

1988 BILL 53

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 53

PROVINCIAL OFFENCES PROCEDURE ACT

MR. STEWART

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 53
Mr. Stewart

BILL 53

1988

PROVINCIAL OFFENCES PROCEDURE ACT

(Assented to , 1988)

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

Definitions

1 In this Act,

- (a) “address for service” for the purposes of Parts 2 and 3 means an address determined in accordance with section 20;
- (b) “clerk” means clerk of the Court or a person designated by a clerk of the Court to perform the duties of a clerk of the Court;
- (c) “Court” means The Provincial Court of Alberta;
- (d) “defendant” means
 - (i) a person to whom a summons is issued on the basis of an information or complaint alleging the commission by that person of an offence, or
 - (ii) a person in respect of whom an offence notice is issued under Part 3;
- (e) “enactment” means any Act, regulation, order or by-law enacted in relation to any matter over which the Legislature has legislative authority;
- (f) “initial appearance date” means, in the case of proceedings under Part 2, the date referred to in section 26(1) and, in the case of proceedings under Part 3, the date indicated on the offence notice, on or before which a defendant is required to respond to the offence notice;
- (g) “justice” means a justice of the peace or a judge of the Court;

- (h) "local authority" means
 - (i) the council of a city, town, village, county or municipal district, or
 - (ii) the board of administrators of a new town;
- (i) "offence" means an offence under an enactment;
- (j) "operator's licence" means a licence to operate motor vehicles issued pursuant to the *Motor Vehicle Administration Act*;
- (k) "peace officer" means
 - (i) a member of the Royal Canadian Mounted Police, while he is in the exercise or discharge of his powers or duties,
 - (ii) a member of a municipal police service, while he is in the exercise or discharge of his powers or duties,
 - (iii) a special constable appointed under the *Police Act*, while he is in the exercise or discharge of his powers or duties,
 - (iv) a person who is employed or retained by the Government or by a municipality and whose duties include written authorization to issue violation tickets under Parts 2 and 3, while he is in the exercise or discharge of that duty and while he is serving a summons, offence notice or subpoena,
 - (v) a park warden as defined in the *National Parks Act (Canada)* and a park officer designated under the *National Parks Act (Canada)*, while they are in the exercise or discharge of their powers or duties in a national park established under that Act,
 - (vi) a person appointed under the *National Defence Act (Canada)* regulations for the purposes of section 134 of the *National Defence Act (Canada)*, while he is in the exercise or discharge of his powers or duties in a defence establishment as defined in that Act, and
 - (vii) any other person employed by a municipality, the Government of Alberta or the Government of Canada for the preservation and maintenance of the public peace, while the person is in the exercise or discharge of his powers and duties;
- (l) "prosecutor" means
 - (i) a barrister and solicitor or student-at-law who is employed by the Government and whose position is under the administration of the Attorney General, or
 - (ii) any other person who is authorized by the Attorney General to conduct prosecutions under this Act;
- (m) "specified penalty" means an amount determined pursuant to the regulations or pursuant to by-laws or ministerial orders under section 42 that can be paid by a defendant who is issued a violation ticket and is authorized to make a payment without a Court appearance;
- (n) "violation ticket" means a violation ticket under Part 2 or Part 3;

(o) “voluntary payment” means payment pursuant to section 25 or 36.

**PART 1
GENERAL**

Application of Act	<p>2 Subject to any express provision in another Act, this Act applies to every case in which a person commits or is suspected of having committed an offence under an enactment for which that person may be liable to imprisonment, fine, penalty or other punishment.</p>
Application of Criminal Code	<p>3 Except to the extent that they are inconsistent with this Act and subject to the regulations, all provisions of the <i>Criminal Code</i> (Canada) that are applicable in any manner to summary convictions and related proceedings apply in respect of every matter to which this Act applies.</p>
Limitation period	<p>4(1) Subject to any express provision in another Act, no proceedings to which this Act applies may be instituted more than 6 months after the time when the alleged offence occurred.</p> <p>(2) In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day or part of a day on which it continues and no proceedings may be instituted more than 6 months after the last occurrence of the alleged offence.</p>
Failure to attend	<p>5(1) A person who, being at large on his own undertaking or recognizance given to or entered into before a justice, fails without lawful excuse, the proof of which lies on him, to attend Court in accordance with that undertaking or recognizance or to surrender himself in accordance with an order of the justice, as the case may be, is guilty of an offence.</p> <p>(2) A person who, being at large on his own undertaking or recognizance given to or entered into before a justice and being bound to comply with a condition of that undertaking or recognizance directed by a justice, fails without lawful excuse, the proof of which lies on him, to comply with that condition, is guilty of an offence.</p> <p>(3) A person who is served with a summons and who fails without lawful excuse, the proof of which lies on him, to attend Court in accordance with that summons is guilty of an offence.</p> <p>(4) A person who is named in</p> <ul style="list-style-type: none">(a) an appearance notice,(b) a promise to appear, or(c) a recognizance entered into before an officer in charge, <p>that has been confirmed by a justice and who fails without lawful excuse, the proof of which lies on him, to attend Court in accordance with the appearance notice, promise to appear or recognizance, is guilty of an offence.</p> <p>(5) For the purpose of subsection (4), it is not a lawful excuse that an appearance notice, promise to appear or recognizance does not correctly state the substance of the alleged offence.</p>

(6) If at the trial of a person for an offence that person does not appear at the time and place appointed for the trial or the resumption of the trial and the justice proceeds to conduct the trial *ex parte*, no proceedings shall be instituted under this section arising out of the failure of the person to appear.

(7) In proceedings under subsection (1), (3) or (4), a certificate purporting to be signed by the clerk or a justice before whom the person is alleged to have failed to attend, stating that

(a) in the case of proceedings under subsection (1), the person gave or entered into an undertaking or recognizance before a justice and failed to attend Court in accordance with the undertaking or recognizance,

(b) in the case of proceedings under subsection (3), a summons was issued to and served on the person and the person failed to attend Court in accordance with the summons, and

(c) in the case of proceedings under subsection (4), the person was named in an appearance notice, a promise to appear or a recognizance entered into before an officer in charge, that was confirmed by a justice, and the accused failed to attend Court in accordance with the appearance notice, promise to appear or recognizance,

is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

(8) A person against whom a certificate described in subsection (7) is produced may, with leave of the Court, require the attendance of the person producing the certificate for the purposes of cross-examination.

(9) A certificate shall not be received in evidence pursuant to subsection (7) unless the party intending to produce it has, before the trial, given to the accused reasonable notice of his intention, together with a copy of the certificate.

Witness

6(1) If a person is required to attend to give evidence before the Court, the Court shall issue a subpoena directed to that person, which shall be signed by a clerk or a justice.

(2) On proof to the satisfaction of the Court

(a) of the service of a subpoena on a witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and

(b) that the presence of the witness is material to the proceedings,

the Court may, by its warrant directed to any peace officer, cause the witness to be apprehended anywhere within Alberta, to be brought before a justice forthwith and to be detained in custody as the justice may order until his presence as a witness is no longer required or, in the discretion of the justice, to be released on a recognizance with or without sureties.

General
Punishment

7(1) Subject to any express provision in another enactment, every person who is convicted of an offence is liable to a fine of not more

than \$2000 or to imprisonment for not more than 6 months or to both.

(2) Subject to any express provision in another enactment, if the imposition of a fine or the making of an order for the payment of money is authorized by an enactment but the enactment does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the Court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than 6 months.

(3) This section does not apply if proceedings are commenced under Part 3.

Compensation for property

8(1) A justice that convicts a defendant of an offence may, on the application of a person aggrieved, at the time sentence is imposed, order the defendant to pay to the applicant an amount of not more than \$2000 as compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence.

(2) If an amount that is ordered to be paid under subsection (1) is not paid within the time ordered by the justice the applicant may, by filing the order, enter as a judgment in the Court of Queen's Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen's Bench in civil proceedings.

Term of imprisonment

9(1) When a defendant is sentenced to a term of imprisonment, the term, unless otherwise directed in the sentence, begins on and from the day on which the defendant is taken into custody under the sentence of imprisonment.

(2) Any time during which the defendant is lawfully at large on judicial interim release does not count as part of a term of imprisonment to which he is sentenced.

Time for payment

10(1) When time has been allowed for payment and a justice has ordered imprisonment in default of payment of the fine, a justice shall not issue a warrant of committal until the expiration of the time allowed for payment.

(2) Notwithstanding subsection (1), if, before the expiration of the time allowed for payment, the defendant who has been allowed time for payment appears before a justice and signifies in writing that he prefers to be committed immediately rather than await the expiration of the time allowed, the justice may immediately issue a warrant of committal.

(3) When time has been allowed for payment any justice may, on application by or on behalf of the person allowed time for payment, allow further time for payment.

Orders relating to payment

11 When a justice, in a conviction or order, imposes a fine or penalty, the conviction or order is not void nor is the right to collect a fine or to enforce a penalty under the conviction or order impaired because

- (a) time has been allowed for the payment of all or any part of the fine or penalty,
- (b) payment of part of the fine or penalty has been received,
- (c) the justice has accepted security for the payment of all or any part of the fine or penalty, or
- (d) the conviction is under appeal, unless a judge of the Court of Queen's Bench stays the right to collect the fine or to enforce the penalty.

Civil recovery

12(1) When a fine is imposed on a defendant but imprisonment of the defendant in default of payment of the fine is not ordered and the fine is not paid forthwith or within the time allowed by the justice, the Attorney General or a person authorized by the Attorney General may, by filing the conviction, enter as a judgment in the Court of Queen's Bench the amount of the fine plus the late payment charge prescribed in the regulations, if any, and the judgment is enforceable against the convicted defendant in the same manner as if it were a judgment rendered against the defendant in that Court in a civil proceeding.

(2) If an enactment provides that any fine or penalty imposed

- (a) on a conviction for an offence occurring in a city, town or village enures to the benefit of the city, town or village,
- (b) on a conviction for an offence occurring in a county or municipal district, elsewhere than on a primary highway, enures to the benefit of the county or municipal district, or
- (c) on a conviction for an offence occurring in a reserve elsewhere than on a primary highway or on a road designated as a secondary road under the *Public Highways Development Act*, enures to the benefit of the band

and the conviction has not been entered as a judgment under subsection (1), an agent of the city, town, village, county, municipal district or band, as the case may be, may enter the amount of a fine payable by the convicted defendant for that offence as a judgment under subsection (1).

(3) For the purposes of this section "reserve" and "band" have the meanings assigned to them in the *Indian Act* (Canada).

Application of money received

13(1) Subject to any express provision in another enactment, the disposition of a penalty, fine or sum of money or the proceeds of a forfeiture under the enactment belong to the Crown in right of Alberta.

(2) Notwithstanding any other enactment, the proceeds of a late payment charge under this Act belong to the Crown in right of Alberta.

Report of conviction

14(1) If a defendant is convicted of an offence, a justice or clerk shall, on request, complete a report respecting the conviction.

(2) A copy of a report under subsection (1) purporting to be certified by a clerk or by the justice who convicted the defendant, or proved to be a true copy, shall, without proof of the identity of the person to whom the report relates, be admitted in evidence in any legal

proceedings as prima facie proof of the conviction of that person for the offence mentioned in the report.

No seal required on documents

15 In any proceeding under an enactment,

- (a) it is not necessary for the justice to affix a seal of a justice of the peace to a document, and
- (b) no document is invalid by reason only of the lack of a seal even if the document purports to be sealed.

Transcripts of evidence

16(1) Except as provided in subsection (2) there shall be no transcript of evidence.

(2) If evidence is recorded in a proceeding, the clerk shall, on payment of the applicable fee, provide either a copy of a mechanical recording of the evidence or a transcript of the evidence if it is

- (a) requested by one of the parties,
- (b) required for an appeal from a conviction or order,
- (c) required by the Attorney General, or
- (d) ordered by a justice.

Appeals

17(1) The Attorney General, a prosecutor, a defendant, or a person affected by a judgment, order or sentence to which this Act applies may appeal a judgment, order or sentence of a justice to the Court of Queen's Bench in the judicial district in which the trial was held.

(2) Following the decision of the Court of Queen's Bench, any justice has authority to enforce the judgment or order on the appeal.

Further appeals

18(1) When it appears to a judge of the Court of Appeal, on the application of the Attorney General, a prosecutor, a defendant or a person affected by a conviction or order to which this Act applies, that a judgment or order of the Court of Queen's Bench made on appeal involves a question of law of sufficient importance to justify a further appeal, the judge of the Court of Appeal may certify that and an appeal then lies to the Court of Appeal from the judgment or order of the Court of Queen's Bench.

(2) The procedure on the appeal shall be the same as that provided by sections 601 to 613 of the *Criminal Code* (Canada) and the rules relating to appeal procedures insofar as they are applicable to appeals involving a question of law.

(3) Following the decision of the Court of Appeal, any justice has authority to enforce the judgment or order on the appeal.

Judicial notice

19 The following shall be judicially noted:

- (a) any rule, order or by-law made pursuant to an Act;
- (b) the publication or promulgation of a rule, order or by-law as required to be published or promulgated by an Act.

Address for service

20(1) Under Part 2 and Part 3 the address for service of a defendant is the address indicated on the defendant's operator's licence unless the defendant, on being served with a summons under Part 2 or with an offence notice under Part 3, states another address.

(2) If a defendant is not in possession of an operator's licence when he is served as described in subsection (1) or his address for service is not the address indicated on his operator's licence he shall provide an address for service to the person serving him.

Parts 2, 3
offences

21(1) Instead of the procedure in the *Criminal Code* (Canada) for laying an information and for issuing a summons, the procedure set out in Part 2 or Part 3, as the case may be, may be followed with respect to offences provided for in the regulations.

(2) If the regulations provide that proceedings with respect to an offence may be commenced under either Part 2 or Part 3, the proceedings shall be commenced under Part 3 unless it is in the public interest to compel the defendant to appear before a justice in proceedings under Part 2.

(3) If the proceedings with respect to an offence referred to in subsection (2) are commenced under Part 2, the peace officer shall issue a summons in accordance with section 26(3).

(4) The use on a violation ticket of a word, figure or expression or any combination of them authorized by a regulation to designate an offence under an enactment is sufficient for all purposes to describe the offence so designated.

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

- (a) the defendant is identified with reasonable clarity,
- (b) the offence with which the defendant is charged is specified in accordance with this Act and the regulations,
- (c) the date on which the offence is alleged to have occurred is specified, and
- (d) the place at or near which the offence is alleged to have occurred is specified.

Service of
summons

22(1) Service of a summons and of an offence notice may be made on a holiday.

(2) An affidavit signed by the person effecting service attesting to the fact that service was effected on the defendant shall be received in evidence in all legal proceedings as proof of that service without the necessity of proof of the signature of the person making the affidavit.

PART 2

SUMMONS VIOLATION TICKETS

Use of violation
tickets

23(1) Proceedings under this Part may be commenced by issuing a summons by means of a violation ticket described in section 24.

(2) If proceedings are commenced under this Part, Part 3 does not apply to those proceedings.

Violation ticket

24(1) A violation ticket under this Part shall be in a form prescribed by the regulations and shall include the following parts:

- (a) a complaint, and
- (b) a summons.

- (2) The complaint part of the violation ticket shall be
 - (a) sworn before a commissioner for oaths by a complainant who believes on reasonable and probable grounds that an offence has been committed, and
 - (b) filed with a clerk prior to the initial appearance date indicated on the violation ticket.
- (3) A summons shall
 - (a) be served on a defendant either personally in accordance with the Alberta Rules of Court or in accordance with a method ordered by a justice, and
 - (b) indicate how the defendant may respond to the summons.

Voluntary
payments

25(1) When authorized by the regulations or a by-law or ministerial order under section 42 and by a summons served on a defendant, the defendant who wishes to plead guilty may make a voluntary payment in respect of a summons by delivering the summons together with

- (a) an amount equal to the specified penalty for the offence as provided for in the regulations, or
- (b) if the defendant is charged with an offence under a by-law or ministerial order, an amount equal to the specified penalty for the offence as provided in the relevant by-law or ministerial order,

to a Court office at a location prescribed under section 21(3)(a) of the *Provincial Court Act* on or before the initial appearance date.

(2) When a clerk records in the Court records the receipt of a voluntary payment under subsection (1) in cash or by cheque, that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

(3) If a voluntary payment is made by cheque and the cheque is dishonoured on the grounds that no funds or insufficient funds were on deposit to the credit of the defendant in the institution on which the cheque was drawn

- (a) the conviction continues but the fine remains outstanding whether or not the plea is signed in the manner provided for on the summons, and
- (b) the clerk shall give notice to the defendant by ordinary mail at his address for service that the cheque has been dishonoured, the conviction continues and the fine remains outstanding,

but a warrant of committal in respect of the defendant shall not issue until 15 days after the notice has been sent by ordinary mail.

Appearances

26(1) Subject to subsection (2), a defendant shall appear, either personally or by an agent, before a justice on the date and at the place and time stated on the summons to answer that summons.

(2) A defendant is not required to appear before a justice on the initial appearance date to answer a summons if

(a) he enters a plea of guilty before a justice prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,

(b) he enters a plea of not guilty prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,

(c) he obtains an adjournment of the proceedings prior to the initial appearance date, or

(d) if authorized by the regulations or a by-law or ministerial order under section 42 and the summons states that the defendant can make a voluntary payment, he makes a voluntary payment.

(3) If it is in the public interest to compel the defendant to appear before a justice in proceedings under this Part, a peace officer may, if authorized by the regulations, issue a summons respecting any offence referred to in subsection (2)(d) requiring the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.

(4) A prosecutor, if he thinks it appropriate, may permit a defendant referred to in subsection (3) to make a voluntary payment.

Failure to
answer summons

27(1) If a defendant fails to enter a plea or make a voluntary payment in the manner provided for on the summons on or before the initial appearance date, the justice may

(a) enter a plea of not guilty on behalf of the defendant and set a time for a trial,

(b) issue a warrant for the arrest of the person, or

(c) direct that a new summons be issued requiring the attendance of the person before a justice and set a time at which the attendance is required.

(2) When a time is set for a trial pursuant to subsection (1)(a), the justice shall direct that the defendant be notified by ordinary mail at his address for service of the time fixed for the trial.

(3) If a defendant fails to appear in Court in person or by an agent at the time fixed for the trial, a justice, on proof of service of the summons,

(a) shall proceed to conduct the trial ex parte, or

(b) on application by a prosecutor, shall adjourn the proceedings, set a new trial date, and direct that the defendant be notified of the new trial date by ordinary mail at his address for service.

(4) If the proceedings are adjourned under subsection (3) and the defendant fails to appear at the new trial date a justice shall proceed to conduct the trial ex parte and if the defendant is convicted the clerk shall give the defendant notice by ordinary mail at the defendant's address for service of the conviction and of the time allowed for payment of the fine.

- Late payment **28(1)** If a voluntary payment is tendered after the initial appearance date, a justice may, without a hearing and notwithstanding any action taken under section 27, direct that the voluntary payment be accepted as if it had been made in the time allowed.
- (2) Acceptance of a voluntary payment with respect to a summons under this section constitutes cancellation of a warrant issued under section 27(1)(b) in respect of the defendant for failure to respond to that summons.

PART 3

OFFENCE NOTICE VIOLATION TICKETS

- Use of violation ticket **29(1)** Proceedings under this Part may be commenced by issuing an offence notice by means of a violation ticket described in section 30.
- (2) If proceedings are commenced under this Part, Part 2 does not apply to those proceedings.
- Violation ticket **30(1)** A violation ticket under this Part shall be in a form prescribed by the regulations and shall include the following parts:
- (a) a certificate of offence, and
 - (b) an offence notice.
- (2) A certificate of offence
- (a) shall be completed and signed by a peace officer who believes on reasonable and probable grounds that an offence has been committed,
 - (b) shall be filed with a clerk prior to the initial appearance date indicated on the violation ticket, and
 - (c) does not need to be sworn.
- (3) An offence notice shall
- (a) be served personally on the defendant in accordance with the Alberta Rules of Court,
 - (b) indicate the specified penalty for the offence, and
 - (c) indicate
 - (i) how and when the defendant may respond to the offence notice, and
 - (ii) that the defendant may be convicted in his absence without a hearing if he fails to respond to the violation ticket by the initial appearance date indicated on the offence notice.
- Evidence of service **31(1)** If an offence notice is served by the peace officer who issued it, he shall complete and sign a certificate of service on the violation ticket that he personally served the offence notice on the person charged and he shall indicate the date of service.
- (2) A certificate of service does not need to be sworn.
- (3) If an offence notice is served by a person other than the peace officer who issued it, that person shall complete an affidavit of service.

(4) A certificate of service or an affidavit of service shall be received in evidence and in the absence of evidence to the contrary is proof of personal service.

Trial date

32(1) If an offence notice is served on a defendant, the defendant may plead not guilty by signing the not guilty plea on the offence notice and delivering it to the Court office indicated on the offence notice for that purpose.

(2) On receipt of an offence notice under subsection (1) the clerk shall, as soon as is practicable, give notice to the defendant of the time and place of the trial by ordinary mail at his address for service.

Failure to appear

33(1) If a defendant pleads not guilty but fails to appear in Court in person or by an agent on his trial date the justice shall, if the certificate of offence is complete and regular on its face,

(a) proceed to conduct the trial *ex parte*, or

(b) on application by a prosecutor, adjourn the proceedings, set a new trial date, and direct that the defendant be notified of the new trial date by ordinary mail at his address for service.

(2) If a defendant fails to appear in Court for his trial set pursuant to subsection (1)(b) the justice shall proceed to conduct the trial *ex parte*.

(3) If a defendant is convicted under this section the defendant shall be notified, by ordinary mail at his address for service, of the conviction, the amount of the fine imposed and the time allowed for payment.

Written dispute

34(1) If an offence notice is served on a defendant and the defendant wishes to dispute the charge but does not wish to attend or be represented at a trial, the defendant may do so by signifying his intention on the offence notice and delivering the offence notice to the Court office indicated on the notice together with a written statement that sets out his reasons and the circumstances on which he relies.

(2) On receipt of an offence notice under subsection (1) a justice shall, in the absence of the defendant, consider the defendant's statement, and

(a) if the dispute raises an issue that may constitute a defence, set a date for a trial, or

(b) if the dispute does not raise an issue that may constitute a defence, convict the defendant and impose a fine in the amount of the specified penalty.

(3) If the justice directs a trial under subsection (2) the Court shall proceed to conduct the trial *ex parte* and shall consider the evidence in the light of the issues raised in the dispute.

(4) If a defendant is convicted under this section the defendant shall be notified, by ordinary mail at his address for service, of the conviction, the amount of the fine imposed and the time allowed for payment.

Plea of guilty with representations

35(1) If an offence notice is served on a defendant and the defendant does not wish to dispute the charge but wishes to make submissions as to the penalty, including the extension of time for payment, the defendant may attend at the time and the place specified in the notice for that purpose and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to penalty.

(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.

(3) On accepting a guilty plea under subsection (1) the justice shall enter a conviction and impose a fine equal to the specified penalty or a lesser fine permitted by law.

Payment, charge not disputed

36(1) If an offence notice is served on a defendant and the defendant wishes to plead guilty to the charge, he may deliver the offence notice and payment in the amount of the specified penalty to a Court office at a location prescribed under section 23(1)(a) of the *Provincial Court Act*.

(2) When a clerk records in the Court records receipt of payment of a specified penalty under subsection (1), that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

Failure to respond to offence notice

37(1) If an offence notice has not been delivered in accordance with section 32, 34 or 36 and a plea of guilty has not been accepted under section 35, the defendant is deemed not to wish to dispute the charge and a justice shall examine the certificate of offence and the certificate of service or the affidavit of service referred to in section 31, and

(a) if they are complete and regular on their face, the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty, or

(b) if they are not complete and regular on their face, the justice shall quash the proceedings.

(2) The clerk shall cause notice of the conviction and the imposition of the specified penalty to be given to the defendant by ordinary mail at his address for service.

(3) If proceedings are quashed under subsection (1)(b), proceedings may be recommenced under this Part if not more than 6 months has elapsed since the alleged offence occurred.

Conviction set aside

38 If through no fault of his own a defendant has not had an opportunity to dispute the charge or to appear in person or by agent at a trial because a necessary notice or document failed to be delivered, and if not more than 15 days has elapsed since the conviction first came to the attention of the defendant, the defendant or his agent may appear before a justice to provide evidence of those facts and the justice, on being satisfied by affidavit of those facts, shall set aside the conviction and give the person appearing a notice of trial in accordance with section 32 or proceed in accordance with section 35.

Penalty

39 Notwithstanding any other enactment but subject to section 40, if proceedings have been commenced under this Part with respect to

an offence the fine imposed with respect to that offence shall not be more than \$400 and the defendant is not liable to imprisonment.

Failure to
pay fine

40 A defendant who is convicted of an offence pursuant to proceedings commenced under this Part and fails to pay a fine imposed by a justice within the time allowed for payment, or, if no time is allowed, forthwith, shall be liable to pay an amount equal to the fine imposed plus the late payment charge provided for by regulation.

PART 4

REGULATIONS, BY-LAWS, ORDERS

Regulations

41 The Lieutenant Governor in Council may make regulations

- (a) respecting the fees payable with respect to any matter under this Act;
- (b) prescribing forms to be used under this Act or the regulations;
- (c) prescribing offences for which proceedings may be commenced under
 - (i) Part 2,
 - (ii) Part 3, or
 - (iii) either Part 2 or Part 3;
- (d) prescribing offences in respect of which a voluntary payment may be made;
- (e) respecting the contents of a violation ticket;
- (f) respecting the procedure for the issuance of a summons and certificate of offence;
- (g) respecting how an offence may be indicated on a violation ticket;
- (h) authorizing the use on a violation ticket of any word, figure or expression, or any combination of them, to designate an offence;
- (i) respecting the manner in which an initial appearance date is determined;
- (j) respecting the determination of the public interest under sections 21(2) and 26(3);
- (k) respecting the time allowed for payment of a fine;
- (l) respecting the amounts of specified penalties;
- (m) respecting the amounts of late payment charges;
- (n) respecting service of a summons, certificate, subpoena or other document under this Act;
- (o) prescribing provisions of the *Criminal Code* (Canada) that are not applicable to proceedings under this Act or any Part of this Act;
- (p) respecting the giving, sending and serving of notices under this Act.

- By-laws, orders **42** A local authority may make by-laws and, in the case of an improvement district or a special area, the Minister of Municipal Affairs may make orders.
- (a) respecting the offences under a by-law or ministerial order, as the case may be, in respect of which a voluntary payment may be made;
 - (b) prescribing the amounts of the specified penalties payable in respect of offences referred to in clause (a).

PART 5
TRANSITIONAL, CONSEQUENTIAL,
COMMENCEMENT AND REPEAL

Prior proceedings **43** *Any proceeding commenced under the Summary Convictions Act, RSA 1980 cS-26, prior to the commencement of this Act shall be continued under that Act to its conclusion and treated for all purposes as if this Act were not in force.*

References **44** *Where in any enactment or document a reference is made to the Summary Convictions Act, the reference shall be read as a reference to this Act.*

Amends
RSA 1980 cM-22 **45(1)** *The Motor Vehicle Administration Act is amended by this section.*

(2) Section 57 is amended

(a) in subsection (1) by striking out “The Minister” and substituting “Subject to subsection (1.1), the Minister”;

(b) by adding the following after subsection (1):

(1.1) The Minister shall not suspend or cancel an operator’s licence under subsection (1) without giving that person at least 15 days’ written notice and giving him an opportunity to be heard.

(c) by repealing subsection (4) and substituting the following:

(4) If a person who holds an operator’s licence

(a) is convicted within or outside Alberta of a motor vehicle related offence other than a parking violation, and

(b) fails to satisfy fines imposed on a conviction described in clause (a) that

(i) amount to more than \$500, or

(ii) are imposed with respect to 5 or more convictions,

the Minister may, on 15 days’ written notice and after giving the person an opportunity to be heard, suspend that person’s operator’s licence and any certificate of registration or permit issued to that person under this Act until the person satisfies the fines referred to in clause (b).

(3) *The following is added after section 57:*

57.1(1) If a person has not paid a fine imposed against him pursuant to a conviction under

- (a) this Act or the regulations,
- (b) the *Highway Traffic Act* or regulations under that Act,
- (c) a by-law pursuant to the *Highway Traffic Act*, or
- (d) any Act, regulation or by-law prescribed by regulation

the Registrar may,

(e) in respect of that person, refuse to perform any function or service or to issue, renew or otherwise deal with any document, operator's licence, certificate of registration, in transit permit or licence plate until the fine is paid, and

(f) if authorized by regulation, refuse to register the vehicle in the name of the new owner if the ownership of a registered vehicle passes from the person who has not paid the fine directly or through intermediary owners to a person described by regulation.

(2) The Lieutenant Governor in Council may make regulations

(a) authorizing the Registrar to refuse to register a vehicle in the name of a new owner if the ownership of a registered vehicle passes directly or indirectly from a person who has not paid a fine, as described in subsection (1), to a person or a person within a class of persons;

(b) governing persons or classes of persons referred to in clause (a);

(c) prescribing Acts, regulations or by-laws for the purposes of subsection (1)(d).

(4) *Section 106 is amended*

(a) *in subsection (1) by striking out "When" and substituting "Subject to subsection (2.1), when";*

(b) *in subsection (2) by striking out "When" and substituting "Subject to subsection (2.1), when";*

(c) *by adding the following after subsection (2):*

(2.1) Subsections (1) and (2) do not apply to an offence if the conviction resulted from proceedings that were commenced under Part 3 of the *Provincial Offences Procedure Act*.

Amends SA
1986 cE-10.05

46(1) *The Employment Pension Plans Act is amended by this section.*

(2) *Section 65(3) is amended by striking out "under section 13 of the Summary Convictions Act" and substituting "issued pursuant to the provisions of the Criminal Code (Canada) that apply to the Provincial Offences Procedure Act".*

Amends
RSA 1980 cH-7

47(1) *The Highway Traffic Act is amended by this section.*

(2) *Section 169(6.1) is repealed.*

Amends
SA 1985 cL-22.5 **48(1)** *The Livestock Identification and Brand Inspection Act is amended by this section.*

(2) Section 29(3) is amended by striking out “under the Summary Convictions Act” and substituting “pursuant to the provisions of the Criminal Code (Canada) that apply to the Provincial Offences Procedure Act”.

Amends
RSA 1980 cM-26 **49(1)** *The Municipal Government Act is amended by this section.*

(2) Section 110(2.1) is amended by striking out “section 6 of the Summary Convictions Act” and substituting “section 42 of the Provincial Offences Procedure Act”.

Amends
SA 1986 cW-9.1 **50(1)** *The Wildlife Act is amended by this section.*

(2) Section 64(2) is amended by striking out “section 4 of the Summary Convictions Act” and substituting “the Provincial Offences Procedure Act”.

Amends
SA 1986 cY-1 **51(1)** *The Young Offenders Act is amended by this section.*

(2) Section 2(2) is amended by striking out “specified sum pursuant to section 6 of the Summary Convictions Act” and substituting “voluntary payment pursuant to the Provincial Offences Procedure Act”.

(3) Section 8 is amended

(a) in subsection (2.1) by striking out “section 6 of the Summary Convictions Act” and substituting “Part 2 of the Provincial Offences Procedure Act”;

(b) in subsection (11) by striking out “is issued a summons referred to in section 6 of the Summary Convictions Act and that person pays out of court the specified sum within the specified time” and substituting “makes a voluntary payment in accordance with the Provincial Offences Procedure Act”.

(4) Section 12(4)(b) is amended by striking out “prescribed under section 6 of the Summary Convictions Act” and substituting “for which a voluntary payment may be made under the Provincial Offences Procedure Act”.

Consequential **52** *The following provisions are amended by striking out “Summary Convictions Act” wherever it occurs and substituting “Provincial Offences Procedure Act”:*

Act	Section
Fire Prevention Act	26(2)
Hail and Crop Insurance Act	18(8)
Interpretation Act	25(1)(j)
Mechanical Recording of Evidence Act	2(1)
Public Service Employee Relations Act	21(1)(g)(v)
Wildlife Act	74(4)(a)
Young Offenders Act	1(2), 2(1), 33

Amends
RSA 1980 cS-26

53 *The Summary Convictions Act, chapter S-26 of the Revised Statutes of Alberta 1980, is amended*

(a) *by repealing section 4 and substituting the following:*

4(1) Except to the extent that they are inconsistent with this Act and subject to the regulations, all provisions of the *Criminal Code* (Canada) that are applicable in any manner to summary convictions and related proceedings apply in respect of every matter to which this Act applies.

(2) The Lieutenant Governor in Council may make regulations prescribing provisions of the *Criminal Code* (Canada) that are not applicable to proceedings under this Act or any Part of this Act.

(b) *in section 5(11) by striking out “Act does” and substituting “Act or the regulations do”;*

(c) *in section 15(2) by striking out “by sections 601 to 613 of” and substituting “in the provisions that relate to summary convictions in”;*

(d) *by repealing section 19(6);*

(e) *by repealing section 20(1)(a).*

Repeals
RSA 1980 cS-26
& cS-26.1

54 *The Summary Convictions Act, chapter S-26 of the Revised Statutes of Alberta 1980, and the Summary Convictions Act, chapter S-26.1 of the Revised Statutes of Alberta 1980, are repealed on Proclamation.*

Coming
into force

55 *This Act comes into force on Proclamation.*