

1975 Bill 49
(Second Session)

First Session, 18th Legislature, 24 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 49

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1975

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

BILL 49

1975

(Second Session)

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1975

(Assented to _____, 1975)

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

The District Court Act

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

(2) *Section 12 is struck out and the following section is substituted therefor:*

12. A district court judge, before entering upon the duties of his office, shall take the oath prescribed by *The Oaths of Office Act* before the Lieutenant Governor, the Chief Justice of Alberta or the Chief Justice of the Trial Division of the Supreme Court of Alberta.

(3) *Section 43 is amended by striking out subsection (2) and by substituting therefor the following subsection:*

(2) The jurisdiction of the Local Judges of the Supreme Court extends to the exercise of all powers and authorities, the performance of all acts and the transaction of all business that may be exercised, performed or transacted by

- (a) the Supreme Court or a judge thereof
 - (i) under the *Divorce Act* (Canada), or
 - (ii) in the exercise of

- (A) any inherent power, or

- (B) any power under any statute or law of Alberta or Canada,

- including the making of an injunction or a judgment or order in the nature of certiorari, prohibition, mandamus, habeas corpus or quo warranto in any matter,

or

- (b) a judge of the Supreme Court acting as *persona designata* under any statute of Alberta or Canada.

Explanatory Notes

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

(2) This amendment will standardize the taking of judicial oaths for all members of the Alberta judiciary. See also sections 3 and 5 of the Bill.

(3) This amendment clarifies a Local Judge's jurisdiction to act as a persona designata and to issue prerogative writs in both civil and criminal matters. Section 43, subsection (2) presently reads:

(2) The jurisdiction of the Local Judges of the Supreme Court under subsection (1) extends to the exercise of all powers and authorities and performance of all acts and transaction of all business that may be exercised, performed or transacted by the Supreme Court or a judge thereof under the Divorce Act (Canada).

The Intestate Succession Act

2. (1) *The Intestate Succession Act is amended by this section.*

(2) *Section 3 is amended by striking out subsections (1) and (2) and by substituting therefor the following subsections:*

3. (1) If an intestate dies leaving a widow and issue his estate, where the net value thereof does not exceed

(a) \$20,000 in the case of an intestate dying prior to January 1, 1976, or

(b) \$40,000 in the case of an intestate dying on or after January 1, 1976,

shall go to his widow.

(2) Where the net value of the estate of an intestate dying prior to January 1, 1976 exceeds \$20,000, the widow is entitled to \$20,000 and has a charge upon the estate for that sum with legal interest from the date of the death of the intestate.

(2.1) Where the net value of the estate of an intestate dying on or after January 1, 1976 exceeds \$40,000, the widow is entitled to \$40,000 and has a charge upon the estate for that sum with legal interest from the date of the death of the intestate.

The Judicature Act

3. (1) *The Judicature Act is amended by this section.*

(2) *Section 7, clause (b) is amended by striking out the figure "14" and by substituting therefor the figure "16".*

(3) *Section 11 is struck out and the following section is substituted therefor:*

11. A judge of the Court, before entering upon the duties of his office, shall take the oath prescribed by *The Oaths of Office Act* before the Lieutenant Governor, the Chief Justice of Alberta or the Chief Justice of the Trial Division of the Supreme Court of Alberta.

(4) *The following section is added after section 15:*

15.1 Where a judge is appointed as chairman of the board of review for Alberta established pursuant to section 547 of the *Criminal Code*, he shall be paid a salary of \$3,000 per year in addition to his salary as a judge.

(5) *The following section is added after section 22:*

22.1 (1) Where, upon an application made by way of originating notice with the consent in writing of the Attorney General, a judge of the Supreme Court is satisfied

2. (1) This section will amend chapter 190 of the Revised Statutes of Alberta 1970.

(2) This amendment will increase the share of the estate payable to the widow from \$20,000 to \$40,000 as of January 1, 1976.

3. (1) This section will amend chapter 193 of the Revised Statutes of Alberta 1970.

(2) This amendment will increase by two the number of judges in the Trial Division.

(3) This amendment will standardize the taking of judicial oaths for all members of the Alberta judiciary. See also sections 1 and 5 of the Bill.

(4) This amendment will complement a federal amendment to the Judges Act (Canada).

(5) This amendment will provide a procedure to prevent bringing of vexatious proceedings.

that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the Supreme Court or in any other court against the same person or against different persons, the judge may order that no legal proceedings shall, without leave of the Supreme Court or a judge thereof, be instituted in any court by the person taking such vexatious legal proceedings, and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

(2) The Attorney General has the right to appear and be heard in person or by counsel upon any application under subsection (1).

The Land Titles Act

4. (1) *The Land Titles Act is amended by this section.*

(2) *Section 30.1, subsection (1), clause (a), subclause (iii) is amended by striking out the word "holder" and by substituting therefor the word "holders".*

(3) *Section 54 is renumbered as subsection (1) and the following subsection is added thereafter:*

(2) Where any instrument is presented to the Registrar for registration subject to any condition, the Registrar shall reject the instrument for registration if the condition is not satisfied at the time the instrument would otherwise be registered.

(4) *Section 93 is amended as to subsection (1) by striking out the words "of the a notification" and by substituting therefor the words "of a notification".*

(5) *Section 161 is amended by adding after subsection (5) the following subsections:*

(6) Where he considers it appropriate to do so, the Registrar may enter into an agreement with any person whereby the fees and other charges payable by that person to the Registrar under subsection (1) will be charged to the credit of that person on a continuing basis and upon such conditions as the Registrar considers necessary and in that case the amounts so charged shall be deemed to have been paid in accordance with subsection (1).

(7) Where any amount charged to the credit of a person under subsection (6) is not paid within 15 days, or such other period as the Registrar may require, of a request for payment by the Registrar, no further amounts may be charged to the account of that person until all amounts owing are paid in full.

4. (1) This section will amend chapter 198 of the Revised Statutes of Alberta 1970.

(2) This amendment will correct a typographical error.

(3) This amendment will require the Registrar to reject a document submitted for registration subject to conditions, i.e. a transfer conditioned on there being only a certain mortgage registered against the title, if the condition does not exist at the relevant time, i.e. a builders' lien in the process of being registered at the time of submission and registered ahead of the transfer.

(4) This amendment will correct an error from a previous amendment.

(5) This amendment will permit the use of charge accounts at the Land Titles Offices.

(8) The Registrar may terminate an agreement under subsection (5) with any person upon seven days' notice in writing sent by registered mail to the person at his last address known to the Registrar.

The Oaths of Office Act

5. (1) The Oaths of Office Act is amended by this section.

(2) Section 4 is amended by striking out the words "as magistrate or" and by substituting therefor the words "as a judge of a court or as a".

(3) The Schedule is amended by striking out Form C and by substituting therefor the following Form:

FORM C

(Section 4)

JUDICIAL OATH

I, hereby swear that I will honestly and faithfully and to the best of my ability exercise the powers and duties of a

So help me God.

5. (1) This section will amend chapter 266 of the Revised Statutes of Alberta 1970.

(2) Section 4 presently reads:

4. Wherever by a statute of the Province a person is required to take an oath upon his appointment as magistrate or justice of the peace, the oath shall be taken in the form of the judicial oath set out in Form C in the Schedule.

(3) This oath will be used for all members of the Alberta judiciary.

The Summary Convictions Act

6. (1) *The Summary Convictions Act is amended by this section.*

(2) *Section 2, clause (b) is amended by striking out the word "magistrate" wherever it appears in the clause and by substituting therefor the words "provincial judge".*

(3) *Section 5 is renumbered as subsection (1) and the following subsections are added thereafter:*

(2) Without restricting the generality of subsection (1), the provisions of sections 448 to 454, 457 to 457.6 and 457.8 to 459 of the *Criminal Code*, as amended from time to time, apply with all necessary modifications to all matters to which this Part applies.

(3) Section 662.1 of the *Criminal Code* does not apply to any matter to which this Part applies.

(4) *The following section is added after section 8:*

8.1 (1) Everyone who, being at large on his undertaking or recognizance given to or entered into before a justice, fails, without lawful excuse, the proof of which lies upon him, to attend court in accordance therewith or to surrender himself in accordance with an order of the justice, as the case may be, is guilty of an offence.

(2) Everyone who, being at large on his undertaking or recognizance given to or entered into before a justice and being bound to comply with a condition of that undertaking or recognizance directed by a justice, fails, without lawful excuse, the proof of which lies upon him, to comply with that condition, is guilty of an offence.

(3) Everyone who is served with a summons whether forming part of a ticket or otherwise, and who fails, without lawful excuse, the proof of which lies upon him, to attend court in accordance therewith, is guilty of an offence.

(4) Everyone who is named in an appearance notice or promise to appear, or in a recognizance entered into before an officer in charge, that has been confirmed by a justice and who fails, without lawful excuse, the proof of which lies upon him, to attend court in accordance therewith, is guilty of an offence.

(5) For the purposes of subsection (4), it is not a lawful excuse that an appearance notice, promise to appear or recognizance states defectively the substance of the alleged offence.

(6) Everyone who is guilty of an offence under this section is liable on summary conviction to a fine of not more than \$500 or to imprisonment for six months or to both.

6. (1) This section will amend chapter 355 of the Revised Statutes of Alberta 1970.

(2) Updates the definition of a "justice" which presently reads:

2. In this Act, "justice"

(a) means a justice of the peace, and

(b) includes two or more justices sitting and acting together, a magistrate, and every other officer or functionary having, for the purpose of any Act, the authority of a justice of the peace, or magistrate.

(3) The proposed addition of subsection (2) will alleviate any doubts as to the applicability of the so-called "bail reform" provisions of the Criminal Code to provincial offences. The proposed subsection (3) will make inapplicable the Criminal Code provision relating to conditional and absolute discharges.

Section 5 presently reads:

5. Except as otherwise specially provided, the provisions of the Criminal Code respecting summary convictions, as amended from time to time, and the proceedings relating thereto apply in respect of all convictions and all orders and the proceedings relating thereto made or to be made by a justice.

(4) This section is based on section 133 of the Criminal Code. The punishment under subsection (6) corresponds to the punishment under the Criminal Code for a conviction under section 133 of the Code. Subsection (7) is based on section 738(3.1) of the Code.

(5) Consequential to the amendment in subsection (6).

(6) The power to order costs will be removed. Section 10 reads as follows:

10. (1) A justice may, in and by the conviction or order, award and order that a defendant pay to the prosecutor or complainant costs in accordance with the tariff of fees set out in section 744 of the Criminal Code.

(2) Where a justice dismisses an information or complaint he may, by the order of dismissal, award and order that the prosecutor or complainant pay to the defendant costs in accordance with the tariff of fees set out in section 744 of the Criminal Code.

(3) The sums allowed for costs

(a) shall be stated in the conviction or order,

(b) are recoverable in the same manner and under the same warrants as a penalty adjudged to be paid by the conviction or order, and

(c) extend to and include costs and charges of the distress, of the commitment, and of conveying the defendant to prison.

(4) The costs and charges mentioned in subsection (3), clause (c) need not be included in the amount mentioned in the conviction or order, but

(a) the amount thereof in case of a warrant of commitment shall be mentioned on the warrant when it is delivered to the jailer, and

(b) in a case of a distress the person by whom the said costs and charges are payable is entitled on demand to a statement of the amount thereof.

(5) Where no penalty is to be recovered, or the information or complaint is dismissed, the costs shall be specified in the order and are recoverable only by distress and sale of the goods and chattels of the party.

(7) These words are redundant and are a left-over from when Part 2 was the former The Fines and Penalties Act. It was consolidated in the 1955 statute revision.

(8) Consequential amendment.

(9) Section 23 reads:

23. The words "summary conviction" wherever they occur in any Act refer to and mean summary conviction under and by virtue of Part XXIV of the Criminal Code.

This is also a redundancy left-over from the predecessor Act.

(10) Consequential amendment.

(7) Where, at the trial of a person

(a) served with a summons, whether forming part of a ticket or otherwise, or

(b) to whom an appearance notice that has been confirmed by a justice has been issued,

the person does not appear at the time and place appointed for the trial and the justice proceeds *ex parte* to hear the charge, no proceedings under this section arising out of the failure of the person to appear shall be instituted or if instituted shall be proceeded with, except with the consent of the Attorney General.

(5) *Section 9 is amended*

(a) *by striking out the words "fine, penalty or costs" and by substituting therefor the words "fine or penalty", and*

(b) *by striking out the words "fine or costs" and by substituting therefor the word "fine".*

(6) *Section 10 is struck out.*

(7) *Section 21 is amended by striking out the words "under the provisions of Part XXIV of the Criminal Code and amendments thereto".*

(8) *Section 22, subsection (5) is amended by striking out the words "and costs".*

(9) *Section 23 is struck out.*

(10) *Section 25 is amended by striking out the words "and costs" wherever they appear in the section.*

The Uniformity of Legislation Act

7. (1) *The Uniformity of Legislation Act is amended by this section.*

(2) *Section 4 is amended by striking out clause (b) and by substituting the following:*

(b) annually and at any other time when requested to do so by the Attorney General, inform the Attorney General of the activities of the Board and of the Uniform Law Conference of Canada.

(3) *Section 5 is amended*

(a) *as to subsection (1) by striking out the words "out of the General Revenue Fund, upon the certificate of the Board approved by the Lieutenant Governor in Council," and by substituting the words "from moneys appropriated by the Legislature for the purpose,"*

(b) *by striking out subsection (2) and by substituting the following:*

7. (1) This section will amend chapter 350 of the Revised Statutes of Alberta, 1955.

(2) Section 4 presently reads:

4. The Board shall

- (a) keep a record of all its transactions, and
- (b) make a report of all its transactions with recommendations to the Lieutenant Governor in Council for submission to the Legislature at each session thereof.

(3) Section 5 presently reads:

5. (1) No member of the Board shall receive any compensation for his services, but members of the Board shall be paid out of the General Revenue Fund, upon the certificate of the Board approved by the Lieutenant Governor in Council, the amount of the travelling and other personal expenses necessarily incurred by them in the discharge of their official duties.

(2) There shall be paid annually out of the General Revenue Fund, upon the recommendation of the Board approved by the Lieutenant Governor in Council

- (a) the expense of printing and of clerical assistance incurred by the Board in its work, and
- (b) a sum of not more than five hundred dollars, to meet the Province's share of expenses of the work carried on by the Conference of Commissioners for Uniformity of Legislation in Canada.

The expenses of the Board and Alberta's contributions to the Conference have been paid from budgeted appropriations not as a direct charge on the General Revenue Fund. The amendment also reflects the new name of the Conference.

(4) Section 6 presently reads:

6. (1) The Lieutenant Governor in Council may appoint a fourth member to the Board from the Bar of the Province to be nominated by the Benchers of the Law Society of Alberta.

(2) This Act applies to a member appointed under subsection (1) except that the member is not entitled to be compensated for expenses under section 5.

The effect of the amendment is to allow the expenses of the Law Society's representative to be paid from an appropriation.

(2) The Attorney General may, from moneys appropriated by the Legislature for the purpose, pay the Province's contributions to the Uniform Law Conference of Canada.

(4) Section 6, subsection (2) is amended by striking out the words "except that the member is not entitled to be compensated for expenses under section 5".

8. This Act comes into force on the day upon which it is assented to.