

1973 Bill 15

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

The Attorney General Statutes Amendment Act, 1973

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Printed by QUEEN'S PRINTER for the Province of Alberta, EDMONTON

BILL 15

1973

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1973

(Assented to _____, 1973)

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

The Bills of Sale Act

1. (1) *The Bills of Sale Act is amended by this section.*
- (2) *Section 18, subsection (1) is amended by striking out the words "of the judicial district in which the chattels are situate".*
- (3) *Section 24 is struck out and the following section is substituted therefor:*

24. Notwithstanding any other provision of this Act, a bill of sale or renewal statement not registered within the times prescribed in this Act may be registered at a later date and such registration has the same effect as registration within the prescribed times except that it does not affect rights which have accrued prior to the late registration.
- (4) *Sections 30 and 31 are struck out.*

The Chattel Security Registries Act

2. (1) *The Chattel Security Registries Act is amended by this section.*
- (2) *Section 3.1, subsection (1) is amended by striking out clause (a).*
- (3) *Section 7, subsection (5) is amended by striking out clause (a).*

GENERAL: This Bill will amend a number of statutes administered by the Attorney General.

The Bills of Sale Act

1. (1) This section will amend chapter 29 of the Revised Statutes of Alberta 1970.

(2) This amendment will permit an application to a judge of the district court in any convenient judicial district where proof of execution cannot be obtained and a court order is required to permit registration.

Section 18(1) reads:

18. (1) Where, before the making of any affidavit of execution required by this Act, the attesting witness to a bill of sale or other document dies or leaves the Province, or becomes incapable of making or refuses to make the affidavit, a judge of the district court of the judicial district in which the chattels are situate may make an order permitting the registration of the bill of sale or other document upon such proof of its due execution and attestation as the judge by the order may require and allow.

(3) Section 24 reads:

24. (1) Subject to the rights of other persons accrued by reason of any omission or mis-statement referred to in this section, a judge of the district court of the judicial district in which the chattels are situate, on being satisfied that the omission to register a bill of sale or renewal statement within the time prescribed by this Act, or that any omission or mis-statement in any document filed under this Act, was accidental, or due to inadvertence or impossibility or other sufficient cause, may in his discretion,

(a) extend the time for registration, or

(b) order the omission or mis-statement to be rectified, as the case may be, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing, as the judge thinks fit to direct.

(2) The order of the judge or a copy thereof made under this section shall be annexed to the bill of sale or copy thereof on file or tendered for registration, and appropriate entries shall be made in the register.

(4) Section 30 provides that growing crops could only be used as security in certain instances. Section 31 prohibits an assignment of the proceeds of a sale of a crop growing or to be grown.

The Chattel Security Registries Act

2. (1) This section will amend chapter 44 of the Revised Statutes of Alberta 1970.

(2) This amendment will save registration clerks from having to pass on the legal validity of documents submitted for registration. Section 3.1, subsection (1) presently reads:

3.1 (1) The registration clerk of the Motor Vehicle Branch may refuse to accept a document for registration

(a) where the document does not comply with the Act authorizing its registration, or

(b) where the document is greater in size than 8½ inches by 14 inches, or

(c) where there are not at least two copies of the document submitted to him, or

(d) where the lienholder does not record his mailing address on the document.

(3) Similar to the previous amendment but applicable to registration submissions at Central Registry.

The Commissioners for Oaths Act

3. (1) *The Commissioners for Oaths Act is amended by this section.*

(2) *Section 2 is renumbered as subsection (1) and the following subsection is added thereafter:*

(2) Every student-at-law under *The Legal Profession Act* is and always has been, from the date of his admission as a student-at-law, a commissioner empowered to administer oaths and take and receive affidavits, declarations and affirmations in Alberta.

(3) *Section 6 is amended by adding after the words "Legislative Assembly of Alberta" the words "or a member of a municipal council in Alberta".*

(4) *Section 9 is amended by adding after subsection (2) the following subsection:*

(3) The Lieutenant Governor in Council may make regulations governing the execution of documents by commissioners.

The Conditional Sales Act

4. (1) *The Conditional Sales Act is amended by this section.*

(2) *Section 13 is struck out and the following section is substituted therefor:*

13. Notwithstanding any other provision of this Act, a conditional sales agreement or renewal statement not registered within the times prescribed in this Act may be registered at a later date and such registration has the same effect as a registration within the prescribed times except that it does not affect rights which have accrued prior to the late registration.

The Alberta Evidence Act

5. (1) *The Alberta Evidence Act is amended by this section.*

(2) *Section 40 is amended by striking out subsection (4) and by substituting therefor the following subsection:*

(4) Subsection (3) does not apply in any case where a photographic print is tendered by

- (a) a government;
- (b) the Bank of Canada;
- (c) a municipal corporation;
- (d) a board of a school district or school division under *The School Act*;
- (e) a hospital district under *The Alberta Hospitals Act*.

The Commissioners for Oaths Act

3. (1) This section will amend chapter 58 of the Revised Statutes of Alberta 1970.

(2) Students-at-law will automatically become commissioners.

(3) Municipal councillors will be ex officio commissioners.
Section 6 presently reads:

6. A member or a member elect of the Legislative Assembly of Alberta is ex officio a commissioner empowered to administer oaths and take and receive affidavits, declarations and affirmations in or outside Alberta for use in Alberta.

(4) This amendment will permit regulations to require such things as the stating of the expiry date of commissions and a legible reproduction of the name of the Commissioner.

The Conditional Sales Act

4. (1) This section will amend chapter 61 of the Revised Statutes of Alberta 1970.

(2) The section presently reads:

13. A judge of the district court of the district within which the buyer or bailee resides, upon being satisfied

(a) that the omission to register or file the same within the prescribed time, or

(b) that an omission or misstatement in the conditional sale agreement, statement or affidavit,

was accidental or due to inadvertence or impossibility in fact, may in his discretion order that the omission or misstatement be rectified in the register or may extend the time for registration, subject always to the rights of third persons accrued by reason of the omission, and to such terms and conditions, if any, as to security, notice by advertisement or otherwise, or to any other matter, as he thinks fit to direct.

The Alberta Evidence Act

5. (1) This section will amend chapter 127 of the Revised Statutes of Alberta 1970.

(2) This amendment will enable municipalities and school and hospital districts to microfilm and destroy records before the expiration of six years. The subsection is presently limited to governments and the Bank of Canada.

The Execution Creditors Act

6. (1) *The Execution Creditors Act is amended by this section.*

(2) *Section 7 is amended by striking out the words “on application of the sheriff” and by substituting therefor the words “on application to the court by the sheriff”.*

The Limitation of Actions Act

7. (1) *The Limitation of Actions Act is amended by this section.*

(2) *Section 55 is amended by adding the word “or” at the end of clause (e) and by adding the following clause after clause (e):*

(f) *an optometrist registered under The Optometry Act,*

(3) *Nothing in this section enables any action to be brought which was barred before the commencement of this section.*

(4) *The time for bringing proceedings in respect of a cause of action which arose before the commencement of this section shall, if it has not already expired, expire*

(a) *at the time it would have expired apart from the provisions of this section, or*

(b) *at the time when it would have expired if the provisions of this section had at all material times been in force,*

whichever is the later.

The Provincial Court Act

8. (1) *The Provincial Court Act is amended by this section.*

(2) *Section 2 is amended by striking out subsection (2).*

(3) *Section 8 is amended by striking out subsection (1) and by substituting therefor the following subsection:*

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

(a) *three provincial judges, and*

(b) *two other persons,*

appointed by the Lieutenant Governor in Council to serve on the Committee for such terms as he may fix by their respective appointments.

The Execution Creditors Act

6. (1) This section will amend chapter 128 of the Revised Statutes of Alberta 1970.

(2) This amendment will clarify that the application is made to the court and not to the clerk. Section 7 presently reads:

7. Where there is in a court a fund belonging to an execution debtor or to which he is entitled, the fund or a part thereof sufficient to pay the subsisting executions in the sheriff's hands, on application of the sheriff or any party interested, may be paid over to the sheriff and the money shall be deemed to be money received by him under execution within the meaning of this Act.

The Limitation of Actions Act

7. (1) This section will amend chapter 209 of the Revised Statutes of Alberta 1970.

(2) Section 55 presently reads:

55. Except as provided in sections 57 to 61, an action against
- (a) a duly qualified medical practitioner registered under The Medical Profession Act, or
 - (b) a dentist registered under The Dental Association Act, or
 - (c) a chiropractor registered under The Chiropractic Profession Act, or
 - (d) a naturopath registered under The Naturopathy Act, or
 - (e) a podiatrist registered under The Podiatry Act,

for negligence or malpractice by reason of professional services requested or rendered may be commenced within one year from the date when the professional services terminated in respect of the matter that is the subject of the complaint, and not afterwards.

(3) This amendment will not revive a cause of action.

(4) Saving clause.

The Provincial Court Act

8. (1) This section will amend chapter 86 of the Statutes of Alberta, 1971.

(2) Section 2(2) presently reads:

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

(3) Section 8 (1) presently reads:

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.

The Racing Commission Act

9. (1) *The Racing Commission Act* is amended by this section.

(2) Section 9 is amended by adding after clause (o) the following clause:

- (o1) to assist in the development of horse racing in Alberta by acquiring mobile pari mutuel units, sponsoring equine research and making direct grants or loans to such persons and upon such terms as the Commission considers appropriate,

The Religious Societies' Lands Act

10. (1) *The Religious Societies' Lands Act* is amended by this section.

(2) Section 27 is struck out and the following section is substituted therefor:

27. (1) On the petition of any interested party a judge of the Supreme Court may order the winding up of any congregation incorporated under this Act for cause or on any grounds for which a company might be wound up by the Court under Part 10 of *The Companies Act*.

(2) In considering a petition under this section the judge may direct that notice be given in any manner and to any persons that he considers appropriate.

(3) On hearing the petition the judge may

- (a) appoint a person to wind up the affairs of the congregation and pay creditors and claimants thereof who are entitled thereto, and provide for the remuneration of that person and the payment of his expenses and other costs incidental to the winding-up, out of the assets of the congregation or otherwise as he sees fit, or
- (b) proceed in like manner as if a petition had been presented under *The Companies Act* for a winding up and the provisions of Part 10 of *The Companies Act* apply with all necessary modifications to the proceedings.

(4) A person appointed under subsection (3), clause (a) may at any time apply to a judge of the Supreme Court for directions or for the determination of any question arising with respect to his duties or for the exercise as respects any matter, of all or any of the powers that the Supreme Court might exercise if the congregation were a company being wound up by the Court, and the judge may give such directions, determine such question or make such order as he thinks just.

The Racing Commission Act

9. (1) This section will amend chapter 308 of the Revised Statutes of Alberta 1970.

(2) Powers of the Commission.

The Religious Societies' Lands Act

10. (1) This section will amend chapter 319 of the Revised Statutes of Alberta 1970.

(2) This section will replace the present provisions whereby the Lieutenant Governor in Council may dissolve the congregation for cause and in all other cases The Companies Act winding-up provisions apply. Now the application would be to the court who could proceed summarily or in like manner as under The Companies Act.

(5) Where there is a surplus of assets after all the liabilities of the former corporation and liquidation expenses have been paid in the winding up of a congregation incorporated under this Act, the liquidator or the person appointed under subsection (3), clause (a)

(a) shall, upon reasonable notice, which may include advertising in a newspaper having circulation in the general geographical area inhabited by the members of the congregation, call a meeting of the persons who were members of the congregation at the time the petition was presented, and that meeting may, by resolution, direct the person to distribute the surplus to one or more religious or charitable organizations named in the resolution, or

(b) may, where no resolution is passed pursuant to and in accordance with clause (a), apply by originating notice of motion to the Supreme Court for an order governing the disposition of the surplus and the judge hearing the application may make such order as he considers just, including an order directing that the surplus be vested in the ultimate heir under *The Ultimate Heir Act*.

(6) An order under subsection (5), clause (b) directing that the surplus be vested in the ultimate heir vests all the estate and interest in the surplus assets in the ultimate heir as if the property had been received under *The Ultimate Heir Act*, and the provisions of that Act apply thereafter with all necessary modifications.

(3) *Section 28 is amended by striking out subsection (3).*

The Sheriffs Act

11. (1) *The Sheriffs Act is amended by this section.*

(2) *Section 3, subsection (2) is amended by striking out the words "Provincial Treasurer" and by substituting therefor the words "Inspector of Legal Offices".*

The Trustee Act

12. (1) *The Trustee Act is amended by this section.*

(2) *Section 37 is struck out and the following section is substituted therefor:*

37. (1) In this section, the words "beneficiary", "beneficiaries", "person" or "persons" include charitable purposes and charitable institutions.

(3) Consequential to the previous amendment. Section 28(3) reads:

(3) Except where the Lieutenant Governor in Council acts under section 27, subsection (1), the provisions of The Companies Act relating to the winding-up of companies apply mutatis mutandis to a society under this Act.

The Sheriffs Act

11. (1) This section will amend chapter 342 of the Revised Statutes of Alberta 1970.

(2) This amendment will provide that the oath of office taken by a sheriff, deputy sheriff or assistant sheriff shall be filed in the office of the Inspector of Legal Offices rather than the office of the Provincial Treasurer.

The Trustee Act

12. (1) This section will amend chapter 373 of the Revised Statutes of Alberta 1970.

(2) This amendment will implement the recommendations of the Institute of Law Research and Reform in their Report No. 9 (The Rule in Saunders v. Vautier). The rule is as follows:

Where there is an absolute vested gift made payable at a future event, with a direction to accumulate the income in the meantime and pay it with the principal, the court will not enforce the trust for accumulation, in which no person has any interest but the legatee.

This amendment will replace the rule to the extent of giving the court power to decide whether to permit termination or variation of the trust so that cognizance may be taken of the donor's intent, ignored in the application of the rule, and also of the interest of the donee.

(2) Subject to any trust terms reserving a power to any person or persons to revoke or in any way vary the trust or trusts, a trust arising after the commencement of this section, whatever the nature of the property involved and whether arising by will, deed or other disposition, shall not be varied or terminated before the expiration of the period of its natural duration as determined by the terms of the trust, except with the approval of the court.

(3) Without limiting the generality of subsection (2), the prohibition contained in subsection (2) applies to

(a) any interest under a trust whereunder the transfer or payment of the capital or of the income, including rents and profits

(i) is postponed to the attainment by the beneficiary or beneficiaries of a stated age or stated ages, or

(ii) is postponed to the occurrence of a stated date or time or the passage of a stated period of time, or

(iii) is to be made by instalments, or

(iv) is subject to a discretion to be exercised during any period by executors and trustees, or by trustees, as to the person or persons who may be paid or may receive the capital or income, including rents and profits, or as to the time or times at which or the manner in which payments or transfers of capital or income may be made,

and

(b) any variation or termination of the trust or trusts

(i) by merger, however occurring;

(ii) by consent of all the beneficiaries;

(iii) by renunciation of his interest by any beneficiary so as to cause an acceleration of remainder or reversionary interests.

(4) The approval of the court under subsection (1) of a proposed arrangement shall be by means of an order approving

(a) the variation or revocation of the whole or any part of the trust or trusts, or

(b) the resettling of any interest under a trust, or

(c) the enlargement of the powers of the trustees to manage or administer any of the property subject to the trusts.

(5) In approving any proposed arrangement, the court may consent to the arrangement on behalf of

- (a) any person who has, directly or indirectly, an interest, whether vested or contingent, under the trusts, and who by reason of infancy or other incapacity is incapable of consenting, or
 - (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, or
 - (c) any person who is a missing person (as defined in *The Public Trustee Act*) or who is unborn, or
 - (d) any person in respect of any interest of his that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined.
- (6) Before a proposed arrangement is submitted to the court for approval it must have the consent in writing of all other persons who are beneficially interested under the trusts and who are capable of consenting thereto.
- (7) The court shall not approve an arrangement unless it is satisfied that the carrying out thereof appears to be for the benefit of each person on behalf of whom the court may consent under subsection (5), and that in all the circumstances at the time of the application to the court the arrangement appears otherwise to be of a justifiable character.
- (8) Where an instrument creates a general power of appointment exercisable by deed, the donee of the power may not appoint to himself unless the instrument shows an intention that he may so appoint.
- (9) Where a will or other testamentary instrument contains no trust, but the court is satisfied that, having regard to the circumstances and the terms of the gift or devise, it would be for the benefit of an infant or other incapacitated beneficiary that the court approve an arrangement whereby the property or interest taken by that beneficiary under the will or testamentary instrument is held on trusts during the period of incapacity, the court has jurisdiction under this section to approve such an arrangement.

The Wills Act

13. (1) *The Wills Act is amended by this section.*

(2) *Section 9 is amended*

(a) *by adding after subsection (2) the following subsection:*

(2.1) Notwithstanding subsection (1), a person who is

(a) under the age of 18 years,

(b) unmarried, and

(c) has children,

may make a valid will to the extent that that person makes a bequest, devise or other disposition to or for the benefit of any or all of such children.

(b) *as to subsection (3) by adding after the words "subsection (1)" the words "or (2.1)".*

(3) *The following section is added after section 33:*

33.1 (1) Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person

(a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death, and

(b) leaves issue any of whom is living at the time of the death of the testator.

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator.

(2) This section only applies with respect to a devise or bequest in a will made on or after July 1, 1960 and before June 1, 1968.

Commencement

14. (1) *This Act, except section 8, comes into force on the day upon which it is assented to and upon so coming into force, section 13, subsection (3) shall be deemed to have been in force at all times on and after April 25, 1968.*

(2) *Section 8 comes into force on the date upon which The Provincial Court Act comes into force.*

The Wills Act

13. (1) This section will amend chapter 393 of the Revised Statutes of Alberta 1970.

(2) This amendment will permit infants to make valid wills providing for their illegitimate children.

(3) The present Wills Act applies to wills made on or after July 1, 1960. In 1968, section 34 was repealed and replaced by the present section 34 which applies to wills made on or after June 1, 1968. The fact that the former section 34 was repealed has given rise to doubts as to whether the repealed section continued to apply to wills made before June 1, 1968, or whether no rule is in force at all as to those wills. To allay those doubts, the former section 34 is re-enacted without change as section 33.1, effective as of the date of the repeal.