

1981 BILL 36

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 36

THE PROVINCIAL COURT JUDGES ACT

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 36

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1981

THE PROVINCIAL COURT JUDGES ACT

(Assented to , 1981)

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

Definitions

1 In this Act,

(a) “judge” means a judge of the Provincial Court appointed under this Act and includes a chief judge, deputy chief judge, assistant chief judge and supernumerary judge;

(b) “Judicial Council” means the Judicial Council for the Judges of the Provincial Court;

(c) “Provincial Court” or “Court” has the same meaning as in *The Provincial Court Act, 1978*.

Appointment of judges

2(1) The Lieutenant Governor in Council may appoint judges.

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

(3) The Lieutenant Governor in Council shall designate 1 judge to be chief judge of the Court and may designate 1 judge to be a deputy chief judge of the Court.

(4) If the chief judge is ill, absent from Alberta or unable to act, the deputy chief judge has all the powers and duties of the chief judge.

(5) Subject to section 12, 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.

(6) The Lieutenant Governor in Council may designate 1 or more judges as assistant chief judges to perform those functions that are delegated to them by the chief judge,

(a) for the Court,

(b) for a division of the Court, or

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

(7) The Attorney General may designate a judge to act in the place of the chief judge, deputy chief judge or an assistant chief judge who is ill, absent from Alberta or unable to act.

(8) A judge designated under subsection (6) has the powers and duties of the chief judge, deputy chief judge or assistant chief judge, as the case may be.

Oath of office

3(1) Every judge before taking office as chief judge, deputy chief judge, assistant chief judge, judge or supernumerary judge shall take and subscribe before the Chief Justice of Alberta, Chief Justice of the Court of Queen's Bench of Alberta, the chief judge, deputy chief judge or assistant chief judge of the Provincial Court 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.

Jurisdiction

4 Every judge has jurisdiction throughout Alberta in every division of the Court and

(a) shall exercise all the powers and perform all the duties conferred or imposed on 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 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 con-

ferred or imposed on 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.

Inability of judge to complete proceedings

5 If a proceeding other than a trial or application under the *Criminal Code*, (Canada) has commenced and the presiding judge is unable for any reason to complete the proceedings, any judge requested to act by the chief judge or deputy chief judge may continue the proceedings from where they were left off and according to his opinion as to what is required to ensure justice, may continue the proceedings to completion or recommence the proceedings.

Retirement age

6(1) Subject to section 10, every judge shall retire on attaining the age of 70 years.

(2) Subject to section 10, no judge may be removed from office before attaining retirement age.

(3) Subject to section 10, the Lieutenant Governor in Council on the recommendation of the Attorney General may appoint, for a term of up to 2 years, a judge as a supernumerary judge on terms and conditions agreed on by the judge and chief judge and approved by the Attorney General.

(4) No person other than a judge who has attained the age of 60 and has served as a judge for at least 15 years may be appointed as a supernumerary judge.

(5) Notwithstanding subsection (4), a judge may, at any time because of health reasons, be appointed as a supernumerary judge.

Resignation

7 A judge may at any time resign his office by giving a written notice signed by him that includes the effective date of the resignation and delivering that notice to the Attorney General.

Discipline

8 The chief judge shall review any matter regarding the conduct of a judge that comes to his attention, whether a complaint is made or not, and may do 1 or more of the following:

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

Judicial Council

9(1) The Judicial Council for the Judges of the Provincial Court shall consist of

- (a) the Chief Justice of Alberta or a judge of the Court of Appeal designated by him,
- (b) the Chief Justice of the Court of Queen's Bench or a judge of the Court of Queen's Bench designated by him,
- (c) the chief judge of the Provincial Court of Alberta or a judge of that court designated by him,
- (d) the President of The Law Society of Alberta or a Benchers designated by him, and
- (e) not more than 2 other persons appointed by the Attorney General.

(2) The Attorney General shall designate 1 member of the Judicial Council to be chairman.

(3) The Judicial Council 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.

Powers of Judicial Council

10(1) The Judicial Council shall

- (a) consider proposed appointments of persons as judges and report its recommendations to the Attorney General,
- (b) receive complaints respecting the lack of competence of, conduct 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 make recommendations to the Attorney General.

(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, privileges and immunities 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 and to 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.

(7) The chief judge of the Provincial Court or the judge designated by him to be a member of the Judicial Council shall not investigate or inquire into any complaint in respect of which he is the subject.

Restriction on
other employment

11 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 other business, profession, trade or occupation.

Judges' residence
and sittings

12(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 the Court shall hold sittings.

(2) Nothing in this section affects a judge's jurisdiction throughout Alberta or in any division of the Provincial Court.

Conflict of interest

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

Staff

14 In accordance with *The Public Service Act* there may be appointed officers and employees that may be required to conduct the business of the Judicial Council.

Action for
damages

15(1) No action may be brought against a judge for any act done or omitted to be done in the execution of his duty or for any act done in a matter in which he has exceeded his jurisdiction unless it is proved that he acted maliciously and without reasonable and probable cause.

(2) No action for the recovery of damages lies against a judge in respect of an order or warrant made or sentence imposed, 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, on 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.

(3) No action for the recovery of damages lies against any person in respect of an act or thing done or omitted to be 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) or (2) relates, or purporting to be done in compliance with or incidental to an order, warrant or sentence.

(4) The Attorney General may make a payment for damages or costs, including solicitor-client costs incurred by the judge in respect of an act, omission or matter described in subsection (1) or (2).

Regulations

16(1) The Lieutenant Governor in Council may make regulations

- (a) fixing the salaries to be paid to judges;
- (b) fixing the amount to be paid to judges sitting part time;
- (c) prescribing fees to be paid for each proceeding or specified service;
- (d) providing for the benefits to which judges are entitled, including,
 - (i) personal expense allowances and services;
 - (ii) travel and moving allowances;
 - (iii) leaves of absence and vacations;
 - (iv) sick leave credits and payments in respect of those credits;
 - (v) pension benefits for judges and their spouses or survivors;
- (e) providing 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* and the regulations under those Acts at the time of their appointment under *The Provincial Court Act, 1978* or under this Act.

(2) Regulations made under subsection (1) shall, if so provided in the regulation, be effective from a date prior to the making of the regulation.

Previous appointments

17 Every person who, immediately prior to the coming into force of this Act, was a judge under *The Provincial Court Act, 1978*, 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.

Judicial Council and previous appointments

18(1) The Judicial Council for the Judges of the Provincial Court established under *The Provincial Court Act, 1978* is hereby continued under this Act.

(2) Every person who, immediately prior to the coming into force of this Act, was the chairman or a member of the Judicial Council

under *The Provincial Court Act, 1978*, and whose designation or appointment is in full force and effect on the coming into force of this Act is deemed to have been designated chairman, appointed a member or both, as the case may be, under this Act.

Previous
appointments

19 Every person who, immediately prior to the commencement of this Act, was appointed as an officer or employee in accordance with *The Public Service Act* to conduct the business of the Judicial Council and whose appointment is in full force and effect on the coming into force of this Act is deemed to have been appointed an officer or employee, as the case may be, under this Act in accordance with *The Public Service Act*.

Consequential

20 *The Provincial Court Act, 1978 is amended*

(a) *in section 1*

(i) *by repealing clause (b) and substituting the following:*

(b) “judge” has the same meaning as in *The Provincial Court Judges Act*;

(ii) *by repealing clause (c);*

(b) *sections 3 to 14 are repealed;*

(c) *section 15(1) is amended by repealing clause (b);*

(d) *section 20 is repealed;*

(e) *section 21(1) is amended by repealing clauses (a) to (d).*

In accordance with section 4(1) of The Interpretation Act, 1980, this Bill comes into force on the date it receives Royal Assent.