a claim for a debt, and
- (ii) a claim in respect of any other type of civil cause which may be tried pursuant to this Act;

3. Section 3 is amended by striking out subsection (1) and by substituting the following:

3. (1) A magistrate has, in the judicial district in which he resides, jurisdiction to try and to adjudicate upon

(a) any claim for a debt, whether payable in money or otherwise,

(i) where the amount claimed does not exceed five hundred dollars, or

(ii) where the amount originally claimed exceeded five hundred dollars, but has been reduced by payment or abandonment to that sum or less,

and

(b) any claim in respect of any civil cause of action in tort

(i) which is not excluded from the jurisdiction conferred by this Act, and

(ii) where the amount claimed does not exceed two hundred dollars.

(1a) There is no jurisdiction under this Act in respect of any case in which the Crown is a party unless the consent of the Attorney General is first obtained.

4. The following section is added after section 3 :

3a. Notwithstanding anything contained in this Act, no magistrate has jurisdiction under this Act in respect of any action or counterclaim

5. Section 20 presently reads:

20. (1) If a defendant has made tender before the issue of the summons he shall pay the money into the hands of the magistrate before or at the hearing, or the tender is of no avail.

(2) A defendant may, not later than eight days before the date of the hearing, pay to the magistrate a sum of money to satisfy the amount of the **debt claimed** and the costs of summons and service.

(3) The magistrate shall upon payment being made to him under either subsection (1) or subsection (2), otherwise than at the hearing, serve or cause to be served upon the plaintiff a notice in writing of the payment stating the date and the amount thereof **paid for debt** and costs respectively.

(4) If the plaintiff proceeds with the claim

(a) after notice of payment made under either subsection (1) or subsection (2), or

(b) after payment made at the hearing under subsection (1), and does not recover a greater sum than the amount paid for the **debt** he is liable to pay to the defendant such costs as the magistrate directs.

6. Section 23 presently reads:

23. (1) Where a counterclaim equalling the **debt due the plaintiff** is established, the defendant shall have judgment with costs.

(2) Where a counterclaim exceeding the amount of the **debt due the plaintiff** by a sum of not more than **two hundred dollars** is established, the defendant shall have judgment for the difference with costs.

These amendments make the section consistent with other changes.

7. Section 24 presently reads:

24. When the defendant's counterclaim exceeds the **debt due to the plaintiff** by more than **two hundred dollars**, the defendant may set off the amount of the plaintiff's claim but shall not have judgment for the excess unless he abandons so much of the counterclaim as reduces the excess to **two hundred dollars**, but the defendant may, at his option, instead of receiving judgment for such portion of the excess under this section, sue for the full amount of the excess in any court of competent jurisdiction.

- (a) in which the title to land is brought into question,
or
- (b) for malicious prosecution, false arrest, libel, slander, criminal conversation, seduction or breach of promise of marriage, or
- (c) against the personal representative of a deceased person, or
- (d) against any magistrate, justice of the peace or other peace officer for any thing done by him in the execution of his office, if he objects thereto.

5. Section 20 is amended

- (a) as to subsection (2) by striking out the words "debt claimed" and by substituting the words "plaintiff's claim",
- (b) as to subsection (3) by striking out the words "for debt" and by substituting the words "in respect of the claim",
- (c) as to subsection (4) by striking out the words "for the debt" and by substituting the words "in respect of the claim".

6. Section 23 is amended

- (a) as to subsection (1) by striking out the word "debt" and by substituting the words "amount of the claim",
- (b) as to subsection (2)
 - (i) by striking out the word "debt" and by substituting the word "claim",
 - (ii) by striking out the words "two hundred dollars" and by substituting the words "five hundred dollars".

7. Section 24 is amended

- (a) by striking out the word "debt" and by substituting the words "amount of the claim",
- (b) by striking out the words "two hundred dollars" wherever they occur and by substituting the words "five hundred dollars".

8. This clause is consequential upon the addition of section 30a added to the Act by chapter 83 of the Statutes of Alberta, 1965 and not yet proclaimed. Sections 30a and 38 presently read:

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.

38. (1) In other cases the person in whose favour judgment is given or his agent, upon payment of a fee of fifty cents, may file a certificate of the judgment, in Form H of Schedule I as provided in section 36, in the nearest office of the district court in the judicial district in which the magistrate resides and thereupon it shall be entered as a judgment of the court, and execution and garnishee summons may be issued thereon according to the ordinary procedure of the court.

(2) Where an appeal has been taken as hereafter provided the filing may be made after the appeal has been heard and disposed of.

(3) Where no appeal has been taken the filing may be made at any time after the expiry of ten days from the date of pronouncing judgment.

(4) The clerk of the district court shall not accept a certificate for filing until he has satisfied himself

(a) that ten days have elapsed since judgment was pronounced, and

(b) that no notice of appeal has been filed.

9. Section 54 presently reads:

54. The processes and proceedings in claims for small debts taken under the provisions of this Act shall be according to the Forms in Schedule I or to the like effect, and the fees therefor shall be taxed according to the table of fees contained in Schedule II.

10. Self-explanatory.

11. These amendments to Schedule I merely convert Forms A, B and C into more general language so they can be used for the new civil jurisdiction as well as for the debt jurisdiction.

8. Section 38, subsection (4) is amended by adding the word "and" at the end of clause (b) and by adding the following clause after clause (b):

(c) that no application pursuant to section 30a has been made to the magistrate who tried the case.

9. Section 54 is amended by striking out the words "for small debts".

10. The following section is added after section 54:

54a. Where any court proceeding under this Act adjourns a trial or an appeal, it may make such order as seems just in respect of witness fees and other costs.

11. Schedule I is amended

- (a) as to Form A by striking out the word "demand" and by substituting the word "claim",
- (b) by striking out Form B (as enacted by section 14 of chapter 88 of the Statutes of Alberta, 1965) and by substituting the following:

FORM B
(Section 6)
CLAIM
(*The Small Debts Act*)

CANADA Province of Alberta To Wit:	}	The claim of..... of in the Province of Alberta, <i>(occupation)</i> made the day of, 19....., who saith that of, in the Province
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12. The portion of Schedule II under the heading "Witness' Fees" presently reads:

WITNESS' FEES

Attendance, per day \$1.00

This amendment raises the regular fee and provides for a fee for interpreters and expert witnesses.

13. Commencement of Act.

*Strike out
whichever is
inapplicable*

(a) is indebted to him, or
(b) should be held liable to him,
in the sum of \$..... (*here
give particulars of claim or refer
to them as attached*).

And I,
(*complainant or*

*Fill in
this
paragraph
only if it
is a debt
action*

.....
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 men-
tioned at
in the Province of Alberta. }
.....

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

(c) as to Form H by striking out the words "for debt"
and by substituting the words "in respect of said
claim".

12. Schedule II is amended under the heading "Witness'
Fees" by striking out the words "Attendance, per day....
.....\$1.00" and by substituting the following:

Attendance, per day \$4.00
Interpreter, per day \$3.00
Expert witness, per day \$10.00

13. (1) This Act, except section 8, comes into force on
the day upon which it is assented to.

(2) Section 8 comes into force on the day upon which
section 30a of *The Small Debts Act* is proclaimed in force.

No. 98

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act to amend The Small
Debts Act

Received and read the

First time

Second time

Third time

HON. MR. MANNING
