

Bill 10

BILL 10

2004

JUSTICE STATUTES AMENDMENT ACT, 2004

(Assented to , 2004)

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

Court of Appeal Act

Amends RSA 2000 cC-30

1(1) The *Court of Appeal Act* is amended by this section.

(2) Section 7 is amended by striking out “judges” and substituting “judges unless otherwise provided by the *Alberta Rules of Court*”.

(3) Section 8 is amended by renumbering it as section 8(1) and adding the following after subsection (1):

(2) If any matter before the Court has been heard by 2 judges and is standing for judgment and any of subsection (1)(a) to (e) applies to one of the judges, the remaining judge may give judgment on behalf of the Court.

(4) Section 16 is amended by renumbering it as section 16(1) and adding the following after subsection (1):

(2) The rules made by the Lieutenant Governor in Council under subsection (1) in relation to the practice and procedure in the Court may, subject to subsection (3), alter or conform to the substantive law.

(3) Subsection (2) does not authorize the making of rules that conflict with an Act of the Legislature or of the Parliament of Canada, or regulations made under those Acts, but the rules may supplement the provisions of an Act or regulation in respect of practice and procedure.

Court of Queen's Bench Act

Amends RSA 2000 cC-31

2 The *Court of Queen's Bench Act* is amended in section 20 by adding the following after subsection (1):

(1.1) The rules made by the Lieutenant Governor in Council under subsection (1) in relation to the practice and procedure in the Court may, subject to subsection (1.2), alter or conform to the substantive law.

(1.2) Subsection (1.1) does not authorize the making of rules that conflict with an Act of the Legislature or of the Parliament of Canada, or regulations made under those Acts, but the rules may supplement the provisions of an Act or regulation in respect of practice and procedure.

Judicature Act

Amends RSA 2000 cJ-2

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

(2) The following is added after section 19:

Periodic payment of damages

19.1(1) In this section,

- (a) “damages” means damages
 - (i) for personal injuries or for the death of a person, or
 - (ii) provided for under the *Fatal Accidents Act*;
- (b) “judgment” means a judgment under which damages are to be paid in whole or in part by periodic payments;
- (c) “judgment creditor” means a person who is entitled to receive periodic payments under a judgment;

- (d) “periodic payment termination date” means the date or event on which periodic payments are to cease being paid;
- (e) “proceeding” means a proceeding under which damages are claimed.

(2) Any party to a proceeding may apply to the Court for an order that damages awarded be paid in whole or in part by periodic payments.

(3) Where the Court orders that damages are to be paid by periodic payments, the Court in its judgment

- (a) must identify the specific damages for which periodic payments are to be made and, with respect to each of those specific damages, set out
 - (i) the amount of each periodic payment,
 - (ii) the date of each periodic payment or the interval between periodic payments,
 - (iii) the recipient of each periodic payment,
 - (iv) the annual percentage increase, if any, in the amount of each periodic payment, and
 - (v) the periodic payment termination date,

and

- (b) in addition to any matter referred to in clause (a), may make any direction and include any material that the Court considers appropriate.

(4) The Court may, for the purposes of assuring payment of a judgment, order any party liable under the judgment to provide security in the amount and subject to any terms or conditions that the Court considers appropriate.

(5) At any time after a judgment is granted, the Court, on application, may, with the consent of all affected parties to the judgment, direct that a review of the damages awarded take place and make any change to the damages awarded as the Court considers appropriate.

(6) Unless otherwise provided for in the judgment or if the Court, on application, otherwise directs, where a judgment creditor dies prior to the periodic payment termination date, any periodic payments remaining payable under the judgment up to, and on, the periodic payment termination date are to be paid to the estate of the judgment creditor in the same manner as if the judgment creditor had not died.

(7) Periodic payments of damages for loss of future earnings are exempt from civil enforcement proceedings to the same extent that wages or earnings are exempt from civil enforcement proceedings.

(8) Periodic payment of damages that are for the cost of future care of the judgment creditor are not assignable to another person unless

- (a) the person who is to be the assignee is a provider of care to the judgment creditor and the assignment is to pay for the costs of products, services and accommodation, or any one or more those items, in respect of the judgment creditor, and
- (b) the Court, on application, approves the assignment.

(9) This section applies to any proceeding, whether the proceeding was commenced before or after this section comes into force.

(3) Section 42(2) is repealed and the following is substituted:

(2) The commission or commissions must be established on or before April 1 in 2006 and 2009 and every 4 years thereafter.

(4) Section 63 is repealed and the following is substituted:

Validation of Alberta Rules of Court

63(1) In this section, “Alberta Rules of Court” means the *Alberta Rules of Court* (AR 390/68) as amended prior to the coming into force of this section.

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

(5) The *Justice Statutes Amendment Act*, RSA 2000 c16(Supp), is repealed.

(6) Subsection (2) comes into force on Proclamation.

Jury Act

Amends RSA 2000 cJ-3

4 The *Jury Act* is amended in section 17

(a) in subsection (1) by striking out “subsection (2)” and substituting “subsections (1.1) and (2)”;

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

(1.1) If, on an application made under subsection (1) or on a subsequent application, a judge considers it appropriate, the judge may direct that the proceeding be tried pursuant to the summary trial procedure set out in the *Alberta Rules of Court*.

Motor Vehicle Accident Claims Act

Amends RSA 2000 cM-22

5 The *Motor Vehicle Accident Claims Act* is amended in section 1 by repealing clause (e) and substituting the following:

(e) “motor vehicle” means

(i) a motor vehicle as defined in section 1 of the *Traffic Safety Act* that is required to be registered under that Act, or

(ii) an off-highway vehicle as defined in section 117 of the *Traffic Safety Act* that is required to be registered under that Act;

Provincial Offences Procedure Act

Amends RSA 2000 cP-34

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

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

- (d.1) “electronic document” means information or data that is created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage, and includes any display, printout or other output of the information or data;

(3) Section 23.1 is repealed and the following is substituted:

Electronic data

23.1 Notwithstanding anything in this or any other enactment, the Court may, with respect to any matter coming under this Act,

- (a) if permitted to do so by the regulations, and
- (b) subject to any directions, conditions or terms provided for in the regulations,

use electronic documents in carrying out the Court’s functions.

Signatures

23.2 Where a document used under this Act is to be signed, that document, whether in electronic or non-electronic form, may, instead of being signed, be marked, subscribed, endorsed, acknowledged or given any other form of signification or be otherwise dealt with if so provided for under the regulations.

(4) Section 25(1) is repealed and the following is substituted:

Violation ticket

25(1) A violation ticket under this Part must include

- (a) a complaint, and
- (b) a summons.

(5) Section 31 is amended

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

Violation ticket

31(1) A violation ticket under this Part must include

- (a) a certificate of offence, and

(b) an offence notice.

(b) by adding the following after subsection (5):

(5.1) Where

- (a) an offence notice is mailed to a defendant under subsection (5), and
- (b) the date of mailing of the offence notice is set out in the related certificate of offence,

that offence notice is, in the absence of evidence to the contrary, deemed to have been served on the defendant on the 7th day from the date of mailing as set out in the certificate of offence.

(6) Section 32 is amended

(a) in subsection (4) by striking out “shall be received in evidence” and substituting “may be filed with a clerk”;

(b) by adding the following after subsection (4):

(5) Notwithstanding subsection (1) or (3), where an offence notice is deemed to have been served under section 31(5.1), neither a certificate of service nor an affidavit of service is required.

(7) Section 37 is amended

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

Failure to respond to offence notice

37(1) If an offence notice has not been delivered in accordance with section 33 or 36 and a plea of guilty has not been accepted under section 35,

- (a) the defendant is deemed not to wish to dispute the charge,
- (b) a conviction for the offence charged shall be entered against the defendant, and

(c) the specified penalty for the offence shall be imposed on the defendant.

(1.1) Where a charge is dealt with under subsection (1), it may be done so without the charge being brought before or being reviewed by a justice.

(b) by repealing subsection (4) and substituting the following:

(4) If an offence notice is quashed by reason of a defect, a new offence notice in respect of the alleged offence may be issued under this Part if not more than 6 months has elapsed since the alleged offence occurred.

(8) Section 42(r) is repealed and the following is substituted:

- (r) permitting and governing the use, processing and filing of electronic documents;
- (s) governing, where electronic documents are used, the issuance and use of any non-electronic documents that are corresponding documents to those electronic documents;
- (t) with respect to documents, whether in electronic or non-electronic form, that are to be signed,
 - (i) governing the signing of those documents, which may include dispensing with any requirement that the documents be signed;
 - (ii) providing for those documents, instead of being signed, to be marked, subscribed, endorsed, acknowledged or given any other form of signification or to be otherwise dealt with, and governing any matter relating to
 - (A) the marking, subscribing, endorsing, acknowledging or signification of or dealing with those documents, and
 - (B) the effect to be given to those documents;
- (u) for the purposes of sections 31 and 32, governing the completion of certificates of offence, certificates of service and affidavits of service.

(9) This section comes into force on Proclamation.

Queen's Counsel Act

Amends RSA 2000 cQ-1

7 The *Queen's Counsel Act* is amended by adding the following after section 9:

Revocation of appointment

10 The Lieutenant Governor in Council shall revoke the appointment made pursuant to section 1 of a member who is disbarred or is deemed to have been disbarred by virtue of a resignation by the member in the face of discipline pursuant to section 61 of the *Legal Profession Act*.

Explanatory Notes

Court of Appeal Act

1(1) Amends chapter C-30 of the Revised Statutes of Alberta 2000.

(2) Section 7 presently reads:

7 A quorum of the Court consists of 3 judges.

(3) Section 8 presently reads:

8 If any matter before the Court has been heard by 3 or more judges and is standing for judgment and one of the judges who heard that matter

(a) is transferred to any other court,

(b) resigns that office,

(c) dies,

(d) *is absent through illness or other cause, or*

(e) *is for any other reason unable to act,*

then the remaining judges may, if unanimous in their decision, give judgment on behalf of the Court notwithstanding section 7.

(4) Section 16 presently reads:

16 The Lieutenant Governor in Council may make rules governing

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

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

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

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

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

Court of Queen's Bench Act

2 Amends chapter C-31 of the Revised Statutes of Alberta 2000. Section 20 presently reads:

20(1) The Lieutenant Governor in Council may by regulation make rules governing

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

(a.1) *governing surrogate matters;*

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

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

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

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

(2) The Lieutenant Governor in Council may make regulations respecting judicial review in civil matters.

Judicature Act

3(1) Amends chapter J-2 of the Revised Statutes of Alberta 2000.

(2) Provides for structured settlements.

(3) Section 42(2) presently reads:

(2) The commission or commissions must be established on or before April 1, 2000 and every 3 years afterwards.

(4) Section 63 presently reads:

63(1) In this section, "Alberta Rules of Court" means the Alberta Rules of Court (AR 390/68) as amended prior to June 18, 1997.

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

(5) Repeals chapter 16(Supp) of the Revised Statutes of Alberta 2000.

(6) Coming into force.

Jury Act

4 Amends chapter J-3 of the Revised Statutes of Alberta 2000.

Section 17 presently reads in part:

17(1) Subject to subsection (2), on application by a party to the proceeding, the following shall be tried by a jury:

- (a) an action for defamation, false imprisonment, malicious prosecution, seduction or breach of promise for marriage,*
- (b) an action founded on any tort or contract in which the amount claimed exceeds an amount prescribed by regulation, or*
- (c) an action for the recovery of property the value of which exceeds an amount prescribed by regulation.*

Motor Vehicle Accident Claims Act

5 Amends chapter M-22 of the Revised Statutes of Alberta 2000. Section 1(e) presently reads:

1 In this Act,

- (e) “motor vehicle” means a vehicle propelled by any power, other than muscular power, except*
 - (i) aircraft, tractors, whether equipped with rubber tires or not, traction engines, implements of husbandry, trolley buses and vehicles that run only on rails, and*
 - (ii) machines designed for use primarily in connection with the building or maintenance of highways or other construction works that are not required to be licensed under the Traffic Safety Act,*

and includes a truck tractor required to be registered under the Traffic Safety Act or the regulations under that Act;

Provincial Offences Procedure Act

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

(2) Defines “electronic document”.

(3) Section 23.1 presently reads:

23.1 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.

(4) Section 25(1) presently reads:

25(1) A violation ticket under this Part must be in a form prescribed by the regulations and shall include the following parts:

(a) a complaint, and

(b) a summons.

(5) Section 31(1) presently reads:

31(1) A violation ticket under this Part must be in a form prescribed by the regulations and shall include the following parts:

- (a) a certificate of offence, and*
- (b) an offence notice.*

(6) Section 32 presently reads:

32(1) If an offence notice is served by the peace officer who issued it, the peace officer shall complete and sign a certificate of service on the violation ticket that the peace officer personally served the offence notice on the person charged and the peace officer shall indicate the date of service.

(2) A certificate of service does not need to be sworn.

(3) If an offence notice is served by a person other than the peace officer who issued it, that person shall complete an affidavit of service.

(4) A certificate of service or an affidavit of service shall be received in evidence and in the absence of evidence to the contrary is proof of personal service.

(7) Section 37 presently reads in part:

37(1) If an offence notice has not been delivered in accordance with section 33 or 36 and a plea of guilty has not been accepted under section 35, the defendant is deemed not to wish to dispute the charge and a justice shall examine the certificate of offence and the certificate of service or the affidavit of service referred to in section 32, and

- (a) if they are complete and regular on their face, the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty, or*

(b) if they are not complete and regular on their face, the justice shall quash the proceedings.

(4) If proceedings are quashed under subsection (1)(b), proceedings may be recommenced under this Part if not more than 6 months have elapsed since the alleged offence occurred.

(8) Section 42 presently reads in part:

42 The Lieutenant Governor in Council may make regulations

(r) respecting, for the purposes of section 23.1,

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

(ii) what constitutes pertinent information.

(9) Coming into force.

Queen's Counsel Act

7 Amends chapter Q-1 of the Revised Statutes of Alberta 2000. Revocation of appointment.

Explanatory Notes