

1977 BILL 78

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Third Session, 18th Legislature, 26 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 78

THE ATTORNEY GENERAL  
STATUTES AMENDMENT ACT, 1977 (NO. 2)

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MR. HORSMAN

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First Reading .....

Second Reading .....

Third Reading .....

Bill 78  
Mr. Horsman

## BILL 78

1977

### THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1977 (NO. 2)

(Assented to \_\_\_\_\_, 1977)

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

#### The Clerks of the Court Act

1(1) *The Clerks of the Court Act is amended by this section.*

(2) *Section 10(1)(a) is repealed and the following is substituted:*

(a) attend at his office to keep the office open during the  
hours and on the days fixed by the Attorney General,

#### The District Court Act

2(1) *The District Court Act is amended by this section.*

(2) *Section 39(1) is amended by striking out "and" at the end of  
clause (b) and by adding the following after clause (b):*

(b.1) may prescribe the rates of fees and expenses payable  
to witnesses and interpreters, and

(3) *The following is added after the heading "Powers as Local  
Judges of Supreme Court":*

**42.1** A local Judge of the Supreme Court may exercise all  
powers and authorities, perform all acts and transact all  
business that may be exercised, performed or transacted by

## **Explanatory Notes**

### **The Clerks of the Court Act**

**1**(1) This section will amend chapter 51 of the Revised Statutes of Alberta 1970.

(2) Section 10(1) presently reads in part:

*10(1) A clerk shall*

*(a) attend at his office to keep the office open during such hours as may be fixed from time to time by the Attorney General on all days except Saturdays and holidays when the office shall be closed.*

### **The District Court Act**

**2**(1) This section will amend chapter 111 of the Revised Statutes of Alberta 1970.

(2) This amendment will permit the Lieutenant Governor in Council to prescribe rates of fees and expenses payable to witnesses and interpreters.

(3) Section 43(2) will be enacted as a separate section to avoid interpretive problems.

- (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 any injunction or a judgment or order in the nature of certiorari, prohibition, mandamus, habeas corpus or quo warranto in any manner,

or

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

(4) *Section 43(2) is repealed.*

### **The Interpretation Act**

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

(2) *Section 18(3) is repealed and the following substituted:*

- (3) Where
  - (a) the proceeding to be taken or the thing to be done
    - (i) involves service upon or filing or registering or attendance at, a department, commission, board or other branch of the public service of Alberta, or
    - (ii) involves service upon or filing or registering with or attendance upon, an official of a department, commission, board or other branch of the public service of Alberta,

and

- (b) the time limited for the taking or doing of the proceeding or thing expires or falls on a day upon which the office of the department, commission, board or other branch of the public service of Alberta is closed,

(4) Consequential to subsection (3).

### The Interpretation Act

3(1) This section will amend chapter 189 of the Revised Statutes of Alberta 1970.

(2) Section 18(3) presently reads:

(3) *Where*

(a) *the proceeding to be taken or the thing to be done*

(i) *involves service upon or filing or registering or attendance at, a department, commission, board or other branch of the public service of Alberta, or*

(ii) *involves service upon or filing or registering with or attendance upon, an official of a department, commission, board or other branch of the public service of Alberta,*

*and*

(b) *the time limited for the taking or the doing of the proceeding or thing*

(i) *expires or falls upon a Saturday, or*

(ii) *expires or falls upon a holiday and a Saturday is the first following day that is not a holiday,*

*the time shall be deemed to be extended to and the proceeding may be taken or the thing done on the first day that follows the Saturday and is not a holiday.*

the time shall be deemed to be extended to and the proceeding may be taken or the thing done on the first following day that the office is open.

#### **The Judicature Act**

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

*(2) Section 7(b) is amended by striking out “16” and substituting “17”.*

*(3) Section 39(a) is amended by striking out “and” at the end of subclause (iii), by adding “and” at the end of subclause (iv) and by adding the following after subclause (iv):*

*(v) the rates of fees and expenses payable to witnesses and interpreters,*

#### **The Land Titles Act**

*5(1) The Land Titles Act is amended by this section.*

This amendment is consequential to amendments to The Clerks of the Court Act and The Land Titles Act in this Bill.

#### **The Judicature Act**

**4(1)** This section will amend chapter 193 of the Revised Statutes of Alberta 1970.

(2) This amendment will increase the number of judges in the Trial Division. Section 7 presently reads:

*7 The Trial Division shall consist*

*(a) of a Chief Justice who shall be styled the Chief Justice of the Trial Division of the Supreme Court of Alberta, and*

*(b) of 16 other judges who shall be called and be justices of the Supreme Court of Alberta.*

(3) Section 39 presently reads:

*39 The Lieutenant Governor in Council*

*(a) may make rules governing*

*(i) the practice and procedure in the Court,*

*(ii) the duties of the officers thereof,*

*(iii) the cost of the proceedings therein, and*

*(iv) the fees to be taken by officers of the Court,*

*and*

*(b) may authorize the judges of the Court to*

*(i) make such rules, or*

*(ii) amend, alter and repeal any of such rules, or*

*(iii) make additional or other rules.*

#### **The Land Titles Act**

**5(1)** This section will amend chapter 198 of the Revised Statutes of Alberta 1970.

(2) *Section 19(1) is repealed and the following is substituted:*

**19(1)** Every Land Titles Office shall be kept open during the hours and on the days fixed by the Attorney General.

(3) *Section 94(1) is amended by striking out “by the Director of Surveys”.*

### **The Legal Profession Act**

6(1) *The Legal Profession Act is amended by this section.*

(2) *Section 33 is amended by striking out “Exchequer” and substituting “Federal”.*

(3) *Section 73 is amended*

(a) *in subsection (2) by striking out “If” and substituting “Subject to subsections (4) and (5), if”, and*

(b) *by adding after subsection (3) the following:*

(4) Subject to subsection (5), a person who

(a) was a British subject at the time of his admission as a student-at-law or his enrolment as a member, and

(b) subsequently ceases to be a British subject for any cause other than as a result of an act or omission on his part

may not be struck off the roll or refused enrolment as a member for that reason only.

(5) A member to whom subsection (4) applies shall be struck off the roll at the expiry of 5 years from the date he ceased to be a British subject if he has not in the interim become a Canadian citizen.

(4) *Section 106(4) is amended by striking out “No director may receive any remuneration for his services but” and by substituting “Out of money appropriated by the Legislature the directors*



(2) Section 19(1) presently reads:

*19(1) Every Land Titles Office shall be kept open during such hours as may be fixed from time to time by the Attorney General on all days except Saturdays and holidays.*

(3) Section 94(1) presently reads:

*94(1) Whenever the plan of survey mentioned in section 93 is forwarded to the Registrar of the proper Land Titles Office by the Director of Surveys, the Registrar shall call in the duplicate certificates of title for all patented lands affected thereby in the manner set forth in section 185.*

### **The Legal Profession Act**

**6(1)** This section will amend chapter 203 of the Revised Statutes of Alberta 1970.

(2) This amendment reflects the change of the name of the Exchequer Court of Canada to the Federal Court of Canada.

(3) Section 73(2) and (3) presently read:

*(2) If it is proved to the satisfaction of the Benchers that a member is neither a Canadian citizen nor a British subject, the Benchers shall order that his name be struck off the roll.*

*(3) Subsection (2) does not apply to a student-at-law.*

This amendment will preserve the qualifications of British subjects who are members of the Alberta Bar and who lose their status as British subjects through legislation outside Alberta.

(4) This amendment will permit the payment of fees to the directors out of departmental funds. Section 106(4) presently reads:

*(4) No director may receive any remuneration for his services but the directors shall be entitled to be paid out of the funds of the Foundation their reasonable travelling and living expenses while absent from their respective ordinary places of residence in the course of their duties as members of the board.*

may be paid remuneration for their services at a rate prescribed by the Attorney General and in addition”.

#### **The Notaries Public Act**

*7(1) The Notaries Public Act is amended by this section.*

*(2) Section 2.1(1) is amended by striking out “active”.*

#### **The Provincial Court Act**

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

*(2) Section 12 is repealed.*

*(3) Section 16 is amended by adding the following after clause (g):*

*(g.1) prescribing the rates of fees and expenses payable to witnesses and interpreters,*

#### **The Public Works Act**

*9(1) The Public Works Act is amended by this section.*

*(2) Section 21(2) is amended by striking out “Director of Surveys” and by substituting “Minister”.*

### **The Notaries Public Act**

7(1) This section will amend chapter 261 of the Revised Statutes of Alberta 1970.

(2) This amendment will result in the expiry provision of the Act being inapplicable to inactive as well as active members of The Law Society of Alberta.

### **The Provincial Court Act**

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

(2) Section 12 presently reads:

*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.*

(3) Section 16 authorizes the making of regulations by the Lieutenant Governor in Council.

### **The Public Works Act**

9(1) This section will amend chapter 303 of the Revised Statutes of Alberta 1970.

(2) Section 21(2) presently reads:

(2) *Notwithstanding subsection (1), where any land required for a public work*

*(a) consists of a lot or parcel shown on a plan that is filed or registered under The Land Titles Act, or*

*(b) is the subject matter of one certificate of title, or consists of one or more legal subdivisions within the meaning of The Surveys Act, or*

*(c) can be described sufficiently without the necessity of a plan of survey or any additional plan of survey,*

*the land need not be surveyed but the Director of Surveys shall prepare a notification describing the lot, parcel, land or legal subdivision and stating that it is required for a public work.*

## The Small Claims Act

10(1) *The Small Claims Act is amended by this section.*

(2) *Section 9 is amended*

(a) *in subsection (1) by striking out “for trial” and substituting “for the defendant to appear”, and*

(b) *in subsection (2)*

(i) *by striking out “for trial” and substituting “for the defendant to appear”, and*

(ii) *by striking out “no trial” and substituting “no proceeding”.*

(3) *Section 17(1) is repealed and the following is substituted:*

**17(1)** Where a summons is served in accordance with this Act, the provincial judge may try the matter on the return date of the summons or may adjourn the matter to a subsequent date in which case the trial shall commence on that subsequent date.

(4) *Section 26 is repealed and the following is substituted:*

**26(1)** Where a defendant fails to appear on the return date fixed by the summons or fails to file a counterclaim, the provincial judge may, upon proof that the summons has been served in accordance with this Act,

(a) enter a default judgment when the claim is for a debt or liquidated demand, or

(b) in any other case, note the defendant in default and proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages.

(2) Where a judgment is entered in default or the defendant is noted in default, the provincial judge may dismiss with costs any counterclaim asserted by the defendant.

## The Small Claims Act

10(1) This section will amend chapter 343 of the Revised Statutes of Alberta 1970.

(2) These amendments will standardize procedure by making clear that a trial need not take place on the return date of the summons. Section 9(1) and (2) presently read:

*9(1) The date fixed by the summons for trial shall not be more than 60 days from the date of the issue of the summons.*

*(2) Notwithstanding subsection (1), a summons shall be served at least 10 days before the date appointed therein for trial and if a summons is not so served no trial shall take place on the appointed day unless the defendant consents thereto.*

(3) Section 17(1) presently reads:

*17(1) Where a summons is served in accordance with this Act, the cause shall be tried on the return date of the summons unless on that date the magistrate adjourns the trial to a subsequent date, in which case the trial shall commence on the adjourned date.*

(4) This amendment will provide for the entry of default judgments. Section 26 presently reads:

*26(1) Where a defendant fails to appear for trial the magistrate may in his discretion allow the plaintiff to prove his claim in the same manner that a defendant may prove a counterclaim under section 25, subsection (2), or the magistrate may adjourn the trial to a later date or may sign judgment by default on production of such evidence as the magistrate considers sufficient.*

*(2) Where a plaintiff proves a claim pursuant to subsection (1) the magistrate may order the defendant to pay such costs as the magistrate considers just.*

*(3) Where a defendant fails to appear for trial the magistrate may in his discretion dismiss with costs any counterclaim that the defendant has asserted.*

(3) Where a judgment is entered in default or the defendant is noted in default, the provincial judge may order costs against the defendant in any amount he considers just.

(5) *Wherever it occurs in the Act “magistrate” is struck out and “provincial judge” is substituted.*

### **The Summary Convictions Act**

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

*(2) Section 6 is repealed and the following is substituted:*

**6(1)** Instead of the procedure set out in the *Criminal Code* for laying an information and for issuing a summons, a complaint in respect of any offence specified in the regulations may be laid and a summons issued by means of a ticket in accordance with this section.

(2) A ticket shall be in 4 parts consisting of

- (a) a complaint,
- (b) a report of conviction,
- (c) the police record, and
- (d) a summons.

(3) The Lieutenant Governor in Council may make regulations

- (a) specifying those offences for which a ticket may be used under this section,
- (b) prescribing the form of ticket to be used,
- (c) authorizing the use on a ticket of any word, figure or expression, or any combination thereof, to designate an offence, and
- (d) respecting any other matter necessary for the use of the ticket.

(4) The offence charged shall be specified on the ticket in the manner prescribed by the regulations.

- (5) References up-dated

### **The Summary Convictions Act**

11(1) This section will amend chapter 355 of the Revised Statutes of Alberta 1970.

(2) This amendment will permit the use of tickets for additional offences and will simplify the procedure for using tickets.

(3) Section 7 presently reads in part:

*7(1) The Lieutenant Governor in Council may prescribe a form of traffic ticket summons under section 6 having an additional part or having an endorsement thereon to the effect that the person to whom the summons is directed may pay out of court a specified sum if he wishes to plead guilty.*

*(5) Where a summons and the specified penalty are delivered to the place stated in the summons after the time stated therein as being allowed for the delivery, a magistrate may*

*(a) without a hearing, and*

*(b) notwithstanding any action he may have taken under section 8,*

*direct that the summons and penalty be accepted as if they had been delivered within the time allowed.*

*(6) The Lieutenant Governor in Council may make regulations in respect of such summons*

*(a) prescribing the offences under*

*(i) The Highway Traffic Act, 1975, The Motor Vehicle Administration Act,*

*(ii) The Public Service Vehicles Act, and*

*(iii) The Motor Vehicle Accident Claims Act, and*

*(iv) The Off-highway Vehicles Act,*

*in respect of which a penalty may be paid out of court in lieu of appearing in answer to the summons, and*

*(b) prescribing the amount of the penalty payable in respect of each such offence.*

(4) Section 8(1) and (2) presently read:

(5) At any time after completing the ticket and affixing his signature to it, any peace officer may serve the summons part of the ticket on the person charged and that service constitutes personal service of the summons upon that person.

(6) Service of the summons part of the ticket on a holiday is a valid service of the summons.

(7) The complaint part of the ticket together with the report of conviction part of the ticket shall be deposited with a justice.

(8) A complaint part of a ticket need not be sworn unless a trial of the offence charged in the complaint is set down for hearing, in which case it is sufficient if the complaint part of the ticket is sworn at a time prior to the hearing of the trial.

(9) Where a justice completes a report of conviction part of a ticket, it shall be deemed to be a certificate of conviction for the purposes of *The Motor Vehicle Administration Act*, *The Motor Transport Act* or any regulations under either of those Acts.

(10) Failure to complete any information required in a complaint part of a ticket does not invalidate the complaint or any part of it if

(a) the person to whom the summons is directed is identified with reasonable clarity in the complaint part of the ticket,

(b) the offence with which the person is charged is identified in accordance with this Act and the regulations,

(c) the date on which the offence is alleged to have been committed is specified in the ticket, and

(d) the place at which the offence is alleged to have occurred is specified in the ticket.

(11) The provisions of the *Criminal Code* as amended from time to time respecting summary convictions and related proceedings apply to all proceedings instituted under this section to the extent that this Act does not otherwise provide.

(3) *Section 7 is amended*

(a) *in subsection (1) by striking out “traffic ticket summons” and substituting “summons part of a ticket”,*

(b) *in subsection (5) by striking out “magistrate” and substituting “justice”, and*



*8(1) Where the person to whom a traffic ticket summons is directed fails to appear in court (in person or by agent) in answer to the summons, the justice*

*(a) may adjourn the proceedings for any period not exceeding 30 days, or*

*(b) may enter a plea of not guilty on behalf of the person and set a time for an ex parte hearing of the charge, or*

*(c) may issue a warrant for the arrest of the person.*

*(2) Where proceedings are adjourned pursuant to subsection (1), clause (a), the justice shall direct that the person be notified by ordinary mail at his last known address of the new time fixed for appearance and if the person fails to appear in court at that time, a justice*

*(a) may enter a plea of not guilty on behalf of the person and set a time for an ex parte hearing of the charge, or*

*(b) may issue a warrant for the arrest of the person.*

(5) Section 9 presently reads in part:

*9 Where a conviction or order of a justice adjudges that a fine or penalty be paid, the conviction or order is not void nor is the right to collect a fine or to enforce a penalty under any such conviction or order impaired because*

*(c) the justice has accepted security for the payment of the sum or any part thereof.*

(6) Section 22(4) presently reads:

*(4) Where time has been allowed for payment under subsection (1), the justice who imposed the sentence may, upon application by or on behalf of the person allowed time for payment, allow further time for payment.*

*(c) by repealing subsection (6)(a) and substituting the following:*

*(a) prescribing the offences in respect of which a penalty may be paid out of court in lieu of appearing in answer to the summons, and*

*(4) Section 8 is amended*

*(a) in subsection (1)*

*(i) by striking out “traffic ticket summons” and substituting “summons part of a ticket”, and*

*(ii) by repealing clause (c) and substituting the following:*

*(c) may, upon the complaint part of the ticket being sworn, issue a warrant for the arrest of that person.*

*and*

*(b) in subsection (2) by repealing clause (b) and substituting the following:*

*(b) may, upon the complaint part of the ticket being sworn, issue a warrant for the arrest of that person.*

*(5) Section 9(c) is amended by striking out “the justice” and by substituting “a justice”.*

*(6) Section 22(4) is amended by striking out “the justice who imposed the sentence” and substituting “a justice”.*

### **The Trustee Act**

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

*(2) Section 5(h) is repealed and the following is substituted:*

*(h) bonds, debentures, notes or deposit receipts of an approved corporation;*

### **The Trustee Act**

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

(2) Section 5(h) presently reads:

*5 A trustee may invest any trust money in his hands, if the investment is in all other respects reasonable and proper, in any of the following:*

*(h) bonds or debentures of an approved corporation;*

### **Commencement**

*13(1) This Act, except section 11, comes into force on the day upon which it is assented to.*

*(2) Section 11 comes into force on a date to be fixed by Proclamation.*