

1994 BILL 209

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 209

COMMENCEMENT OF ACTIONS ACT

MR. GERMAIN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 209
Mr. Germain

BILL 209

1994

COMMENCEMENT OF ACTIONS ACT

(Assented to , 1994)

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

Definitions

1 In this Act,

(a) "action" means a civil proceeding and includes

(i) an issue, matter, or arbitration,

(ii) any interlocutory application, and

(iii) any other proceeding authorized or permitted to be
tried, heard, had or taken by or before the Court under the
law of Alberta;

(b) "clerk" means the clerk, deputy clerk or acting clerk of the
Court of the judicial district in which the action is pending or
is about to be commenced and, where the context requires it,
a process issuer;

(c) "Court" means the Court of Queen's Bench;

(d) "judicial district" means a judicial district established under
section 21 of the *Court of Queen's Bench Act*;

(e) "place" means a place at which regular sittings of the Court
are held;

Place of action **2** In every document initiating an action, the plaintiff shall indicate the place where the action shall be tried.

Determining place of action **3(1)** Every action shall be commenced and tried, unless otherwise agreed by the parties under section 4 or otherwise ordered by the Court, in the judicial district where:

(a) when the possession of land is claimed or when the proceeding is an action for foreclosure, sale under a mortgage, enforcement of a vendor's lien or relates to any lien governed by statute, or is for specific performance, termination, cancellation or rescission of a contract relating to land, then notwithstanding any provision in a mortgage of land or in an agreement for the sale of land, where the land or any part is situated;

(b) when the cause of action relates to an action under the *Divorce Act (Canada)* or involves the division of property, custody of children or any other domestic or matrimonial cause within the jurisdiction of the Court, where the parties last had their permanent residence or one of the parties has resided on a regular and habitual basis for one year prior to commencing the action;

(c) when the cause of action is founded on a tort, where the tort is alleged to have been committed;

(d) when the action is to enforce, rescind, resolve, annul or otherwise affect a contract or to recover damages or obtain any other relief in respect of a breach of a contract, where the contract was made or in which the subject matter of the contract is situated;

(e) when the action is to collect a debt other than a debt related to land, where the obligation giving rise to the debt was incurred;

(f) when the action is to enforce a judgment of a court, where the judgment was given or where a defendant's assets are situated;

(g) when the action is for the removal and sale of property seized by the sheriff, where the seizure occurred;

(2) When there is more than one judicial district where an action may be commenced under subsection (1), the action may be commenced and tried in any one of those judicial districts.

(3) If a judicial district cannot be determined in accordance with subsection (1) for the purposes of commencing an action then subject to the other provisions of this Act, the action may be commenced and tried in any judicial district.

Application to
transfer an action

4(1) The parties to an action may agree that it be commenced or be tried in whole or in part in a judicial district other than the one determined in accordance with section 3.

(2) Where the parties to an action reach an agreement under subsection (1), they shall file one signed copy with the clerk who shall place it on the Court file.

(3) Where an agreement is filed under this section, the trial of the action shall be held in the judicial district named in the agreement unless the Court otherwise orders.

Agreement to
proceed in another
judicial district

5(1) Where an action has been commenced in a judicial district other than the one determined in accordance with section 3, any party to the action may apply to have it transferred to another judicial district.

(2) An application under this section may be made in the judicial district in which the action was commenced or in the judicial district to which the applicant proposes to have the action transferred.

Effect of a transfer

6(1) An action shall continue in the judicial district in which it was commenced until an agreement is filed under section 4 or the Court orders it be transferred.

(2) When an application is made to transfer an action, no further steps may be taken in the judicial district in which the action was commenced unless the Court orders that the action continue in that judicial district.

(3) When an action has been transferred to another judicial district, no further orders or judgments may be granted in any other judicial district except by consent of the parties or by order of the Court.

7(1) When the Court orders that an action be transferred to another judicial district, the clerk in the judicial district in which the order was granted shall notify the clerk in the judicial district in which the action was commenced or is proceeding of the judicial district to which it is to be transferred and shall transfer or cause to be transferred the Court file to the clerk of the judicial district in which the action is to be tried.

(2) When an agreement between the parties is reached under section 4, the clerk of the judicial district in which the action is continuing shall notify the clerk of the judicial district to which it is to be transferred and transfer the Court file.

(3) When an application is made to transfer an action under section 5, the clerk of the judicial district in which the application is made shall notify the clerk of the judicial district where the action was commenced or is proceeding.

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| Limitations | 8 Notwithstanding that an action is commenced in a judicial district other than the one determined in accordance with section 3, this irregularity alone shall not serve to invalidate the action for the purposes of the <i>Limitation of Actions Act</i> or any other limitation period established by an enactment. |
| Regulations | 9 Regulations made by the Lieutenant Governor in Council under the <i>Court of Queen's Bench Act</i> shall have the same effect and operate as if they were made under this Act. |
| Authority of the Court | 10 A Court may order that an action be transferred to any judicial district when it is in the best interests of justice and equity to do so. |
| Application | 11 This Act applies to actions that are commenced on or after the date this Act comes into force. |
| Coming into force | 12 This Act comes into force on July 1, 1995. |