

Bill 23

BILL 23

2005

ADMINISTRATIVE PROCEDURES ADMENDMENT ACT, 2005

(Assented to , 2005)

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

Amends RSA 2000 cA-3

1 The *Administrative Procedures Act* is amended by this Act.

2 The title of the Act is repealed and the following is substituted:

ADMINISTRATIVE PROCEDURES AND JURISDICTION ACT

3 The following heading is added before section 1:

Part 1 Administrative Procedures

4 Section 2 is repealed and the following is substituted:

Application of Part

2(1) This Part applies to an authority only to the extent provided under this section.

(2) The Lieutenant Governor in Council may, by regulation,

- (a) designate any authority as an authority to which this Part applies in whole or in part;
- (b) designate the statutory power of the authority in respect of which this Part applies in whole or in part;
- (c) designate the provisions of this Part that are applicable to the authority in the exercise of that statutory power, and the extent to which they apply;
- (d) prescribe the form of notices for the purposes of this Part;
- (e) prescribe the length of time that is adequate for the giving of a notice under this Part.

5 Section 6 is amended by striking out “this Act” wherever it occurs and substituting “this Part”.

6 Section 8 is amended by striking out “this Act” and substituting “this Part”.

7 Section 9 is amended by striking out “this Act” and substituting “this Part”.

8 Section 10 is repealed and the following is substituted:

**Part 2
Jurisdiction to Determine
Questions
of Constitutional Law**

Definitions

10 In this Part,

- (a) “court” means the Court of Queen’s Bench of Alberta;

- (b) “decision maker” means an individual appointed or a body established by or under an Act of Alberta to decide matters in accordance with the authority given under that Act, but does not include
 - (i) The Provincial Court of Alberta or a judge of that Court,
 - (ii) a sitting justice of the peace conferred with the authority to determine a question of constitutional law under the *Provincial Court Act*,
 - (iii) the Court of Queen’s Bench of Alberta or a judge or master in chambers of that Court, or
 - (iv) the Court of Appeal of Alberta or a judge of that Court;
- (c) “designated decision maker” means a decision maker designated under section 16(a) as a decision maker that has jurisdiction to determine one or more questions of constitutional law under section 16(b);
- (d) “question of constitutional law” means
 - (i) any challenge, by virtue of the Constitution of Canada or the *Alberta Bill of Rights*, to the applicability or validity of an enactment of the Parliament of Canada or an enactment of the Legislature of Alberta, or
 - (ii) a determination of any right under the Constitution of Canada or the *Alberta Bill of Rights*.

Lack of jurisdiction

11 Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so.

Notice of question of constitutional law

12(1) Except in circumstances where only the exclusion of evidence is sought under the *Canadian Charter of Rights and Freedoms*, a person who intends to raise a question of

constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

- (a) must provide written notice of the person's intention to do so at least 14 days before the date of the proceeding
 - (i) to the Attorney General of Canada,
 - (ii) to the Minister of Justice and Attorney General of Alberta, and
 - (iii) to the parties to the proceeding,
- and
- (b) must provide written notice of the person's intention to do so to the designated decision maker.

(2) Until subsection (1) is complied with, the decision maker must not begin the determination of the question of constitutional law.

(3) Nothing in this section affects the power of a decision maker to make any interim order, decision, directive or declaration it considers necessary pending the final determination of any matter before it.

(4) The notice under subsection (1) must be in the form and contain the information provided for in the regulations.

Referral of question of constitutional law

13(1) With respect to a question of constitutional law over which a designated decision maker has jurisdiction and in respect of which a notice has been given under section 12, if the designated decision maker is of the opinion that the court is a more appropriate forum to decide the question, the designated decision maker may, instead of deciding the question,

- (a) direct the person who provided the notice under section 12 to apply to the court to have the question determined by that court, or
- (b) state the question of constitutional law in the form of a special case to the court for the opinion of the court.

(2) Before acting under subsection (1)(a) or (b), the designated decision maker may conduct any inquiries the designated decision maker considers necessary.

(3) Where the designated decision maker acts under subsection (1)(a) or (b), the designated decision maker must, unless otherwise directed by the court, suspend the proceeding, or any part of the proceeding, as it relates to the question to be heard by the court under subsection (1) until the decision of the court has been given.

(4) A question of constitutional law in respect of which an application has been directed to be made to the court under subsection (1)(a) must be brought on for hearing as soon as practicable.

(5) The court must hear and determine the question of constitutional law submitted to it under this section and give its decision as soon as practicable.

(6) The designated decision maker may and, at the request of the court, shall provide the court with any record and documentation that may assist the court in determining the question of constitutional law submitted to it under this section.

**Attorney General of Canada and Minister of Justice
and Attorney General of Alberta**

14 In any proceeding relating to the determination of a question of constitutional law before a decision maker or before the court under this Part, or in any subsequent proceeding on appeal or judicial review,

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, in person or by counsel,
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of Her Majesty in right of Alberta, or on behalf of an agent of Her Majesty in right of Alberta, appear and participate, and

- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears, the Minister of Justice and Attorney General of Alberta is deemed to be a party and has the same rights as any other party.

Transitional

15 Where proceedings to determine a question of constitutional law have commenced but have not been concluded before the coming into force of this Part, the decision maker hearing the question may continue the proceedings as if this Part had not come into force.

Regulations

16 The Lieutenant Governor in Council may make regulations

- (a) designating decision makers as having jurisdiction to determine questions of constitutional law;
- (b) respecting the questions of constitutional law that decision makers designated under a regulation made under clause (a) have jurisdiction to determine;
- (c) respecting the referral of questions of constitutional law to the court;
- (d) respecting the form and contents of the notice under section 12(1).

9 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter A-3 of the Revised Statutes of Alberta 2000.

2 Changes the name of the Act.

3 The existing Act becomes Part 1 and a new Part 2 is being added.

4 Section 2 presently reads:

2 The Lieutenant Governor in Council may, by order,

- (a) designate any authority as an authority to which this Act applies in whole or in part,*
- (b) designate the statutory power of the authority in respect of which this Act applies in whole or in part, and*
- (c) designate the provisions of this Act that are applicable to the authority in the exercise of that statutory power, and the extent to which they apply,*

and this Act only applies to an authority to the extent ordered under this section.

5 Section 6 presently reads:

6 Where by this Act a party is entitled to make representations to an authority with respect to the exercise of a statutory power, the authority is not by this Act required to afford an opportunity to the party

- (a) to make oral representations, or*
- (b) to be represented by counsel,*

if the authority affords the party an opportunity to make representations adequately in writing, but nothing in this Act deprives a party of a right conferred by any other Act to make oral representations or to be represented by counsel.

6 Section 8 presently reads:

8 Nothing in this Act relieves an authority from complying with any procedure to be followed by it under any other Act relating to the exercise of its statutory power.

7 Section 9 presently reads:

9 Nothing in this Act

- (a) requires that any evidence or allegations of fact made to an authority be made under oath, or*
- (b) requires any authority to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.*

8 Section 10 presently reads:

Regulations

10 The Lieutenant Governor in Council may make regulations

- (a) to prescribe the length of time that is reasonable for the giving of a notice in accordance with this Act, with respect to authorities generally or with respect to a specified authority;*
- (b) to prescribe forms of notices for the purposes of this Act;*
- (c) to carry into effect the purposes of this Act.*

9 Coming into force.