

1968 Bill 35

First Session, 16th Legislature, 17 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 35

An Act to amend The Seizures Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Printed by L. S. Wall, Queen's Printer, Edmonton

BILL 35

1968

An Act to amend The Seizures Act

(Assented , 1968)

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

1. *The Seizures Act* is hereby amended.

2. Section 25, subsection (1) is amended by striking out all the words after clause (c) and by substituting the following words:

a notice of seizure in Form A in the Schedule and a notice of objection to seizure and sale in Form B in the Schedule.

3. Section 26 is amended by striking out subsection (2) and by substituting the following:

(2) The notice of objection to seizure and sale shall be accompanied by a sufficiently stamped envelope addressed to the sheriff of the judicial district in which the goods are situated.

4. Section 27, subsection (1) is amended by striking out the words "or deputy sheriff, as the case may be".

5. Section 28 is amended by striking out the words "or deputy sheriff, as the case may be,".

6. The following section is added after section 39:

39a. (1) A sheriff in his discretion may, at any time after a seizure under writ of execution or distress warrant has been in effect for six months, serve upon

(a) the party who instructed the seizure, or

(b) in the case of a seizure under execution, all persons having subsisting writs of execution in his hands,

a notice in writing informing each person so served that upon the expiration of a period of 60 days from the date of service of the notice he intends to release the seizure unless before that time application is made to a judge for an order continuing the seizure.

Explanatory Notes

1. This Bill amends chapter 307 of the Revised Statutes.

2. Section 25, subsection (1) presently reads:

25. (1) To effect the seizure of any goods or chattels under any writ of execution or under any distress, the person duly authorized to effect the seizure

(a) shall serve upon the debtor, and if there is more than one debtor, upon each one of them, or upon some adult member of his household, or

(b) shall attach to the goods to be seized or some or all of them, or

(c) shall post up in some conspicuous place upon the premises upon which the goods or some part of them are at the time of seizure, a notice of seizure in Form A in Schedule A, and a form of notice objecting to the removal and sale of the goods seized in Form B in Schedule A.

This amendment makes it clear that the seizure is what the debtor may object to.

3. Section 26, subsection (2) presently reads:

(2) The notice of objection to removal and sale shall be accompanied by a sufficiently stamped envelope addressed to the sheriff of the judicial district in which the goods are situated, or in case the goods are situated in a sub-judicial district, to the deputy sheriff of the sub-judicial district.

The word "removal" is again changed to "seizure" and the reference to "sub-judicial districts" is removed since they no longer exist.

4. Section 27 (1) presently reads:

27. (1) The person liable for the payment of the debt for which the seizure is made, if he objects to the removal and sale of the goods seized, shall sign the notice of objection and within fourteen days of the date of the seizure cause it to be delivered to the sheriff or deputy sheriff, as the case may be.

"Sheriff", as defined in section 2, includes a "deputy sheriff".

5. Section 28 presently reads:

28. Where no notice of objection is received by the sheriff or deputy sheriff, as the case may be, within fourteen days after the seizure of the goods, the goods seized may be disposed of according to law.

6. NEW. Procedure by which a sheriff may dispose of dormant seizures.

(2) Where no application is made pursuant to subsection (1) the sheriff may release the seizure.

(3) Any application made pursuant to subsection (1) may be made *ex parte* or upon such notice as a judge may direct, but in every case the applicant shall serve the sheriff with notice thereof.

(4) An application shall not be heard on the merits until at least 65 days after the sheriff served or delivered the notice which resulted in the application and where more than one application is made in respect of a particular seizure, a judge may make such orders and give such directions as he considers necessary to dispose of all the applications at one time.

(5) A judge upon hearing the application may make any order providing for the release of or the continuation of the seizure and in either case upon such terms including costs as he considers proper.

(6) For the purposes of subsection (1) the date of service shall, where service is made by ordinary mail, be deemed to be the date upon which the notice would have arrived at the last known address of the person served in the ordinary course of delivery, if the notice is in fact addressed to the last known address of such person and placed in the mail.

7. Section 44 is amended by striking out wherever they occur the words "or sub-judicial district".

8. Section 48 is amended by striking out subsection (2) and by substituting the following:

(2) At any time after a distress a creditor may, upon the order of a judge, examine upon oath

- (a) the debtor in respect of whom the distress was made, or
- (b) any other person or corporation whom the creditor, upon reasonable grounds, believes to be in possession of or to have knowledge respecting the whereabouts of, any goods and chattels that comprise the creditor's security under the conditional sale agreement or the chattel mortgage,

before the clerk of the judicial district within which the debtor resides, or before any other person named in the order, as to the whereabouts of the goods and chattels that comprise the creditor's security under the conditional sale agreement or the chattel mortgage.

9. The heading "SCHEDULE A" is struck out and the heading "SCHEDULE" is substituted.

7. Section 44 presently reads:

44. An application to a court or judge that is required to be made under this Act in respect of any seizure shall be made to a court or judge sitting in the judicial district or sub-judicial district in which the goods that are the subject matter of the application are situated at the time of seizure, unless after the making of the seizure the debtor consents to the application being heard by a court or judge of any other judicial district or sub-judicial district.

8. Section 48 presently reads:

48. (1) In this section,

- (a) "creditor" means the person who has the power of distress under a conditional sale agreement or a chattel mortgage;
- (b) "debtor" means the person who, under a conditional sale agreement or a chattel mortgage, is liable for the payment of any money or the delivery up of any goods or chattels, if the payment of the money or the delivery up of the goods is enforceable by distress or by proceedings in the nature of distress.

(2) At any time after a distress a creditor may, upon the order of a judge, examine his debtor upon oath before the clerk of the judicial district within which the debtor resides, or before any other person named in the order, as to the whereabouts of the goods and chattels that comprise the creditor's security under the conditional sale agreement or the chattel mortgage.

(3) In an examination under this section Order XXVIII of the Consolidated Rules of the Supreme Court applies mutatis mutandis as if the examination of the debtor under this section were an examination of a judgment debtor under the said Rules.

This amendment allows the creditor to examine persons and corporations in addition to the debtor himself, in respect of the debtor's security property.

9. There is only one Schedule, so this change merely reflects this fact.

10. The Schedule is amended

- (a) as to Form A by striking out wherever it occurs the word "removal" and by substituting the word "seizure",
- (b) by striking out Form B and by substituting the following:

FORM B
(Section 25)

NOTICE OF OBJECTION TO SEIZURE OF GOODS

I,
hereby object to the seizure and disposal of the goods mentioned in the Notice of Seizure of Goods by

My post office address is

To

Sheriff of the Judicial District of

N.B. If there is no real reason for objecting to the seizure and disposal of the goods, the sending of this notice may result in increased costs to the debtor.

11. This Act comes into force on the first day of July, 1968.

10. The Schedule is amended to change the formal name of Form B. Forms A and B presently read:

FORM A

(Section 25)

NOTICE OF SEIZURE OF GOODS

To

Take notice that
has caused the following goods to be seized to satisfy a claim against
you for the sum of \$.....for
.....

If you object to the removal and disposal of the said property, or
either, you must cause the attached notice in Form B to be delivered
to the Sheriff of the Judicial District of
within fourteen days from the date of the seizure, and the judge will,
after notice to you, decide whether he will give an order for the re-
moval and disposal of the property or not.

Dated this day of, 19....

.....
(Signature)

FORM B

(Section 25)

NOTICE OF OBJECTION TO REMOVAL OF GOODS

I,
hereby object to the removal and disposal of the goods mentioned in
the Notice of Seizure of Goods by
.....

My post office address is

To

Sheriff of the Judicial District of
.....

N.B. If there is no real reason for objecting to the removal and
disposal of the goods, the sending of this notice may result in increased
costs to the debtor.