

1989 BILL 16

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

PROVINCIAL COURT AMENDMENT ACT, 1989

MR. EVANS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 16
Mr. Evans

BILL 16

1989

PROVINCIAL COURT AMENDMENT ACT, 1989

(Assented to , 1989)

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

- 1 The Provincial Court Act is amended by this Act.*
- 2 Section 2(2)(d) is repealed and the following is substituted:*
(d) the Civil Division to be styled “The Civil Division of The Provincial Court of Alberta”;
- 3 Section 21(1) is amended by adding the following after clause (k):*

(k.1) respecting fees for making copies of transcripts, orders, judgments and other documents;
(k.2) respecting fees for searches of court files;
- 4 Part 4 is repealed and the following is substituted:*

PART 4 CIVIL CLAIMS

35 In this Part,

- (a) “defendant” means a person to whom a summons is issued under this Part;
- (b) “local authority” means
 - (i) a city, town, new town, village, summer village, municipal district or county, or

Explanatory Notes

- 1 This Bill will amend chapter P-20 of the Revised Statutes of Alberta 1980.
- 2 Section 2(2) presently reads:
 - (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 Youth Division to be styled "The Youth 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 Section 21(1) presently reads in part:
 - 21(1) *The Lieutenant Governor in Council may make regulations*
 - (k) *prescribing fees, expenses and other forms of remuneration payable to operators and transcribers of sound-recording machines;*
- 4 Part 4 presently reads:

PART 4 *SMALL CLAIMS MATTERS*

- 35 *In this Part,*
 - (a) *"defendant" means the person to whom a summons under this Part is directed;*
 - (b) *"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;*

(ii) the Minister of Municipal Affairs, in the case of an improvement district or special area;

(c) “plaintiff” means a person at whose instance a summons is issued under this Part;

(d) “school board” means a board as defined in the *School Act*.

36(1) Subject to this Act, the Court has jurisdiction to hear and adjudicate on any claim or counterclaim

(a) for debt, whether payable in money or otherwise, if the amount claimed or counterclaimed, as the case may be, does not exceed \$4000, and

(b) for damages, including damages for breach of contract, if the amount claimed or counterclaimed, as the case may be, does not exceed \$4000.

(2) If the claim of a plaintiff or the counterclaim of a defendant exceeds the amount prescribed in subsection (1), the plaintiff or the defendant, as the case may be, may abandon that part of the claim or counterclaim that is in excess by filing a notice to that effect with the Court.

(3) Subject to section 68(4), where a notice is filed under subsection (2), the person forfeits the excess and is not entitled to recover it in the Provincial Court or in any other court.

37 The Court does not have jurisdiction to hear and adjudicate on 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 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) A person who has a claim may apply to a clerk for the issuance of a summons.

(2) When an application is made under subsection (1), a clerk shall, subject to section 73, issue a summons in the prescribed form that contains the particulars of the claim and an address for service as provided by the plaintiff, together with a copy of a dispute note in the prescribed form.

(3) The summons and dispute note shall be served on the defendant by the plaintiff.

(4) A summons and dispute note may be served outside Alberta without an order of the Court.

(c) "plaintiff" means a person at whose instance a summons is issued under this Part;

(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 on

(a) any claim

(i) for debt (whether payable in money or otherwise) if the amount claimed does not exceed \$2000 exclusive of interest payable under an Act or by agreement on the amount claimed, and

(ii) for damages (including damages for breach of contract) if the amount claimed does not exceed \$2000 exclusive of interest payable under an Act or by agreement on the amount claimed,

and

(b) any counterclaim

(i) for debt (whether payable in money or otherwise) if the amount counterclaimed does not exceed \$2000 exclusive of interest payable under an Act or by agreement on the amount counterclaimed, and

(ii) for damages (including damages for breach of contract) if the amount counterclaimed does not exceed \$2000 exclusive of interest payable under an Act or by agreement on the amount counterclaimed.

(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 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 on 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) 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) On 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 place and date set for hearing the matter.

39(1) The clerk who issues a summons under section 38 shall set the action down for hearing at the place where the Court holds regular sittings that in the opinion of the clerk is nearest

39(1) The defendant shall pay the amount claimed in the summons or file a dispute note with a clerk,

- (a) where the defendant has been served in Alberta, within 20 days from the date of service of the summons and the dispute note;
- (b) where the defendant has been served outside of Alberta, within 30 days from the date of service of the summons and the dispute note.

(2) The dispute note shall

- (a) state clearly the nature or grounds of the defendant's defence,
- (b) where a claim is disputed in part only, state which part or which items are disputed,
- (c) state clearly the particulars of the defendant's counterclaim, if any,
- (d) state clearly the particulars of the defendant's claim for set-off, if any, and
- (e) have endorsed on it the defendant's address and, if it is different, his address for service.

40(1) On the filing of a dispute note under section 39, a clerk shall

- (a) set the time, date and place for a hearing,
- (b) send to all parties a notice of the time, date and place set for the hearing, and
- (c) send a copy of the dispute note to all parties other than the party filing the dispute note.

(2) A hearing is not invalid only because it was held at a time, date or place other than the time, date or place set out in the notice referred to in subsection (1)(b).

41 The Court may, on its own direction or on application by a party, order that the hearing be held at a time, date or place other than that set out in the notice referred to in section 40(1)(b).

42(1) Service of documents under this Part, other than notices to attend, may be made on the person to be served

- (a) either personally or by leaving a copy of the document for the person at his most usual place of abode with some resident of the abode apparently 16 years of age or older,
- (b) by mailing a copy to the person by double registered mail or certified mail to his last known address, and service is deemed to be effected at the time the receipt of the double registered letter or certified letter was signed by the person to be served or the person receiving the letter on his behalf, or
- (c) as directed by the Court.

(2) Service of a document on a partnership may be made by serving it on one of the partners of the partnership.

- (a) *to the place where the defendant or one of the co-defendants resided or carried on business at the time the summons was issued, or*
 - (b) *to where the cause of action arose.*
- (2) *An action heard under this Part is not invalid by reason only that it was set down for hearing and heard at a place other than the place provided for under subsection (1).*
- 40 *The Court may, on its own direction or on application by a party to an action, order that an action be heard by the Court at a place other than that set forth in the summons.*
- 41(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 on 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 Court of Queen's Bench*
- (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.*
- 42(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.*
- 43(1) *On 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) *On 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.*
- 44(1) *Service of documents issued under this Part, other than notices to attend, may be made*
- (a) *on the person to be served, either personally or by leaving a copy of the document for him at his most usual 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 on one of the partners is service on the partnership.*

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

(4) Service of a document on a corporation, other than a local authority, may be made

(a) by serving it on the president, chairman or other head officer by whatever name the person is known, a director or the secretary of the corporation,

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

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

(5) The Court may dispense with service of any document if sufficient cause is shown.

43(1) A party may apply to a clerk to issue notices to attend to persons who may be witnesses at the hearing and, subject to section 73, the clerk shall issue the notices to attend.

(2) A person may serve a notice to attend

(a) by delivering to that person a copy of the notice to attend together with the prescribed witness fee, or

(b) as directed by the Court.

(3) A person served with a notice to attend shall attend the hearing in accordance with the terms prescribed in the notice.

(4) A notice to attend has the same effect as a notice to attend given in a proceeding in the Court of Queen's Bench and is enforceable in the same manner.

44(1) 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,

(c) by an affidavit of service proving the mailing by registered mail and exhibiting the receipt provided by the post office showing that the document was sent by registered mail, or

(d) by an affidavit of service proving the mailing by double registered mail or certified mail and exhibiting the acknowledgement 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.

(2) Notwithstanding that a document has not been served in the required manner, the Court may, if it is satisfied that the document has come to the attention of the defendant, deem the service to be valid service on the party being served.

45(1) A party 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,

(3) Service of a document on 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 on 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 registered mail to the registered office of the corporation.

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

45(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) On 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.

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

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) On 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.

- (a) the plaintiff's claim and costs, or
 - (b) the defendant's counterclaim and costs.
- (2) When a person makes a payment under subsection (1), a clerk shall send to the other party a notice setting out the date payment was made, the amount paid in respect of the claim or counterclaim and the amount paid in respect of the costs.
- (3) If a person accepts in writing the payment made under subsection (1) in full satisfaction of the claim or counterclaim and the costs, a clerk shall pay the money to the person.
- (4) If a person proceeds with the claim or counterclaim, as the case may be, after receiving the notice referred to in subsection (2) and is not awarded a greater sum than the amount paid into the Court, he is liable to the other party for those costs that the Court considers proper.
- (5) If the money paid into Court under subsection (1) is not paid under subsection (3), the Court may make an order with respect to the disposition of that money.

46 The Court may adjourn a hearing to another date

- (a) on the application of a party, on serving notice to the other parties,
- (b) on the non-appearance of a party, or
- (c) if there is insufficient time to hold the hearing.

47(1) At a hearing, the parties are confined to the particulars set out in the summons and the dispute note.

- (2) If the Court is satisfied that sufficient cause is shown, it may allow the summons or the dispute note to be amended.

48(1) A party may admit his indebtedness or liability by filing a notice to that effect with the Court.

- (2) When the notice is filed, the Court may order that judgment be given with respect to the claim or counterclaim, as the case may be.

49(1) For the purposes of a hearing, the Court

- (a) is not bound by the laws of evidence applicable to judicial proceedings, and
 - (b) may admit any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not.
- (2) Nothing is admissible in evidence at a hearing
- (a) that would be inadmissible by reason of any privilege under the law of evidence, or
 - (b) that is inadmissible by any Act.

(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.

48(1) If a summons is properly served, 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) on the application of a party to the action,

(b) on 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 on 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.

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) On 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.

50(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 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.

(3) On payment of the prescribed fee, a party may obtain a record of the evidence taken at the hearing.

51(1) A party may

(a) withdraw his claim or counterclaim, as the case may be, or

(b) consent to a judgment's being entered in favour of the other party

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

(2) When a person files a notice under subsection (1), a clerk shall send to the other party 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.

52(1) If a plaintiff fails to appear on the date set for the hearing, the Court may order that the plaintiff's claim be dismissed.

(2) If the Court dismisses a plaintiff's claim under subsection (1), it shall not give judgment on any counterclaim of 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.

53(1) Where a summons includes a claim for a debt or liquidated demand and no dispute note has been filed within the time specified in section 39, a clerk shall, on proof of service of the summons and dispute note on the defendant and on the request of the plaintiff, enter judgment against the defendant for the full amount of the claim.

(2) With respect to other claims, the plaintiff may on proof of service of the summons and dispute note on the defendant apply to a clerk to note the defendant in default and may either

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, on proof that the summons has been properly served,*

(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, on any terms it considers proper, set aside or vary any judgment entered by default.*

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 Court of Queen's Bench and on being filed*

(a) *the judgment becomes a judgment of the Court of Queen's Bench, and*

(b) *execution and garnishee summons may be issued according to the ordinary procedure of the Court of Queen's Bench.*

58(1) *Any party to an action under this Part may appeal the decision of the Provincial Court to the Court of Queen's Bench 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*

(a) apply ex parte to the Court for judgment, and the judge hearing the application may

(i) on proof of the plaintiff's claim make an order for judgment, or

(ii) set the matter over for a hearing to hear the claim or assess the damages,

or

(b) apply to the clerk to set a hearing to assess the damages.

(3) The plaintiff shall serve on the defendant at least 10 days' notice of the time, date and place

(a) of the hearing referred to in subsection (2)(a)(ii), and

(b) of the hearing to assess the damages referred to in subsection (2)(b).

(4) After the hearing referred to in subsection (2)(b), the clerk shall enter judgment against the defendant for the amount determined.

54(1) If the defendant fails to appear on the date set for a hearing, the Court may, on proof of service of the summons and the dispute note on the defendant,

(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 of the defendant.

55(1) The Court may, on any terms it considers proper, set aside or vary

(a) any judgment entered under sections 53 and 54,

(b) the dismissal of a claim ordered under section 52, or

(c) any judgment on any counterclaim given under section 52.

(2) The person in whose favour an order under subsection (1) is made may file a certified copy of the order in the Court of Queen's Bench, and on its being filed

(a) the judgment referred to in subsection (1)(a) or (c) is set aside or varied or the dismissal is set aside or varied as the order provides, and

(b) any execution or garnishee summons issued pursuant to the judgment is stayed subject to the order of the Court of Queen's Bench.

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

(2) If a counterclaim is established that

- (i) the respondent or such other person as the Court of Queen's Bench directs, and
- (ii) any other person that the Court of Queen's Bench directs, within 30 days after the judgment was made,
- (b) filing in the Court of Queen's Bench
 - (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 on 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 Court of Queen's Bench may, on 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), on 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 on the due payment by the appellant of all costs that may be ordered to be paid by him.

59 On 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 Court of Queen's Bench the security for costs, the record of the evidence taken, any money paid into the Provincial Court other than court fees 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 Court of Queen's Bench 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 Court of Queen's Bench.

62(1) On sections 58 and 59 being complied with, the Court of Queen's Bench shall set down the appeal for hearing at a regular sitting and the clerk of the Court of Queen's Bench 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 on 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 Court of Queen's Bench.

64 The Court of Queen's Bench 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.

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

(b) is less than the amount of the established plaintiff's 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 Where judgment is entered or given under this Part, the amount of the judgment shall include costs and any prejudgment interest claimed or payable pursuant to the *Judgment Interest Act*.

58(1) If judgment is entered or given under this Part, a clerk shall prepare a certificate of judgment and send a copy of the certificate of judgment to each party.

(2) If an order is made under this Part, a clerk shall prepare the order and furnish a copy of the order as directed by the Court in the order.

(3) A copy of the certificate or the order referred to in subsection (1) or (2) is admissible in evidence as prima facie proof of its contents in any court dealing with a subsequent proceeding without proof of the signature or official character of the person appearing to have signed the certificate or order.

(4) The person in whose favour judgment is given may file the certificate of judgment in the Court of Queen's Bench and on its being filed

(a) the judgment becomes a judgment of the Court of Queen's Bench, and

(b) execution and garnishee summons may be issued according to the procedure of the Court of Queen's Bench.

59(1) Any party may appeal a decision of the Provincial Court to the Court of Queen's Bench,

(a) within 30 days after the judgment is given, by

(i) filing in the Provincial Court a notice of appeal setting out the grounds of appeal, and

(ii) serving the notice of appeal on

(A) the respondent, and

(B) any other person that the Court of Queen's Bench directs,

and

(b) by filing in the Court of Queen's Bench not later than 7 days after the last day for service of the notice of appeal on those parties served pursuant to clause (a)

(i) a copy of the notice of appeal referred to in clause (a)(ii),

65(1) *The Court of Queen's Bench 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 Court of Queen's Bench is final and cannot be further appealed.*

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

67(1) *If at any time in an action commenced under this Part 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 Court of Queen's Bench.*

(2) *On an order being made under subsection (1), a clerk of the Provincial Court shall forward to the clerk of the Court of Queen's Bench the record of any evidence taken, any money paid into the Provincial Court other than court fees and all other material in the possession of the Provincial Court that pertains to the action in respect of which the order was made.*

(3) *On an action being transferred into the Court of Queen's Bench under this section, the Court of Queen's Bench may, on any conditions it considers proper,*

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

(4) *If an action is transferred into the Court of Queen's Bench 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 Court of Queen's Bench considers proper, withdraw the abandonment of that portion of his claim or counterclaim and proceed on 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 on any conditions 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 38,*
- (b) *a statement of counterclaim under section 43, or*
- (c) *a notice to attend under section 45.*

(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(1) *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.

(2) *Subsection (1)(b) does not apply to proceedings that take place in the Court of Queen's Bench.*

(ii) an affidavit of service of the notice of appeal, and

(iii) a copy of a requisition to a clerk of the Provincial Court for a transcript of evidence together with a receipt for payment of the transcript.

(2) The Court of Queen's Bench may, on 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) The appellant shall file with the Court of Queen's Bench a transcript of the evidence heard before the judge of the Provincial Court within 6 months of the date that the notice of appeal is filed in the Court of Queen's Bench, unless an order has been made by a judge of the Court of Queen's Bench prior to the expiration of the 6-month period extending the time for filing the transcript.

(4) Where a judge of the Court of Queen's Bench is satisfied that a transcript cannot be provided for the appeal, the judge may, on application by the appellant,

(a) order that the matter be returned to the Provincial Court for a new hearing, or

(b) make any other order that the judge considers appropriate.

60 When a notice of appeal is filed with a clerk of the Provincial Court, the clerk shall forward to a clerk of the Court of Queen's Bench any money paid into the Provincial Court, other than court fees, and all other documents and exhibits in the possession of the Provincial Court that pertain to the matter being appealed.

61(1) If an appellant fails to comply with the requirements of section 59, the appeal shall be dismissed by the Court of Queen's Bench.

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

62 On section 59(1)(a) and (b) being complied with, an appeal operates as a stay of proceedings under the judgment being appealed, subject to the order of the Court of Queen's Bench.

63 On sections 59 and 60 being complied with, the Court of Queen's Bench shall set down the appeal for hearing at a regular sitting.

64 An appeal shall be heard as an appeal on the record unless, on application by a party, the Court of Queen's Bench orders the appeal to be heard as a trial de novo.

65 The Court of Queen's Bench may adjourn an appeal from time to time as circumstances require and may make any order that it considers proper in respect of costs.

66(1) The Court of Queen's Bench shall

(a) hear and determine an appeal,

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.

- (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 Court of Queen's Bench is final and cannot be further appealed.
- 67** A party to an appeal may have the judgment entered as a judgment of the Court of Queen's Bench and execution and garnishee summons may be issued on it in accordance with the procedure of the Court of Queen's Bench.
- 68(1)** If at any time a claim, counterclaim or defence involves a matter that is beyond the jurisdiction of the Court, the Court may order that the matter be transferred to the Court of Queen's Bench.
- (2) When an order is made under subsection (1), a clerk of the Provincial Court shall forward to the clerk of the Court of Queen's Bench the record of any evidence in the form in which it was taken, any money paid into the Provincial Court, other than court fees, and all other documents and exhibits in the possession of the Provincial Court pertaining to the matter.
- (3) When a matter is transferred into the Court of Queen's Bench, the Court of Queen's Bench may, on any conditions it considers proper,
 - (a) continue the matter to completion, or
 - (b) order the matter to be recommenced.
- (4) If a matter is transferred into the Court of Queen's Bench and a party had abandoned a portion of his claim or counterclaim under section 36(2), that party may, subject to any conditions that the Court of Queen's Bench considers proper, withdraw the abandonment of that portion of the claim or counterclaim and proceed on the entire claim or counterclaim, as the case may be.
- 69(1)** On application by a party to the clerk, with the consent of the other parties, before the hearing commences, an action in the Court of Queen's Bench in which the claim is within the jurisdiction of the Provincial Court may be transferred into the Provincial Court by the clerk of the Court of Queen's Bench in the judicial district where the action was commenced.
- (2) An action transferred into the Court under subsection (1) continues as if it had been commenced in that Court.
- 70** The Court may at any time in a hearing and on any conditions it considers proper
 - (a) award costs, and
 - (b) grant adjournments.
- 71** A document shall not be issued or filed until the prescribed fee payable in respect of that issuance or filing has been paid.
- 72** Where a clerk is required to send a document, notice or other thing under this Part, it may be sent by ordinary or registered mail.

73(1) The Court may, on application, if it considers it proper to do so, order a clerk not to issue

(a) a summons under section 38, or

(b) a notice to attend under section 43.

(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.

74(1) 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.

(2) Subsection (1)(b) does not apply to proceedings that take place in the Court of Queen's Bench.

75 No proceeding is invalid for informality if there has been substantial compliance with the requirements of this Part.

76(1) The practice and procedure of the Court shall be as provided in this Act and the regulations.

(2) Where this Act and the regulations do not provide for some specific practice or procedure and the practice or procedure is necessary to ensure an expeditious and inexpensive resolution of the matter before the Court, the Court may, in its discretion, apply the Alberta Rules of Court, modified or varied as need be.

5 Part 4 of the Provincial Court Act as it read immediately before January 15, 1990 continues to apply with respect to summonses issued before that date.

6 This Act comes into force on January 15, 1990.

5 Transitional.

6 Coming into force.