

1997 BILL 16

First Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

JUSTICE STATUTES AMENDMENT ACT, 1997

THE MINISTER OF JUSTICE
AND ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 16

1997

JUSTICE STATUTES AMENDMENT ACT, 1997

(Assented to _____, 1997)

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

Domestic Relations Act

Amends RSA
1980 cD-37

1(1) The *Domestic Relations Act* is amended by this section.

(2) Section 25.1 is amended by adding the following after clause (a):

(a.1) “child support guidelines” means the child support guidelines designated or established under section 39(2);

(3) Section 27 is amended

(a) by adding the following after subsection (7):

(7.1) In making an order under this section that provides for maintenance of a child, the provincial judge must follow the child support guidelines.

(b) by adding the following after subsection (15):

(15.1) In making an order under subsection (15) that provides for maintenance of a child, the Court must follow the child support guidelines.

(4) Section 28 is amended

(a) by repealing subsection (5) and substituting the following:

(5) The provincial judge may from time to time vary the order on the application of either the husband or the wife

Explanatory Notes

Domestic Relations Act

- 1(1) Amends chapter D-37 of the Revised Statutes of Alberta 1980.
- (2) Defines “child support guidelines”.
- (3) Requires the child support guidelines to be followed.
- (4) Section 28(7) will require the child support guidelines to be followed. Section 28(5) presently reads:
 - (5) *The provincial judge may from time to time vary the order on the application of either the husband or the wife on proof that the means of the husband or the wife have altered in amount since the making of the original order or a subsequent order varying it.*

- (a) on proof that the means of the husband or the wife have altered in amount since the making of the original order or a subsequent order varying it, or
- (b) in circumstances authorized under the child support guidelines.

(b) by adding the following after subsection (6):

(7) In making or varying an order under this section that provides for maintenance of a child, the provincial judge must follow the child support guidelines.

(5) Section 36 is amended by adding the following after subsection (2):

(3) In confirming, rescinding or varying an order under subsection (2) that provides for maintenance of a child, the provincial judge must follow the child support guidelines.

(6) Section 39 is renumbered as section 39(1) and the following is added after subsection (1):

(2) The Lieutenant Governor in Council may make regulations

- (a) designating the Federal Child Support Guidelines, as defined in subsection 2(1) of the *Divorce Act* (Canada), as the child support guidelines to be followed pursuant to sections 27, 28 and 36 of this Act;
- (b) establishing child support guidelines, including regulations
 - (i) respecting the way in which the amount of an order for child support is to be determined;
 - (ii) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
 - (iii) authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;
 - (iv) authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;

(5) Requires the child support guidelines to be followed.

(6) Section 39 presently reads:

39 The Lieutenant Governor in Council may make regulations

(a) prescribing rules with respect to the making of applications under this Part and dealing generally with all matters of procedure under this Part;

(b) prescribing forms and providing for their use.

- (v) respecting the circumstances that give rise to the making of a variation order in respect of a child support order;
 - (vi) respecting the determination of income for the purposes of the application of the guidelines;
 - (vii) authorizing a court to impute income for the purposes of the application of the guidelines;
 - (viii) respecting the production of financial information and providing for sanctions when that information is not provided;
- (c) authorizing the court, when making an order providing for maintenance of a child, to exempt in whole or in part the application of the child support guidelines with respect to the maintenance of the child, if the court is satisfied that the financial requirements of the child have been otherwise adequately taken care of so that in the opinion of the court the child is in at least as favourable a financial position as if the child support guidelines had been applied.

(7) This section comes into force on Proclamation.

Judicature Act

Amends RSA
1980 cJ-1

2(1) The *Judicature Act* is amended by this section.

(2) The following is added after Part 7:

PART 7.1

COURT SECURITY

Definitions

37.2 In this Part,

- (a) “courthouse” means a building in which a courtroom is located but does not include any portion of that building not used in connection with the courtroom;
- (b) “courtroom” means any place where a justice of the Court of Appeal or Court of Queen’s Bench, a judge of the Surrogate Court, a judge of the Provincial Court or a justice of the peace holds court;
- (c) “Minister” means the Minister of Justice and Attorney General;

(7) Coming into force.

Judicature Act

2(1) Amends chapter J-1 of the Revised Statutes of Alberta 1980.

(2) Regulations.

- (d) “restricted area” means any portion of a courthouse to which access by the public is restricted and that is identified as a restricted area by a sign;
- (e) “security officer” means a person appointed by the Minister under section 37.3;
- (f) “weapon” means weapon as defined in the *Criminal Code* (Canada).

Security officers

37.3(1) The Minister may appoint persons as security officers for the purpose of providing security in a courthouse.

(2) Every security officer appointed under subsection (1) has, for the purposes of this Part, the powers of a peace officer.

Identity checks and weapon screening

37.4(1) Where a person enters a courthouse or courtroom, a security officer may

- (a) require the person to satisfy the security officer as to the person’s identity, and
- (b) where the security officer is not satisfied that the person is a peace officer or a person authorized by the regulations to have possession of a weapon in a courthouse, screen the person for weapons.

(2) If the security officer is not satisfied as to the person’s identity, the person refuses to be screened for weapons or the person has possession of a weapon, the security officer may refuse the person entry to the courthouse or a courtroom and use as much force as is reasonably necessary to prevent the person from entering.

(3) A security officer may at any time require a person, other than a peace officer or a person authorized by the regulations to have possession of a weapon in a courthouse, who the security officer reasonably believes has possession of a weapon to leave the courthouse and may use as much force as is reasonably necessary to force the person to leave.

Offences

37.5(1) Every person who enters or attempts to enter or remains in a courthouse or a restricted area after having been refused entry or after having been requested to leave by a security officer is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a period not exceeding one year or to both a fine and imprisonment.

(2) Every person who has possession of a weapon in a courthouse, other than a peace officer or a person authorized by the regulations to have possession of a weapon in a courthouse, is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a period not exceeding one year or to both a fine and imprisonment.

Non-derogation of judges' powers

37.6 Nothing in this Part derogates from or is intended to replace the power of a judge, whether established by common law or otherwise, to control proceedings in a courtroom.

Regulations

37.7 The Lieutenant Governor in Council may make regulations

- (a) providing for the organization, co-ordination, supervision, discipline and control of security officers;
- (b) designating persons authorized to have possession of weapons in a courthouse.

(3) Section 47 is repealed and the following is substituted:

Validation of Alberta Rules of Court

47(1) In this section, "Alberta Rules of Court" means the Alberta Rules of Court, filed as Alberta Regulation 390/68 as amended prior to the commencement of this section.

(2) The Alberta Rules of Court are validated notwithstanding that any provision in the Rules may affect substantive rights.

Limitations Act

Amends SA 1996 cL-15.1

3(1) The *Limitations Act* is amended by this section.

(2) Section 2 is amended by renumbering subsection (1) as subsection (1.2) and by adding the following before subsection (1.2):

Application

2(1) This Act applies where a claimant seeks a remedial order in a proceeding commenced after this Act comes into force, whether the claim arises before or after the coming into force of this Act.

(1.1) Subject to sections 11 and 13, if, before this Act comes into force, the claimant knew, or in the circumstances ought to have known, of a claim and the claimant has not sought a remedial order before the earlier of

(3) Section 47 presently reads:

47(1) In this section, "Alberta Rules of Court" means the Alberta Rules of Court, filed as Alberta Regulation 390/68 as amended prior to November 4, 1976.

(2) The Alberta Rules of Court are hereby validated notwithstanding that any provision therein may affect substantive rights.

Limitations Act

3(1) Amends chapter L-15.1 of the Statutes of Alberta, 1996.

(2) Section 2(1) presently reads:

2(1) Except as provided in subsection (2), this Act is applicable to any claim, including a claim to which this Act can apply arising under any law that is subject to the legislative jurisdiction of the Parliament of Canada, if

(a) the remedial order is sought in a proceeding before a court created by the Province, or

(b) the claim arose within the Province and the remedial order is sought in a proceeding before a court created by the Parliament of Canada.

(a) the time provided by the *Limitation of Actions Act* that would have been applicable but for this Act, or

(b) 2 years after the coming into force of this Act,

the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

(3) Section 5(2) is repealed and the following is substituted:

(2) Where a claimant brings an action against

(a) a parent or guardian of the claimant, or

(b) any other person for a cause of action based on conduct of a sexual nature including, without limitation, sexual assault,

and the cause of action arose when the claimant was a minor, the operation of the limitation periods provided by this Act is suspended during the period of time that the claimant is a minor.

(4) Section 14 is repealed.

(5) The following is added before section 15:

Amends RSA
1980 cJ-1

14.1 The *Judicature Act* is amended by repealing section 14.

Provincial Court Act

Amends RSA
1980 cP-20

4(1) The *Provincial Court Act* is amended by this section.

(2) Section 21(1) is amended by adding the following after clause (k.2):

(3) Section 5(2) presently reads:

(2) Where an action is brought by a claimant against a parent or guardian of the claimant and the cause of action arose when the claimant was a minor, the operation of the limitation periods provided by this Act is suspended during the period of time that the person was a minor.

(4) Section 14 presently reads:

14(1) Subject to subsection (2), this Act applies where a claimant seeks a remedial order in a proceeding commenced after the date this Act comes into force.

(2) A defendant is not entitled to immunity from liability in respect of a claim of which the claimant knew, or in the circumstances ought to have known, before this Act came into force and in respect of which a remedial order is sought

(a) in time to satisfy the provisions of law governing the commencement of actions which would have been applicable but for this Act, and

(b) within 2 years after the date this Act comes into force.

(5) Consequential amendment.

Provincial Court Act

4(1) Amends chapter P-20 of the Revised Statutes of Alberta 1980.

(2) Section 21(1) presently reads:

(k.3) prescribing an amount, not to exceed \$10 000, for the purposes of section 36(1)(a) and (b);

(3) Section 36 is amended

(a) in subsection (1)(a) and (b) by striking out “\$4000” and substituting “the amount prescribed by the regulations”;

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

(1.1) Where an amount is prescribed by the regulations for the purposes of subsection (1), the amount applies with respect to civil claims issued after the prescribed amount comes into effect.

(c) in subsection (2) by striking out “prescribed in” and substituting “prescribed for the purposes of”.

21(1) *The Lieutenant Governor in Council may make regulations*

(a) to (d) *repealed 1981 cP-20.1 s21;*

(e) *establishing divisions of the Court in addition to divisions referred to in section 2(2)(a) to (d);*

(f) *prescribing the locations at which the Court will hold sittings;*

(g) *respecting costs that may be awarded in respect of proceedings in the Court;*

(h) *governing the rates of fees and expenses payable to witnesses and interpreters;*

(i) *prescribing fees payable for the filing or issuing of documents in respect of proceedings in the Court;*

(j) *prescribing fees, expenses and other forms of remuneration payable to stenographic reporters;*

(k) *prescribing fees, expenses and other forms of remuneration payable to operators and transcribers of sound-recording machines;*

(k.1) *respecting fees for making copies of transcripts, orders, judgments and other documents;*

(k.2) *respecting fees for searches of court files;*

(l) *respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.*

(3) Section 36 presently reads:

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 exclusive of interest payable under an Act or by agreement on the amount claimed, 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 exclusive of interest payable under an Act or by agreement on the amount claimed.*

(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.*

(4) This section comes into force on Proclamation.

Provincial Offences Procedure Act

Amends SA
1988 cP-21.5

5(1) The *Provincial Offences Procedure Act* is amended by this section.

(2) Section 1 is amended by adding the following after clause (m):

(m.1) “surcharge” means a surcharge under the *Victims of Crime Act*;

(3) Section 25 is amended

(a) in subsection (1) by repealing clause (a) and substituting the following:

(a) an amount equal to the combined amounts of the specified penalty for the offence as provided for in the regulations and the applicable surcharge, if any, or

(b) in subsection (3)(a) and (b) by striking out “remains” and substituting “and any applicable surcharge remain”.

(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.

(4) Coming into force.

Provincial Offences Procedure Act

5(1) Amends chapter P-21.5 of the Statutes of Alberta, 1988.

(2) Adds definition.

(3) Section 25 presently reads:

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,

(4) Section 30(3)(a) is repealed and the following is substituted:

- (a) indicate the specified penalty for the offence or, if a surcharge is payable in respect of the offence, the combined amount of the specified penalty and the applicable surcharge, and

(5) Section 33(3) is amended by striking out “the amount of the fine imposed” and substituting “the combined amount of the specified penalty and the applicable surcharge, if any.”

(6) Section 35(3) is amended by adding “and indicate the amount of any applicable surcharge” after “law”.

(7) Section 36 is repealed and the following is substituted:

Payment,
charges not
disputed

36(1) If an offence notice is served on a defendant and the defendant wishes to plead guilty to the charge, the defendant may make a voluntary payment by delivering the offence notice together with an amount equal to the specified penalty and the applicable surcharge, if any, to a court office at a location prescribed under section 21(3)(a) of the *Provincial Court Act*.

(2) When a clerk records in the Court records the receipt of a voluntary payment 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.

(8) Section 37(2) is amended by adding “and of any applicable surcharge payable” after “penalty”.

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.

(4) Section 30(3) presently reads:

(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 or if he pleads not guilty and fails to appear in Court in person or by an agent on his trial date.

(5) Section 33(3) presently reads:

(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.

(6) Section 35(3) presently reads:

(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.

(7) Section 36 presently reads:

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 21(3)(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.

(8) Section 37(2) presently reads:

(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.

(9) Section 39 is amended by adding “excluding any applicable surcharge” after “\$400”.

(10) Section 40 is amended by adding “any applicable surcharge and” after “plus”.

(11) The following is added after section 41:

Violation ticket
transitional

41.1 When a new violation ticket is prescribed for the purposes of the surcharge, the violation ticket previously prescribed may also be used until supplies of those previously prescribed tickets are exhausted.

(12) This section comes into force on Proclamation.

(9) Section 39 presently reads:

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.

(10) Section 40 presently reads:

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.

(11) Violation ticket transitional.

(12) Coming into force.