

2008 Bill 39

First Session, 27th Legislature, 57 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 39

COURT STATUTES AMENDMENT ACT, 2008

MR. DENIS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 39
Mr. Denis

BILL

2008

COURT STATUTES AMENDMENT ACT, 2008

(Assented to , 2008)

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

Provincial Court Act

Amends RSA 2000 cP-31

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

**(2) Section 9(1)(i.2)(ii)(D) is amended by striking out “76 to 80”
and substituting “64 to 68”.**

Explanatory Notes

Provincial Court Act

1(1) Amends chapter P-31 of the Revised Statutes of Alberta 2000.

(2) Section 9(1)(i.2)(ii)(D) presently reads:

(i.2) providing for rules governing the practice and procedure of the Court and, without limiting the generality of the foregoing, make rules

(i) governing payment hearings and methods of payments referred to in section 44.2;

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

(D) varying the provisions of sections 9.8(2) and 64 to 68 or substituting other provisions for the provisions of sections 9.8(2) and 76 to 80 and making those varied or substituted provisions applicable to other matters before the Court that do not come under Part 4;

(3) Section 9.23 is amended

(a) in subsection (1) by striking out “section 9.22” and substituting “section 9.22(1)”;

(b) by adding the following after subsection (9):

(10) Subject to Part 6 of the *Judicature Act*, no judge reappointed under this section may be removed from office before the expiry of that judge’s term.

(4) Section 9.24 is amended

(a) in subsection (1) by striking out “section 9.22” and substituting “section 9.22(1)”;

(b) by adding the following after subsection (11):

(12) Subject to Part 6 of the *Judicature Act*, no part-time judge appointed or reappointed under this section may be removed from office before the expiry of that judge’s term.

(5) Section 9.3 is amended by adding the following after subsection (5):

(6) Subject to Part 6 of the *Judicature Act*, no supernumerary judge appointed under this section may be removed from office before the expiry of that judge’s term.

(6) Section 9.6(1)(a)(i) is amended

(a) by adding the following after paragraph (A):

(A.1) for unjust enrichment, including a claim or counterclaim for the recovery of the value of services provided or goods supplied, if the amount claimed or counterclaimed, as the case may be, does not exceed the amount prescribed by the regulations,

(b) in paragraph (C) by striking out “for the return of personal property” and substituting “for a determination of the title to and the right of possession of personal property, and for the delivery of personal property.”

(3) Section 9.23 presently reads in part:

9.23(1) Notwithstanding section 9.22, a judge may, in accordance with this section, be reappointed as a judge.

(9) Notwithstanding anything in this section, if a judge who is reappointed under this section attains the age of 75 years at any time during the judge's term, that judge's term expires when that judge attains that age.

(4) Section 9.24 presently reads in part:

9.24(1) Notwithstanding section 9.22, a judge may, in accordance with this section, be appointed as a part-time judge.

(11) Notwithstanding anything in this section, the term of appointment of a part-time judge expires when the judge attains the age of 75 years.

(5) Section 9.3(5) presently reads:

(5) Section 9.22 does not apply to a supernumerary judge.

(6) Section 9.6(1)(a) presently reads:

9.6(1) The Court has, subject to this Act, the following jurisdiction:

(a) for the purposes of Part 4,

(i) to hear and adjudicate on any claim or counterclaim

(A) for debt, whether payable in money or otherwise, if the amount claimed or counterclaimed, as the case may be, exclusive of interest payable under an Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations,

(B) for damages, including damages for breach of contract, if the amount claimed or counterclaimed, as the case may be, exclusive of interest payable under an

(7) The following is added after section 9.6:

Guardian ad litem

9.601(1) A judge may appoint a guardian ad litem for a minor where it appears to be in the interests of the minor.

(2) The power to appoint a guardian ad litem under subsection (1) does not include the power to appoint the Public Trustee as guardian ad litem for a minor pursuant to an application under section 16 of the *Minors' Property Act*.

(8) Section 25 is amended by adding the following after subsection (4):

(5) A civil claim issued under this section expires one year after it is issued unless within that year it is renewed by an order of the Court for a further period not exceeding 3 months.

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

(C) for the return of personal property if the value of the personal property does not exceed the amount prescribed by the regulations, and

(D) for specific performance or rescission of a contract if the value of the rights in issue does not exceed the amount prescribed by the regulations;

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

(7) Judge may appoint guardian ad litem for minor.

(8) Section 25 presently reads:

25(1) A person who has a claim may apply to a clerk for the issuance of a civil claim.

(2) When an application is made under subsection (1), a clerk shall, subject to section 61, issue a civil claim in the prescribed form that contains the particulars of the claim and an address for service as provided by the plaintiff, together with a copy of the form of a dispute note.

(3) The civil claim and a copy of the form of a dispute note shall be served on the defendant by the plaintiff.

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

(9) Section 30(2)(a) is amended by adding “at least 21 days prior to the hearing” **after** “to that person”.

(10) Section 32 is amended by adding the following after subsection (5):

(6) No interest accrues to money paid into the Court under subsection (1).

(11) Section 39 is repealed.

(9) Section 30(2) presently reads:

(2) A person may serve a notice to attend

(a) by delivering to that person a copy of the notice to attend together with the prescribed witness fee, or

(b) as directed by the Court.

(10) Section 32 presently reads:

32(1) A party may at any time before the date of the hearing pay into the Court a sum of money to satisfy, as the case may be,

(a) the plaintiff's claim and costs, or

(b) the defendant's counterclaim and costs.

(2) When a person makes a payment under subsection (1), a clerk shall send to the other party a notice setting out the date payment was made, the amount paid in respect of the claim or counterclaim and the amount paid in respect of the costs.

(3) If a person accepts in writing the payment made under subsection (1) in full satisfaction of the claim or counterclaim and the costs, a clerk shall pay the money to the person.

(4) If a person proceeds with the claim or counterclaim, as the case may be, after receiving the notice referred to in subsection (2) and is not awarded a greater sum than the amount paid into the Court, the person is liable to the other party for those costs that the Court considers proper.

(5) If the money paid into Court under subsection (1) is not paid under subsection (3), the Court may make an order with respect to the disposition of that money.

(11) Section 39 presently reads:

39(1) If a plaintiff fails to appear on the date set for the hearing, the Court may order that the plaintiff's claim be dismissed.

(2) If the Court dismisses a plaintiff's claim under subsection (1), it shall not give judgment on any counterclaim of the defendant until the defendant has presented the defendant's case in respect of the counterclaim

(12) Section 41 is repealed and the following is substituted:

Failure to appear

41(1) If a defendant fails to appear on the date set for a hearing or a pre-trial conference in respect of a claim or counterclaim, the Court may

- (a) where the claim is for a debt or liquidated demand, enter judgment on the claim;
- (b) where the claim requires the assessment of damages, proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages;
- (c) where the claim is for a remedy, other than a remedy referred to in clause (a) or (b), that is within the jurisdiction of the Court, grant the remedy to the extent that the Court considers appropriate in the circumstances, or adjourn the matter to a subsequent date for the determination and granting of the remedy;
- (d) dismiss the counterclaim of the defendant.

(2) If a plaintiff fails to appear on the date set for a hearing or a pre-trial conference in respect of a claim or counterclaim, the Court may

- (a) where the counterclaim is for a debt or liquidated demand, enter judgment on the counterclaim;
- (b) where the counterclaim requires the assessment of damages, proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages;
- (c) where the counterclaim is for a remedy, other than a remedy referred to in clause (a) or (b), that is within the jurisdiction of the Court, grant the remedy to the extent that the Court considers appropriate in the

- (a) *by the oral evidence given under oath of the defendant and any witnesses the defendant may have, or*
- (b) *by means of affidavit evidence if the Court is satisfied that oral evidence cannot reasonably be presented to the Court.*

(12) Section 41 presently reads:

41(1) In the case of a civil claim, if the defendant fails to appear on the date set for the hearing or a pre-trial conference in respect of the claim, the Court may

- (a) *where the claim is for a debt or liquidated demand, enter a default judgment;*
- (b) *where the claim requires the assessment of damages, note the defendant in default and proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages;*
- (c) *where the claim is for a remedy, other than a remedy referred to in clause (a) or (b), that is within the jurisdiction of the Court, note the defendant in default and grant the remedy to the extent that the Court considers appropriate in the circumstances, or adjourn the matter to a subsequent date for the determination and granting of the remedy.*

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

- (a) *where the counterclaim is for a debt or liquidated demand, enter a default judgment;*
- (b) *where the counterclaim requires the assessment of damages, note the plaintiff in default and proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages;*
- (c) *where the counterclaim is for a remedy, other than a remedy referred to in clause (a) or (b), that is within the jurisdiction of the Court, note the plaintiff in default and grant the remedy to the extent that the Court considers appropriate in the circumstances, or adjourn the matter to a subsequent date for the determination and granting of the remedy.*

circumstances, or adjourn the matter to a subsequent date for the determination and granting of the remedy;

- (d) dismiss the claim of the plaintiff.

(13) Section 42 is repealed and the following is substituted:

Setting aside judgment or dismissal

42(1) The Court may, on any terms it considers proper, set aside or vary

- (a) any judgment on a claim or counterclaim entered under section 40 or 41, or
- (b) the dismissal of a claim or counterclaim under section 41.

(2) The person in whose favour an order under subsection (1) is made may file a certified copy of the order in the Court of Queen's Bench, and on its being filed,

- (a) the judgment or the dismissal referred to in subsection (1), as the case may be, is set aside or varied, as the order provides, and
- (b) any execution or garnishee summons issued pursuant to the judgment is stayed subject to the order of the Court of Queen's Bench.

(14) Section 43 is amended by striking out "shall" wherever it occurs and substituting "may".

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

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

(13) Section 42 presently reads:

42(1) The Court may, on any terms it considers proper, set aside or vary

(a) any judgment entered under sections 40 and 41,

(b) the dismissal of a claim ordered under section 39, or

(c) any judgment on any counterclaim given under section 39.

(2) The person in whose favour an order under subsection (1) is made may file a certified copy of the order in the Court of Queen's Bench, and on its being filed

(a) the judgment referred to in subsection (1)(a) or (c) is set aside or varied or the dismissal is set aside or varied as the order provides, and

(b) any execution or garnishee summons issued pursuant to the judgment is stayed subject to the order of the Court of Queen's Bench.

(14) Section 43 presently reads:

43(1) Subject to this section, a counterclaim shall, to the extent it is established, be applied in satisfaction of any plaintiff's claim established by the Court.

(2) If a counterclaim is established that

(a) exceeds the amount of the established plaintiff's claim, the Court shall give judgment in favour of the defendant in the amount of the excess, or

(15) Section 46(3) is amended by adding “, and serve copies on those parties served pursuant to subsection (1)(a)(ii),” after “with the Court of Queen’s Bench”.

(16) Section 64(2) is amended

(a) in clause (d) by adding “and entering judgment” after “pleadings”;

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

- (d.1) striking out or amending a claim, dispute note or counterclaim by reason that the claim, dispute note or counterclaim
 - (i) discloses no cause of action or defence,
 - (ii) is scandalous, frivolous or vexatious,
 - (iii) may prejudice, embarrass or delay the fair trial of the action, or
 - (iv) is otherwise an abuse of process of the Court;

Court of Queen’s Bench Act

Amends RSA 2000 cC-31

2(1) The *Court of Queen’s Bench Act* is amended by this section.

(b) is less than the amount of the established plaintiff's claim, the Court shall give judgment in favour of the plaintiff for the difference.

(3) In the event that both a claim and a counterclaim are established, the Court may, if it awards costs for and against both the plaintiff and the defendant, make an order for a net amount of costs in favour of the party entitled to them.

(15) Section 46(3) presently reads:

(3) The appellant shall file with the Court of Queen's Bench a transcript of the evidence heard before the judge of the Provincial Court within 3 months of the date that the notice of appeal is filed in the Court of Queen's Bench, unless an order has been made by a judge of the Court of Queen's Bench prior to the expiration of the 3-month period extending the time for filing the transcript.

(16) Section 64(2) presently reads:

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

- (a) giving directions with respect to matters raised or otherwise considered during the pre-trial conference;*
- (b) setting out the results of the pre-trial conference;*
- (c) amending pleadings;*
- (d) striking out pleadings by reason of the failure of a party to attend a pre-trial conference;*
- (e) giving such further directions as the Court considers appropriate in the circumstances with respect to the trial of the action;*
- (f) varying or setting aside an order made under this subsection.*

Court of Queen's Bench Act

2(1) Amends chapter C-31 of the Revised Statutes of Alberta 2000.

(2) Section 14 is repealed and the following is substituted:

Protection from action

14(1) No action may be brought against a master in chambers for any act done or omitted to be done in the execution of the master's duty or for any act done in a matter in which the master lacked jurisdiction or exceeded the master's jurisdiction unless it is proved that the master acted maliciously and without reasonable and probable cause.

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

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

(3) Section 25(1)(c) is amended by striking out "chief judge" wherever it occurs and substituting "Chief Judge".

**Amendments Respecting References to
Judges of the Provincial Court**

Amends RSA 2000 cA-8

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

(2) Section 18(1) is amended

- (a) by striking out "a provincial judge" and substituting "a judge of the Provincial Court";**
- (b) by striking out "the provincial judge" wherever it occurs and substituting "the judge".**

(2) Section 14 presently reads:

14 No action may be brought against a master in chambers for any act done in the execution of the master's duty or in a matter in which the master lacked jurisdiction or exceeded the master's jurisdiction unless it is proved that the master acted maliciously and without reasonable and probable cause.

(3) Section 25(1)(c) presently reads:

25(1) There shall be a Rules of Court Committee consisting of the following members:

(c) the chief judge of The Provincial Court of Alberta or a judge of the Provincial Court designated by the chief judge;

Amendments Respecting References to Judges of the Provincial Court

NOTE: Change in terminology for consistency in references to judges of the Provincial Court.

Amends RSA 2000 cA-15

4(1) The *Alberta Corporate Tax Act* is amended by this section.

(2) Section 76 is amended by striking out “provincial court judge” wherever it occurs and substituting “judge of the Provincial Court”.

(3) Section 77(5)(e) is amended by striking out “provincial court judge” and substituting “a judge of the Provincial Court”.

(4) Section 77.1(1) is amended by striking out “provincial court judge” and substituting “a judge of the Provincial Court”.

Amends RSA 2000 cA-18

5(1) The *Alberta Evidence Act* is amended by this section.

(2) Section 1(b) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cA-20

6(1) The *Alberta Health Care Insurance Act* is amended by this section.

(2) Section 22(24) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cA-30

7(1) The *Alberta Personal Income Tax Act* is amended by this section.

(2) Section 79(5)(f) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

(3) Section 80(1) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cA-38

8(1) The *Alcohol and Drug Abuse Act* is amended by this section.

(2) Section 9(4) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends SA 2003 cC-16.7

9(1) The *Climate Change and Emissions Management Act* is amended by this section.

(2) Section 1(b.3) is amended by striking out “provincial court judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cC-20

10(1) The *Commissioners for Oaths Act* is amended by this section.

(2) Section 4 is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cE-9

11(1) The *Employment Standards Code* is amended by this section.

(2) Section 101 is amended by striking out “provincial judge” wherever it occurs and substituting “judge of the Provincial Court”.

Amends RSA 2000 cE-12

12(1) The *Environmental Protection and Enhancement Act* is amended by this section.

(2) Section 194(a) is amended by striking out “provincial court judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cF-9

13(1) The *Fatality Inquiries Act* is amended by this section.

(2) Section 34(a) is amended by striking out “chief judge” wherever it occurs and substituting “Chief Judge”.

(3) Section 35(3) is amended by striking out “chief judge” and substituting “Chief Judge”.

(4) Section 38(4) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends SA 2006 cF-28.1

14(1) The *Fuel Tax Act* is amended by this section.

(2) Section 50(1) is amended by striking out “provincial judge” wherever it occurs and substituting “judge of the Provincial Court”.

Amends RSA 2000 cF-30

15(1) The *Fur Farms Act* is amended by this section.

(2) Section 3(3) is amended

(a) by striking out “a provincial judge” and substituting “a judge of the Provincial Court”;

(b) by striking out “the provincial judge” wherever it occurs and substituting “the judge”.

Amends RSA 2000 cH-14

16(1) The *Human Rights, Citizenship and Multiculturalism Act* is amended by this section.

(2) Section 24(1) is amended by striking out “provincial court judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cJ-4

17(1) The *Justice of the Peace Act* is amended by this section.

(2) Section 12(2)(b) is amended by striking out “a provincial court judge” and substituting “a judge of the Provincial Court”.

Amends RSA 2000 cM-7

18(1) The *Masters and Servants Act* is amended by this section.

(2) Section 4 is amended

- (a) **by striking out** “a provincial judge” **and substituting** “a judge of the Provincial Court”;
- (b) **by striking out** “the provincial judge” **wherever it occurs and substituting** “the judge”.

(3) Section 5 is amended

- (a) **by striking out** “When the provincial judge” **and substituting** “When the judge of the Provincial Court”;
- (b) **by striking out** “provincial judge in addition” **and substituting** “judge in addition”;
- (c) **in clauses (a) and (b) by striking out** “provincial judge” **and substituting** “judge”.

(4) Section 6 is amended

- (a) **by striking out** “When the provincial judge” **and substituting** “When the judge of the Provincial Court”;
- (b) **by striking out** “provincial judge finds” **and substituting** “judge finds”;
- (c) **by striking out** “provincial judge may” **and substituting** “judge may”.

(5) Section 8 is amended

- (a) **in subsection (1) by striking out** “the provincial judge” **and substituting** “the judge of the Provincial Court”;
- (b) **in subsection (2) by striking out** “provincial judge” **wherever it occurs and substituting** “judge”.

Amends RSA 2000 cM-13

19(1) The *Mental Health Act* is amended by this section.

(2) Section 10 is amended

- (a) **by striking out** “a provincial judge” **wherever it occurs and substituting** “a judge of the Provincial Court”;

(b) **by striking out** “the provincial judge” **wherever it occurs and substituting** “the judge”.

(3) Section 11 is amended

(a) **by striking out** “a provincial judge” **wherever it occurs and substituting** “a judge of the Provincial Court”;

(b) **in subsection (6) by striking out** “A provincial judge” **and substituting** “A judge of the Provincial Court”;

(c) **in subsection (7)(b) by striking out** “the provincial judge” **and substituting** “the judge”.

Amends SA 2007 c35

20(1) The *Mental Health Amendment Act, 2007* is amended by this section.

(2) Section 9(b) is amended in the new subsection (1.1) by striking out “provincial judge” **and substituting** “judge of the Provincial Court”.

Amends RSA 2000 cM-26

21(1) The *Municipal Government Act* is amended by this section.

(2) Section 544 is amended by striking out “provincial judge” **wherever it occurs and substituting** “judge of the Provincial Court”.

Amends RSA 2000 cN-6

22(1) The *Notaries Public Act* is amended by this section.

(2) Section 4 is amended by striking out “provincial judge” **and substituting** “judge of the Provincial Court”.

Amends RSA 2000 cP-11

23(1) The *Petty Trespass Act* is amended by this section.

(2) Section 4 is amended by striking out “provincial judge” **and substituting** “judge of the Provincial Court”.

(3) Section 6 is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends RSA 2000 cP-27

24(1) The *Protection Against Family Violence Act* is amended by this section.

(2) Section 2 is amended by striking out “provincial court judge” wherever it occurs and substituting “judge of the Provincial Court”.

(3) Section 3 is amended by striking out “provincial court judge” wherever it occurs and substituting “judge of the Provincial Court”.

Amends RSA 2000 cP-35

25(1) The *Provincial Parks Act* is amended by this section.

(2) Section 18 of the *Provincial Parks Act* as the Act read before being amended by SA 2006 c27 is amended by striking out “provincial judge” wherever it occurs and substituting “judge of the Provincial Court”.

Amends RSA 2000 cP-37

26(1) The *Public Health Act* is amended by this section.

(2) Section 30(3) is amended by striking out “provincial court judge” and substituting “judge of the Provincial Court”.

(3) Section 47 is amended by striking out “provincial court judge” wherever it occurs and substituting “judge of the Provincial Court”.

Amends RSA 2000 cR-7.5

27(1) The *Recording of Evidence Act* is amended by this section.

(2) Section 1(a)(iv) is amended by striking out “provincial judge” and substituting “judge of the Provincial Court”.

Amends SA 2007 cS-0.5

28(1) The *Safer Communities and Neighbourhoods Act* is amended by this section.

(2) Section 42 is amended by striking out “provincial court” wherever it occurs and substituting “Provincial Court”.

Amends RSA 2000 cS-4

29(1) The *Securities Act* is amended by this section.

(2) Section 196 is amended

(a) in subsection (1) by striking out “provincial judge or justice” and substituting “judge of the Provincial Court or justice”;

(b) in subsection (2) by striking out “provincial judge or justice” and substituting “judge of the Provincial Court or justice”.

Amends RSA 2000 cT-4

30(1) The *Tobacco Tax Act* is amended by this section.

(2) Section 23(5) is amended by striking out “judge of The Provincial Court of Alberta” and substituting “judge of the Provincial Court”.

Coming into Force

Coming into force

31 This Act comes into force on Proclamation.

Coming into Force

31 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To