

1971 Bill 74

---

---

Fourth Session, 16th Legislature, 20 Elizabeth II

---

---

THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 74**

**The Provincial Court Act**

---

---

THE ATTORNEY GENERAL

---

---

First Reading .....

Second Reading .....

Third Reading .....

---

---

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

# BILL 74

1971

## THE PROVINCIAL COURT ACT

(Assented to \_\_\_\_\_, 1971)

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

**1. In this Act**

- (a) "Committee" means the Provincial Court Advisory Committee established under section 8;
- (b) "judge" means a provincial judge appointed under this Act;
- (c) "Provincial Court" means The Provincial Court of Alberta.

**2. (1)** There shall be a provincial court for the Province and the court shall be styled "The Provincial Court of Alberta".

(2) The Provincial Court is a court of record consisting of such provincial judges as may be appointed from time to time.

**3. (1)** The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint provincial judges as he considers necessary.

(2) No person other than a Canadian citizen or other British subject is eligible to be appointed a provincial judge.

**4. (1)** Every judge before taking office shall take and subscribe before a person authorized to administer oaths and declarations in Alberta the oath of allegiance and the judicial oath prescribed by The Oaths of Office Act.

(2) The oath of allegiance and the judicial oath shall be transmitted forthwith by the judge to the Inspector of Legal Offices and shall be filed in his office.

**5.** Every judge has jurisdiction throughout Alberta and

## **Explanatory Notes**

**1. Definitions.**

**2. Establishment of Provincial Court.**

**3. Appointment of judges.**

**4. Oaths.**

**5. Jurisdiction.**

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) has all the power and authority now vested by or under any Act of the Legislature in a magistrate or two justices of the peace sitting together;
- (c) may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;
- (d) is by virtue of his office a justice of the peace and a commissioner for taking affidavits.

**6.** (1) Every judge shall retire upon attaining the age of 70 years.

(2) Subject to section 10, no judge may be removed from office before attaining retirement age.

**7.** A judge may at any time resign his office in writing, signed by him and delivered to the Attorney General.

**8.** (1) There is established the Provincial Court Advisory Committee composed of

- (a) one nominee who shall be a member of the Trial Division of the Supreme Court of Alberta,
- (b) two nominees who shall be provincial judges,
- (c) one nominee who shall be a member of The Law Society of Alberta, and
- (d) one other person

who shall be appointed by the Lieutenant Governor in Council for terms of not more than three years nor less than one year so that one-third of the Committee shall retire annually.

(2) The Lieutenant Governor in Council may fix the fees and expenses to be paid to members of the Committee.

(3) There may be appointed in accordance with The Public Service Act all officers and employees of the Committee which may be considered necessary.

(4) A majority of the members of the Committee constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Committee.

**9.** (1) The functions of the Committee are

- (a) at the request of the Attorney General, to consider the proposed appointment of provincial judges and to make a report thereon to the Attorney General;

**6. Retirement.**

**7. Resignation.**

**8. Provincial Court Advisory Committee.**

**9. Functions of the Committee**

(b) to receive, investigate and inquire into complaints respecting the lack of competence or misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties.

(2) The Committee and each member thereof have, for the purposes of this Act, all the powers of commissioners appointed under The Public Inquiries Act.

(3) An inquiry held by the Committee under subsection (1), clause (b) shall not be public.

(4) The Committee, after holding an inquiry, may

(a) reject the complaint, or

(b) censure the judge, or

(c) recommend to the Attorney General the removal or retirement of the judge from office.

(5) Where the Committee recommends the removal or retirement of a judge from office it shall file a report of the proceedings before it with the Attorney General.

**10.** (1) When the Committee recommends the removal or retirement of a judge from office, the Lieutenant Governor in Council shall appoint one or more judges of the Supreme Court of Alberta to hold an inquiry to review the proceedings and a judge so appointed has all the powers of a commissioner appointed under The Public Inquiries Act.

(2) On the review additional evidence may be introduced on the discretion of the judge or judges conducting the inquiry.

(3) The judge or judges conducting the inquiry may reject, vary or affirm the recommendation of the Committee.

(4) Where the recommendation of the Committee is affirmed hereunder, the Lieutenant Governor in Council may make an order of removal or retirement and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if it is not in session, within 15 days after the commencement of the next ensuing session.

**11.** Unless otherwise authorized by the Lieutenant Governor in Council, a judge who is employed as a full-time judge shall not carry on or practise any business, profession, trade or occupation.

**12.** Notwithstanding the retirement or removal from office of a judge, the judge remains liable to transmit all money and to make all returns that he was liable to transmit or make while he held office and remains subject to the same penalties or liabilities for failure to do so.

**10. Removal of provincial judge for cause.**

**11. Restrictions on activities of a judge.**

**12. Ex-judge accountable for fines and returns.**

**13.** (1) The Attorney General or any person authorized by him may, from time to time,

- (a) designate the place at which a judge shall have his residence,
- (b) designate the place or places and the day or days at which a judge shall hold sittings,
- (c) designate the place or places at which a judge shall have an office, and
- (d) require a judge to act during the absence of another judge in the place and stead of the absent judge.

(2) The Attorney General may direct that a judge have supervision of the administration of The Provincial Court of Alberta within a district designated by the Attorney General.

(3) Nothing in this section affects a judge's jurisdiction throughout Alberta.

**14.** There may be appointed in accordance with The Public Service Act all officers, clerks and employees as required for the operation of the Provincial Court.

**15.** (1) No action for the recovery of damages lies in respect of an order or warrant made or sentence imposed at any time, whether before or after the coming into force of this Act,

- (a) by a provincial judge while acting in the place of any other provincial judge who has then ceased for any reason to be a provincial judge, and
- (b) against or upon or in respect of a person who had been previously convicted by such other provincial judge but had not been sentenced by him,

if the order, warrant or sentence could have been lawfully made or imposed by the provincial judge by whom the conviction was made.

(2) No action for the recovery of damages lies against any person whatsoever in respect of an act or thing done at any time, whether before or after the coming into force of this Act, in the execution of any order, warrant or sentence to which subsection (1) relates, or purporting to be done in compliance with or incidental to any such order, warrant or sentence.

(3) No action may be brought against a provincial judge 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 provincial judge acted maliciously and without reasonable and probable cause.



**13. Powers of the Attorney General.**

**14. Clerks, officers and employees.**

**15. Damages.**

**16.** The Lieutenant Governor in Council may make regulations

- (a) fixing the salaries to be paid to judges,
- (b) fixing the amount per day or per half-day to be paid to part-time judges,
- (c) prescribing fees to be paid for each proceedings or specified service,
- (d) providing for the benefits to which judges are entitled, including,
  - (i) leave of absence and vacations,
  - (ii) sick leave credits and payments in respect of such credits,
  - (iii) pension benefits for judges and their widows and surviving children,  
and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges under this Act were entitled under The Public Service Act of The Public Service Pension Act at the time of their appointment under this Act,
- (e) requiring and governing the making of returns and reports by judges,
- (f) governing the remission of fines, penalties, forfeitures or other sums of money,
- (g) providing for the safekeeping, inspection and destruction of books, documents and papers of Provincial Courts and judges,
- (h) providing for the appointment and employment of stenographic reporters to take down evidence before judges, and fixing their fees, expenses and other forms of remuneration,
- (i) defining the classes of cases and conditions in which stenographic reporters may be utilized, and
- (j) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

**17.** Every person who was previously appointed as a magistrate or as a judge under the provisions of chapter 287 of the Revised Statutes of Alberta 1970 or of chapter 186 of the Revised Statutes of Alberta, 1955 or any predecessor Act and whose appointment is in full force and effect on the coming into force of this Act shall be deemed to have been appointed a judge under this Act.

**18.** Every action or proceeding pending before a magistrate or provincial judge on the day that this Act comes

**16. Regulations.**

**17. Former appointments continued.**

**18. Continuation of proceedings.**

into force is continued in the Provincial Court established pursuant to this Act, and shall proceed, so far as the judge considers practicable, in accordance with this Act.

*19. The Interpretation Act is amended as to section 21, subsection (1)*

*(a) by striking out clause 16 and by substituting the following:*

16. "magistrate" means a provincial judge appointed under The Provincial Court Act;

*(b) by adding the following clause after clause 22:*

22.1 "provincial judge" means a provincial judge appointed under The Provincial Court Act;

**20.** The Provincial Judges and Justices Act, being chapter 287 of the Revised Statutes of Alberta 1970, is repealed.

**21.** This Act comes into force on a day to be fixed by proclamation.

**19.** Consequential amendments to chapter 189 of the Revised Statutes of Alberta 1970.

**20.** Repeal.