

BILL 20

2002

JUSTICE STATUTES AMENDMENT ACT, 2002

(Assented to _____, 2002)

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

Civil Enforcement Act

Amends RSA 2000 cC-15

1(1) The *Civil Enforcement Act* is amended by this section.

(2) Section 1(1)(mm) is amended

(a) in subclause (i) by striking out “seizure distribution search” and substituting “distribution seizure search”;

(b) in subclause (ii) by striking out “seizure distribution search” and substituting “distribution seizure search”.

(3) Section 7(1) is repealed and the following is substituted:

Discontinuance of proceedings

7(1) Before any seizure pursuant to writ proceedings is released or any garnishment is discontinued, a notice of the release or of the discontinuance must, at least 30 days before the date on which the seizure is to be released or the garnishment is to be discontinued, be served

(a) on all the enforcement creditors having related writs at the time that the notice was given, and

(b) in the case of a seizure, on any person who has given notice to the agency under section 105.1.

(4) Section 9(6) is repealed.

(5) Section 13(2)(a), (b) and (c) are repealed and the following is substituted:

- (a) a bailiff has the right to enter any location or premises of a debtor for the purposes of carrying out
 - (i) the seizure and the removal, or either of them as the case may be, of property of the debtor, or
 - (ii) the eviction of a debtor;
- (a.1) where a bailiff has reasonable grounds for believing that personal property of a debtor is located at a location or in premises of a person other than the debtor, the bailiff has the right to enter that location or those premises for the purposes of carrying out the seizure and the removal, or either of them as the case may be, of personal property of the debtor;
- (b) notwithstanding clause (a.1), in the case of any location or premises of a person other than a debtor, a bailiff shall not
 - (i) enter, or attempt to enter, the location or premises after entry has been refused, or
 - (ii) use force for the purposes of gaining access to the location or premises,

unless authorized to do so by an order of the Court;
- (c) notwithstanding clauses (a), (a.1) and (b), in the case of a residence of a debtor or other person, a bailiff shall not
 - (i) enter the residence except in the presence of a person whom the bailiff believes to be an adult who lives in the residence,
 - (ii) enter the residence after entry has been refused, or
 - (iii) use force for the purposes of gaining access to the residence,

unless authorized to do so by an order of the Court;
- (c.1) a bailiff may use force but only reasonable force for the purpose of gaining access

- (i) to a location or premises, other than a residence, of a debtor, or
- (ii) where authorized by an order of the Court, to a location or premises of a person other than a debtor or to a residence;

(6) Section 15 is amended

(a) in subsection (1)(j)

(i) by striking out “or “sheriff” ” and substituting “, “sheriff” or “civil enforcement” ”;

(ii) by adding the following after subclause (iv):

- (iv.1) the person displaying the words “civil enforcement” is employed by or providing services on behalf of any agency,

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

(3) A prosecution under this section may be instituted at any time within 12 months after the commission of the alleged offence.

(7) The following is added after section 27:

New judgment

27.1(1) In this section,

- (a) “existing judgment” means a judgment that is in force;
- (b) “existing registration” means, in respect of an existing writ,
 - (i) a registration of the writ in the Personal Property Registry if that registration is still in force;
 - (ii) a registration of the writ under the *Land Titles Act* if that registration is still in force;
 - (iii) in the case of land that is not under the *Land Titles Act*, a registration, filing or recording of the writ in accordance with the regulations if that registration, filing or recording is still in force;

- (c) “existing writ” means a writ issued in respect of an existing judgment;
- (d) “new judgment” means a judgment that replaces an existing judgment and that has been obtained by suing on the existing judgment or pursuant to proceedings provided for under the *Alberta Rules of Court*;
- (e) “new writ” means a writ that is issued in respect of a new judgment.

(2) Where a judgment creditor has obtained a new judgment and has been issued a new writ in respect of that judgment, the judgment creditor may,

- (a) if there is not an existing registration in the Personal Property Registry in respect of the matter for which the new writ was issued, register the new writ in the Personal Property Registry;
- (b) if there is an existing registration in the Personal Property Registry in respect of the matter for which the new writ was issued, submit to the Personal Property Registry a status report to amend the registration in the Personal Property Registry to reflect the particulars of the new writ;
- (c) in the case of land that is under the *Land Titles Act*, register the new writ under the *Land Titles Act*;
- (d) in the case of land that is not under the *Land Titles Act*, register, file or otherwise record the new writ in accordance with the regulations.

(3) If an existing registration in the Personal Property Registry is amended to reflect the particulars of a new writ, that new writ has, in respect of the Personal Property Registry, the same priority as the existing writ had.

(4) If, in respect of an existing registration under the *Land Titles Act*, a new writ is registered under the *Land Titles Act*, that new writ has, in respect of the *Land Titles Act*, the same priority as the existing writ had.

(5) If, in respect of an existing registration in the case of land that is not under the *Land Titles Act*, a new writ is registered, filed or otherwise recorded in accordance with the regulations,

that new writ has, in respect of that matter, the same priority as the existing writ had.

(8) Section 35(1) is repealed and the following is substituted:

Priority between writs and security interests

35(1) Except as otherwise provided in this Division, a security interest in personal property is subordinate to a writ that binds the property regardless of whether the security interest attached before or after the personal property became bound by registration of the writ in the Personal Property Registry.

(9) Section 47 is amended

(a) by repealing subsection (2) and substituting the following:

(2) If personal property has been under seizure for at least 90 days, the agency may give 30 days' notice of the agency's intention to release the property from seizure to

(a) every enforcement creditor who, at the time that the notice is given, has a related writ against the enforcement debtor, and

(b) any person who has given notice to the agency under section 105.1.

(b) in subsection (3) by striking out "an enforcement creditor" and substituting "a person given a notice under subsection (2)".

(10) Section 48(j) is amended by repealing subclause (i) and substituting the following:

(i) the buyer obtains only the interest in the property

(A) of the enforcement debtor, and

(B) of any other person with an interest in the property who has consented to the sale or disposition of the interest,

and

(11) Section 70 is repealed and the following is substituted:

Notice of intention to sell

70(1) Before selling land under this Act, an agency must give notice of intention to sell the land in accordance with the regulations.

(2) If an agency has given notice of intention to sell land, no other agency may give notice of intention to sell the same land while the original notice is still in effect.

(3) For the purposes of subsection (2), a notice of intention to sell remains in effect until

- (a) the notice is withdrawn by the agency that gave it, or
- (b) the Court on application by any interested person declares that the notice is no longer in effect.

(12) Section 79(2) is amended by striking out “Where” and substituting “Subject to section 83(2), where”.

(13) Section 81(1)(k) is amended by striking out “30” and substituting “60”.

(14) Section 83(2) is amended by striking out “Notwithstanding section 79, a garnishee” and substituting “A garnishee”.

(15) Section 88 is amended

- (a) **by striking out** “The following property of an enforcement debtor” **and substituting** “Subject to section 89, the interest of an enforcement debtor in the following”;
- (b) **in clauses (b) and (c) by striking out** “that are of a value not exceeding an amount” **and substituting** “up to the value”;
- (c) **in clause (d) by striking out** “that is of a value not exceeding an amount” **and substituting** “up to the value”;
- (d) **by repealing clause (f) and substituting the following:**
 - (f) in the case of an enforcement debtor whose primary occupation is farming, up to 160 acres of land if the enforcement debtor’s principal residence is located on that land and that land is part of that enforcement debtor’s farm;
- (e) **in clause (g) by striking out** “where the enforcement debtor’s equity in that residence does not exceed an amount” **and substituting** “up to the value”;
- (f) **in clause (h) by striking out** “not exceeding in value an amount” **and substituting** “up to the value”.

(16) Section 89 is repealed and the following is substituted:

Property exempt up to the prescribed value

89(1) This section applies to property in which the enforcement debtor's interest is exempt from writ proceedings up to a prescribed value, but it does not apply to property where other property of the same description has been selected for exemption under section 90.

(2) Property to which this section applies may be sold in writ proceedings only if the proceeds of the sale exceed the total of any amounts that would be payable out of the proceeds in respect of the following:

- (a) money payable under section 96(4);
- (b) money payable to the enforcement debtor or a subordinate secured creditor or encumbrancer under section 98(1).

(3) A bailiff may seize personal property to which this section applies except where the bailiff knows or should reasonably know that the property could not be sold for more than the total of the amounts referred to in subsection (2).

(4) Notwithstanding sections 7 and 47, an agency whose bailiff has seized personal property under subsection (3) must release the property from seizure without delay on acquiring knowledge that the property cannot be sold for more than the total of the amounts referred to in subsection (2).

(5) An agency that sells property to which this section applies must deal with the proceeds in accordance with Part 11.

(17) Section 96 is amended by adding the following after subsection (3):

(4) Where a distributing authority receives money in which a person has a security interest or other interest that has priority over the claims of enforcement creditors, the distributing authority must pay to that person the money to which the person is entitled, and any money paid under this section does not form part of a distributable fund.

(18) Section 97 is amended

- (a) in clause (b) by adding "or an order of the Court" after "this Act";**

(b) in clause (c) by striking out “89(2)” and substituting “96(4)”.

(19) Section 98 is repealed and the following is substituted:

Money derived from exempted property

98(1) A distributing authority that receives money that is exempt or that represents the proceeds of exempt property must make the following payments from the money:

- (a) if the money is subject to a subordinate security interest or subordinate encumbrance or there is an enforcement creditor against whom the exemption does not apply,
 - (i) pay the prescribed amount of the exemption to the secured creditor, encumbrancer or enforcement creditor, as the case may be, or
 - (ii) if the amount owed to the secured creditor, encumbrancer or enforcement creditor is less than the prescribed amount of the exemption, pay the secured creditor, encumbrancer or enforcement creditor, as the case may be, the amount owed and pay the balance of the prescribed amount of the exemption to the enforcement debtor;
- (b) if there is no creditor to whom clause (a) applies, pay the prescribed amount of the exemption to the enforcement debtor.

(2) After payment of the amounts required to be paid under subsection (1), any money remaining constitutes a distributable fund.

(3) Except where money that is paid to an enforcement debtor under subsection (1) is intermingled with other funds of the enforcement debtor, any money that is paid to an enforcement debtor under subsection (1), including any deposit account into which it is paid, is exempt for a period of 60 days from the day that the money is paid to the enforcement debtor.

(20) Section 99(3) is amended

(a) by repealing clause (a);

(b) in clause (b) by striking out “second” and substituting “first”;

- (c) in clause (c) by striking out “third” and substituting “second”;**
- (d) in clause (d) by striking out “fourth” and substituting “third”;**
- (e) in clause (e) by striking out “fifth” and substituting “fourth”;**
- (f) in clause (f) by striking out “sixth” and substituting “fifth”;**
- (g) in clause (g) by striking out “seventh” and substituting “sixth”.**

(21) Section 101 is amended

(a) in subsection (1)

- (i) by striking out “Where the” and substituting “Subject to subsections (1.1) and (1.2), where the”;**

(ii) by adding the following after clause (d):

- (d.1) a person who has made an objection must, in accordance with the rules or practice of the Court, serve the notice of motion referred to in clause (d) on the persons interested in the matter;

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

(1.1) Where subsection (1) applies but there is only one eligible claim to which section 99(3)(g) would apply, the distributing authority must immediately distribute the fund in accordance with section 99(3).

(1.2) Where subsection (1) applies to a distributable fund that consists of money paid under a garnishee summons, the following applies:

- (a) a statement of the proposed distribution that is served in accordance with subsection (1)(a) must set out
 - (i) the proposed distribution of the distributable fund, and
 - (ii) the method of determining the proportion of any distributable fund produced by the garnishee

summons in the future that is to be paid to the instructing creditor and to other enforcement creditors;

- (b) a distributing authority that has served a statement of proposed distribution in accordance with clause (a) is not required to serve another statement of proposed distribution in respect of a distributable fund produced by the garnishee summons in the future unless, at the time that the distributable fund is constituted, there are enforcement creditors with related writs who have not previously been served with that statement;
- (c) if pursuant to clause (b) a distributing authority does not serve another statement of proposed distribution in respect of a distributable fund, the distributing authority must
 - (i) distribute the distributable fund as soon as possible after the fund is constituted, and
 - (ii) send to the enforcement debtor and to each person who receives a portion of the distributable fund a statement showing how the fund has been distributed.

(c) in subsection (2) by striking out “immediately” and substituting “as soon as possible”;

(d) by adding the following after subsection (2):

(3) Notwithstanding subsections (1.1), (1.2) and (2), where a distributing authority has any doubt regarding the validity or priority of a claim, whether it is a claim of an enforcement creditor or otherwise, against money received by the distributing authority, the following applies:

- (a) the distributing authority
 - (i) must serve a notice to that effect on the person asserting the claim, and
 - (ii) may serve that notice on any other persons as the distributing authority considers appropriate;
- (b) the notice referred to in clause (a) must set out how the distributing authority proposes to distribute the money;

- (c) subsection (1)(b) to (e) apply to a notice served under clause (a) as if that notice were a statement served under subsection (1).

(22) Section 104 is amended by adding the following after clause (a):

- (a.1) section 47(2) and (3) apply to the distress as if it were a seizure made under writ proceedings, except that the notice of intention referred to in section 47(2) need only be served on the landlord and on any person who has given notice to the agency under section 105.1;

(23) The following is added after section 105:

Notice re personal property already subject to writ proceedings

105.1 A person who has a right of distress against personal property that is already subject to writ proceedings may give notice of that person's claim to the civil enforcement agency that is conducting the writ proceedings.

Court order re personal property already under seizure

105.2(1) Unless permitted or otherwise authorized to do so by an order of the Court granted under this section, a person shall not exercise a right of distress against personal property that is already under seizure pursuant to other civil enforcement proceedings.

(2) A person who wishes to exercise a right of distress against personal property that is already under seizure pursuant to other civil enforcement proceedings may apply to the Court for an order

- (a) transferring to that person the control of the civil enforcement proceedings relating to the seized property, or
- (b) permitting that person to distrain against the seized property notwithstanding that it is already under seizure.

(3) Where the Court considers that it would be appropriate to do so in the circumstances, the Court may grant an application under subsection (2) subject to any terms or conditions as the Court may determine.

(4) An order under subsection (2) or any action taken under an order under subsection (2) does not affect priority to the seized property or its proceeds.

(5) Unless otherwise ordered by the Court, a person to whom the control of civil enforcement proceedings has been transferred pursuant to an order under subsection (2) is responsible on the granting of the order for the personal property and any storage costs incurred in respect of that property.

**(24) This section comes into force on Proclamation.
Fatal Accidents Act**

Amends RSA 2000 cF-8

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

(2) Section 8(2) is amended

(a) in clause (a) by striking out “\$43 000” and substituting “\$75 000”;

(b) by repealing clause (b) and substituting the following:

(b) \$75 000 to the parent or parents of the deceased person if the deceased person, at the time of death,

(i) was a minor, or

(ii) was not a minor but was unmarried and living with the parent or parents, and not with a cohabitant,

to be divided equally if the action is brought for the benefit of both parents, and

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

(c) \$45 000 to each child of the deceased person who, at the time of the death of the deceased person,

(i) is a minor, or

(ii) is not a minor but is unmarried and was living with the deceased person, and not with a cohabitant.

(3) Section 9(1) is amended by striking out “once in every 5 years from September 1, 1994” and substituting “not later than 5 years after section 2 of the *Justice Statutes Amendment Act, 2002* comes into force”.

(4) Section 8(2) of the *Fatal Accidents Act*,

- (a) as amended by this section, applies only in respect of deceased persons who die after the coming into force of this section, and**
- (b) as it existed before the coming into force of this section, applies in respect of deceased persons who die before the coming into force of this section.**

**(5) This section comes into force on Proclamation.
Interpretation Act**

Amends RSA 2000 cl-8

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

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

- (3) Subject to subsection (2), where**
 - (a) an enactment is expressed to be repealed on a particular day, or**
 - (b) an enactment is expressed to expire or otherwise cease to have effect on a particular day,**

that enactment is repealed, expires or otherwise ceases to have effect at the end of that day.

(3) Section 12(2)(b) is amended by adding “and section headers” after “marginal notes”.

(4) Section 20 is amended by adding the following after subsection (4):

- (5) Unless otherwise expressed in an enactment and subject to section 36(1)(a), if**
 - (a) a person is appointed by or under the authority of an enactment to an office, and**
 - (b) while that appointment is still in effect,**
 - (i) the office or position of the person making the appointment has changed or the occupant of that office or position has changed,**
 - (ii) the name or designation of the office to which the person has been appointed has changed but the functions, duties and undertakings of the office**

remain the same or substantially the same as they were at the time of the appointment, or

- (iii) the authority under which the appointment was made has changed in some manner but the authority to make the appointment remains substantially the same as it was at the time that the appointment was made,

the person appointed continues to hold the office to which the person has been appointed until the term of office expires or the appointment is terminated, revoked or rescinded.

(6) Unless otherwise expressed in an enactment, if

- (a) a delegation, including any appointment made or authority given that is in the nature of a delegation, is made or otherwise given to a person by or under the authority of an enactment, and
- (b) while that delegation is in effect,
 - (i) the office or position of the person making or otherwise giving the delegation has changed or the occupant of that office or position has changed,
 - (ii) the name or designation of the office or position of the person to whom the delegation was made or otherwise given has changed but the functions, duties and undertakings of the office or position remain the same or substantially the same as they were at the time that the delegation was made or otherwise given, or
 - (iii) the authority under which the delegation was made or otherwise given has changed in some manner but the authority to make or otherwise give the delegation remains substantially the same as it was at the time that the delegation was made or otherwise given,

that delegation remains in effect until the delegation is terminated, revoked or rescinded or expires.

(7) Unless otherwise expressed in an enactment, if

- (a) a person who is appointed by or under the authority of an enactment to an office is engaged in an investigation, a hearing, a review, an appeal or a similar undertaking or

in carrying out some other duty or function provided for under an enactment, and

- (b) that appointment expires or otherwise ends before that person concludes the investigation, hearing, review, appeal or undertaking or the carrying out of the duty or function,

that person, unless otherwise directed by the person who has the authority to make the appointment referred to in clause (a) or the Minister responsible for the enactment under which the appointment was made, remains empowered to conclude that investigation, hearing, review, appeal or undertaking or the carrying out of that duty or function, including the making of any recommendation, report, determination or other conclusion that forms a part of that investigation, hearing, review, appeal, undertaking, duty or function.

(8) Notwithstanding subsections (6) and (7), in the case of an appointment referred to in subsection (4) that is terminated, revoked or rescinded, the person whose appointment is terminated, revoked or rescinded is not, at any time after the termination, revocation or rescission becomes effective, eligible to exercise any power, duty or function under subsection (6) or (7) unless expressly permitted to do so by the person who terminated, revoked or rescinded the appointment or by the Minister responsible for the enactment under which the termination, revocation or rescission was effected.

Limitations Act

Amends RSA 2000 cL-12

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

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

- (h) “person under disability” means
 - (i) a dependent adult or a person in respect of whom a certificate of incapacity is in effect pursuant to the *Dependent Adults Act*, or
 - (ii) an adult who is unable to make reasonable judgments in respect of matters relating to a claim;

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

Persons under disability

5(1) The operation of the limitation periods provided by this Act is suspended during any period of time that the claimant is a person under disability.

(2) The claimant has the burden of proving that the operation of the limitation periods provided by this Act was suspended under this section.

Minors

5.1(1) In this section,

- (a) “guardian” means a parent or guardian having actual custody of a minor;
- (b) “potential defendant” means a person against whom a minor may have a claim.

(2) Except as otherwise provided in this section, the operation of limitation periods provided by this Act is suspended during the period of time that the claimant is a minor.

(3) A potential defendant may cause the limitation periods provided by this Act to run against a minor by

- (a) delivering a notice to proceed in the prescribed form to
 - (i) a guardian of the minor, if the minor has a guardian, and
 - (ii) the Public Trustee,
- and
- (b) paying the Public Trustee’s prescribed fee.

(4) Where a potential defendant has complied with subsection (3), the notice to proceed takes effect and the limitation periods provided by this Act begin to run

- (a) on the date the notice to proceed is received by the Public Trustee, which must be shown in the notice delivered by the Public Trustee under subsection (6)(a) or (b), or
- (b) on the date determined by an order of a judge under subsection (7) or (8).

(5) Where a potential defendant delivers a notice to proceed to the Public Trustee under subsection (3) and pays the Public Trustee's prescribed fee, the Public Trustee must

- (a) if the claimant has a guardian, make such inquiries as the Public Trustee considers necessary and practicable regarding the ability and intention of the claimant's guardian to act in the best interest of the minor regarding the claim, or
- (b) if the claimant does not have a guardian, apply by originating notice of motion to a judge of the Court of Queen's Bench, on notice to such persons as may be directed or approved by the judge, for directions.

(6) After making the inquiries referred to in subsection (5)(a), the Public Trustee must do one of the following:

- (a) if satisfied as to the guardian's ability and intention to act in the best interest of the minor regarding the claim, deliver to the potential defendant and the guardian a notice in the prescribed form of the Public Trustee's decision not to intervene in the matter;
- (b) with the consent of the claimant's guardian, deliver to the potential defendant a notice in the prescribed form stating that the Public Trustee intends to act as next friend of the minor in relation to the claim;
- (c) if for any reason the Public Trustee thinks it necessary or appropriate to do so, apply by originating notice of motion to a judge of the Court of Queen's Bench, on notice to such persons as may be directed or approved by the judge, for directions.

(7) On an application under subsection (5)(b), a judge may make an order

- (a) directing the Public Trustee to take no further steps in the matter and stipulating that the limitation periods provided by this Act continue to be suspended with respect to the minor despite subsection (3), or
- (b) doing all of the following:

- (i) stipulating that the limitation periods provided by this Act begin to run against the minor on a date specified in the order;
- (ii) authorizing and directing the Public Trustee to act as next friend of the minor;
- (iii) giving such authority and directions to the Public Trustee and any other person as may be necessary to ensure that the Public Trustee may effectively prosecute the claim on behalf of the minor.

(8) On an application under subsection (6)(c), a judge may make an order

- (a) directing the Public Trustee to take no further steps in the matter and stipulating that the limitation periods provided by this Act
 - (i) begin to run against the minor on a date specified in the order, or
 - (ii) continue to be suspended with respect to the minor despite subsection (3),

or

(b) doing all of the following:

- (i) stipulating that the limitation periods provided by this Act begin to run against the minor on a date specified in the order;
- (ii) authorizing and directing the Public Trustee to act as next friend of the minor;
- (iii) giving such authority and directions to the Public Trustee, guardian, if any, and any other person as may be necessary to ensure that the Public Trustee may effectively prosecute the claim on behalf of the minor.

(9) On an application by the Public Trustee under subsection (5)(b) or (6)(c), a judge may consider

- (a) the apparent seriousness of the minor's injury;

- (b) the apparent legal merits of the claim;
- (c) the views of the Public Trustee and the guardian, if any, as to whether the minor's best interest will be better served by pursuing or by not pursuing the claim;
- (d) the view of the minor regarding the claim, where the judge considers that the minor is able to appreciate the nature of the issue;
- (e) where the guardian or the minor is opposed to pursuing the claim, the apparent likelihood that the Public Trustee would be able to prosecute the claim effectively as next friend;
- (f) whether directing the Public Trustee to take no further steps and stipulating that the limitation periods provided by this Act continue to be suspended with respect to the minor is likely to cause serious prejudice to either the minor or the potential defendant, having regard to any matters that the judge considers relevant, including
 - (i) the minor's age,
 - (ii) whether the minor will be, or is likely to be, a person under disability on becoming an adult,
 - (iii) whether it would be practicable to preserve relevant evidence during the period the limitation periods would be suspended, and
 - (iv) any harm that may be suffered by the minor as a result of any delay in recovering compensation to which the minor may be entitled;
- (g) any other matters the judge considers relevant.

(10) Where the Public Trustee makes an application to the Court of Queen's Bench under this section, no costs may be awarded against any party to the application.

(11) Subsection (4) operates only in favour of a potential defendant on whose behalf the notice to proceed is delivered and only with respect to a claim arising out of the circumstances specified in the notice.

(12) A notice to proceed delivered under this section is not an acknowledgment for the purposes of this Act and is not an admission for any purpose.

(13) Subsections (3) to (12) do not apply

- (a) where the potential defendant is a guardian of the minor, or
- (b) where the claim is based on conduct of a sexual nature including, without limitation, sexual assault.

(14) Under this section, the claimant has the burden of proving that at any relevant point in time the claimant was a minor.

(15) The Minister may make regulations prescribing

- (a) the form, contents and mode of a delivery of a notice to proceed or any other notice referred to in this section;
- (b) the fee to be paid by a potential defendant under subsection (3)(b).

(16) This section applies where a claimant seeks a remedial order in a proceeding commenced after this section comes into force, regardless of when the claim arises, except that a defendant who would have had immunity from liability for a claim if the proceeding had been commenced immediately

before this section came into force continues to have immunity from liability for that claim.

(4) Section 7 is amended by renumbering it as section 7(1) and adding the following after subsection (1):

(2) An agreement that purports to provide for the reduction of a limitation period provided by this Act is not valid.

**(5) This section comes into force on Proclamation.
Motor Vehicle Accident
Claims Act**

Amends RSA 2000 cM-22

5(1) The *Motor Vehicle Accident Claims Act* is amended by this section.

(2) Section 1(j) is repealed.

(3) The following is added after section 7:

Driving with consent in issue

7.1 If

- (a) bodily injury to or the death of a person arises out of the use or operation within Alberta of a motor vehicle,
- (b) the operator of the motor vehicle at the time of the cause of the injury or death was not the owner of the motor vehicle, and
- (c) an issue arises as to whether the operator of the motor vehicle had the consent of the owner of the motor vehicle, expressed or implied, to operate the motor vehicle at that time,

the operator of the motor vehicle and the owner of the motor vehicle, for the purposes of any action where a claim may be made under this Act, are adverse in interest.

(4) The following is added after section 18:

Exempting Administrator from examination

18.1 Unless otherwise directed by a court, the person who is the Administrator, including any person who is acting on behalf of the Administrator, is not, in that person's capacity as the Administrator or as acting on behalf of the Administrator,

- (a) subject to being examined at trial or in any examination for discovery, or

- (b) subject to any requirement to produce, file or serve any affidavit of records,

with respect to any action where a claim may be made under this Act.

Provincial Offences Procedure Act

Amends RSA 2000 cP-34

6(1) The *Provincial Offences Procedure Act* is amended by this section.

(2) Section 14 is amended by adding the following after subsection (2):

- (3) Where, under an enactment,
 - (a) the Crown in right of Alberta collects an amount of money in respect of a penalty, fine or sum of money payable under the enactment or the proceeds of a forfeiture, and
 - (b) the amount collected by the Crown does not belong to the Crown in right of Alberta,

the Crown in right of Alberta may, notwithstanding any Act and subject to the regulations, retain a portion of that amount to offset the expenses incurred by the Crown with respect to the collecting of penalties, fines, sums of money or forfeitures arising under any enactment, and that portion that is retained by the Crown belongs to the Crown in right of Alberta and shall be deposited in the General Revenue Fund.

(3) Section 42 is amended by adding the following after clause (m):

- (m.1) prescribing or otherwise specifying, in whole or in part, the enactments or the penalties, fines or sums of money or forfeitures to which section 14(3) applies;
- (m.2) respecting the portions of amounts that may be retained by the Crown under section 14(3);

(4) This section comes into force on April 1, 2002.

(5) Notwithstanding subsection (4), if this section is assented to after April 1, 2002 it is deemed to have been in force at all times on and after April 1, 2002.

(6) A regulation made under section 42(m.1) or (m.2), or both, of the *Provincial Offences Procedure Act*, as that provision is amended by subsection (3), is, if so stated in the regulation, deemed to have been in force at all times on and after April 1, 2002 notwithstanding that the regulation was made after April 1, 2002.

Public Trustee Act

Amends RSA 2000 cP-44

7(1) The *Public Trustee Act* is amended by this section.

(2) The following is added after section 6:

Notice to Public Trustee under Limitations Act

6.1(1) If a notice to proceed is delivered to the Public Trustee under section 5.1(3) of the *Limitations Act*,

- (a) the Public Trustee must not act as next friend of the minor except in accordance with section 5.1(6)(b) of the *Limitations Act* or in accordance with an order of a judge under section 5.1(7)(b) or (8)(b) of the *Limitations Act*,
 - (b) where the Public Trustee acts as next friend of a minor,
 - (i) the Public Trustee is entitled to be compensated for so doing out of money, if any, recovered for the minor,
 - (ii) the amount of the Public Trustee's compensation is to be determined in accordance with the regulations, and
 - (iii) the Public Trustee's compensation is a charge against the money recovered for the minor,
- and
- (c) neither the Public Trustee nor any person acting on behalf of the Public Trustee incurs any liability to a minor for anything done or omitted to be done by the Public Trustee or by that person while attempting in good faith to carry out a duty imposed on the Public

Trustee by the *Limitations Act* or by an order of a judge under the *Limitations Act*.

(2) The Minister may make regulations determining the amount or the method of determining the amount of the compensation to which the Public Trustee is entitled under subsection (1).

**(3) This section comes into force on Proclamation.
Survival of Actions Act**

Amends RSA 2000 cS-27

8(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 the coming into force of this section.

(3) This section comes into force on Proclamation.

Explanatory Notes

Civil Enforcement Act

1(1) Amends chapter C-15 of the Revised Statutes of Alberta 2000.

(2) Section 1(1)(mm) presently reads:

(mm) “related writ” means

- (i) *in respect of a particular enforcement debtor, a writ that would be disclosed if a seizure distribution search was conducted of the Personal Property Registry using the name of that debtor as shown on the instructing creditor’s writ, and*
- (ii) *in respect of a defendant under Part 3, a writ that would be disclosed if a seizure distribution search was conducted of the Personal Property Registry using the name of that defendant as shown on the attachment order;*

(3) Section 7(1) presently reads:

7(1) Before any seizure pursuant to writ proceedings is released or any garnishment is discontinued, a notice of the release or the discontinuance must, at least 15 days before the date on which the

seizure is to be released or the garnishment is to be discontinued, be served on all the enforcement creditors having related writs at the time that the notice was given.

(4) Section 9(6) presently reads:

(6) With respect to serial number goods referred to in section 54,

- (a) a person other than an agency may, notwithstanding this section, effect a seizure of those goods under section 54(b), but*
- (b) the removal of the seized goods, the sale of those goods and the distribution of the proceeds of the sale must be carried out by an agency.*

(5) Section 13(2)(a), (b) and (c) presently read:

(2) For the purposes of carrying out civil enforcement proceedings, the following applies:

- (a) a bailiff has, subject to clauses (b) and (c), the right*
 - (i) to enter any location or premises of a debtor for the purposes of carrying out*
 - (A) the seizure and the removal, as the case may be, of property of the debtor, or*
 - (B) the eviction of a debtor,*

and

- (ii) where a bailiff has reasonable grounds for believing that personal property of a debtor is located at a location or in premises of a person other than the debtor, to enter that location or those premises for the purposes of carrying out the seizure and the removal, as the case may be, of personal property of the debtor;*

- (b) *a bailiff may use reasonable force for the purpose of gaining access to a location or premises of a debtor, other than a residence;*
- (c) *in the case of a residence of a debtor or any location or premises, including a residence, of a person other than a debtor, a bailiff shall not,*
 - (i) *where entry to the residence, location or premises is refused, enter the residence, location or premises, or*
 - (ii) *use force for the purposes of gaining access to the residence, location or premises,**unless authorized to do so by an order of the Court;*

(6) Section 15(1)(j) and (2) presently read:

15(1) A person who does any of the following is guilty of an offence:

- (j) *displays the word “agency”, “bailiff” or “sheriff” either alone or as part of a word or in conjunction with any other words*
 - (i) *on any business papers or correspondence or similar documents,*
 - (ii) *on any business or identification cards or similar documents, or*
 - (iii) *on any uniform, insignia, badge or vehicle,**where the display of those words might lead the public or a member of the public into believing that the person*

displaying those words is, is employed by or is providing services on behalf of an agency, bailiff or sheriff, except where

- (iv) the person displaying the word “agency” is employed by or providing services on behalf of any agency,*
- (v) the person displaying the word “bailiff” is a bailiff, or*
- (vi) the person displaying the word “sheriff” is or is acting under the directions of a sheriff.*

(2) Where

- (a) a corporation is guilty of an offence under subsection (1), the corporation is liable to a fine of not more than \$100 000, or*
- (b) an individual is guilty of an offence under subsection (1), the individual is,*
 - (i) in the case of a first offence, liable to a fine of not more than \$25 000, and*
 - (ii) in the case of a 2nd or subsequent offence, liable to a fine of not more than \$50 000 or to a term of imprisonment of not more than 6 months or to both fine and imprisonment.*

(7) New judgment.

(8) Section 35(1) presently reads:

35(1) Except as otherwise provided in this Division, a security interest in personal property is subordinate to a writ that binds the property regardless of whether the security interest attached before or after the personal property became bound by registration of the writ in the Personal Property Registry unless

- (a) the security interest is perfected or registered in the Personal Property Registry, or*
- (b) the secured party or a person acting on behalf of the secured party has possession of the personal property under section 24 of the Personal Property Security Act.*

(9) Section 47(2) and (3) presently read:

(2) If personal property has been under seizure for at least 90 days, the agency may give 30 days' notice to every enforcement creditor who, at the time that the notice is given, has a related writ against the enforcement debtor of the agency's intention to release the property from seizure.

(3) Unless within the 30-day period referred to in subsection (2) the agency has been directed by an enforcement creditor to continue the seizure, the agency may release from seizure the property in respect of which the notice was given.

(10) Section 48(j) presently reads:

48 For the purposes of selling seized personal property, the following applies:

(j) subject to section 34(2), when property is sold,

(i) the person who buys the property obtains only the interest of the enforcement debtor in the property, and

(ii) *the sale of the property does not adversely affect the rights or interest of any other person in the property.*

(11) Section 70 presently reads:

70 Before land is sold under this Act, a notice of intention to sell the land must be given in accordance with the regulations.

(12) Section 79(2) presently reads:

(2) Where a garnishee summons is issued in respect of a deposit account, the garnishee summons expires 60 days from the day on which it was issued.

(13) Section 81(1)(k) presently reads:

81(1) For the purposes of garnishing an enforcement debtor's employment earnings from the enforcement debtor's employer, the following applies:

(k) an interruption of less than 30 days in an enforcement debtor's employment is not to be taken into account in determining the effect of a garnishee summons issued against the enforcement debtor's employment earnings.

(14) Section 83(2) presently reads:

(2) Notwithstanding section 79, a garnishee summons that attaches a joint deposit account only attaches the portion of the joint entitlement that is a current obligation.

(15) Section 88(b), (c), (d), (f), (g) and (h) presently read:

88 *The following property of an enforcement debtor is exempt from writ proceedings:*

(b) the necessary clothing of the enforcement debtor and the enforcement debtor's dependants that are of a value not exceeding an amount prescribed by the regulations;

(c) household furnishings and appliances that are of a value not exceeding an amount prescribed by the regulations;

(d) one motor vehicle that is of a value not exceeding an amount prescribed by the regulations;

(f) in the case of a enforcement debtor

(i) who is a bona fide farmer, and

(ii) whose principal occupation is farming,

160 acres if the enforcement debtor's principal residence is located on that 160 acres and that 160 acres is part of that enforcement debtor's farm;

(g) the principal residence of an enforcement debtor, including a residence that is a mobile home, where the enforcement debtor's equity in that residence does not exceed an amount prescribed by the regulations for that residence but if the enforcement debtor is a co-owner of the residence, the amount of the exemption allowed under this provision is reduced to an amount that is proportionate to the enforcement debtor's ownership interest in the residence;

(h) in the case of an enforcement debtor whose primary occupation is not farming, personal property not exceeding in value an amount prescribed by the regulations that is used by the enforcement debtor to earn income from the enforcement debtor's occupation;

(16) Section 89 presently reads:

89(1) Where the enforcement debtor's equity in the property referred to in section 88 exceeds the prescribed value of the exemption for the property, that property is subject to sale pursuant to writ proceedings.

(2) If property to which subsection (1) applies is sold pursuant to writ proceedings, the following applies:

- (a) an agency shall, before distributing any of the proceeds of the sale under Part 11,*

- (i) *pay to the enforcement debtor an amount that is equal to the prescribed value of the exemption, or*
- (ii) *where the property was subject to a subordinate security interest or encumbrance, pay to the secured creditor the lesser of*
 - (A) *the prescribed value of the exemption, and*
 - (B) *the amount owed by the enforcement debtor to the secured creditor;*
- (b) *clause (a) does not apply where the enforcement debtor has other property of the same description that is exempted under section 88;*
- (c) *except where money paid to an enforcement debtor under clause (a) or section 98(a) is intermingled with other funds of the enforcement debtor, that money and any deposit accounts into which that money is paid is exempt for a period of 60 days from the day that the money is paid to the enforcement debtor.*

(17) Section 96 presently reads:

96(1) All money that

- (a) *is realized through writ proceedings, or*
- (b) *is otherwise received by an agency as a result of the existence of an enforcement debt,*

must be dealt with in accordance with this Part.

(2) Where property that is bound by a writ is sold in distress proceedings under a landlord's right of distraint or in proceedings to enforce a security interest or encumbrance that has priority over the writ,

- (a) *if the property is sold by a distributing authority, this Part applies to any portion of the proceeds that exceeds the amount*
 - (i) *for which the landlord is entitled to distraint, or*
 - (ii) *that is necessary to discharge the security interest or encumbrance,*

and

Explanatory Notes

(b) if the property is sold pursuant to a judicial sale or by a person other than a distributing authority, any portion of the

proceeds in excess of the amount necessary to discharge the security interest or encumbrance shall be paid to an agency.

(3) Nothing in this Part other than section 102 shall be construed so as to prejudice any right to money that is based on an interest, including a security interest or an encumbrance,

(a) in the money, or

(b) in the property from which the money is derived,

where that interest has priority over the relevant writs.

(18) Section 97 presently reads:

97 For the purposes of determining what constitutes a distributable fund, the following applies:

(a) subject to clauses (b) and (c), any money to which this Part applies constitutes a distributable fund when the money is received by a distributing authority;

(b) where this Act requires that money that is received by a distributing authority not be distributed before a certain period of time elapses or a certain event occurs, that money constitutes a distributable fund only when the period elapses or the event occurs;

(c) money payable in accordance with section 89(2) or 98 does not constitute or form part of a distributable fund.

(19) Section 98 presently reads:

98 Where a distributing authority receives money that is exempt or that represents the proceeds of exempt property, that money constitutes a distributable fund subject to the following payments being made from that money:

(a) if an enforcement creditor against whom the exemption does not apply has a related writ, the distributing authority

(i) shall pay to that enforcement creditor the lesser of

(A) the amount outstanding on the writ, and

(B) the maximum prescribed value of the exemption,

and

(ii) shall, insofar as the remaining balance permits, pay to the enforcement debtor the amount, if any, by which the maximum prescribed value of the exemption exceeds the amount of the payment made under subclause (i);

- (b) *if there is not an enforcement creditor who qualifies to be paid under clause (a), the distributing authority shall, insofar as the amount of that money held by the distributing authority permits, pay to the enforcement debtor an amount that is equal to the maximum prescribed value of the exemption.*

(20) Section 99(3) presently reads:

(3) Where the total amount of the eligible claims exceeds the amount of a distributable fund, the distributing authority must apply the distributable fund toward the claims in the following order of priority:

- (a) *first, if the fund is comprised of the proceeds of sale of a crop, to any charge for harvesting or marketing expenses to which an agency or enforcement creditor is entitled under section 52(f);*
- (b) *second, to other fees and expenses of a distributing authority that may be claimed against the enforcement debtor that were earned or incurred in connection with the enforcement measures that have produced the fund;*
- (c) *third, to other costs that may be claimed against the enforcement debtor that were incurred by the instructing creditor in connection with the enforcement measures that have produced the fund and any other costs that the Court has directed to be paid out of the fund;*
- (d) *fourth, to claims referred to in section 103(1);*
- (e) *fifth, to eligible claims that by virtue of any other enactment or law in force in Alberta are entitled to priority over the eligible claims of enforcement creditors generally;*
- (f) *sixth, to the balance of the instructing creditor's claim up to an amount not exceeding*

- (i) \$2000, plus
- (ii) after the payments referred to in clauses (a) to (e) are made, 15% of the amount by which the balance of the fund remaining exceeds \$15 000;
- (g) seventh, to all other eligible claims, including any unpaid balance of the instructing creditor's claim, on a prorated basis.

(21) Section 101 presently reads:

101(1) Where the amount of the distributable fund is less than the total amount of all eligible claims but is greater than the total amount distributable under section 99(3)(a) to (f), the following applies:

- (a) *the distributing authority must serve a statement setting out the proposed distribution on the enforcement debtor and on each of the enforcement creditors who have related writs at the time that the statement is given;*
- (b) *if a person on whom a statement was served under clause (a) wishes to object to the proposed distribution of the distributable fund, that person must within 15 days from the day of being served with that statement serve on the distributing authority a written notice of the objection to the distribution;*
- (c) *if an objection has not been made in accordance with clause (b) or any objection that is made is withdrawn,*
 - (i) *the statement of proposed distribution is final and conclusive as between all persons on whom the statement was served and the distributing authority, and*
 - (ii) *the distributing authority must distribute the fund in accordance with the statement of proposed distribution;*
- (d) *a person who has made an objection in accordance with clause (b) is deemed to have withdrawn the objection unless, within 15 days from the day of serving the notice of objection on the distributing authority, that person*

(i) *files with the Court, and*

(ii) *serves on the distributing authority,*

a notice of motion, returnable not more than 30 days from the day that the notice of motion is filed, for an order determining the matter in respect of which the objection was made;

(e) where an objection has been made in accordance with clause (b), the distributing authority must distribute in accordance with the proposed distribution as much of the fund as will not prejudice the effect of the objection if the objection is upheld by the Court.

(2) Where the amount of the distributable fund does not exceed the total amount distributable under section 99(3)(a) to (f), the distributing authority must immediately distribute the fund in accordance with section 99(3).

(22) Section 104 presently reads in part:

104 In carrying out a distress by a landlord for rent, the following applies:

(a) *sections 34(2), 45, 46, 47(1) and 48 apply to the distress as if it were a seizure made pursuant to writ proceedings;*

(23) Dealing with personal property that is already involved in writ proceedings or under seizure.

(24) Coming into force.

Fatal Accidents Act

2(1) Amends chapter F-8 of the Revised Statutes of Alberta 2000.

(2) Section 8(2) presently reads:

(2) If an action is brought under this Act, the court, without reference to any other damages that may be awarded and without evidence of damage, shall award damages for grief and loss of the guidance, care and companionship of the deceased person of

(a) *subject to subsections (3) and (4), \$43 000 to the spouse or cohabitant of the deceased person,*

(b) *\$43 000 to the parent or parents if*

(i) *the deceased is a minor child, or*

(ii) *the deceased is an unmarried child who died when 18 years of age or older and had not reached the deceased's 26th birthday and was not living with a cohabitant,*

to be divided equally if the action is brought for the benefit of both parents, and

(c) *\$27 000 to each child of the deceased person who, at the time of the death of the deceased person, is*

(i) *a minor, or*

(ii) *unmarried and 18 years of age or older and has not reached the child's 26th birthday and is not living with a cohabitant.*

(3) Section 9(1) presently reads:

9(1) The Executive Council shall review the levels of damages set out in section 8(2) once in every 5 years from September 1, 1994 to determine the adequacy of those levels.

(4) Transitional.

(5) Coming into force.

Interpretation Act

3 (1) Amends chapter I-8 of the Revised Statutes of Alberta 2000.

(2) Section 5 presently reads:

5(1) An enactment has effect immediately at the beginning of the day on which it comes into force.

(2) An enactment that is repealed and replaced ceases to have effect at the time the new enactment commences.

(3) An enactment that is expressed to expire or otherwise cease to have effect on a particular day shall be construed as ceasing to have effect at the end of that day.

(3) Section 12(2) presently reads:

(2) *In an enactment,*

(a) *tables of contents,*

(b) *marginal notes, and*

(c) *statutory citations after the end of a section or schedule*

are not part of the enactment, but are inserted for convenience of reference only.

(4) Section 20 presently reads:

20(1) Words in an enactment authorizing the appointment of a person include the power of

(a) *fixing the person's term of office;*

(b) *terminating the person's appointment or removing or suspending the person;*

(c) *reappointing or reinstating the person;*

(d) *fixing the person's remuneration and varying or terminating it;*

(e) *appointing another in the person's place or to act in the person's place whether or not the office is vacant;*

(f) *appointing a person as that person's deputy.*

(2) If a person is appointed by or under the authority of an enactment to an office effective on a specified day, the appointment is deemed to be effective immediately on the beginning of that day.

(3) If a person is appointed by or under the authority of an enactment to an office for a term of office that is to conclude, expire or otherwise come to an end on an expressed day, the term of office includes that day.

(4) If the appointment of a person by or under the authority of an enactment is terminated, revoked or rescinded effective on a specified day, that termination, revocation or rescission, whether or not that person holds office for a term of office that is to conclude, expire or otherwise come to an end on an expressed day, is deemed to be effective immediately on the beginning of the specified day.

Limitations Act

4(1) Amends chapter L-12 of the Revised Statutes of Alberta 2000.

(2) Definition.

(3) Section 5 presently reads:

5(1) The operation of the limitation periods provided by this Act is suspended during any period of time that the claimant is a person under disability.

(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 claim 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.

(3) Under this section, the claimant has the burden of proving that the operation of the limitation periods provided by this Act was suspended.

(4) Section 7 presently reads:

7 Subject to section 9, if an agreement expressly provides for the extension of a limitation period provided by this Act, the limitation period is altered in accordance with the agreement.

(5) Coming into force.

**Motor Vehicle Accident
Claims Act**

5(1) Amends chapter M-22 of the Revised Statutes of Alberta 2000.

(2) Section 1(j) presently reads:

1 In this Act,

(j) “uninsured motor vehicle” means a motor vehicle that is not an insured motor vehicle within the meaning of the Motor Vehicle Administration Act or that is not an insured off-highway vehicle within the meaning of the Off-highway Vehicle Act.

(3) Provides that when the driver and owner of a motor vehicle are different persons they may in certain circumstances be, for the purposes of litigation, adverse in interest.

(4) Unless directed by a court, the Administrator is not subject to examination.

**Provincial Offences
Procedure Act**

6(1) Amends chapter P-34 of the Revised Statutes of Alberta 2000.

(2) Section 14 presently reads:

14(1) Subject to section 8(5) of the Victims of Crime Act and any express provision in another enactment, the disposition of a penalty, fine or sum of money or the proceeds of a forfeiture under the enactment belong to the Crown in right of Alberta.

(2) Notwithstanding any other enactment, the proceeds of a late payment charge under this Act belong to the Crown in right of Alberta.

(3) Section 42 presently reads in part:

42 The Lieutenant Governor in Council may make regulations

(m) respecting the amounts of late payment charges;

(4) Coming into force.

(5) Retroactive effect.

(6) Retroactive regulations.

Public Trustee Act

7(1) Amends chapter P-44 of the Revised Statutes of Alberta 2000.

(2) Adds section 6.1 re notice to Public Trustee under the Limitations Act.

(3) Coming into force.

Survival of Actions Act

8(1) Amends chapter S-27 of the Revised Statutes of Alberta 2000.

(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 the deceased's 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.

(3) Coming into force.

Explanatory Notes