

1994 BILL 23

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

**PROVINCIAL OFFENCES PROCEDURE
AMENDMENT ACT, 1994**

MRS. FRITZ

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 23
Mrs. Fritz

BILL 23

1994

PROVINCIAL OFFENCES PROCEDURE AMENDMENT ACT, 1994

(Assented to _____, 1994)

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

1 *The Provincial Offences Procedure Act is amended by this Act.*

2 *Section 30 is amended*

(a) *in subsection (3)(b)(ii) by adding "or if he pleads not guilty
and fails to appear in Court in person or by an agent on his
trial date" after "notice";*

(b) *by repealing subsection (5) and substituting the following:*

(5) Notwithstanding subsection (4), if

(a) the defendant has been charged under section 170 of
the *Highway Traffic Act* or section 102 of the *Motor
Vehicles Administration Act*, or

(b) the offence notice relates to an alleged parking
violation,

the offence notice may be served by sending it by ordinary
mail to the defendant's address as shown on the records of
the Registrar, as defined in the *Motor Vehicle
Administration Act*.

Explanatory Notes

1 Amends chapter P-21.5 of the Statutes of Alberta, 1988.

2 Section 30(3), (4) and (5) presently read:

30(3) An offence notice shall

(a) indicate the specified penalty for the offence, and

(b) 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.

(4) An offence notice shall be served on a defendant

(a) in the case of a defendant who is an individual, by delivering it personally to the defendant,

(b) in the case of a defendant that is a municipality, by delivering it personally to the mayor, reeve or other chief officer of the municipality or to the clerk of the municipality,

(b.1) in the case of a defendant that is a Metis settlement, by delivering it personally to the settlement chairman or the settlement administrator, and

3 Section 33 is amended

(a) in subsection (1)

(i) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):

(a) enter a conviction in the defendant's absence and without a hearing and impose the specified penalty,

(ii) in clause (a.1) by adding "on application by a prosecutor," before "proceed";

(b) in subsection (2) by striking out "proceed to conduct the trial ex parte" and substituting "enter a conviction in the defendant's absence and without a hearing and impose the specified penalty";

(c) by adding the following after subsection (3):

*(4) If section 30(5)(a) or (b) applies, the notice referred to in subsection (3) may be sent by ordinary mail to the defendant's address as shown on the records of the Registrar, as defined in the *Motor Vehicle Administration Act*.*

4 Section 34 is repealed.

(c) *in the case of a defendant that is a corporation other than a municipality or Metis settlement,*

(i) *by sending it by single registered mail to the registered office of the corporation, or*

(ii) *by delivering it personally to the manager, secretary or other executive officer of the corporation or the person apparently in charge of a branch office of the corporation at an address held out by the corporation to be its address.*

(5) *An offence notice with respect to an alleged parking violation shall be served on a defendant in accordance with subsection (4) or in accordance with the regulations.*

3 Section 33 presently reads:

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.*

4 Section 34 presently reads:

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*

5 *Section 37 is amended*

(a) *in subsection (1) by striking out “, 34”;*

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

(2.1) If section 30(5)(a) or (b) applies, the notice referred to in subsection (2) may be sent by ordinary mail to the defendant’s address as shown on the records of the Registrar, as defined in the *Motor Vehicle Administration Act*.

6 *The following is added after section 38:*

Affidavit
evidence

38.1(1) In any proceedings under this Part where a defendant is charged with a contravention of section 70, 71(1), 72(2) to (4) or 108(5)(a) of the *Highway Traffic Act*, the evidence of the interceptor of the motor vehicle and the issuer of the violation ticket may be given by affidavit.

(2) An affidavit referred to in subsection (1) is, in the absence of evidence to the contrary, proof as to the motor vehicle that was intercepted and the driver of the motor vehicle.

(3) A copy of an affidavit referred to in subsection (1) must be served on the defendant by ordinary mail at his address for service prior to the date of the hearing.

(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.

5 Section 37 presently reads:

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.

6 Allows for affidavit evidence in some circumstances.

(4) The defendant may, with leave of the court, require the attendance of any person giving evidence by affidavit pursuant to subsection (1) for the purpose of cross-examination.

7(1) Any defendant who was served with an offence notice before the coming into force of section 4 of this Act continues to have the right to dispute the charge without attending or being represented at the trial as if section 34 of the Provincial Offences Procedure Act had not been repealed.

(2) Any statement made by a defendant pursuant to section 34 of the Provincial Offences Procedure Act is to be dealt with in accordance with that section as if it had not been repealed.

8 This Act, except section 6, comes into force on Proclamation.

7 Transitional.

8 Coming into force.