

1978 BILL 64

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 64

THE PROVINCIAL COURT ACT, 1978

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE PROVINCIAL COURT ACT, 1978

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Bill 64

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1978

THE PROVINCIAL COURT ACT, 1978

(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) “clerk” means a clerk or deputy clerk of the Provincial Court;
- (b) “judge” means a judge of the Provincial Court appointed under this Act;
- (c) “Judicial Council” means the Judicial Council for the Judges of the Provincial Court;
- (d) “District Court” means the District Court of Alberta;
- (e) “Provincial Court” or “Court” means The Provincial Court of Alberta;
- (f) “Supreme Court” means the Supreme Court of Alberta.

Explanatory Notes

GENERAL: This Bill will replace The Provincial Court Act, The Juvenile Court Act, The Family Court Act and The Small Claims Act. The Bill provides for the creation of one provincial court of record, The Provincial Court of Alberta which will replace the present provincial courts namely; The Provincial Court of Alberta, The Juvenile Court of Alberta and The Family Court of Alberta. Part 4 of the Bill updates and streamlines the procedure presently found in The Small Claims Act.

1 Definitions.

PART 1

THE PROVINCIAL COURT OF ALBERTA

2(1) There shall be a provincial court for the Province to be styled "The Provincial Court of Alberta".

(2) The Court shall consist of the following divisions:

(a) the Criminal Division to be styled "The Criminal Division of The Provincial Court of Alberta";

(b) the Juvenile Division to be styled "The Juvenile Division of The Provincial Court of Alberta";

(c) the Family Division to be styled "The Family Division of The Provincial Court of Alberta";

(d) the Small Claims Division to be styled "The Small Claims Division of The Provincial Court of Alberta";

(e) any other division established by the Lieutenant Governor in Council.

(3) The Provincial Court is a court of record.

3(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint judges as he considers necessary.

(2) No person other than a Canadian citizen may be appointed a judge.

(3) The Lieutenant Governor in Council shall designate one judge to be chief judge of the Court for a period of time, being not less than 5 years, as the Lieutenant Governor in Council may specify.

(4) The chief judge has the power and duty to supervise the judges in the performance of their duties, including the power and duty to

(a) designate a particular case or other matter or class of cases or matters in respect of which a particular judge shall act;

(b) designate which court facilities shall be used by particular judges;

(c) assign duties to judges;

(d) exercise any other powers and perform any other duties prescribed by the Lieutenant Governor in Council.

2 The Provincial Court.

3 Judges of the Provincial Court.

(5) The Attorney General may designate a judge to act in the place of the chief judge during his illness, absence from Alberta or inability to act for any other reason.

(6) The Lieutenant Governor in Council may designate a judge as an assistant chief judge

(a) for a division of the Court, or

(b) for any area of Alberta designated by the Attorney General where 2 or more judges hold sittings,

to perform those functions that are delegated to him by the chief judge with respect to that division or area.

4(1) Every judge before taking office shall take and subscribe before a person authorized to administer oaths and declarations in Alberta the oath of allegiance and the judicial oath prescribed by *The Oaths of Office Act*.

(2) The oath of allegiance and the judicial oath shall be transmitted forthwith by the judge to the Inspector of Legal Offices and shall be filed in his office.

5 Every judge has jurisdiction throughout Alberta and

(a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge or a judge of the Provincial Court by or under any Act of the Legislature or of the Parliament of Canada,

(b) has all the power and authority now vested by or under any Act of the Legislature in a magistrate or 2 justices of the peace sitting together,

(c) may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada, and

(d) is by virtue of his office a justice of the peace and a commissioner for taking affidavits.

6 If a trial or application has commenced and the presiding judge is unable for any reason to complete the proceedings, any judge requested to act by the chief judge may take up the proceedings at the point at which they were left off by the first judge, and the succeeding judge, according to his opinion as to what is required to ensure justice, may continue the proceeding to completion or recommence the proceedings.

4 Oath of office.

5 Jurisdiction.

6 Inability of a judge to complete proceedings.

7(1) Every judge shall retire upon attaining the age of 70 years.

(2) Subject to section 11, no judge may be removed from office before attaining retirement age.

8 A judge may at any time resign his office by giving a notice in writing signed by him to that effect and delivering that notice to the Attorney General.

9 The chief judge shall review any matter regarding the conduct of a judge which comes to his attention in any manner, whether a complaint is made or not, and may

- (a) determine that no further action need be taken,
- (b) reprimand the judge,
- (c) take corrective measures, or
- (d) refer the matter to the Judicial Council.

10(1) There is hereby established a Judicial Council for the Judges of the Provincial Court consisting of

- (a) the Chief Justice of Alberta or a judge of the Appellate Division of the Supreme Court designated by him,
- (b) the Chief Justice of the Trial Division of the Supreme Court or a judge of the Trial Division designated by him,
- (c) the Chief Judge of the District Court or a judge of that court designated by him,
- (d) the chief judge of the Provincial Court of Alberta or a judge of that court designated by him,
- (e) the President of The Law Society of Alberta or a Bencher designated by him, and
- (f) not more than 2 other persons appointed by the Attorney General.

(2) The Attorney General shall designate one member of the Judicial Council to be chairman.

(3) The Judicial Council, with the approval of the Attorney General, may make rules of procedure governing the calling of its meetings and the conduct of business at its meetings.

(4) Four members of the Judicial Council constitute a quorum of the Judicial Council.

7 Retirement age of judges.

8 Resignation of judges.

9 Discipline of judges.

10 Judicial Council.

11(1) The Judicial Council shall

(a) consider proposed appointments of judges and report on them to the Attorney General,

(b) receive complaints respecting the lack of competence or misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties, and

(c) take any action to investigate complaints that it considers advisable and advise the Attorney General with respect to that action.

(2) The Judicial Council may refer any complaint to the chief judge of the Court or to a committee of the Judicial Council for inquiry and report to the Judicial Council.

(3) The Judicial Council, a committee of it or the chief judge, in conducting an inquiry under this section, has all the powers of a commissioner under *The Public Inquiries Act*.

(4) An inquiry under this section shall be held in private and the results of the inquiry shall not be made public.

(5) If an inquiry is conducted under this section, the judge whose conduct, competence or ability is the subject of the inquiry shall be given

(a) reasonable notice of the time and place of the inquiry and the matter to be investigated, and

(b) the opportunity, by himself or his counsel, to be heard, cross-examine witnesses and adduce evidence.

(6) If the Judicial Council recommends the removal or retirement of a judge from office, the Lieutenant Governor in Council may make an order of removal or retirement.

12 Unless otherwise authorized by the Lieutenant Governor in Council, a judge who is employed as a full-time judge shall not carry on or practise any business, profession, trade or occupation.

13(1) The Attorney General or a person authorized by him may

(a) designate the place at which a judge shall have his residence;

(b) designate the day or days on which a judge shall hold sittings.

11 Powers of the Judicial Council.

12 Restriction on other employment.

13 Judges' residence and sittings.

(2) Nothing in this section affects a judge's jurisdiction throughout Alberta.

14 A judge does not have jurisdiction to hear any matter in which he has or has had an interest.

15(1) In accordance with *The Public Service Act* there may be appointed

(a) officers and employees as may be required to conduct the business of the Court, and

(b) officers and employees as may be required to conduct the business of the Judicial Council.

(2) The Attorney General may designate any officer or employee appointed under subsection (1)(a) as a clerk or deputy clerk.

16(1) A clerk may authorize in writing a person to do any act or thing required or permitted to be done by a clerk under this or any other Act.

(2) An authorization given under this section may be

(a) general or applicable to a particular case, and

(b) conditional or unconditional.

(3) An authorization given under subsection (1)

(a) purporting to be signed by the person giving it, and

(b) stating that the person named in it is authorized under this section to do the act or thing set forth in the written authorization,

or a copy of it, shall be admitted in evidence as prima facie proof of that person's authorization to do the act or thing without proof of the signature or official character of the person appearing to have signed the authorization.

17 In addition to performing the duties prescribed under this Act or any other Act, a clerk shall perform those duties assigned to him by the Attorney General.

18 A clerk, 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.

14 Conflict of interest.

15 Staff.

16 Delegation of clerks' duties.

17 Duties of clerks.

18 Powers of clerk.

19 Sheriffs, deputy sheriffs, persons employed at correctional institutions 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.

20(1) No action for the recovery of damages lies in respect of an order or warrant made or sentence imposed at any time, whether before or after the coming into force of this Act,

(a) by a judge while acting in the place of any other judge who has then ceased for any reason to be a judge, and

(b) against, upon or in respect of a person who had been previously convicted by that other judge but had not been sentenced by him,

if the order, warrant or sentence could have been lawfully made or imposed by the judge by whom the conviction was made.

(2) No action for the recovery of damages lies against any person in respect of an act or thing done at any time, whether before or after the coming into force of this Act, in the execution of an order, warrant or sentence to which subsection (1) relates, or purporting to be done in compliance with or incidental to an order, warrant or sentence.

(3) No action may be brought against a judge for any act done in the execution of his duty or in a matter in which he lacked or has exceeded his jurisdiction, unless it is proved that the judge acted maliciously and without reasonable and probable cause.

21(1) The Lieutenant Governor in Council may make regulations

(a) fixing the salaries to be paid to judges;

(b) fixing the amount per day or per half-day to be paid to part-time judges;

(c) prescribing fees to be paid for each proceeding or specified service;

(d) providing for the benefits to which judges are entitled, including,

(i) leaves of absence and vacations,

(ii) sick leave credits and payments in respect of those credits, and

19 Duties of sheriffs, deputy sheriffs, persons employed at correctional institutions and peace officers.

20 Action for damages barred.

21 Regulations.

- (iii) pension benefits for judges and their survivors,
and for the transfer or other disposition of those benefits to which persons appointed as judges under this Act were entitled under *The Public Service Act*, *The Public Service Pension Act* or *The Public Service Management Pension Act* at the time of their appointment under this Act;
- (e) establishing divisions of the Court in addition to divisions referred to in section 2(2)(a) to (d);
- (f) prescribing the locations at which the Court will hold sittings;
- (g) respecting costs that may be awarded in proceedings under this Act;
- (h) prescribing the rates of fees and expenses payable to witnesses and interpreters;
- (i) prescribing fees payable for the filing or issuing of documents in the Court;
- (j) prescribing fees, expenses and other forms of remuneration payable to stenographic reporters;
- (k) prescribing fees, expenses and other forms of remuneration payable to operators and transcribers of sound-recording machines;
- (l) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

(2) The Attorney General may make regulations

- (a) prescribing locations at which the Court shall maintain court offices;
- (b) requiring and governing the making of returns and reports by judges and clerks;
- (c) prescribing the records that shall be maintained by the Court;
- (d) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court and judges;
- (e) providing for the appointment and employment of stenographic reporters to take down evidence before judges;
- (f) providing for the appointment of operators and transcribers of sound-recording machines when used to record evidence before judges;
- (g) defining the classes of cases and conditions in which stenographic reporters may be used;
- (h) prescribing forms to be used in the Court or issued by the Court.

PART 2

JUVENILE MATTERS

22 In this Part,

(a) “Child Welfare Commission” means the Child Welfare Commission appointed under *The Child Welfare Act*;

(b) “juvenile delinquent” means a juvenile delinquent as defined in the *Juvenile Delinquents Act* (Canada);

(c) “neglected child” means a neglected child as defined in *The Child Welfare Act*.

23 The Court is a juvenile court within the meaning of and for the purposes of the *Juvenile Delinquents Act* (Canada), and has all the powers vested in a juvenile court under that Act.

24 Each judge of the Supreme Court and each judge of the District Court is by virtue of his office a judge of The Provincial Court of Alberta for the purpose of hearing matters that come under the *Juvenile Delinquents Act* (Canada.)

25 A complaint under this Part may be sworn before any justice of the peace authorized by the Attorney General to receive complaints under this Part and any justice of the peace so authorized may adjourn any matter from time to time until the matter can be heard by the Court.

26(1) In the case of juvenile delinquents, a clerk shall keep records, in the form approved by the Director of Child Welfare, containing

(a) full particulars of the cases dealt with by the Court under this Part, including the disposition or order made in each case,

(b) the parentage, nationality and religion of each juvenile delinquent, and

(c) any other information that may be required by the Director of Child Welfare.

(2) A clerk shall forward to the Director of Child Welfare any information required by him relating to juvenile delinquents at the times and on the forms that the Director of Child Welfare requires.

22 Definitions.

23 Powers of the Court.

24 Judges of the superior courts.

25 Complaints.

26 Juvenile delinquents.

27 In the case of neglected children, a clerk shall

(a) prepare and keep the reports and information that the Child Welfare Commission requires, and

(b) forward the reports and information at the times and on the forms that the Child Welfare Commission requires.

28(1) No person shall disclose or make public the contents of a report, or any part of a report, relating to a juvenile delinquent without the consent of the Attorney General.

(2) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of not more than \$1000.

27 Neglected children.

28 Confidentiality of reports on juvenile delinquents.

PART 3

FAMILY MATTERS

29(1) A person entitled to alimony or maintenance under a judgment or order of the Supreme Court may file a copy of the judgment or order in the Provincial Court, and when so filed it is enforceable in the same manner as an order made by a judge under Part 4 of *The Domestic Relations Act*.

(2) A person entitled to maintenance under a judgment or order of the Supreme Court within the meaning of subsection (1) includes a child entitled to maintenance under the judgment or order.

(3) The Provincial Court may not vary the amount of any alimony or maintenance ordered to be paid by a judgment or order of the Supreme Court filed in the Provincial Court under this section.

30(1) On an application by a person ordered to pay maintenance or alimony to his spouse for an adjournment of a hearing, the Court may, as a condition of granting the adjournment, order that person to pay to his spouse a sum that the Court considers proper for the support of the spouse and the children, if any, during the period of the adjournment.

(2) An order under subsection (1) may order payment to be made in a lump sum or by instalments.

31(1) If the parties to an application

(a) are in agreement respecting the matters in question, and

(b) consent to an order on the terms agreed upon,

the Court in its discretion may make the order without holding a hearing.

(2) An order made under subsection (1) has the same force and effect as an order made after a hearing.

32(1) If

(a) the parents of a child are in fact living apart from one another, and

(b) there is a dispute as to the custody of or access to the child,

29 Enforcement of Supreme Court orders.

30 Interim maintenance.

31 Consent orders.

32 Custody orders.

the Court may, on an application, make an order as it sees fit regarding

(c) the custody of the child, and

(d) the right of access to the child,

by either parent or any other person, having regard to the best interests of the child.

(2) The application for an order under this section may be made

(a) by either parent of the child, or

(b) by the child, who may apply with or without any person interested on his behalf.

(3) An applicant for an order under this section shall

(a) apply in person to a clerk, and

(b) file with the clerk a supporting affidavit setting out the material facts,

and upon being satisfied that there may be reasonable grounds for the making of an order, the clerk shall give written notice to all interested parties to the application to appear at the hearing of the application before the Court.

(4) If a parent or other interested party

(a) has been served with a copy of the written notice, and

(b) fails to attend as required by the written notice,

an order may be made in the absence of that person.

(5) Pending the hearing of an application under this section, the Court may issue an interim order setting out the right of access to the child and the terms of that access.

(6) The applicant and all persons that the Court thinks proper may be examined on oath touching the matters in issue.

(7) The Court,

(a) upon application for review, and

(b) upon reasonable notice to the interested parties,

may review an order made under this section and may confirm, vary or discharge the order.

(8) Any person who contravenes a provision as to custody or right of access in an order made under this section is guilty of an offence and liable on summary conviction to a fine of not more than \$1000 or to imprisonment for a term not exceeding 4 months or to both fine and imprisonment.

(9) To the extent that an order made under this section is in variance with an order of the Supreme Court or the District Court, the order made under this section is void.

33 Any case arising under this Part may, in the discretion of the Court, be heard in private.

34 A party to proceedings under this Part who is dissatisfied with an order or refusal to make an order may appeal to the District Court and the provisions of section 27 of *The Domestic Relations Act* relating to appeals applies with all necessary modifications to that appeal.

33 Private hearing.

34 Appeal.

PART 4
SMALL CLAIMS MATTERS

35 In this Part,

- (a) “defendant” means the person to whom a summons under this Part is directed;
- (b) “plaintiff” means a person at whose instance a summons is issued under this Part;
- (c) “local authority” means
 - (i) a city, town, new town, village, municipal district or county, or
 - (ii) the Minister of Municipal Affairs, in the case of an improvement district or special area;
- (d) “school board” means a board as defined in *The School Act*.

36(1) Subject to this Act, the Court has jurisdiction to try and adjudicate upon

- (a) any claim
 - (i) for debt (whether payable in money or otherwise) if the amount claimed does not exceed \$1000, and
 - (ii) for damages (including damages for breach of contract) if the amount claimed does not exceed \$1000,

and

- (b) any counterclaim
 - (i) for debt (whether payable in money or otherwise) if the amount counterclaimed does not exceed \$1000, and
 - (ii) for damages (including damages for breach of contract) if the amount counterclaimed does not exceed \$1000.

(2) If it appears that

- (a) the claim of a plaintiff, or
- (b) the counterclaim of a defendant

is in excess of the amount prescribed in subsection (1), the plaintiff or the defendant, as the case may be, may abandon

35 Definitions.

36 Jurisdiction.

that part of his claim that is in excess of the jurisdiction of the Court by filing a notice to that effect with the Court and in that event that person forfeits the excess and is not entitled to recover it in any other action in the Provincial Court or any other court.

37 The Court does not have jurisdiction to hear or adjudicate upon a claim or counterclaim

- (a) in which the title to land is brought into question,
- (b) in which the validity of any devise, bequest or limitation is disputed,
- (c) for malicious prosecution, false imprisonment, defamation, criminal conversation, seduction or breach of promise of marriage,
- (d) in replevin,
- (e) against a judge, justice of the peace or peace officer for any thing done by him while executing the duties of his office, or
- (f) by a local authority or school board for the recovery of taxes, other than taxes imposed in respect of the occupancy of or an interest in land that is itself exempt from taxation.

38(1) An action shall be commenced, carried on and heard in the judicial district where

- (a) the defendant or one of the defendants is then dwelling or carrying on business, or
- (b) the cause of action arose.

(2) If a defendant is a local authority or school board, the claim may be heard in any judicial district

- (a) that includes any area under the jurisdiction of the local authority or school board, or
- (b) where any co-defendant resided or carried on business at the time the summons was issued.

39(1) A person who has a claim that may be dealt with under this Part may apply to a clerk for the issuance of a summons.

(2) Upon an application being made under subsection (1), a clerk shall issue a summons that contains the particulars of the claim as provided by the plaintiff and the date set for hearing the matter.

37 Matters beyond the jurisdiction of the Court.

38 Place of hearing.

39 Issuance of summons.

40(1) If the defendant lives further than 30 kilometres from the place of trial, the Court in its discretion may, before the summons is issued, require the plaintiff to deposit with the Court a travelling allowance in the prescribed amount calculated upon the return distance between the defendant's residence and the place of trial.

(2) The travelling allowance deposited under subsection (1) shall be paid by a clerk of the Provincial Court or, in the case of an appeal, by the clerk of the District Court

(a) to the plaintiff, if final judgment is given in favour of the plaintiff, or

(b) to the defendant for his personal expenses in attending the hearing if the plaintiff discontinues or if judgment is for any cause given in favour of the defendant.

41(1) The date set in the summons for hearing the matter 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 on the defendant at least 10 days before the date set for the hearing of the matter and if a summons is not so served the matter shall not be heard on that date without the consent of the defendant.

(3) If a summons is not served within the time prescribed by this section, a clerk may issue a new summons in accordance with this Part.

42(1) Upon being served with a summons, a defendant who has a counterclaim may apply to a clerk for the issuance of a statement of counterclaim.

(2) Upon an application being made under subsection (1), a clerk shall issue a statement of counterclaim that contains the particulars of the counterclaim as provided by the defendant.

(3) If at a hearing a defendant asserts a counterclaim and the plaintiff has not been served with a copy of a statement of counterclaim at least 6 days before the date set for the hearing, the Court may, if in its opinion the plaintiff has been unduly prejudiced, adjourn the hearing to a subsequent date.

43(1) Service of documents issued under this Part, other than notices to attend, may be made

(a) upon the person to be served, either personally or by leaving a copy of the document for him at his most usual

40 Travelling allowance.

41 Date of hearing.

42 Counterclaims.

43 Service of documents.

place of abode with some resident of the abode apparently 16 years of age or older,

(b) by mailing the copy to the person to be served by double registered mail or certified mail to his last known post office address and service shall be deemed to be effected at the time the copy is delivered by an official of the post office to the person to be served or to any person receiving it on his behalf, or

(c) as directed by the Court.

(2) In any action by or against a partnership, service of a document upon one of the partners is service upon the partnership.

(3) Service of a document upon a local authority or school board may be made by serving the mayor, reeve, chairman, clerk, secretary, secretary-treasurer or the Minister of Municipal Affairs, as the case may be.

(4) Service of a document upon a corporation other than a local authority or school board may be made

(a) by serving the president, head officer, a director or the secretary of the corporation,

(b) by serving a manager, agent or officer of the corporation transacting business on behalf of the corporation in the judicial district in which the action was commenced, or

(c) by leaving it at or sending it by double registered mail or certified mail to the registered office of the corporation.

44(1) A party to an action under this Part may apply to a clerk for the issuance of notices to attend in respect of persons who may be witnesses in the proceedings.

(2) Upon an application being made under subsection (1), a clerk shall issue notices to attend in respect of those persons who may be witnesses in proceedings under this Part.

(3) A person may serve a notice to attend

(a) by showing it to the person named in the notice to attend and delivering to that person a copy of the notice to attend and the prescribed witness fee, or

(b) as directed by the Court.

(4) A person served with a notice to attend under this section shall attend the proceedings in accordance with the terms prescribed in the notice to attend.

44 Notices to attend.

(5) A notice to attend issued under this section has the same effect as a notice to attend given in a proceeding in the District Court and is enforceable in the same manner.

45 Service of any document issued under this Part may be effected on any day including Sunday.

46 For the purposes of this Part, service of a document may be proved

(a) by the oral testimony of the person serving it,

(b) by an affidavit of service proving the service, or

(c) by an affidavit of service proving the mailing by double registered mail or certified mail and exhibiting the acknowledgment of receipt of the double registered letter or certified letter purporting to be signed by the person to be served or by any person receiving the letter on his behalf.

47(1) A party to an action under this Part may at any time before the date of the hearing, pay into the Court a sum of money to satisfy, as the case may be,

(a) the plaintiff's claim and costs, or

(b) the defendant's counterclaim and costs.

(2) Upon a person making a payment under subsection (1), a clerk shall send to the other party to the action by registered mail a notice setting forth the date payment was made and separate amounts paid in respect of the claim or counterclaim and the costs.

(3) If a person accepts in writing the payment made under subsection (1) in full satisfaction of his claim or counterclaim, as the case may be, and costs, a clerk shall pay the money out to that person.

(4) If a person proceeds with his claim or counterclaim after receiving a written notice of the payment into the Court in respect of his claim or counterclaim and does not recover a greater sum than that amount paid into the Court, he shall be liable to the other party to the action for those costs that the Court considers proper.

(5) If money paid into Court under subsection (1) is not paid out under subsection (3), the Court may make an order with respect to the disposition of that money.

45 When service may be effected.

46 Proof of service.

47 Payment into Court.

48(1) If a summons is served in accordance with this Part, the Court shall hear the matter on the return date of the summons.

(2) Notwithstanding subsection (1), the Court may adjourn the matter to a subsequent date

(a) upon the application of a party to the action,

(b) upon the non-appearance of a party to the action, or

(c) if there is insufficient time to hear the matter on the date set for the hearing.

49(1) At the hearing of an action under this Part, the parties shall be confined to the particulars set out in the summons and the statement of counterclaim.

(2) Notwithstanding subsection (1), if the Court is satisfied that sufficient cause is shown, it may allow the summons or statement of counterclaim, as the case may be, to be amended.

50 A party to an action under this Part may admit his indebtedness or liability, as the case may be, by filing a notice to that effect with the Court and upon the notice being filed the Court may order that judgment be entered on the claim or counterclaim, as the case may be.

51(1) A complete record of the evidence of a hearing shall be taken

(a) by a court reporter appointed pursuant to the Alberta Rules of Court, or

(b) by means of a sound recording machine as provided under *The Mechanical Recording of Evidence Act*.

(2) If for any reason the evidence given at a hearing cannot be taken in accordance with subsection (1), the Court shall

(a) cause a summary of the evidence of a witness to be taken down in a manner determined by the Court,

(b) read to the witness the summary taken of the witness' evidence, and

(c) certify on the summary that it is a summary of the evidence given by that witness at the hearing.

48 Time of hearing.

49 Parties confined to particulars.

50 Admission of liability.

51 Taking of evidence.

- 52**(1) A party to an action under this Part may
- (a) withdraw his claim or counterclaim, as the case may be, or
 - (b) consent to a judgment being entered in favour of the other party

at any time prior to the hearing of the action by filing a notice to that effect with the Court.

- (2) Upon a person filing a notice under subsection (1), a clerk shall send to the other party to the action by registered mail a notice stating that the claim or counterclaim has been withdrawn or that a judgment has been entered in favour of the other party, as the case may be.

53(1) If a plaintiff fails to appear on the date set for a hearing, the Court may dismiss the plaintiff's claim.

- (2) If the Court dismisses a plaintiff's claim under subsection (1), it shall not give judgment on any counterclaim asserted by the defendant until the defendant has presented his case in respect of the counterclaim

(a) by the oral evidence given under oath of the defendant and any witnesses he may have, or

(b) by means of affidavit evidence if the Court is satisfied that oral evidence cannot reasonably be presented to the Court.

54(1) If a defendant fails to appear on the date set for a hearing, the Court may, upon proof that the summons has been served in accordance with this Part and being satisfied that the plaintiff has a proper claim,

(a) enter a default judgment if 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) If a judgment is entered in default or the defendant is noted in default, the Court may dismiss any counterclaim asserted by the defendant.

55 The Court may, upon any terms that it considers proper, set aside or vary any judgment entered by default.

52 Withdrawal of a claim or counterclaim.

53 Dismissal of claim upon the non-appearance of plaintiff.

54 Default judgment, noting in default.

55 Setting aside default judgment.

56(1) Subject to this section, a counterclaim shall, to the extent it is established, be applied in satisfaction of any claim established by the plaintiff.

(2) If a counterclaim is established that

(a) exceeds the amount established by the plaintiff in his claim, the Court shall give judgment in favour of the defendant in the amount of the excess, or

(b) is less than the amount established by the plaintiff in his claim, the Court shall give judgment in favour of the plaintiff for the difference.

(3) In the event that both a claim and a counterclaim are established, the Court may, if it awards costs for and against both the plaintiff and defendant, make an order for a net amount of costs in favour of the party entitled to them.

57(1) If a judgment is given under this Part, a clerk shall after it is given prepare a certificate of judgment and furnish a copy of the certificate of judgment to each party to the action.

(2) A copy of the certificate referred to in subsection (1) is admissible in evidence as prima facie proof as to its contents in any court dealing with a subsequent proceeding relating to the action without proof of the authenticity of the clerk's signature or any other proof.

(3) The person in whose favour judgment is given may file the certificate of judgment in the District Court in the judicial district in which the action was commenced and upon being filed

(a) the judgment becomes a judgment of the District Court, and

(b) execution and garnishee summons may be issued according to the ordinary procedure of the District Court.

58(1) Any party to an action under this Part may appeal the decision of the Provincial Court to the District Court by

(a) filing with a clerk of the Provincial Court a notice of appeal setting forth the grounds of appeal and serving the notice of appeal on

(i) the respondent or such other person as the District Court directs, and

(ii) any other person that the District Court directs, within 30 days after the judgment was made,

56 Setting-off claim and counterclaim.

57 Certificate of judgment.

58 Appeal.

(b) filing in the District Court

- (i) the notice of appeal referred to in clause (a), and
- (ii) an affidavit of service of the notice of appeal,

not later than 7 days after the last day for service of the notice of appeal upon those parties served pursuant to clause (a), and

(c) depositing with a clerk of the Provincial Court, within

- (i) the period fixed by clause (b), or
- (ii) any longer period resulting from an order made under subsection (3),

security for costs in the amount of \$100 or a lesser amount as may be determined by the Provincial Court.

(2) The District Court may, upon application made before or after the expiration of the periods fixed by subsection (1)(a) and (b), by order fix a further period not exceeding 30 days from the date of the order, within which the service and filing referred to in subsection (1)(a) and (b) may be effected.

(3) Notwithstanding subsection (1)(c), upon application by the appellant, the Provincial Court may by order allow security for costs to be by way of bond of the appellant and at least one other person in the sum of \$100 conditioned upon the due payment by the appellant of all costs that may be ordered to be paid by him.

59 Upon a notice of appeal being filed with and the security for costs being deposited with a clerk of the Provincial Court, the clerk of the Provincial Court shall forward to the clerk of the District Court the security for costs, the record of the evidence taken and all other material in the possession of the Provincial Court that pertains to the matter being appealed.

60(1) If an appellant fails to comply with the requirements of section 58, the appeal shall be dismissed.

(2) If an appeal is dismissed under subsection (1), the District Court may make any order as to costs that it considers proper.

61 Notwithstanding anything in this Part, an appeal does not operate as a stay of proceedings under the judgment being appealed except as ordered by the District Court.

59 Material to be forwarded upon an appeal.

60 Dismissal of appeal.

61 Staying of judgment being appealed.

62(1) Upon sections 58 and 59 being complied with, the District Court shall set down the appeal for hearing at a regular sitting and the clerk of the District Court shall post in a conspicuous place in his office a notice of every appeal that has been set down for hearing and notice of the time when it will be heard.

(2) An appeal shall not be set down for hearing within 10 days from the time that service of the notice of appeal was effected upon the respondent, unless the parties, their counsels or agents otherwise agree in writing.

63 The appeal under this Part shall be heard as a trial de novo unless otherwise ordered by the District Court.

64 The District Court may adjourn the appeal from time to time as circumstances require and may make any order that it considers proper in respect of witness fees and other costs.

65(1) The District Court shall

- (a) hear and determine the appeal,
- (b) give its judgment, and
- (c) make an order awarding costs, if any, to the parties, including costs of all proceedings previous to the appeal.

(2) The decision of the District Court is final and cannot be further appealed.

66 A party to the appeal may have the judgment entered as a judgment of the District Court and execution and garnishee summons may be issued on it in accordance with the ordinary procedure of the District Court.

67(1) If at any time in an action commenced under this Act it appears that a claim, counterclaim or defence involves a matter that is beyond the jurisdiction of the Court, the Court may order that the action be transferred to the District Court.

(2) Upon an order being made under subsection (1), a clerk of the Provincial Court shall forward to the clerk of the District Court all the material, evidence and money, if any, paid into the Provincial Court other than court fees that pertain to the action in respect of which the order was made.

(3) Upon an action being transferred into the District Court under this section, the District Court may, upon those conditions that it considers proper,

- (a) continue the action to completion, or
- (b) order the action to be recommenced.

62 Time of appeal.

63 Hearing of appeal.

64 Adjournment of appeal.

65 Decision on appeal.

66 Entry of appeal decision.

67 Transfer of an action into a superior court.

(4) If an action is transferred into the District Court and a party to that action had abandoned a portion of his claim or counterclaim under section 36(2), that party may, subject to any conditions that the District Court considers proper, withdraw the abandonment of that portion of his claim or counterclaim and proceed upon his entire claim or counterclaim, as the case may be.

68 The Court may at any time in an action under this Part award costs and grant adjournments upon those conditions that it considers proper.

69 A document shall not be issued, filed or entered, as the case may be, under this Part until the prescribed fee payable in respect of that issuance, filing or entering has been paid.

70(1) The Court may, if it considers it proper to do so, order a clerk not to issue

- (a) a summons under section 39,
- (b) a statement of counterclaim under section 42, or
- (c) a notice to attend under section 44.

(2) An order made under subsection (1)(a) or (b) does not prejudice the right of a person having a claim or counterclaim to proceed on it in any other manner permitted by law.

71 A person is entitled to be represented by

- (a) a barrister and solicitor, or
- (b) an agent

in respect of any proceedings under this Part.

72 No proceeding under this Part shall be held invalid for informality if there has been a substantial compliance with the requirements of this Part.

73 If anything necessary for carrying out the objects of this Part is not contained in this Act or the regulations, the remedies, practice and procedure contained in the Alberta Rules of Court may be applied.

68 Costs and adjournments.

69 Payment of fees.

70 Refusal to issue documents.

71 Representation of a party.

72 Effect of informality on proceedings.

73 Rules of Court.

PART 5

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS AND COMMENCEMENT

74 Every person who, immediately prior to the commencement of this section, was a provincial judge under *The Provincial Court Act* and whose appointment is in full force and effect on the coming into force of this Act is deemed to have been appointed a judge under this Act.

75 Every action or proceeding pending before

- (a) a provincial judge,
- (b) a judge of The Juvenile Court of the Province of Alberta, or
- (c) a judge of The Family Court of Alberta

on the coming into force of this Act is continued in The Provincial Court of Alberta established pursuant to this Act and shall proceed, so far as the Court considers practicable, in accordance with this Act.

76 *The Child Welfare Act is amended*

(a) *in the following provisions by striking out “judge of the juvenile court” and substituting “judge of The Provincial Court of Alberta”:*

section 86(e) (i);
section 90(c);
section 97(1);
section 98(1);

(b) *in the following provisions by striking out “clerk of the juvenile court” and substituting “clerk of The Provincial Court of Alberta”:*

section 95(1) and (2);
section 98(2) and (3);

(c) *in section 96(1) by striking out “the juvenile court” and substituting “The Provincial Court of Alberta”, and*

(d) *in section 96(4) by striking out “a juvenile court” and substituting “The Provincial Court of Alberta”.*

74 Previous appointments of judges.

75 Continuation of proceedings.

76 Consequential amendments to chapter 45 of the Revised Statutes of Alberta 1970.

77 *The Interpretation Act is amended in section 21(1), clauses 16 and 22.1 by striking out “a provincial judge appointed under The Provincial Court Act” and substituting “ a judge of the Provincial Court of Alberta appointed under The Provincial Court Act, 1978”.*

78(1) Any reference made to

- (a) The Family Court of Alberta, or
- (b) The Juvenile Court of Alberta,

in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document shall be read as a reference to The Provincial Court of Alberta, unless the context otherwise requires.

(2) Any reference made to

- (a) a judge of The Family Court of Alberta, or
- (b) a judge of The Juvenile Court of Alberta,

in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document shall be read as a reference to a judge of The Provincial Court of Alberta, unless the context otherwise requires.

(3) Any reference made to

- (a) a clerk of The Family Court of Alberta, or
- (b) a clerk of The Juvenile Court of Alberta,

in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document shall be read as a reference to a clerk of The Provincial Court of Alberta, unless the context otherwise requires.

79 Any reference made to

- (a) *The Family Court Act,*
- (b) *The Juvenile Court Act,*
- (c) *The Provincial Court Act,* or
- (d) *The Small Claims Act,*

in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document shall be read as a reference to *The Provincial Court Act, 1978,* unless the context otherwise requires.

77 Consequential amendments to chapter 189 of the Revised Statutes of Alberta 1970.

78 Transitional

79 Transitional

80 The following Acts are repealed on a date or dates to be fixed by Proclamation:

- (a) *The Family Court Act;*
- (b) *The Juvenile Court Act;*
- (c) *The Provincial Court Act;*
- (d) *The Small Claims Act.*

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

80 Repeal of certain Acts.