

2000 BILL 20

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Fourth Session, 24th Legislature, 49 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 20

JUSTICE STATUTES AMENDMENT ACT, 2000

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THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 20

2000

### JUSTICE STATUTES AMENDMENT ACT, 2000

(Assented to , 2000)

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

#### Part 1 Provincial Court Act

Amends RSA  
1980 cP-20

**1 The *Provincial Court Act* is amended by this Part.**

**2 Section 1(b) is repealed and the following is substituted:**

(b) “judge” means a judge of the Provincial Court appointed under this Act and includes a chief judge, deputy chief judge, assistant chief judge and supernumerary judge;

(b.01) “Judicial Council” means the Judicial Council established under Part 6.1 of the *Judicature Act*;

**3 Section 2 is amended by repealing subsection (2).**

## **Explanatory Notes**

### **Part 1 Provincial Court Act**

**1** Amends chapter P-20 of the Revised Statutes of Alberta 1980.

**2** Section 1(b) presently reads:

*1 In this Act,*

*(b) “judge” has the same meaning as in the Provincial Court Judges Act;*

**3** Section 2 presently reads:

*2(1) There shall be a provincial court for Alberta to be styled “The Provincial Court of Alberta”.*

*(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”;*

**4 Section 15 is amended**

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

Staff

**15(1)** In accordance with the *Public Service Act* there may be appointed officers and employees required to conduct the business of the Court.

**(b) in subsection (2) by striking out “subsection (1)(a)” and substituting “subsection (1)”.**

**5 Section 21 is amended**

**(a) in subsection (1)**

**(i) by repealing clause (e);**

**(ii) in clause (i) by adding “and providing for waiving the payment of those fees” after “Court”;**

**(iii) by repealing clause (k.3) and substituting the following:**

(k.3) prescribing an amount, not to exceed \$25 000, for the purposes of section 21.6;

**(b) in subsection (1) by adding the following after clause (k.3):**

(k.4) respecting the preparation of judgments and orders;

(k.5) providing for rules governing the practice and procedure of the Court and, without limiting the generality of the foregoing, make rules

(i) governing payment hearings and methods of payments referred to in section 57.2;

(ii) with respect to pre-trial conferences and mediations as defined in Part 4,

(A) respecting any practice or procedural matters not specifically provided for under sections 76 to 80;

*(d) the Civil Division to be styled "The Civil Division of The Provincial Court of Alberta";*

*(e) any other division established by the Lieutenant Governor in Council.*

*(3) The Provincial Court is a court of record.*

**4** Section 15 presently reads:

*15(1) In accordance with the Public Service Act there may be appointed*

*(a) officers and employees required to conduct the business of the Court, and*

*(b) repealed 1981 cP-20.1 s21.*

*(2) The Minister of Justice and Attorney General may designate any officer or employee appointed under subsection (1)(a) as a clerk or deputy clerk.*

**5** Section 21(1) presently reads in part:

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

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

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

- (B) governing confidentiality of matters considered at pre-trial conferences and mediations;
- (C) making sections 21.8(2) and 76 to 80 applicable to other matters before the Court that do not come under Part 4;
- (D) varying the provisions of sections 21.8(2) and 76 to 80 or substituting other provisions for the provisions of sections 21.8(2) and 76 to 80 and making those varied or substituted provisions applicable to other matters before the Court that do not come under Part 4;
- (iii) except as otherwise provided for under this Act or another enactment, governing in respect of any matter before the Court the period of time within which an act is to be carried out, an attendance of a person is required, a document must be filed with the Court or a document must be served on any party;
- (iv) determining when a notice period commences or concludes or both;
- (v) in respect of family law proceedings, governing the obligations of parties to attend courses, workshops or similar undertakings;

**(c) by adding the following after subsection (1):**

**(1.1)** The Court may make recommendations to the Minister of Justice and Attorney General respecting rules to be made under subsection (1)(k.5).

**6 The following is added after section 21:**

**PART 1.1**

**PROVINCIAL COURT JUDGES**

Appointment  
of judges

**21.1(1)** The Lieutenant Governor in Council may appoint judges.

**(2)** No person other than a Canadian citizen may be appointed a judge.

**6** Part 1.1 amalgamates the provisions of the Provincial Court Judges Act into the Provincial Court Act. Part 1.2 provides for general matters regarding judicial functions including jurisdiction and civil contempt proceedings.

(3) The Lieutenant Governor in Council shall designate one judge to be chief judge of the Court and may designate one judge to be deputy chief judge of the Court.

(4) If the chief judge is ill, absent from Alberta or unable to act, the deputy chief judge has all the powers and duties of the chief judge.

(5) Subject to section 21.42, the chief judge has the power and duty to supervise the judges in the performance of their duties, including the power and duty to

- (a) designate a particular case or other matter or class of cases or matters in respect of which a particular judge is to act;
- (b) designate which court facilities shall be used by particular judges;
- (c) assign duties to judges;
- (d) exercise any other powers and perform any other duties prescribed by the Lieutenant Governor in Council.

(6) The chief judge in consultation with the assistant chief judges may designate the sittings of the Court.

(7) Where the chief judge makes any decision or takes any action with respect to a matter referred to in subsection (5) or (6) or any other matter relating to the administration of the Court, that decision or action is not subject to any type of judicial review by a superior court unless that decision or action is, in the opinion of a superior court, patently unreasonable or not within the powers, duties or jurisdiction of the chief judge.

(8) The Lieutenant Governor in Council may designate one or more judges as assistant chief judges in respect of or for one or more of the following:

- (a) the Court;
- (b) a location within Alberta;
- (c) any particular matter or class of matters;





(d) any circumstance or situation not referred to in clauses (a) to (c) that the Minister of Justice and Attorney General considers appropriate.

(9) The assistant chief judges shall perform those functions that are delegated to them by the chief judge.

(10) The Minister of Justice and Attorney General may designate a judge to act in the place of the chief judge, deputy chief judge or an assistant chief judge

(a) who is ill, absent from Alberta or unable to act, or

(b) when the office is vacant.

(11) A judge designated under subsection (10) has the powers and duties of the chief judge, deputy chief judge or assistant chief judge, as the case may be.

Appointments  
of chief judge  
and deputy  
and assistant  
chief judges

**21.11(1)** A judge appointed as chief judge holds that office for a term of 7 years and may not be reappointed to that office.

(2) A judge appointed as deputy chief judge holds that office for a term not exceeding 7 years as set out in the order appointing the deputy chief judge and may not be reappointed to that office.

(3) A judge appointed as assistant chief judge holds that office for a term of 5 years and may not be reappointed to that office or appointed to any other office of assistant chief judge.

(4) This section applies only to a judge appointed as the chief judge, the deputy chief judge or an assistant chief judge after April 28, 1999.

Oath of office

**21.12(1)** Every judge, before taking office as chief judge, deputy chief judge, assistant chief judge, judge or supernumerary judge, shall take and subscribe before the Chief Justice of Alberta, the Chief Justice of the Court of Queen's Bench of Alberta or the chief judge, the deputy chief judge or an assistant chief judge of the Provincial Court the oath of allegiance and the judicial oath prescribed by the *Oaths of Office Act*.

(2) The oath of allegiance and the judicial oath are to be transmitted forthwith by the judge to the Minister of Justice



and Attorney General or a person designated by that Minister.

Jurisdiction

**21.2** Every judge has jurisdiction throughout Alberta and

- (a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge or a judge of the Provincial Court by or under any Act of the Legislature or of the Parliament of Canada,
- (b) has all the power and authority vested by or under any Act of the Legislature in a magistrate or 2 justices of the peace sitting together,
- (c) may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada, and
- (d) is, by virtue of being a judge, a justice of the peace and a commissioner for administering oaths and taking affidavits.

Inability of  
judge to  
complete  
proceedings

**21.21** If a proceeding, other than a trial or application under the *Criminal Code* (Canada), has commenced and the presiding judge is unable for any reason to complete the proceedings, any judge requested to act by the chief judge or deputy chief judge may continue the proceedings from where the proceedings were left off and, according to the opinion of the judge requested to act as to what is required to ensure justice, that judge may continue the proceedings to completion or recommence the proceedings.

Retirement  
age

**21.22(1)** Subject to Part 6.1 of the *Judicature Act*, every judge must retire on attaining the age of 70 years.

(2) Subject to Part 6.1 of the *Judicature Act*, no judge may be removed from office before attaining retirement age.

Appointment  
of super-  
numerary  
judge

**21.3(1)** A judge who retires may elect to become a supernumerary judge.

(2) A judge who is retired from office under Part 6.1 of the *Judicature Act* is not entitled to elect to become a supernumerary judge.

(3) The Lieutenant Governor in Council, on the recommendation of the chief judge, may appoint a person as



a supernumerary judge if the person has made an election under subsection (1).

(4) The term of appointment as a supernumerary judge is 2 years, but the Minister of Justice and Attorney General shall renew the appointment for further periods of 2 years on the recommendation of the chief judge.

(5) Section 21.22 does not apply to a supernumerary judge.

Resignation

**21.31** A judge may at any time resign from being a judge by giving a written notice signed by that judge that includes the effective date of the resignation and delivering that notice to the Minister of Justice and Attorney General.

Confidentiality  
of selection  
process

**21.32** Records containing information arising during the process for the selection of judges are confidential and notwithstanding the *Freedom of Information and Protection of Privacy Act* are not subject to that Act.

Complaints

**21.4** A complaint about the competence, conduct, misbehaviour or neglect of duty of a judge or the inability of a judge to perform duties is to be dealt with in accordance with Part 6.1 of the *Judicature Act*.

Restriction on  
other  
employment

**21.41** Unless otherwise authorized by the Lieutenant Governor in Council, a judge who is employed as a full-time judge shall not carry on or practise any other business, profession, trade or occupation.

Judge's  
residence

**21.42(1)** The Minister of Justice and Attorney General or a person authorized by that Minister may, on the appointment of a judge, designate the place at which the judge is to reside.

(2) Where a designation is made under subsection (1), any subsequent change in designation may only be made by the Judicial Council at the request of the chief judge and only if, in the opinion of the Judicial Council, the change in residence is required for the better administration of the Court.

(3) Nothing in this section affects a judge's jurisdiction throughout Alberta.

Conflict of  
interest

**21.5** A judge does not have jurisdiction to hear any matter in which the judge has or has had an interest.



Action for  
damages

**21.51(1)** No action may be brought against a judge for any act done or omitted to be done in the execution of the judge's duty or for any act done in a matter in which the judge has exceeded the judge's jurisdiction unless it is proved that the judge acted maliciously and without reasonable and probable cause.

(2) No action for the recovery of damages lies against a judge in respect of an order or warrant made or sentence imposed, whether before or after the coming into force of this Act, by a judge while acting in the place of any other judge who has then ceased for any reason to be a judge, if the order, warrant or sentence could have been lawfully made or imposed by the judge by whom the conviction was made.

(3) No action for the recovery of damages lies against a judge in respect of an order or warrant made or sentence imposed, whether before or after the coming into force of this Act, against, on or in respect of a person who had been previously convicted by another judge but had not been sentenced by that other judge, if the order, warrant or sentence could have been lawfully made or imposed by the judge by whom the conviction was made.

(4) No action for the recovery of damages lies against any person in respect of an act or thing done or omitted to be done at any time, whether before or after the coming into force of this Act, in the execution of an order, warrant or sentence to which subsection (1), (2) or (3) relates, or purporting to be done in compliance with or incidental to an order, warrant or sentence.

(5) The Minister of Justice and Attorney General may make a payment for damages or costs, including solicitor-client costs incurred by the judge in respect of an act, omission or matter described in subsection (1), (2) or (3).

Regulations

**21.52(1)** The Lieutenant Governor in Council shall make regulations

- (a) fixing the salaries to be paid to judges;
- (b) fixing the amount to be paid to judges sitting part time;
- (c) prescribing fees to be paid for each proceeding or specified service;





- (d) providing for the benefits to which judges are entitled, including
  - (i) personal expense allowances and services;
  - (ii) travel and moving allowances;
  - (iii) leaves of absence and vacations;
  - (iv) sick leave credits and payment in respect of those credits;
  - (v) benefits under one or more pension plans for specified judges and other individuals deriving benefit entitlements through them;
- (e) respecting the terms and conditions of appointment of supernumerary judges;
- (f) without limiting anything in clause (d), providing for the continuation or establishment of
  - (i) one or more pension plans, including a supplemental retirement plan that may or may not be registrable under the *Income Tax Act* (Canada), and
  - (ii) one or more pension funds,

including the making of any provisions in respect of those plans or funds that are made, or that are similar to or that correspond to provisions made, by or under, or that could be made under, the *Public Sector Pension Plans Act* with respect to any pension plan or pension fund continued or established by that Act;
- (g) providing for the transfer or other disposition of those benefits to which persons appointed as judges under the *Provincial Court Judges Act* or this Act were entitled under the *Public Service Act* and the regulations under that Act or the Public Service Pension Plan, the Public Service Management (Closed Membership) Pension Plan or the Management Employees Pension Plan at the time of their appointment under the *Provincial Court Judges Act* or under this Act.



(2) A regulation made under subsection (1) shall, if so provided in the regulation, be effective from a date prior to the making of the regulation.

Previous  
appointments

**21.53** Every person who, immediately prior to the coming into force of this Part, was a judge under the *Provincial Court Judges Act*, and whose appointment is in full force and effect on the coming into force of this Part is deemed to have been appointed a judge under this Act.

## PART 1.2

### GENERAL JUDICIAL MATTERS

Jurisdiction

**21.6(1)** The Court has, subject to this Act, the following jurisdiction:

- (a) for the purposes of Part 4,
  - (i) 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, exclusive of interest payable under an Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations,
  - (B) for damages, including damages for breach of contract, if the amount claimed or counterclaimed, as the case may be, exclusive of interest payable under an Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations,
  - (C) for the return of personal property if the value of the personal property, exclusive of interest payable under an Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations, and
  - (D) for specific performance or rescission of a contract if the amount in respect of the contract, exclusive of interest payable under



an Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations;

(ii) to grant an equitable remedy in respect of a claim or counterclaim referred to in subclause (i);

(b) where provided for or directed under any enactment, and subject to that enactment, to hear and adjudicate on any matter, provide any relief, carry out any duty or perform any function assigned to the Court under that enactment or in respect of which the Court is empowered to undertake or provide under that enactment;

(c) for the purposes of the *Mobile Home Sites Tenancies Act* and the *Residential Tenancies Act*, without limiting the jurisdiction of the Court provided for under those Acts, to grant

(i) an order terminating a tenancy;

(ii) an order for the recovery of possession of premises;

(iii) an order to vacate premises.

(2) 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) against a judge, justice of the peace or peace officer for anything done by that person while executing the duties of that office, or

(e) 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.



(3) Where an amount is prescribed by the regulations for the purposes of subsection (1), that amount applies with respect

(a) to civil claims issued, or

(b) subject to clause (a), to matters that arose,

after the prescribed amount came into effect.

(4) If the claim of a plaintiff or the counterclaim of a defendant exceeds the amount prescribed for the purposes of 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.

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

#### Contempt

**21.61(1)** A judge may, on application or on the judge's own initiative, declare that a person is in contempt of the Court if that person fails, without adequate excuse, to obey an order of a judge or an order of a sitting or presiding justice of the peace.

(2) Where a judge is satisfied that there are reasonable and probable grounds for believing that a person may be in contempt of the Court, the judge may order

(a) the person to appear before a judge, or

(b) a peace officer to take the person into custody and bring that person before a judge,

to show cause why the person should not be held in contempt of the Court.

(3) Every person in contempt of the Court is liable to any one or more of the following:

(a) imprisonment until the person has purged the contempt;

(b) imprisonment for not more than 2 years;





(c) a fine not exceeding \$25 000 and in default of paying the fine to imprisonment for not more than 2 years.

(4) The judge who imposed a sanction on a person whom the judge declared to be in contempt may waive the sanction in whole or in part or suspend any imprisonment where the judge is satisfied that the person has purged that person's contempt.

(5) This section does not apply

(a) to an order for the payment of money, or

(b) to an order made under the *Criminal Code* (Canada).

Adjournment

**21.62** The Court may at any time in any proceeding before the Court and on any conditions that the Court considers proper grant adjournments.

Notice of application

**21.63** Unless otherwise directed by the Court or otherwise provided for under an enactment, an application shall not be made to the Court except on at least 7 days' notice to the respondent to the application or, in the case of an application on the Court's own motion, the parties to the proceedings.

Exhibits

**21.7(1)** Where exhibits are in the possession or under the control of the Court and the party on whose behalf the exhibits were put into evidence has not made an application to the Court for the return of the exhibits

(a) within 6 months from the conclusion of the proceeding in respect of which the exhibits were put into evidence, or

(b) in the case of an appeal from the judgment or direction of the Court, within 6 months from the conclusion of the appeal,

a clerk may notify that party that unless within 3 months from a date specified in the notice that party applies to the clerk for the return of the exhibits the clerk may destroy or otherwise dispose of the exhibits.

(2) If a party who was given a notice by a clerk under subsection (1) does not apply for the return of the exhibits within the time period specified in the notice, the clerk may destroy or otherwise dispose of the exhibits.



(3) Notwithstanding subsection (1) or (2), where

- (a) requested to do so by a party to the proceedings, the clerk may retain possession or control of the exhibits for a further period of time that appears appropriate to the clerk, or as otherwise directed by the Court, or
- (b) directed to do so by the Court, the clerk shall retain possession or control of the exhibits as directed by the Court.

(4) Notwithstanding subsections (1), (2) and (3), the clerk may, unless otherwise directed by the Court, at any time after

- (a) the expiration of the appeal period, or
- (b) the disposition of the appeal,

as the case may be, return the exhibits to the party on whose behalf the exhibits were put into evidence at the proceeding before the Court.

(5) Notwithstanding anything in this section, a clerk at any time may, where permitted by the Court and subject to any directions by the Court, return or otherwise dispose of any exhibit that is in the possession or control of the Court.

(6) This section,

- (a) in respect of proceedings before the Court that are governed under another enactment, applies subject to any provisions of that enactment respecting exhibits, and
- (b) does not apply in respect of proceedings under the *Criminal Code* (Canada).

Certificate of  
judgment, etc.

**21.71(1)** If a judgment is entered or given under Part 4, the party in whose favour the judgment is made is, unless otherwise provided for by the regulations or directed by the Court, responsible for

- (a) preparing the certificate of judgment, and
- (b) sending a copy of the certificate of judgment to the other parties to the action.



(2) If an order is made by the Court under this Act or any other enactment, the party in whose favour the order is made is, unless otherwise provided for by the regulations or directed by the Court, responsible for

(a) preparing the order, and

(b) furnishing the order to the other party to the proceeding or as directed by the Court.

(3) Notwithstanding subsections (1) and (2), a clerk

(a) may, where the clerk considers it appropriate to do so in the circumstances, or

(b) shall, where directed to do so by the Court,

prepare a certificate of judgment or order referred to in subsection (1) or (2) and send or furnish, as the case may, the certificate of judgment or order to the parties to the proceedings.

(4) A copy of the certificate or the order referred to in subsection (1) or (2), at any time after it is filed with the Court or otherwise acknowledged by a clerk as being the judgment or order made by the Court, 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.

(5) A certificate of judgment, or an order of the Court under which money is payable, may be filed in the Court of Queen's Bench and on its being filed,

(a) the judgment for which the certificate of judgment was prepared or the order, as the case may be, becomes a judgment or order of the Court of Queen's Bench, and

(b) writ proceedings may be taken pursuant to the *Civil Enforcement Act*.

Costs of action

**21.8(1)** The Court may at any time in any proceeding before the Court and on any conditions that the Court considers proper award costs in respect of any matters coming under Part 3 or 4.



(2) The Court may award costs at any time in respect of pre-trial conferences conducted under Part 4.

Fees

**21.9** A clerk shall not file or issue a document in respect of proceedings in the Court until the prescribed fee payable in respect of the filing or issuance has been paid.

**7 Section 32 is amended by adding the following after subsection (2):**

(2.1) Where both parents of a child are dead, a person may, in respect of that child, make an application for access under this section.

**8 Section 35 is amended**

**(a) by adding the following after clause (b):**

(b.1) “mediation” means mediation referred to in section 77;

**(b) by adding the following after clause (c);**

(c.1) “pre-trial conference” means a pre-trial conference referred to in section 76;

(c.2) “registered mail” means any form of mail for which the addressee or a person on behalf of the addressee



**7** Section 32 presently reads in part:

*32(1) If*

- (a) the parents of a child are in fact living apart from one another, and*
- (b) the terms respecting custody of or access to the child are agreed to by the parties or there is a dispute respecting custody of or access to the child,*

*the Court may, on an application, make an order as it sees fit regarding*

- (c) the custody of the child, and*
- (d) the right of access to the child,*

*by either parent or any other person, having regard to the best interests of the child.*

*(2) The application for an order under this section may be made*

- (a) by either parent of the child, or*
- (b) by the child, who may apply with or without any person interested on his behalf.*

**8** Section 35 presently reads in part:

*35 In this Part,*

- (b) "local authority" means*
  - (i) a city, town, village, summer village, municipal district or Metis settlement, or*
  - (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 civil claim is issued under this Part;*

is required to acknowledge receipt of the mail by providing a signature;

**9 Sections 36 and 37 are repealed.**

**9** Sections 36 and 37 are replaced by section 21.6. Sections 36 and 37 presently read:

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

*(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.*

*(2) If the claim of a plaintiff or the counterclaim of a defendant exceeds the amount prescribed for the purposes of 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,*

**10 Section 38 is amended**

- (a) in subsection (2) by striking out “a dispute note in the prescribed form” and substituting “the form of a dispute note”;**
- (b) in subsections (3) and (4) by striking out “dispute note” and substituting “a copy of the form of a dispute note”.**

**11 Section 39(1) is amended**

- (a) by striking out “pay the amount claimed in” and substituting “satisfy”;**
- (b) in clauses (a) and (b) by striking out “the dispute note” and substituting “a copy of the form of a dispute note”.**

**12 Section 40 is amended**

- (a) in subsection (1)**
  - (i) in clause (a) by striking out “for a hearing” and substituting “either for a hearing or for a pre-trial conference or mediation”;**
  - (ii) in clause (b) by adding “, pre-trial conference or mediation, as the case may be” after “the hearing”;**
- (b) in subsection (2) by striking out “hearing” and substituting “proceeding referred to in subsection (1)”.**

*(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.*

**10** Section 38 presently reads:

*38(1) A person who has a claim may apply to a clerk for the issuance of a civil claim.*

*(2) When an application is made under subsection (1), a clerk shall, subject to section 73, issue a civil claim 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 civil claim and dispute note shall be served on the defendant by the plaintiff.*

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

**11** Section 39(1) presently reads:

*39(1) The defendant shall pay the amount claimed in the civil claim 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 civil claim and the dispute note;*

*(b) where the defendant has been served outside of Alberta, within 30 days from the date of service of the civil claim and the dispute note.*

**12** Section 40 presently reads:

*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).*

**13 Section 42(1) is amended by repealing clause (b) and substituting the following:**

- (b) by mailing a copy to the person by registered mail, and service is deemed to be effected at the time that the acknowledgment of receipt of that mail is signed by the person to be served or the person receiving that mail on that person's behalf, or

**14 The following is added after section 42:**

Service of  
counterclaims

**42.1** Where a dispute note includes a counterclaim by the defendant, service of the dispute note constitutes service of the counterclaim.

**15 Section 44(1) is amended by repealing clause (d) and substituting the following:**

- (d) by an affidavit of service proving the mailing by registered mail and exhibiting the acknowledgment of receipt of that mail purporting to be signed by the person to be served or by any person receiving that mail on that person's behalf.

**16 Section 51 is amended by adding the following after subsection (2):**

**13** Section 42(1) presently reads:

*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.*

**14** Service of counterclaim.

**15** Section 44(1) presently reads:

*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.*

**16** Section 51 presently reads:

*51(1) A party may*

(3) Within 30 days after the day that a claim or counterclaim is withdrawn, the other party to the claim or counterclaim may apply to the Court for costs.

**17 Section 53 is amended**

- (a) in subsection (1) by striking out “dispute note on” and substituting “a copy of the form of a dispute note on”;**
- (b) in subsection (2) by striking out “dispute note” and substituting “a copy of the form of a dispute note”.**

**18 Section 54 is repealed and the following is substituted:**

Failure to  
appear

**54(1)** In the case of a civil claim, if the defendant fails to appear on the date set for the hearing or a pre-trial conference in respect of the claim, the Court may, on proof of service on the defendant of the civil claim and a copy of the form of a dispute note,

(a) where

- (i) the claim is for a debt or liquidated demand, enter a default judgment, or
- (ii) the claim is for the return of personal property, make an order for the return of the personal property,



(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*

**17** Section 53(1) and (2) presently read:

*53(1) Where a civil claim 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 civil claim 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 civil claim and dispute note on the defendant apply to a clerk to note the defendant in default and may either*

*(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.*

**18** Section 54 presently reads:

*54(1) If the defendant fails to appear on the date set for a hearing, the Court may, on proof of service of the civil claim 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.*

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) In the case of a counterclaim to a civil claim, if the plaintiff fails to appear on the date set for the hearing or a pre-trial conference in respect of the counterclaim, the Court may, on proof of service on the plaintiff of the counterclaim,

(a) where

- (i) the counterclaim is for a debt or liquidated demand, enter a default judgment, or
- (ii) the counterclaim is for the return of personal property, make an order for the return of the personal property,

or

- (b) in any other case, note the plaintiff in default and proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages.

(3) If, in the case of a civil claim, a judgment is entered in default or the defendant is noted in default, the Court may dismiss any counterclaim of the defendant.

(4) If, in the case of a counterclaim, a judgment is entered in default or the plaintiff is noted in default, the Court may dismiss any claim of the plaintiff.

## **19 The following is added after section 57:**

Stay of  
judgment

**57.1** The Court may stay a judgment entered or given under this Part subject to any terms or conditions that the Court considers appropriate.

Payment  
hearings, etc.

**57.2** Where a person owes money under a judgment or an order of the Court, the Court may, subject to the regulations,

- (a) conduct a payment hearing for the purposes of determining that person's ability to pay the money owing under the judgment or order, and

**19** Section 57.1 allows the Court to stay a judgment. Section 57.2 allows for payment hearings to be conducted.

- (b) if the Court considers it appropriate to do so, establish a schedule or other method under which the amount owing is to be paid.

**20 Section 58 is repealed.**

**21 Section 59(3) is amended**

- (a) **by striking out** “within 6 months” **and substituting** “within 3 months”;
- (b) **by striking out** “the 6-month period” **and substituting** “the 3-month period”.

**22 Section 68(4) is amended by striking out** “section 36(2)” **and substituting** “section 21.6(4)”.

**20** Section 58 is replaced by section 21.71. Section 58 presently reads:

*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) writ proceedings may be taken pursuant to the Civil Enforcement Act.*

**21** Section 59(3) presently reads:

*(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.*

**22** Section 68(4) presently reads:

*(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.*

**23 Sections 70 and 71 are repealed.**

**24 The following is added after section 75:**

Pre-trial  
conference

**76(1)** In any action under this Part, the Court may direct the parties or their lawyers or agents, as the case may be, to appear before the Court for a pre-trial conference to consider one or more of the following:

- (a) the possibility of settling the claim, counterclaim or other matter, as the case may be, by agreement;
- (b) the simplification of the issues;
- (c) the necessity or desirability of amendments to pleadings;
- (d) the possibility of obtaining any admission that will facilitate the trial;
- (e) any other matters that may aid in the disposition of the action.

**(2)** During or at the conclusion of a pre-trial conference or otherwise in respect of a pre-trial conference, the Court may make an order doing one or more of the following:

- (a) giving directions with respect to matters raised or otherwise considered during the pre-trial conference;
- (b) setting out the results of the pre-trial conference;
- (c) amending pleadings;
- (d) striking out pleadings by reason of the failure of a party to attend a pre-trial conference;

**23** Sections 70 and 71 are replaced by sections 21.8 and 21.81. Sections 70 and 71 presently read:

*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.*

**24** Provides for pre-trial conferences and mediations.

(e) giving such further directions as the Court considers appropriate in the circumstances with respect to the trial of the action;

(f) varying or setting aside an order made under this subsection.

(3) An order, when entered, shall control the subsequent course of the action unless modified at the trial of the action to prevent injustice.

(4) The judge who conducts a pre-trial conference in an action shall not conduct the trial of the action.

Mediation

**77** At any time after a dispute note is filed, the Court, or a person authorized by the Court to do so, may refer the action for mediation.

Action in  
abeyance

**78** Except as otherwise directed by the Court, if a pre-trial conference or mediation is to be conducted in respect of an action, that action shall not be set down for trial or otherwise continued until the conclusion of the pre-trial conference or the mediation, as the case may be.

Privilege

**79(1)** Any settlement discussions in respect of an action that take place during a pre-trial conference or mediation are privileged and are not admissible in any action under this Part or in any other civil action.

(2) Neither a judge who conducts a pre-trial conference nor a mediator who conducts a mediation is compellable to give evidence in any court or in any proceedings of a judicial nature concerning any proceeding, discussion or matter that takes place during or with respect to the pre-trial conference or mediation.

(3) Subsection (1) does not apply

(a) to any order made under section 76;

(b) to any written agreement arising from a pre-trial conference or mediation;

(c) to the admission in evidence of factual evidence relating to the claim or counterclaim that would otherwise be admissible except for the operation of subsection (1);





(d) to any facts that are relevant to the issue of the validity or enforceability of an agreement arising from a pre-trial conference or mediation.

(3) Subsection (2) does not apply where a judge or a mediator is required by law to disclose those discussions if the disclosure is to the person who under that law is entitled to receive the disclosure.

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to any document, information or record arising during or as a result of a pre-trial conference or mediation.

Immunities

**80** No action may be brought against a mediator who conducts a mediation for any act done or omitted to be done in the execution of the mediator's duty or for any act done in respect of that mediation unless it is proved that the mediator acted maliciously and without reasonable and probable cause.

**Transitional Provisions, Consequential Amendments, Repeals and Coming into Force**

**25(1)** In this section,

(a) "amended Act" means the *Provincial Court Act* as amended by this Part;

(b) "former Act" means the *Provincial Court Act* as it read immediately before it was amended by this Part.

(2) Any proceeding or action that was before the Provincial Court under the former Act at the coming into force of the amended Act shall continue before the Provincial Court under the amended Act and shall be governed by the amended Act and the regulations under the amended Act.

**26 The *Financial Consumers Act* is amended in section 26(2) by repealing clause (a) and substituting the following:**

(a) a civil claim can be filed in The Provincial Court of Alberta if the amount claimed does not exceed the limit prescribed for civil claims under the *Provincial Court Act*, or

**Transitional Provisions, Consequential  
Amendments, Repeals and Coming into Force**

**25** Transitional.

**26** Amends chapter F-9.5 of the Statutes of Alberta, 1990. Section 26(2) of the Financial Consumers Act presently reads:

*(2) If court proceedings are started,*

*(a) a civil claim can be filed in The Civil Division of The Provincial Court of Alberta, if the amount claimed does not exceed the limit set by section 36 of the Provincial Court Act, or*

**27 The *Government Fees and Charges Review Act* is amended in Schedule 2 with respect to Fees under the *Provincial Court Act***

- (a) by repealing the heading “Civil Division” and substituting “Civil Matters”;
- (b) by repealing the heading “Family and Youth Division” and substituting “Family and Youth Matters”;
- (c) by repealing the heading “Criminal Division” and substituting “Criminal Matters”.

**28 The *Judicature Act* is amended**

(a) in section 32.1

- (i) in clause (a) by striking out “section 11 of the *Provincial Court Judges Act*” and substituting “section 21.4 of the *Provincial Court Act*”;
- (ii) in clause (b) by striking out “*Provincial Court Judges Act*” and substituting “*Provincial Court Act*”;

(b) in section 32.2 by repealing subsection (4).

**29 The *Justice of the Peace Act* is amended in section 6.2 by striking out “Sections 5, 14 and 16 of the *Provincial Court Judges Act*” and substituting “Sections 21.21, 21.5 and 21.51 of the *Provincial Court Act*”.**

**30 The *Mobile Home Sites Tenancies Act* is amended**

(a) in section 46(1)

- (i) in clause (a) by striking out “Part 4 of”;
- (ii) by adding “or” at the end of clause (a) and by repealing clauses (b) and (b.1);

*(b) a statement of claim can be filed in the Court of Queen's Bench.*

**27** Amends chapter G-6.5 of the Statutes of Alberta, 1999.

**28** Amends chapter J-1 of the Revised Statutes of Alberta 1980. Sections 32.1(a) and (b) and 32.2(4) of the Judicature Act presently read:

*32.1 In this Part,*

*(a) "complaint" means a complaint under section 11 of the Provincial Court Judges Act, section 14.1 of the Court of Queen's Bench Act or section 5.1 of the Justice of the Peace Act;*

*(b) "judge" means a judge as defined in the Provincial Court Judges Act;*

*32.2(4) Every person who, immediately prior to the coming into force of this section, was a member of the Judicial Council under the Provincial Court Judges Act, and whose appointment is in effect on the coming into force of this section, is deemed to have been appointed as a member of the Judicial Council under this Act.*

**29** Amends chapter J-3 of the Revised Statutes of Alberta 1980. Section 6.2 of the Justice of the Peace Act presently reads:

*6.2 Sections 5, 14 and 16 of the Provincial Court Judges Act apply to a justice of the peace in the same manner as if the justice of the peace were a provincial judge.*

**30** Amends chapter M-18.5 of the Statutes of Alberta, 1982. Sections 46 and 47 of the Mobile Home Sites Tenancies Act presently read:

*46(1) The Provincial Court has the jurisdiction to grant any remedy or relief under this Act other than*

*(a) giving a judgment for debt or damages in excess of the amount prescribed under Part 4 of the Provincial Court Act,*

(b) in section 47 by striking out “of Part 4”.

**31 The *Proceedings Against the Crown Act* is amended in section 10 by striking out “Part 4 of”.**

**32(1) The *Residential Tenancies Act* is amended**

**(a) in section 41(1)**

**(i) in clause (a) by striking out “Part 4 of”;**

**(ii) by adding “or” at the end of clause (a) and by repealing clauses (b) and (b.1);**

**(b) in section 42 by striking out “of Part 4”.**

**33 The *Young Offenders Act* is amended in section 1(1)(m) by striking out “under the *Provincial Court Judges Act*”.**

(b) *granting an equitable remedy,*

(b.1) *granting an order for recovery of possession of a mobile home site, or*

(c) *granting a relief or remedy required by this Act to be granted in the Court of Queen's Bench.*

(3) *Nothing in this Part prohibits a landlord or a tenant from proceeding under this Act in the Court of Queen's Bench.*

47 *The provisions of Part 4 of the Provincial Court Act and the regulations made under that Act, to the extent they are not changed by or provided for in this Act or the regulations under this Act, apply to proceedings before the Provincial Court and to appeals from decisions of the Provincial Court.*

**31** Amends chapter P-18 of the Revised Statutes of Alberta 1980. Section 10 of the Proceedings Against the Crown Act presently reads:

10 *Nothing in this Act authorizes proceedings against the Crown under Part 4 of the Provincial Court Act or the Masters and Servants Act.*

**32** Amends chapter R-15.3 of the Revised Statutes of Alberta 1980. Sections 41 and 42 of the Residential Tenancies Act presently read:

41(1) *The Provincial Court has the jurisdiction to grant any remedy or relief under this Act other than*

(a) *giving a judgment for debt or damages in excess of the amount prescribed under Part 4 of the Provincial Court Act,*

(b) *granting an equitable remedy,*

(b.1) *granting an order for recovery of possession of premises or an order directing a person to vacate premises, or*

(c) *granting a relief or remedy required by this Act to be granted in the Court of Queen's Bench.*

(3) *Nothing in this Part prohibits a landlord or a tenant from proceeding under this Act in the Court of Queen's Bench.*

42 *The provisions of Part 4 of the Provincial Court Act and the regulations made under that Act to the extent they are not changed by or provided for in this Act or the regulations under this Act apply to proceedings before the Provincial Court and to appeals from decisions of the Provincial Court.*

**33** Amends chapter Y-1 of the Statutes of Alberta, 1984. Section 1(1)(m) of the Young Offenders Act presently reads:

1(1) *In this Act,*

**34 The *Provincial Court Judges Act* is repealed.**

**35 This Part comes into force on Proclamation.**

**Part 2  
Surrogate Matters**

Amends RSA  
1980 cC-29

**36(1) The *Court of Queen's Bench Act* is amended by this section.**

**(2) Section 2 is amended by adding the following after subsection (1):**

(1.1) The Surrogate Court of Alberta is continued in the Court of Queen's Bench.

**(3) Section 18(1) is amended by adding the following after clause (a):**

(a.1) governing surrogate matters;

Amends RSA  
1980 cJ-1

**37 The *Judicature Act* is amended**

**(a) in section 2 by renumbering it as section 2(1) and by adding the following after subsection (1):**

(2) The Court has all the jurisdiction, powers and authority that were by any law, order or regulation vested in, or capable of being exercised by, The Surrogate Court of Alberta immediately before the coming into force of this subsection.

**(b) in section 37.2(b) by striking out “, a judge of the Surrogate Court”.**



- (m) “youth court judge” means a person appointed under the Provincial Court Judges Act as a judge of the Provincial Court;

**34** Repeals chapter P-20.1 of the Statutes of Alberta, 1981.

**35** Coming into force.

## **Part 2 Surrogate Matters**

**36(1)** Amends chapter C-29 of the Revised Statutes of Alberta 1980.

(2) Section 2(1) presently reads:

*2(1) The Trial Division of the Supreme Court of Alberta is continued as a superior court of civil and criminal jurisdiction styled the Court of Queen's Bench of Alberta.*

(3) Section 18(1) presently reads:

*18(1) The Lieutenant Governor in Council by regulation*

*(a) may make rules governing*

*(i) the practice and procedure in the Court,*

*(ii) the duties of officers of the Court,*

*(iii) costs in matters before the Court,*

*(iv) the fees to be collected by officers of the Court, and*

*(v) the rates of fees and expenses payable to witnesses and interpreters.*

**37** Amends chapter J-1 of the Revised Statutes of Alberta 1980. Sections 2 and 37.2(b) presently read:

*2 The Court has generally all the jurisdiction, powers and authority that before its organization were by any law, order or regulation vested in, or capable of being exercised within, Alberta by the Supreme Court of the Northwest Territories.*

**37.2** *In this Part,*

*(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;*

Repeals RSA  
1980 cS-28

**38 The *Surrogate Court Act* is repealed.**

Transitional

**39(1)** If on the coming into force of section 38 any matter was before The Surrogate Court of Alberta or a judge of that Court,

- (a) the matter shall be continued before the Court of Queen's Bench;
- (b) the judge of The Surrogate Court of Alberta shall continue to deal with the matter in that judge's capacity as a judge of the Court of Queen's Bench;
- (c) subject to subsection (2), all documents required to be filed in or in connection with the cause or matter shall thereafter be styled in the Court of Queen's Bench of Alberta.

**(2)** When any matter before The Surrogate Court of Alberta or a judge of that Court is continued under subsection (1), an affidavit styled in The Surrogate Court of Alberta

- (a) shall be accepted for filing after the coming into force of subsection (1) if it was sworn before the coming into force of subsection (1), or
- (b) may be accepted for filing when it was sworn after the coming into force of subsection (1) if the clerk is satisfied that it is impossible or that it would result in undue delay or hardship to have an affidavit sworn that is properly styled.

**(3)** A judge of the Court of Queen's Bench may, on the application of any person interested in a matter before the Court of Queen's Bench or a judge of that Court, give directions

- (a) as to the filing of documents or matters of procedure in cases for which no provision is made by subsection (1) or (2), and
- (b) for the purpose of removing or minimizing any procedural difficulty arising on the coming into force of subsection (1).

**(4)** If any matter

- (a) was before The Surrogate Court of Alberta prior to the coming into force of section 38, and
- (b) as a result of an appeal

**38** Repeals chapter S-28 of the Revised Statutes of Alberta 1980.

**39** Transitional provisions.

- (i) has, before or after the coming into force of section 38, been referred back to that Court to be further dealt with, or
- (ii) after the coming into force of section 38 would, except for this subsection, have been referred back to that Court to be further dealt with,

the matter shall be dealt with by the Court of Queen's Bench of Alberta as though the matter had instead been before the Court of Queen's Bench of Alberta.

(5) The records and files of The Surrogate Court of Alberta, whether concluded or not, become the records and files of the Court of Queen's Bench of Alberta.

(6) If in any statute, ordinance, regulation, rule, order, by-law, agreement or other instrument or document reference is made to The Surrogate Court of Alberta or a judge of that Court, the reference shall be read as a reference to the Court of Queen's Bench of Alberta or a judge of that Court, as the case may be, unless the context otherwise requires.

(7) Section 38 does not affect

- (a) the capacity of a person who was a judge of The Surrogate Court of Alberta on the coming into force of subsection (1) to exercise the jurisdiction of a judge of The Surrogate Court of Alberta, or
- (b) the right of a judge referred to in clause (a) to continue to receive the salary of a judge of The Surrogate Court of Alberta as long as that person remains a judge of the Court of Appeal or Court of Queen's Bench.

### **Consequential Amendments**

#### **40 The *Administration of Estates Act* is amended**

##### **(a) in section 1**

- (i) in clause (e) by adding "or Court of Queen's Bench" after "Surrogate Court";
- (ii) in clause (i) by adding "or any successor to those rules made under the *Court of Queen's Bench Act*" after "Surrogate Court Rules";

### **Consequential Amendments**

- 40** Amends chapter A-1 of the Revised Statutes of Alberta 1980.

**(b) in the following provisions by striking out “Surrogate Court” wherever it occurs and substituting “Court of Queen’s Bench”:**

section 1(d) and (f);  
section 2(1);  
section 10(3) and (4);  
section 53;  
section 61.

**41 The *Alberta Evidence Act* is amended in section 52 by striking out “the Surrogate Court,”.**

**42 The *Commissioners for Oaths Act* is amended in section 2.2 by striking out “, judge of the Surrogate Court”.**

**43 The *Dependent Adults Act* is amended**

**(a) in section 1**

**(i) by repealing clause (c) and substituting the following:**

(c) “Court” means the Court of Queen’s Bench;

**(ii) in clause (o.1) by striking out “*Surrogate Court Act*” and substituting “*Court of Queen’s Bench Act*”;**

**(b) in the following provisions by striking out “Surrogate Court” wherever it occurs and substituting “Court of Queen’s Bench”:**

section 45(1) and (2);  
section 47(2) and (4);  
section 48.

**44 The *Domestic Relations Act* is amended in section 45 by striking out “, or a judge of the Surrogate Court sitting in chambers”.**

**45 The *Dower Act* is amended in section 1(b) by striking out “, or the Surrogate Court in the case of an estate of a deceased person”.**

**41** Amends chapter A-21 of the Revised Statutes of Alberta 1980.

**42** Amends chapter C-19 of the Revised Statutes of Alberta 1980.

**43** Amends chapter D-32 of the Revised Statutes of Alberta 1980.

**44** Amends chapter D-37 of the Revised Statutes of Alberta 1980.

**45** Amends chapter D-38 of the Revised Statutes of Alberta 1980.

**46 The *Family Relief Act* is amended**

- (a) in sections 1(e) and 13(1) by striking out “Surrogate Court” and substituting “Court of Queen’s Bench”;**
- (b) in section 19 by striking out “or the Surrogate Court”.**

**47 The *Freedom of Information and Protection of Privacy Act* is amended in sections 1(1)(p)(viii) and 4(1)(a) and (2) by striking out “, The Surrogate Court of Alberta”.**

**48 The *Government Fees and Charges Review Act* is amended**

- (a) in Schedule 1 by striking out “Surrogate Court Act - RSA 1980 cS-28”;**
- (b) in Schedule 2 by striking out “Fees under the Surrogate Court Act” and substituting “Fees under the Court of Queen’s Bench Act in respect of surrogate matters”.**

**49 The *Government Organization Act* is amended in section 14(1)(f) of Schedule 12 by striking out “, the Surrogate Court of Alberta”.**

**50 The *Insurance Act* (RSA 1980 cl-5) is amended**

- (a) in section 287 by striking out “Surrogate Court, in accordance” and substituting “Court of Queen’s Bench, in accordance”;**
- (b) in the following provisions by striking out “Surrogate Court” and substituting “Court of Queen’s Bench”:**
  - section 279(1);
  - section 280;
  - section 282;
  - section 285(2);
  - section 288;
  - section 289(3);
- (c) in the following provisions by striking out “apply to the Surrogate Court” and substituting “apply to the Court of Queen’s Bench”:**
  - section 277;
  - section 278;
  - section 283.



**46** Amends chapter F-2 of the Revised Statutes of Alberta 1980.

**47** Amends chapter F-18.5 of the Statutes of Alberta, 1994.

**48** Amends chapter G-6.5 of the Statutes of Alberta, 1999.

**49** Amends chapter G-8.5 of the Statutes of Alberta, 1994.

**50** Amends chapter I-5 of the Revised Statutes of Alberta 1980.

**51 The *Insurance Act* (SA 1999 cl-5.1) is amended**

**(a) in section 602 by striking out “Surrogate Court may” and substituting “Court of Queen’s Bench may”;**

**(b) in the following provisions by striking out “Surrogate Court” and substituting “Court of Queen’s Bench”:**

section 594(1);  
section 595;  
section 597;  
section 600(2);  
section 603;  
section 604(3);

**(c) in the following provisions by striking out “apply to the Surrogate Court” and substituting “apply to the Court of Queen’s Bench”:**

section 592;  
section 593;  
section 598.

**52 The *Interpretation Act* is amended in section 25(1) by repealing clause (v).**

**53(1) The *Languages Act* is amended in section 4(1) by repealing clause (c).**

**(2) *La loi linguistique* est modifiée par l’abrogation de l’article 4(1)(c).**

**54 The *Legal Profession Act* is amended**

**(a) in section 46(1)(a) by repealing subclause (iii);**

**(b) in section 102 by striking out “, the Surrogate Court of Alberta”.**

**55 The *Mechanical Recording of Evidence Act* is amended in section 1(a)(i) by striking out “, the Court of Queen’s Bench or the Surrogate Court of Alberta” and substituting “or the Court of Queen’s Bench”.**

**51** Amends chapter I-5.1 of the Statutes of Alberta, 1999.

**52** Amends chapter I-7 of the Revised Statutes of Alberta 1980.

**53** Amends chapter L-7.5 of the Statutes of Alberta, 1988.

**54** Amends chapter L-9.1 of the Statutes of Alberta, 1990.

**55** Amends chapter M-11 of the Revised Statutes of Alberta 1980.

**56 The *Minors' Property Act* is amended**

- (a) in section 1 by striking out “or the Surrogate Court, as the case may require”;
- (b) in sections 8 and 15(1) by striking out “or the Surrogate Court”.

**57 The *Miscellaneous Statutes Amendment Act, 1992* is amended by repealing section 47(7) and (8).**

**58 The *Notaries Public Act* is amended in section 3 by striking out “, surrogate court judge”.**

**59 The *Powers of Attorney Act* is amended in section 1(c) by striking out “Surrogate Court of Alberta” and substituting “Court of Queen’s Bench”.**

**60 The *Public Trustee Act* is amended**

- (a) in section 1(c) by striking out “or the Surrogate Court of Alberta”;
- (b) in sections 15(5), (6) and (7) and 23(2), (6), (7) and (9) by striking out “Surrogate Court” and substituting “Court of Queen’s Bench”.

**61 The *Survival of Actions Act* is amended in section 8(1) by striking out “or the Surrogate Court of Alberta”.**

**62 The *Trustee Act* is amended**

- (a) in section 44(1) by striking out “Surrogate Court in the case of a trust under a will or the Court of Queen’s Bench in any other case” and substituting “Court of Queen’s Bench,”;
- (b) in section 46(1) by striking out “or the Surrogate Court, having regard to the value of the property in question,”;
- (c) in the following provisions by striking out “or the Surrogate Court”:

**56** Amends chapter M-16 of the Revised Statutes of Alberta 1980.

**57** Amends chapter 21 of the Statutes of Alberta, 1992.

**58** Amends chapter N-11 of the Revised Statutes of Alberta 1980.

**59** Amends chapter P-13.5 of the Statutes of Alberta, 1991.

**60** Amends chapter P-36 of the Revised Statutes of Alberta 1980.

**61** Amends chapter S-30 of the Revised Statutes of Alberta 1980.

**62** Amends chapter T-10 of the Revised Statutes of Alberta 1980.

section 14(2)(a);  
 section 15(1);  
 section 16(1);  
 section 21(1).

**63 In the following provisions, “Surrogate Court” is struck out and “Court of Queen’s Bench” is substituted:**

Act	Section
Devolution of Real Property Act	1(a);
Income Support Recovery Act	48;
Perpetuities Act	10(1);
Ultimate Heir Act	5(2).

**64 This Part comes into force on Proclamation.**

### Part 3 Provincial Offences Procedure Act

Amends SA  
1988 cP-21.5

**65 The *Provincial Offences Procedure Act* is amended by this Part.**

**66 The following is added after section 22:**

Electronic data

**22.1** Where, under Parts 2 and 3 or either of them, the Court may carry out a function only after receiving a violation ticket or a copy of a violation ticket, the Court, subject to the regulations, may nevertheless carry out that function by using an electronic version of, or other electronic data in respect of, the violation ticket if that electronic version or data contains all the pertinent information set out on the violation ticket.

**67 Section 25(1) is amended**

- (a) **by adding** “on or before the initial appearance date” **after** “by delivering”;
- (b) **by striking out** “*Provincial Court Act* on or before the initial appearance date” **and substituting** “*Provincial Court Act* or, where permitted by regulation, to a person acting as an agent of the Court for the purpose of receiving voluntary payments”.

**63** Consequential amendments.

**64** Coming into force.

**Part 3**  
**Provincial Offences Procedure Act**

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

**66** Section 22.1 provides for the use of electronic versions of violation tickets.

**67** Section 25(1) 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 combined amounts of the specified penalty for the offence as provided for in the regulations and the applicable surcharge, if any, or*

**68 Section 36(1) is amended by adding** “or, where permitted by regulation, to a person acting as an agent of the Court for the purposes of receiving payment in the amount of the specified penalty” **after** “*Provincial Court Act*”.

**69 Section 39 is amended by striking out “\$400” and substituting “\$1000”.**

**70 Section 41 is amended by adding the following after clause (p):**

- (q) with respect to agents of the Court for the purposes of sections 25(1) and 36(1),
  - (i) permitting persons to act as agents of the Court for the purposes of sections 25(1) and 36(1);
  - (ii) governing the qualifications of and requirements to be met by persons who wish to act as agents of the Court;
  - (iii) governing the carrying out of duties and functions of those agents;
  - (iv) governing the holding and handling of money by those agents;
  - (v) permitting an agent to carry out other functions on behalf of the Court with respect to violation tickets;
  - (vi) where an agent collects from a member of the public a voluntary payment, or otherwise provides a service to a member of the public in respect of a function carried out on behalf of the Court, permitting the agent, for the agent’s own benefit, to



*(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.*

**68** Section 36(1) presently reads:

*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.*

**69** 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 excluding any applicable surcharge and the defendant is not liable to imprisonment.*

**70** Section 41 presently reads in part:

*41 The Lieutenant Governor in Council may make regulations*

charge and collect from that member of the public a service charge for collecting the voluntary payment or in respect of providing a service;

(vii) respecting the maximum and minimum amounts that may be charged by agents as service charges;

(viii) in addition to the matters referred to in subclauses (i) to (vii), generally governing the agency relationship;

(r) respecting, for the purposes of section 22.1,

(i) the carrying out of functions by the Court using electronic versions of violation tickets and electronic data, and

(ii) what constitutes pertinent information.

**71 This Part comes into force on Proclamation.**

#### **Part 4 Other Amendments**

Amends RSA  
1980 cC-23

**72(1) The *Contributory Negligence Act* is amended by this section.**

**(2) The following is added after section 5:**

Last clear  
chance rule  
not applicable

**5.1** This Act applies if damage is caused or contributed to by the act or omission of a person, whether or not another person had the opportunity of avoiding the consequences of that act or omission and failed to do so.

**(3) Sections 6 and 7 are repealed.**

**71** Coming into force.

**Part 4  
Other Amendments**

**72(1)** Amends chapter C-23 of the Revised Statutes of Alberta 1980.

(2) Last clear chance rule not applicable.

(3) Sections 6 and 7 presently read:

*6 If the trial is before a judge with a jury, the judge shall not submit to the jury any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof, unless in his opinion there is evidence upon which the jury could reasonably find that the act or omission of the latter was so clearly subsequent to and severable from the act or omission of the former as not to be substantially contemporaneous with it.*

*7 If the trial is before a judge without a jury the judge shall not take into consideration any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof, unless he is satisfied by the evidence that the act or omission*

Amends RSA  
1980 cP-36

**73 The *Public Trustee Act* is amended in section 27(10)(b) by striking out “of the common fund and”.**

Amends RSA  
1980 cS-30

**74(1) The *Survival of Actions Act* is amended by this section.**

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

Recovery of  
damages

**5(1)** If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or the deceased’s estate are recoverable.

**(2)** Without restricting the generality of subsection (1), the following are not recoverable:

(a) punitive or exemplary damages;

(b) damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities;

(c) damages in relation to future earnings, including damages for loss of earning capacity, ability to earn or chance of future earnings.

**(3)** Subsection (2)(c) applies only to causes of action that arise after this section comes into force.

**75 This Part comes into force on Proclamation.**

*of the latter was so clearly subsequent to and severable from the act or omission of the former as not to be substantially contemporaneous therewith.*

**73** Amends chapter P-36 of the Revised Statutes of Alberta 1980. Section 27(10) presently reads:

*(10) A sum of money paid under subsection (9)*

*(a) shall not exceed the annual interest earned in respect of the securities held in the special reserve fund, and*

*(b) shall be applied toward the cost of administration of the common fund and of the special reserve fund.*

**74** Amends chapter S-30 of the Revised Statutes of Alberta 1980.

(2) Section 5 presently reads:

*5 If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or his estate are recoverable and, without restricting the generality of the foregoing, punitive or exemplary damages or damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities are not recoverable.*

**75** Coming into force.