

1974 Bill 73

Third Session, 17th Legislature, 23 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 73

THE DISTRICT COURTS AMENDMENT ACT, 1974

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Printed by L. S. WALL, Queen's Printer for the Province of Alberta, EDMONTON

BILL 73

1974

THE DISTRICT COURTS AMENDMENT ACT, 1974

(Assented to , 1974)

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

- 1. The District Courts Act is hereby amended.*
- 2. The title is amended by striking out the word "COURTS" and by substituting therefor the word "COURT".*
- 3. Section 1 is struck out.*
- 4. Section 2 is amended*
 - (a) as to clause (c) by striking out the words "a district court" and by substituting therefor the words "The District Court of Alberta",*
 - (b) by striking out clause (g) and by substituting therefor the following clause:*
 - (g) "judge" or "district court judge" means any judge, including the Chief Judge and the Associate Chief Judge, or any supernumerary judge, of The District Court of Alberta, or an acting judge or deputy lawfully acting for him, or a judge or supernumerary judge of the Supreme Court acting as a district court judge;*
 - and*
 - (c) as to clause (i) by striking out the words "a district court" and by substituting therefor the words "The District Court of Alberta".*
- 5. Section 3 is struck out and the following section is substituted therefor:*
 - 3.** The courts of record in Alberta styled The District Court of the District of Northern Alberta and The District Court of the District of Southern Alberta are hereby amalgamated and continued as a court of record styled The District Court of Alberta.

Explanatory Notes

1. This Bill will amend chapter 111 of the Revised Statutes of Alberta 1970 to provide for the amalgamation of the two present district courts into The District Court of Alberta.

2. The title of the Act will be amended to reflect the change from two district courts to one district court for all Alberta.

3. Section 1 presently reads:

1. This Act may be cited as The District Courts Act.

4. Section 2, clause (g) presently reads:

2. In this Act,

(g) "judge" or "district court judge" means any judge, including the Chief Judge, of one of the district courts in the Province, or an acting judge or deputy lawfully acting for him, or a judge of the Supreme Court acting as a district court judge;

5. This amendment will amalgamate the present two courts as one court.

6. Sections 4 and 5 are struck out and the following sections are substituted therefor:

4. The District Court of Alberta shall consist of the Chief Judge, the Associate Chief Judge and 15 other judges and has jurisdiction throughout Alberta.

5. For each office of judge established under section 4 there is an additional office of supernumerary judge which any judge of the court may elect to hold upon compliance with, and upon meeting the qualifications under, the *Judges Act* (Canada).

7. Section 6 is struck out.

8. Section 7 is amended by striking out the words "of the District of Northern Alberta or of the District of Southern Alberta".

9. Section 8 is struck out and the following section is substituted therefor:

8. The court shall have and shall use as occasion requires the seal authorized by the Lieutenant Governor in Council as the seal of The District Court of Alberta, and the seal so authorized may afterwards be changed by the Lieutenant Governor in Council.

10. Section 9 is amended by striking out the words "district courts respectively" and by substituting therefor the words "district court".

11. Section 10 is amended by striking out clause (a).

12. Section 12 is amended by striking out the words "of the District of" and by substituting therefor the words "of Alberta".

13. Section 14 is struck out and the following section is substituted therefor:

14. Where a judge of The District Court of Alberta has resigned his office or has been appointed to another court, and a cause that has been fully heard by the judge stands for judgment, he may within six weeks after his resignation or appointment to another court give judgment therein as if he were still a judge of The District Court of Alberta and any such judgment is of the same force and validity as if he were still a judge of that court.

6. Constitution of the single court.

7. Section 6 presently reads:

6. (1) The Chief Judge of The District Court of the District of Northern Alberta shall reside in the City of Edmonton and the Chief Judge of The District Court of the District of Southern Alberta shall reside in the City of Calgary.

(2) Notwithstanding subsection (1), the Chief Judge may reside in any other city in the district for which he is appointed if he obtains the approval in writing of the Attorney General.

8. Section 7 presently reads:

7. If a judge of the District of Northern Alberta or of the District of Southern Alberta

(a) dies, or

(b) resigns his office, or

(c) is transferred to another court, or

(d) is absent through illness, or

(e) for any other cause is unable to perform the duties of his office,

the remaining judges constitute the court until another judge is appointed or until a proclamation of the Lieutenant Governor in Council is issued pursuant to section 9 decreasing the number of judges constituting the court.

9. At present each court has its own seal.

10. Consequential. Section 9 presently reads:

9. The Lieutenant Governor in Council at any time by proclamation may increase or decrease the number of judges of the district courts respectively.

11. Section 10 presently reads:

10. Each district court judge shall reside

(a) within the district of which his commission designates him as a judge, and

(b) at such place as the Attorney General in writing approves.

12. Section 12 presently reads:

12. No district court judge shall enter upon the duties of his office until he has taken the following oath before the Lieutenant Governor, the Chief Justice of Alberta, a judge of the Supreme Court or some other person appointed by the Lieutenant Governor to administer it:

"I, A.B., do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the District Court of the District of.....without fear, favour or malice. So help me God."

13. Section 14 presently reads:

14. Where a judge of The District Court of the District of Northern Alberta or of the District of Southern Alberta has resigned his office or has been appointed to another court, and a cause that has been fully heard by the judge stands for judgment, he may within six weeks after his resignation or appointment to another court give judgment therein as if he were still a judge of The District Court of the District of Northern Alberta or of the District of Southern Alberta, as the case may be, and any such judgment is of the same force and validity as if he were still a judge of that court.

14. Section 15, subsection (1) is amended by striking out the words "the district courts for either of the districts in the Province" and by substituting therefor the words "the district court".

15. Sections 16 and 17 are struck out and the following section is substituted therefor:

16. (1) In accordance with *The Public Service Act* there may be appointed such clerks and deputy clerks as the business of the district court requires.

(2) Where there is no clerk, the clerk or acting clerk of the Supreme Court for the judicial district shall exercise all the functions that under any law or regulation made thereunder would be exercisable by the clerk of the district court.

(3) Where there is no deputy clerk, the deputy clerk or acting deputy clerk of the Supreme Court for the judicial district shall exercise all the functions that under this Act would be exercisable by the deputy clerk of the district court.

16. Section 18 is struck out and the following section is substituted therefor:

18. (1) A clerk of the district court shall perform all the duties with relation to the district court that a clerk of the Supreme Court is required to perform in relation to the Supreme Court under any Act or rule relating thereto so far as the Act or rule is applicable to the district court.

(2) Until otherwise provided the rules in force governing the conduct of the offices and returns required from clerks of the Supreme Court under any Act or rule, so far as the Act or rule is applicable to the district court, apply to every clerk of the district court and to each clerk of the Supreme Court while acting hereunder as a clerk of the district court.

17. Section 19 is amended

(a) as to clause (a), subclause (ii) by striking out the word "courts" and by substituting therefor the word "court", and

(b) as to clause (b) by striking out the word "courts" and by substituting therefor the word "court".

18. The words "a district court" are struck out wherever they appear in the following sections and the words "the district court" are substituted therefor:

section 21, subsection (1), clause (b);

section 33, subsections (1) and (4);

14. Section 15, subsection (1) presently reads:

15. (1) Any or all of the judges of the Supreme Court of the Province shall, upon the request of the Lieutenant Governor in Council, perform the duties by this or any other Act or law devolving upon the judges of the district courts for either of the districts in the Province.

15. Sections 16 and 17 presently read:

16. The Lieutenant Governor in Council may appoint from time to time a clerk of the court in each district, but while there is no such clerk the clerk or acting clerk of the Supreme Court for the judicial district shall exercise all the functions that under any law or regulation made thereunder would be exercisable by the clerk of the district court.

17. (1) When it appears that the convenience of the public so requires, the Lieutenant Governor in Council

(a) may appoint one or more deputy clerks of the court for a district, and

(b) may designate the place where the office of a deputy clerk shall be established and fix his remuneration.

(2) While there is no such deputy clerk, the deputy clerk or acting deputy clerk of the Supreme Court for the judicial district shall exercise all the functions that under this Act would be exercisable by the deputy clerk of the district court.

16. Section 18 presently reads:

18. (1) The clerk of a district court shall perform all the duties with relation to the district court that a clerk of the Supreme Court is required to perform in relation to the Supreme Court under any Act or rule relating thereto so far as the Act or rule is applicable to the district court.

(2) Until otherwise provided the rules in force governing the conduct of the offices and returns required from clerks of the Supreme Court under any Act or rule, so far as the Act or rule is applicable to district courts, apply to every clerk of a district court and to each clerk of the Supreme Court while acting hereunder as a clerk of the district court.

17. Consequential amendments.

18. Consequential amendments.

section 40, subsection (1);
section 43, subsection (1);
section 45;
section 46.

19. Section 22 is struck out.

20. The words "the district courts" are struck out wherever they appear in the following sections and the words "the district court" are substituted therefor:

section 23;
section 36, subsections (1) and (2);
section 39, subsection (1);
section 47.

21. The words "The district courts" are struck out wherever they appear in the following sections and the words "The district court" are substituted therefor:

section 25;
section 38, subsection (1);
section 41;
section 42, subsection (1).

22. Section 26 is amended

- (a) by striking out the words "A district court" and by substituting therefor the words "The district court", and*
- (b) as to clause (b) by striking out the words "subject to section 27".*

23. The following section is added after section 26:

26.1 The provisions of *The Jury Act* apply, with all necessary modifications, to jury trials in the district court, and the district court has, for the purpose of conducting jury trials, the same powers as the Supreme Court under *The Jury Act*.

24. Section 30, subsection (4) is amended by striking out the words "having jurisdiction" and by substituting therefor the word "sitting".

25. Section 31 is amended by striking out subsections (2) and (3) and by substituting therefor the following subsections:

19. Section 22 reads:

22. Upon the request of the Attorney General a district court judge

(a) shall hold any of the sittings of the district court other than that to which he is appointed, and

(b) shall perform any other duty of a district court judge of the district court other than that to which he is appointed,

and while so acting in compliance with the Attorney General's request, he possesses all the powers and authority of a district court judge of such other district court.

This section will become unnecessary if all judges belong to the same court.

20. Consequential amendments.

21. Consequential amendments.

22. Consequential amendments.

23. This amendment will ensure that The Jury Act procedures will apply to district court jury trials.

24. Section 30, subsection (4) presently reads:

(4) Where an action has been commenced in the wrong judicial district, a judge having jurisdiction in the judicial district where the action has been commenced or in the judicial district where the action ought to have been commenced pursuant to subsection (1) shall, on the application of either party, order that the action be transferred to, carried on and tried in the proper judicial district and shall make such order regarding costs as he considers just.

25. Consequential amendment to remove references to two courts.

(2) Subject to any special statutory provisions, in actions or proceedings commenced in the district court, if it is made to appear to the satisfaction of a judge thereof or of a judge of the Supreme Court that the preponderance of convenience is against the trial of the action in the district in which the action or proceeding has been commenced, the judge, subject to appeal to the Appellate Division of the Supreme Court, may order the action or proceeding to be transferred to any other judicial district in Alberta.

(3) If an order is made under subsection (2), the clerk of the district court in the district in which the action was commenced shall forthwith transmit all papers in the matter to the clerk of the district court in the district to which the matter has been transferred and all subsequent proceedings shall be intituled in the last mentioned court and carried on therein as if the proceedings had originally been commenced in that judicial district.

26. Section 32 is struck out.

27. Section 35 is amended

(a) *by striking out subsection (1) and by substituting therefor the following subsection:*

35. (1) If an action that is within the competence of the district court is brought in the Supreme Court, a judge of the Supreme Court at any time and either

(a) on application by either party to the action, or

(b) on his own accord,

may order the action to be tried in the district court and may make such order with regard to costs or otherwise as to him seems just.

(b) *as to subsection (1.1) by striking out the words "named in the memorandum".*

28. Section 37 is amended

(a) *by striking out the words "all district courts in Alberta" and by substituting therefor the words "The District Court of Alberta", and*

(b) *by striking out the words "by the district courts" and by substituting therefor the words "by the district court".*

29. Section 39, subsection (2) is amended by striking out the figure "\$400" wherever it appears in the subsection and by substituting therefor the figure "\$500".

26. Section 32 presently reads:

32. An action by or against a judge of a district court and within the competence of a district court may be brought in the district court in any district adjoining that in which the judge resides.

27. Section 35 presently reads:

35. (1) If an action

(a) that is within the competence of the district court, or

(b) that, though originally not within the competence of the district court, is reduced by payment or admitted set-off or otherwise so as to bring it within the competence of the district court,

is brought in the Supreme Court a judge of the Supreme Court at any time and either on application by either party to the action or of his own accord may order the action to be tried in the district court in which the action might have been commenced, or in any other district court, and may make such order with regard to costs or otherwise as to him seems just.

(1.1) Where an action is commenced in the Supreme Court and

(a) at the time of its commencement the action could have been brought in the district court, or

(b) the action could not, at the time of its commencement, have been brought in the district court but subsequently is brought within the competence of the district court,

the parties to the action may, by a memorandum in writing signed by all the parties to the action or their solicitors and filed with the clerk of the Supreme Court where the action was commenced, cause the action to be transferred to the district court named in the memorandum.

(2) The action and all proceedings therein shall be transferred accordingly and subject to such order shall proceed in the district court in all respects as though it had been originally commenced therein.

28. Consequential amendment.

29. This amendment will bring the section up to date with rule changes increasing the monetary jurisdiction in small claims matters. The subsection now reads:

(2) Notwithstanding subsection (1), the tariff of costs allowed from time to time to solicitors and counsel in respect of actions in the Supreme Court applies to actions in the district court where the debt or damages, claim or demand exceeds \$400, and where the subject matter involved in a claim for relief or for the enforcement of any right or demand exceeds \$400.

30. Section 42 is amended by striking out subsection (2) and by substituting therefor the following subsection:

(2) Judges' summonses and orders may be issued in the like manner, and all such writs, rules, summonses, orders and proceedings are of equal force and effect and as binding, as if they had been issued by the judge in the district to or into which they are so issued, and all subsequent proceedings thereupon shall, except as herein otherwise provided, be carried on in the district in which the action has been brought or judgment entered.

31. Section 43, subsection (1) is amended by striking out the words "brought or proposed to be brought in the district of a district court judge or in any district in which a judge of a district court is acting as district court judge under the provisions of this Act, the district court judge" and by substituting therefor the words "a district court judge".

32. Section 46 is amended as to clause (c) by striking out the words ", if the decision or order is in its nature final and not merely interlocutory".

33. Sections 48 and 49 are struck out.

34. Section 50 is amended

(a) *as to subsection (1) by adding after the words "at any time" the words "with or", and*

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

(3) The District Court of Alberta is a court of general sessions of the peace.

35. Section 53 is amended

(a) *as to subsection (2)*

(i) *by adding after clause (a) the following clause:*

(a1) The District Court of Northern Alberta
or The District Court of Southern Alberta, or

and

(ii) *by striking out all the words after clause (d) and by substituting therefor the following words:*

"the reference shall, after the coming into force of section 5 of *The District Courts Amendment Act, 1974*, be construed to mean and to refer

30. Section 42, subsection (2) presently reads:

(2) Judges' summonses and orders may be issued in the like manner, and all such writs, rules, summonses, orders and proceedings are of equal force and effect and as binding, as if they had been issued from the court or by the judge in the district to or into which they are so issued, and all subsequent proceedings thereupon shall, except as herein otherwise provided, be carried on in the court in the district in which the action has been brought or judgment entered.

31. Section 43, subsection (1) presently reads:

43. (1) In all actions in the Supreme Court brought or proposed to be brought in the district of a district court judge or in any district in which a judge of a district court is acting as district court judge under the provisions of this Act, the district court judge has, subject to the rules of court, concurrent jurisdiction with and the same power and authority as a judge of the Supreme Court to do and perform all such acts and transact all such business in respect of matters and causes in the Supreme Court as he is by statute or the rules of court empowered to do and perform, and in the exercise of such jurisdiction may be styled "Local Judge of the Supreme Court".

32. This amendment will permit appeals from interlocutory orders.

33. These sections do not accord with practice or the rules. They read as follows:

48. (1) The district court judge shall at the request of the appellant certify under his hand to the proper officer of the Supreme Court the pleadings in the cause and all motions, rules or orders made, granted or refused therein, together with the judge's charge, if any, and the judgment or decision on the same.

(2) Where a trial has been had the district court judge shall also certify under his hand to the proper officer the evidence, all objections and exceptions thereto, and all other papers in the cause affecting the question raised by the appeal.

49. In appeals under section 46, the judge is only required under section 48 to certify the motions, rules, orders, affidavits, evidence and other materials necessary for the full understanding of the matter in appeal together with his judgment or decision on the same.

34. Section 50, subsection (1) presently reads:

50. (1) Every district court judge is hereby constituted a court of record for the trial at any time without a jury of any person for any of the offences mentioned in the Criminal Code as being within the jurisdiction of the district court in Alberta.

These amendments will clarify the court's power regarding jury trials.

35. Section 53 presently reads:

53. (1) The district court has generally all the jurisdiction, powers and authority that before its organization were by any law, order or regulation vested in or capable of being exercised

- (a) by the district court of a judicial district, or
- (b) by a district court judge, or
- (c) by a judge of the district court within the Province.

(2) Where in any statute, Act or ordinance or any order or regulation made thereunder reference is made

- (a) to a district court of a judicial district, or
- (b) to a district court judge, or
- (c) to a judge of the district court, or
- (d) to any court that could after the passing of the statute, Act or ordinance be constituted and exercise within the Province the jurisdiction, powers or authority exercised at the date of the passing of the statute, Act or ordinance
 - (i) by the district court of any judicial district, or
 - (ii) by the district court judge, or
 - (iii) by a judge of the district court

the reference shall, after the coming into force of this Act, be construed to mean and to refer to the court established by this Act and to a judge of that court respectively.

to The District Court of Alberta and to a judge of that court, as the case may be."

and

- (b) *by adding after subsection (2) the following subsection:*

(3) Where in any Act, regulation, order or other document any reference is made or could be construed as being made to The District Court of Northern Alberta, The District Court of Southern Alberta or to a judge of either of those courts, the reference shall, on and after the coming into force of this subsection, be deemed to be a reference to The District Court of Alberta and to a judge of that court, respectively.

36. The following sections are added after section 53:

53.1 (1) Where at the commencement of this section, any application, proceeding or other matter is before a district court or a judge thereof

- (a) the application, proceeding or other matter shall be continued before the district court and shall be dealt with and determined by the district court or judge thereof, and
- (b) the district court judge dealing with the application, proceeding or other matter shall continue to deal with it in his capacity as a judge of The District Court of Alberta, and
- (c) subject to section 53.2, subsection (2), all papers required to be filed in or in connection with the application, proceeding or other matter shall be styled in The District Court of Alberta.

(2) At the commencement of this section, the records and files of the district courts, whether concluded or not, become the records and files of The District Court of Alberta.

53.2 (1) Where any matter is before the district court, an affidavit made in connection with the application but styled in The District Court of Northern Alberta or The District Court of Southern Alberta shall be accepted by the court as though it were styled in The District Court of Alberta if the affidavit was sworn before the commencement of this section.

(2) Where any application, proceeding or other matter before the district court or a judge thereof is continued before the district court or a district court judge pursuant to section 53.1, subsection (1), an affidavit styled in The District Court of Northern Alberta or The District Court of Southern Alberta

36. Transitional amendments.

- (a) shall be accepted for filing after the commencement of this section if it was sworn before the commencement of this section, or
 - (b) may be accepted for filing where it was sworn after the commencement of this section if the clerk is satisfied that it is impossible or that it would cause undue delay or hardship to have a proper affidavit styled in The District Court of Alberta prepared and sworn.
- (3) A district court judge may, upon an application of any person interested in an application, proceeding or matter before the court or a judge, give directions as to the filing of documents or matters of procedure in cases for which no provision is made by section 53.1 or this section and for the purpose of removing or minimizing any procedural difficulty arising upon the commencement of section 53.1 and this section.

37. This Act comes into force on a date or dates to be fixed by Proclamation.