

1978 BILL 33

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 33

THE COURT OF APPEAL ACT

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 33

1978

THE COURT OF APPEAL ACT

(Assented to , 1978)

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

1 In this Act,

- (a) "Court" means the Court of Appeal of Alberta;
- (b) "judge" includes a supernumerary judge of the Court of Appeal for Alberta.

Constitution of Court

2(1) The Appellate Division of the Supreme Court of Alberta is continued as a superior court of civil and criminal jurisdiction styled the Court of Appeal of Alberta.

(2) The Lieutenant Governor in Council may authorize a seal to be used by the Court as occasion requires.

3(1) The Court of Appeal consists of

- (a) the chief judge who shall be called the Chief Justice of Alberta,
- (b) 8 other judges who shall be called justices of appeal, and
- (c) the supernumerary judges of the Court.

(2) The Lieutenant Governor in Council by order may increase the number of judges of the Court.

(3) Notwithstanding subsection (1), each judge of the Court of Queen's Bench of Alberta is by virtue of his office a judge of the Court of Appeal.

Explanatory Notes

1 Definitions.

2 The Appellate Division of the Supreme Court of Alberta will be continued as the Court of Appeal of Alberta.

3 Composition of the Court.

4(1) For each office of judge under section 3(1)(a) and (b) 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).

(2) Where the Chief Justice of Alberta makes an election under subsection (1), he shall hold only the office of a supernumerary judge of the Court of Appeal.

5 Each 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 Court of Queen's Bench.

6 The Chief Justice and justices of appeal shall reside at or in the neighbourhood of Edmonton or Calgary.

7 Each judge has all the powers, rights, incidents, privileges and immunities exercised or enjoyed by a judge of The Supreme Court of Alberta immediately prior to the commencement of this Act.

Jurisdiction

8 The Court has all the jurisdiction and powers formerly possessed and exercisable within Alberta by The Appellate Division of the Supreme Court of Alberta immediately prior to the commencement of this Act.

Operation of the Court

9 A quorum of the Court consists of 3 judges.

10 If any matter before the Court has been heard by 3 or more judges and is standing for judgment and one of the judges who heard that matter

(a) is transferred to any other court,

(b) resigns his office,

4 Supernumerary judges.

5 Oath of office.

6 Residence of members of the Court.

7 Powers, etc. of judges.

8 Jurisdiction of the Court.

9 Quorum of the Court.

10 Judgment where a judge is unable to continue.

(c) dies,

(d) is absent through illness or other cause, or

(e) is for any other reason unable to act,

then the remaining judges may, if unanimous in their decision, give judgment on behalf of the Court notwithstanding section 9.

11 A judge who has heard any matter and who is absent at the time of delivery of the judgment, may provide his opinion in writing to a judge present at the delivery of the judgment, to be read or announced in open court and then to be provided to the Registrar or court reporter.

12 Where for any reason one or more judges are unavailable, a judge of the Court of Queen's Bench may sit as a judge of the Court of Appeal if

(a) requested to do so by or on behalf of the Chief Justice of Alberta, and

(b) the Chief Justice of the Court of Queen's Bench consents.

13 In any matter before the Court, no judge

(a) by or before whom the verdict in question was pronounced,

(b) who pronounced or made the judgment, order or decision in question at a previous proceeding in the same matter, or

(c) who determined the matter being reheard,

may sit as one of the judges hearing the matter.

14 Subject to an express provision to the contrary in any enactment, the costs of and incidental to any matter authorized to be taken before the Court or a judge are in the discretion of the Court or judge and the Court or judge may make any order relating to costs that is appropriate in the circumstances.

11 Judge absent at delivery of judgment.

12 Queen's Bench judges assisting the Court.

13 Exclusion of judges previously involved.

14 Costs.

Officers and Employees

15 In accordance with *The Public Service Act* there may be appointed a Registrar of the Court and all other officers and employees that the business of the Court requires.

16 An officer of the Court, for the purpose of matters directed by the Court to be taken before him, has power to administer oaths, take affidavits and statutory declarations, receive affirmations and examine parties and witnesses, as the Court may direct.

17 Sheriffs, deputy sheriffs, jailers and peace officers shall give assistance to and comply with the directions of the Court and the judges in the exercise of the jurisdiction of the Court.

Rules of Court

18 The Lieutenant Governor in Council

- (a) may make rules governing
 - (i) the practice and procedure in the Court,
 - (ii) the duties of officers of the Court,
 - (iii) costs in matters before the Court,
 - (iv) the fees to be collected by officers of the Court, and
 - (v) the rates of fees and expenses payable to witnesses and interpreters,

and

- (b) may prescribe the times and places for sittings of the Court.

19 In addition to the regular sittings of the Court fixed pursuant to section 18(b), the Chief Justice of Alberta may, at the times and places he appoints for the purpose, fix additional sittings to be held as required for the dispatch of the business of the Court.

20(1) A council comprised of the judges shall, at least once in every year upon a day fixed by the Chief Justice of Alberta and

15 Personnel.

16 Powers of officers of the Court.

17 Duties of sheriffs, etc.

18 Rules of Court.

19 Additional sittings of the Court.

20 Council of judges.

of which he shall give notice to the judges, assemble for the purpose of

(a) considering

(i) the operation of this Act and the rules made under this Act, and

(ii) the working of, and the arrangements governing the performance of duties by, the officers of the Court,

and

(b) inquiring into and examining any defects that appear to exist in the procedure of any court or other authority.

(2) Where it considers it necessary and appropriate to do so, the council may form one or more subcommittees to deal with any matter referred to in subsection (1) and each subcommittee so formed shall meet at such times and places as is necessary to achieve the purpose for which it was formed.

(3) The council shall report its recommendations to the Lieutenant Governor in Council.

Transitional and Consequential

21 Where in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document reference is made or could be construed as being made to

(a) the Supreme Court of the North-West Territories sitting *en banc*,

(b) The Appellate Division of the Supreme Court of Alberta, or

(c) a judge of either of those courts,

the reference shall be taken to mean a reference to the Court of Appeal of Alberta or a judge thereof, as the case may be.

22(1) Where, at the commencement of this Act, a matter is before The Appellate Division of the Supreme Court of Alberta or a judge thereof

(a) the matter shall be continued before the Court,

(b) the judge dealing with the matter shall continue to deal with it in his capacity as a judge of the Court of Appeal of Alberta, and

21 References.

22 Continuation of proceedings.

(c) subject to section 23, all documents required to be filed in or in connection with the cause or matter shall thereafter be styled in the Court of Appeal of Alberta.

(2) At the commencement of this Act the records and files of The Appellate Division of the Supreme Court of Alberta, whether concluded or not, become the records and files of the Court of Appeal of Alberta.

23(1) Where a matter before The Appellate Division of the Supreme Court of Alberta or a judge thereof is continued under section 22, an affidavit styled in The Appellate Division of the Supreme Court of Alberta

(a) shall be accepted for filing after the commencement of this Act if it was sworn before the commencement of this Act, or

(b) may be accepted for filing where it was sworn after the commencement of this Act if the clerk is satisfied that it is impossible or that it would result in undue delay or hardship to have an affidavit sworn that is properly styled.

(2) A judge may, upon the application of any person interested in a matter before the Court or a judge, give directions

(a) as to the filing of documents or matters of procedure in cases for which no provision is made by section 22 or subsection (1), or

(b) for the purpose of removing or minimizing any procedural difficulty arising upon the commencement of this Act.

24 *Wherever it occurs in the following provisions “Appellate Division” is struck out and “Court of Appeal” is substituted:*

*The Chartered Accountants Act, section 22(3);
The City Transportation Act, section 18(2);
The Companies Act, section 202(a);
The Controverted Elections Act, sections 27 and 30(1);
The Energy Resources Conservation Act, section 42(2), (3), (5), (6), (9) and (11);
The Execution Creditors Act, section 43;
The Expropriation Act, sections 35(1) and (2), 36(1), (2) and (3) and 37(4);
The Family Relief Act, section 22(2);
The Franchises Act, section 49(5) and (6);
The Gas Utilities Act, section 53(2), (3), (4) and (9);
The Irrigation Act, section 176(1) (b) and (2);
The Land Surface Conservation and Reclamation Act, section 60;
The Legal Profession Act, sections 47(2) and 71(3);
The Medical Profession Act, 1975, section 60;*

23 Documents under former style of cause.

24 Consequential.

The Motor Transport Act, sections 29(1) and 30(1);
The Municipal Government Act, section 406(2);
The Planning Act, 1977, sections 146(2) (a) and 147(3) (b);
The School Act, section 165(4);
The Securities Act, sections 29(1), (4), (5) and (6) and 113(4);
The Surface Rights Act, section 24(9) and (11);
The Surrogate Court Act, section 22(3) to (6);
The Trust Companies Act, sections 16(5), 26(3), 75(6), 77(4), 133(4), 134(6), (7) and (8), 153(12) and (13) and 173(5) and (6).

25 *Wherever it occurs in the following provisions “Appellate Division of the Supreme Court” is struck out and “Court of Appeal” is substituted:*

The Builders’ Lien Act, section 52(1);
The Chartered Accountants Act, sections 22(2) and 44(1);
The Controverted Elections Act, section 27;
The Criminal Injuries Compensation Act, section 22(1);
The Estate Tax Rebate Act, section 12(2) (b);
The Execution Creditors Act, section 42;
The Land Titles Act, sections 192 and 195;
The Legal Profession Act, sections 43(3), 47(1) and 70(1);
The Municipal Election Act, sections 12(5) and 189;
The Pension Benefits Act, section 20(1);
The Surrogate Court Act, section 22(1).

26 *Wherever it occurs in the following provisions “Appellate Division of the Supreme Court of Alberta” is struck out and “Court of Appeal” is substituted:*

The Agricultural Development Act, section 25(3);
The City Transportation Act, section 18(1);
The Energy Resources Conservation Act, section 42(1);
The Family Relief Act, section 22(1);
The Franchises Act, section 49(1);
The Gas Utilities Act, section 53(1);
The Alberta Insurance Act, section 321.8(2);
The Investment Contracts Act, section 21(1) and (3);
The Irrigation Act, section 176(1);
The Land Surface Conservation and Reclamation Act, section 60;
The Land Titles Act, section 191;
The Local Authorities Board Act, sections 2(c) and 61(1);
The Medical Profession Act, 1975, sections 34(1) and (2), 58(1) and 76;
The Mortgage Brokers Regulation Act, section 30(1) and (3);
The Municipal Government Act, sections 405 and 406(1);
The Planning Act, 1977, section 146(1);
The Provincial Court Act, section 9(1) (a);
The Public Utilities Board Act, sections 2(c) and 62(1);

25 Consequential.

26 Consequential.

The Surface Reclamation Act, section 43;
The Surface Rights Act, section 24(9).

27 *Wherever it occurs in the following provisions “Appellate Division of the court” is struck out and “Court of Appeal” is substituted:*

The Companies Act, sections 84(6), 86(4), 121(5) and 138(4);
The Alberta Insurance Act, sections 161(5) and 166(13) and (19).

28 *Wherever it occurs in the following provisions “Appellate Division of the Court” is struck out and “Court of Appeal” is substituted:*

The Franchises Act, section 53(3);
The Securities Act, section 147(3).

29 (1) *The Constitutional Questions Act is amended*

(a) *by repealing section 2 and substituting the following:*

2 In this Act, “Court” means the Court of Appeal of Alberta.

and

(b) *in section 3 by striking out “Supreme Court of Alberta” and substituting “Court of Appeal”.*

(2) *The Controverted Elections Act is amended in section 27 by striking out “The Judicature Act” and substituting “The Court of Appeal Act”.*

(3) *The Election Act is amended in section 108(2) by striking out “of the Appellate Division”.*

(4) *The Franchises Act is amended in section 49(3) by striking out “Supreme Court” and substituting “Court of Appeal”.*

(5) *The Alberta Insurance Act is amended by striking out “court of appeal” wherever it occurs in sections 270 and 321.8(3) and substituting “Court of Appeal”.*

(6) *The Motor Transport Act is amended by repealing section 1(1)(a).*

(7) *The Securities Act is amended in section 29(3) by striking out “Supreme Court” and substituting “Court of Appeal”.*

27 Consequential.

28 Consequential.

29 Consequential.

(8) The Trust Companies Act is amended in section 134(6) and (7) by striking out "Supreme Court" and substituting "Court of Appeal".

30 This Act comes into force on April 1, 1979.