

Bill 5

BILL 5

2006

JUSTICE STATUTES AMENDMENT ACT, 2006

(Assented to , 2006)

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 7(1)(b) is amended by striking out “105.1” and substituting “48.1”.

(3) Section 47(2)(b) is amended by striking out “105.1” and substituting “48.1”.

(4) The following is added after section 48:

Notice re personal property already subject to civil enforcement proceedings

48.1(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.

(2) An enforcement creditor may give notice of that person’s claim against personal property that is already subject to distress proceedings to the civil enforcement agency that is conducting the distress proceedings.

Court order re personal property already under seizure

48.2(1) Unless permitted or otherwise authorized to do so by an order of the Court granted under this section, a person shall not

- (a) exercise a right of distress against personal property that is already under seizure pursuant to other civil enforcement proceedings, or
- (b) conduct a seizure against personal property that is already under seizure by another person pursuant to a right of distress.

(2) A person who has 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) An enforcement creditor who wishes to seize personal property that is already under seizure pursuant to a right of distress may apply to the Court for an order

- (a) transferring to that enforcement creditor the control of the civil enforcement proceedings related to the seized property, or
- (b) permitting that enforcement creditor to seize the property notwithstanding that it is already under seizure.

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

(5) An order under subsection (2) or (3) or any action taken under an order under subsection (2) or (3) does not affect priority to the seized property or its proceeds.

(6) 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) or (3) is responsible on the granting of the order for the personal property and any storage costs incurred in respect of that property.

(5) Section 104(a.1) is amended by striking out “105.1” and substituting “48.1”.

(6) Sections 105.1 and 105.2 are repealed.

Justice Statutes Amendment Act, 2004

Amends SA 2004 c11

2(1) The *Justice Statutes Amendment Act, 2004* is amended by this section.

(2) Section 3(2) is amended in the new section 19.1

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

(2) On application by any party to a proceeding, the Court may order that damages awarded be paid in whole or in part by periodic payments, and where no party to a proceeding has made an application for periodic payments, the Court nevertheless

- (a) may, in the Court’s discretion and on the terms that the Court thinks just, order that an award for damages be paid by periodic payments if the Court considers it to be in the best interests of the plaintiff, and
- (b) shall order that an award for damages be paid by periodic payments if the plaintiff requests that an amount be included in the award to compensate for income tax payable on income from investment of the award.

(2.1) Notwithstanding subsection (2), the Court shall not make an order under this section

- (a) if all the parties agree otherwise,
- (b) if one or more of the parties in respect of whom the order would be made satisfies the Court that the parties do not have sufficient means to fund the order, or
- (c) if the Court, on considering all the circumstances, including but not limited to considering whether an order for periodic payments would have the effect of preventing the plaintiff or another person from obtaining full recovery for damages awarded, is satisfied that such an order would not be in the best interests of the plaintiff.

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

(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 form of an annuity contract that complies with the requirements of the *Income Tax Act* (Canada) regarding the tax-free status of the payments, issued by a life insurer satisfactory to the Court and irrevocably payable to the plaintiff, subject to any terms or conditions the Court considers appropriate.

(c) by repealing subsections (5) and (6).

Mechanical Recording of Evidence Act

Amends RSA 2000 cM-10

3(1) The *Mechanical Recording of Evidence Act* is amended by this section.

(2) The title and chapter number of the Act are repealed and the following is substituted:

RECORDING OF EVIDENCE ACT
Chapter R-7.5

(3) Section 1 is amended

(a) in clause (a)

(i) by repealing subclause (iii);

(ii) in subclause (v) by adding “, justice of the peace” after “referee”;

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

(f) “reporter” means

(i) an official court reporter as defined in the *Alberta Rules of Court*,
or

(ii) a person who is appointed by the Minister as a court reporter for the purposes of this Act or an agent or employee of that person;

(4) Section 2(1) is amended by striking out “an action” and substituting “a proceeding”.

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

Certification of record

3(1) A record must, in accordance with the regulations, be certified as being the record made of the evidence or part of the evidence, as the case may be, in the proceeding by the judge or the court official in charge of the sound-recording machine during the proceeding.

(2) A certification made under this section is admissible in evidence as proof, in the absence of evidence to the contrary, that the record is the record of evidence, or part of the evidence, in the proceeding.

(6) Section 4(b) is amended by striking out “to be a true and faithful transcript of the contents of the record” **and substituting** “in accordance with the regulations”.

(7) Section 6 is repealed and the following is substituted:

Filing of records

6 All records must be stored and maintained by the official having custody of the records of the court and shall not be removed except as required by an Act or a rule of court or on the order of a judge of the court or a judge of the Court of Appeal or the Court of Queen’s Bench.

(8) Section 7 is repealed.

(9) Section 8 is repealed and the following is substituted:

Destruction on order

8(1) A record must be kept for a period of 10 years from the making of the record after which time the Court of Queen’s Bench may order that the record be erased, cancelled or otherwise destroyed.

(2) An order under subsection (1) may be made on the application of the Minister without notice to any other person and may be a general order to apply with respect to all or any records made more than 10 years previous to the order.

(10) Section 9 is repealed and the following is substituted:

Regulations

9(1) The Lieutenant Governor in Council may make regulations prescribing the fees to be charged for the transcription of records and for copies of transcriptions.

(2) The Minister may make regulations respecting the manner and form of the certification given under section 3 or 4.

(11) The *Mental Health Act* is amended in section 10(4) by striking out “Mechanical”.

(12) The *Provincial Court Act* is amended in section 37(1)(b) by striking out “Mechanical”.

(13) Subsections (5) and (6) come into force on Proclamation.

Explanatory Notes

Civil Enforcement Act

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

(2) Section 7(1)(b) presently reads:

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

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

(3) Section 47(2)(b) presently reads:

(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

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

(4) Notice re personal property already subject to civil enforcement proceedings; Court order re personal property already under seizure.

(5) Section 104(a.1) presently reads:

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

(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;

(6) Sections 105.1 and 105.2 presently read:

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.

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.

Justice Statutes Amendment Act, 2004

2(1) Amends chapter 11 of the Statutes of Alberta, 2004.

(2) Section 19.1 of the Judicature Act as enacted by section 3(2) presently reads in part:

19.1(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.

(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.

Mechanical Recording of Evidence Act

3(1) Amends chapter M-10 of the Revised Statutes of Alberta 2000.

(2) The title and chapter number presently read:

MECHANICAL RECORDING OF EVIDENCE ACT

Chapter M-10

(3) Section 1 presently reads in part:

1 In this Act,

(a) “court” means

(iii) *the court of a justice of the peace,*

(v) *the hearings presided over by a clerk of the court, sheriff, registrar, commissioner, board, arbitrator, referee or other person appointed by law or by order of a court or otherwise, to hear any witness or take any evidence, or to make any order, decree, finding, decision or report, or to exercise any judicial or quasi-judicial function;*

(f) “reporter” means

(i) *an official court reporter appointed in accordance with the Alberta Rules of Court, or*

(ii) *a person appointed by the Minister*

(A) *who makes a transcription of a record from a sound-recording, or*

(B) *who is a stenographer or typist;*

(4) Section 2(1) presently reads:

2(1) The Minister may by order direct that the evidence or any part of the evidence given before a court in a civil action or in an action under the Provincial Offences Procedure Act be recorded by means of a sound-recording machine.

(5) Section 3 presently reads:

3(1) A record must be certified, by the judge or by the court official in charge of the sound-recording machine during the proceeding, as being the record made of the evidence or part of the evidence, as the case may be, in the proceeding.

or official character, admissible in evidence as proof, in the absence of evidence to the contrary, that the record is the record of the evidence, or part of the evidence, as the case may be, in the proceeding.

(6) Section 4(b) presently reads:

4 A typewritten copy of the whole or any part of the contents of a record,

(b) certified by the reporter to be a true and faithful transcript of the contents of the record,

is admissible in evidence by any court to the same extent and with the same effect as a transcript of shorthand notes prepared by a reporter pursuant to the Alberta Rules of Court.

(7) Section 6 presently reads:

6 All records must be filed in the office of the official having custody of the records of the court and shall not be removed except as required by an Act or a rule of court or on the order of a judge of the court or a judge of the Court of Appeal or the Court of Queen's Bench.

(8) Section 7 presently reads:

7(1) Any time after 6 months from the making of the record, a duplicate record may be made by means of a sound recording mechanical device approved by the Minister and the original record may then be erased, cancelled or otherwise destroyed.

(2) A typewritten copy of the whole or any part of the contents of the duplicate record,

(a) reduced to writing by a reporter, and

(b) certified by the reporter to be a true and faithful transcript of the contents of the duplicated record,

is admissible in evidence by any court to the same extent and with the same effect as a typewritten copy of the original record.

(9) Section 8 presently reads:

8(1) A record or a duplicate record must be kept for a period of 10 years from the making of the record or duplicate after which time the Court of Queen's Bench may order that the record or duplicate record be erased, cancelled or otherwise destroyed.

(2) An order under subsection (1) may be made on the application of the Minister without notice to any other person and may be a general order to apply with respect to all or any records or duplicate records made more than 10 years previous to the order.

(10) Section 9 presently reads:

9 The Lieutenant Governor in Council may make regulations

(a) prescribing the form of certificates given under section 3, 4 or 7;

(b) prescribing the fees to be charged for the transcriptions of records and for copies of those transcriptions.

(11) Consequential amendment.

(12) Consequential amendment.

(13) Coming into force.