

1974 Bill 74

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Third Session, 17th Legislature, 23 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 74**

**THE SURROGATE COURTS AMENDMENT ACT, 1974**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Third Reading .....

# BILL 74

1974

## THE SURROGATE COURTS AMENDMENT ACT, 1974

(Assented to \_\_\_\_\_, 1974)

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

1. *The Surrogate 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 court constituted by this Act" and by substituting therefor the words "The Surrogate Court of Alberta", and*
  - (b) *by striking out the words "a surrogate court" where they appear in clauses (d) and (e) and by substituting therefor the words "The Surrogate Court of Alberta".*
5. *Sections 3 to 5 are struck out and the following sections are substituted therefor:*
  3. The courts of record in Alberta called The Surrogate Court of Northern Alberta and The Surrogate Court of Southern Alberta are hereby amalgamated and continued as a court of record with the name "The Surrogate Court of Alberta".
  4. The Chief Judge, the Associate Chief Judge and the other judges of The District Court of Alberta shall be the Chief Judge, Associate Chief Judge and judges respectively of The Surrogate Court of Alberta.
6. *Section 6, subsection (1) is amended by striking out the words "The Surrogate Court of . . . Alberta" and by substituting therefor the words "The Surrogate Court of Alberta".*

## Explanatory Notes

**1.** This section will amend chapter 357 of the Revised Statutes of Alberta 1970.

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

**3.** Section 1 reads:

1. This Act may be cited as **The Surrogate Courts Act**.

**4.** Consequential amendments to definitions.

**5.** This amendment will replace the present two courts with one court and will unite the judges of the two courts as judges of the single court.

**6.** Section 6 (1) presently reads:

6. (1) No surrogate court judge shall enter upon the duties of his office until he has taken an oath in the following form 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, ....., solemnly and sincerely promise and swear that I will duly and faithfully and to the best of my skill and knowledge exercise the powers and trusts reposed in me as ..... of The Surrogate Court of ..... Alberta. So help me God.

7. Section 8, subsection (5) is amended by striking out the words "a court" and by substituting therefor the words "the court".

8. Section 10 is amended by striking out the words "the surrogate courts" and by substituting therefor the words "the surrogate court".

9. Section 11 is amended by striking out subsection (2) and by substituting therefor the following subsection:

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

10. Section 12 is amended

- (a) as to subsection (1) by striking out the words "A surrogate court" and by substituting therefor the words "The court",
- (b) as to subsection (2) by striking out the words "a surrogate court" and by substituting therefor the words "the court", and
- (c) as to subsection (3) by striking out the words "the surrogate courts" and by substituting therefor the words "the surrogate court".

11. Section 13 is amended

- (a) as to subsection (2) by striking out the words "a surrogate court" and by substituting therefor the words "the surrogate court", and
- (b) by striking out subsection (4).

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

**14.** (1) Where a person resident in Alberta dies, an application for a grant shall, subject to the Rules, be made in the judicial district within which the deceased, at the time of his death, resided.

(2) Where a person not resident in Alberta dies and at the time of his death had property in Alberta, an application for a grant shall, subject to the Rules, be made in the judicial district where the property was situated at the time of his death.

(3) An application for a grant of letters of guardianship in respect of an infant resident in Alberta shall, subject to the Rules, be made in the judicial district within which the infant resides.

**7. Consequential amendment.**

**8. Consequential amendment.**

**9. At present each court has its own seal.**

**10. Consequential amendments.**

**11. Consequential amendments. Section 13(4) will no longer be necessary. It reads:**

(4) In matters of guardianship, a court has jurisdiction in respect of the person or property, or both, of an infant if the infant resides or has property within the territorial limits of the court.

**12. Section 14 presently reads:**

14. (1) Where a person resident in the Province dies, the court within whose territorial limits the deceased has his place of residence at the time of his death has jurisdiction in respect of his property.

(2) Where a person is not a resident of the Province at the time of his death, the court has jurisdiction in respect of his property if the deceased had at the time of his death any property within the territorial limits of the court.

(3) Subject to the Rules, where a court has jurisdiction by reason of the fact that the deceased at the time of his death resided or the infant resides within its territorial limits, and application for a grant shall be made in the judicial district within which the deceased at the time of his death resided or the infant resides, as the case may be.

(4) Subject to the Rules, where a court has jurisdiction by reason of the fact that the deceased had at the time of his death, or that the infant has, property within the territorial limits of the court, an application for a grant may be made in any judicial district within which property was or is situated, as the case may be.

(4) An application for a grant of letters of guardianship in respect of an infant resident outside Alberta but having or being entitled to property in Alberta shall, subject to the Rules, be made in the judicial district where the property is situated.

13. *The words "A surrogate court" are struck out wherever they appear in the following sections and the words "The surrogate court" are substituted therefor:*

*section 15;*

*section 20, subsections (1) and (2).*

14. *Section 16 is struck out.*

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

*section 17, subsection (1);*

*section 21, subsection (1);*

*section 22, subsection (1).*

16. *Section 17, subsection (2) is amended by striking out the words "the surrogate courts" and by substituting therefor the words "the surrogate court".*

17. *Section 19 is amended*

*(a) by striking out the words "surrogate courts" and by substituting therefor the words "surrogate court", and*

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

18. *Section 22, subsection (6) is amended by adding after the words "to the surrogate court" the words "at the judicial district".*

19. *Section 23 is amended by striking out the words "the courts" wherever they appear in the section and by substituting therefor the words "the court".*

20. *The following sections are added after section 23:*

**24.** Where at the commencement of this section, any application, proceeding or other matter is before The Surrogate Court of Northern Alberta or The Surrogate Court of Southern Alberta or a judge thereof

**13.** Consequential amendment.

**14.** This section will not be necessary. It presently reads:

16. A grant made by a court having jurisdiction is effective throughout the Province.

**15.** Consequential amendments.

**16.** Consequential amendment.

**17.** Consequential amendment. Section 19 presently reads:

19. The powers of the Supreme Court to issue commissions and make orders for the examination of witnesses in actions pending therein, and the provisions of law for enforcing examination and production applicable thereto and to the witnesses examined, extend and are applicable to the surrogate courts and to the examination of witnesses under the commissions and orders of those courts.

**18.** Section 22 (6) presently reads:

(6) The registrar of the Appellate Division shall, upon the issue of the judgment in the appeal, return the documents, instruments, affidavits, papers and orders, determination or judgment to the surrogate court from which they were transmitted together with a certified copy of the judgment of the Appellate Division and the reason for judgment, if any were given.

**19.** Consequential amendment.

**20.** Transitional amendments.

- (a) the application, proceeding or other matter shall be continued before the surrogate court and shall be dealt with and determined by the surrogate court or judge thereof,
- (b) the surrogate court judge dealing with the application, proceeding or other matter shall continue to deal with it in his capacity as a surrogate court judge, and
- (c) subject to section 26, all papers required to be filed in or in connection with the application, proceeding or other matter shall be styled in The Surrogate Court of Alberta.

**25.** At the commencement of this section, the records and files of The Surrogate Court of Northern Alberta and The Surrogate Court of Southern Alberta in respect of all probate, administration and guardianship matters, whether concluded or not, become the records and file of The Surrogate Court of Alberta.

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

(2) Where any application, proceeding or other matter before the surrogate court or a judge thereof is continued before a surrogate court or a surrogate judge pursuant to section 24, an affidavit styled in The Surrogate Court of Northern Alberta or The Surrogate Court of Southern Alberta

- (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 Surrogate Court of Alberta prepared and sworn.

(3) A Surrogate 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 24 or this section and for the purpose of removing or minimizing any procedural difficulty arising upon the commencement of this section.





**27.** Where in any Act, regulation, order or other document any reference is made or could be construed as being made to The Surrogate Court of Northern Alberta, The Surrogate Court of Southern Alberta or to a judge of either court, the reference shall, on and after the coming into force of this section, be deemed to be a reference to The Surrogate Court of Alberta and to a judge of that court, respectively.

*21. This Act comes into force on a date to be fixed by Proclamation.*