

Bill No. 22 of 1935.

A BILL RESPECTING SUMMARY CONVICTIONS.

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NOTE.

This Bill is designed to make specific provision as to the proceedings before justices and police magistrates relating to offences under Provincial statutes, and cases where a justice or police magistrate may make any order for the payment of money or otherwise under any Provincial statute (section 3).

The provisions of *The Criminal Code* as to summary convictions are made generally applicable to such proceedings (section 4).

Provision is made to prevent the voiding of convictions or orders by reason of the extension of time for payment for, or the taking of a part payment on account of, or the taking of security for payment of any sum payable thereunder (section 5).

Power is given to award costs and provision is made for enforcing payment (section 6).

Provision is made for the imposition of a suspended sentence in certain cases (section 7).

Section 8 prescribes as to the returns to be made of convictions, orders and orders of dismissal.

Provision is made for the issuance of search warrants in respect of offences under Provincial Acts (section 9).

The provision made by section 10 permits the release of persons arrested for offences against Provincial Acts and brought into a gaol in a city or town between 9 p.m. and 9 a.m. upon such person entering into a recognizance for his appearance before the officer in charge of the gaol, or upon making a cash deposit of not more than fifty dollars with that officer.

Every officer taking a recognizance or a cash deposit from any person is required to keep an account thereof and to

make a return thereof to the magistrate or justice before whom that person is required to attend (sections 11 and 12).

Section 13 provides that in any proceedings for offences against Provincial statutes the sealing of any document by the justice or magistrate shall not be required and that no such document shall be invalidated by reason of the absence of a seal.

By section 14 provision is made for appeals to the Appellate Division of the Supreme Court of Alberta from decisions of Judges of the District Court made in respect of convictions or orders to which this Act applies, upon the certificate of the Attorney General.

Section 15 makes provision as to commencement of terms of imprisonment and excludes from the term any time during which the person liable to serve the same is out on bail.

R. ANDREW SMITH,  
*Legislative Counsel.*

*(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)*

# BILL

No. 22 of 1935.

An Act respecting Summary Convictions.

(Assented to \_\_\_\_\_, 1935.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** This Act may be cited as "*The Summary Convictions Act.*"

**2.** In this Act "Justice" shall mean a justice of the peace and shall include two or more justices sitting and acting together, a police magistrate, and every other officer or functionary having, for the purposes of any Act, the authority of a justice of the peace or police magistrate.

**3.** Subject to any special provision otherwise enacted with respect to such offence, act or matter, this Act shall apply to—

- (a) every case in which any person commits, or is suspected of having committed, any offence or act over which the Legislature of the Province has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;
- (b) every case in which a complaint is made to a justice in relation to any matter over which the Legislature of the Province has legislative authority and with respect to which such justice has authority by law to make an order for the payment of money or otherwise.

**4.** Except as otherwise specially provided, the provisions of the Criminal Code of Canada respecting summary convictions as amended from time to time and the proceedings relating thereto shall apply in respect of all convictions and all orders upon summary conviction made or to be made by justices of the peace and police magistrates.

**5.** Where a conviction or order of a justice adjudges that a fine, penalty or costs be paid, the conviction or order shall not be void nor shall the right to collect any fine or costs or to enforce any penalty under any such conviction or order be impaired because of time having been allowed for the payment of the sum, or any part thereof, or because of payment having been received of part of the sum adjudged to be paid, or because of the justice having accepted security for the payment of the same, or any part thereof.

**6.—**(1) The justice may award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant costs in accordance with the tariff of fees set out in section 770 of the Criminal Code of Canada.

(2) Where the justice dismisses the information or complaint he may by the order of dismissal award and order that the prosecutor or complainant shall pay to the defendant costs in accordance with the tariff of fees set out in section 770 of the Criminal Code of Canada.

(3) The sums allowed for costs shall be stated in the conviction or order, and shall be recoverable in the same manner and under the same warrants as a penalty adjudged to be paid by the conviction or order, and such costs shall extend to and include costs and charges of the distress, of the commitment, and of conveying the defendant to prison, and it shall not be necessary to include them in the amount mentioned in the conviction or order, but the amount thereof in case of a warrant of commitment shall be mentioned on the warrant when it is delivered to the gaoler, and in the case of a distress the person by whom the same are payable shall be entitled on demand to a statement of the amount thereof.

(4) Where there is no penalty to be recovered, or where the information or complaint is dismissed, the costs shall be specified in the order and shall be recoverable only by distress and sale of the goods and chattels of the party.

**7.—**(1) In any case in which a person is convicted of an offence for which a minimum punishment is not provided and he has not been previously convicted of any offence, the justice may, if he thinks it expedient having regard to the age, character and antecedents of the offender and to the nature of the offence and to any extenuating circumstances, direct that he be released upon suspended sentence.

(2) The offender so released may at any time within two years or such shorter period as the justice may fix, be called upon to appear and receive sentence if in the meantime he fails to keep the peace and be of good behaviour.

(3) The justice may, if he sees fit, require a bond with or without sureties for such appearance and keeping of the peace and good behaviour.

**8.—**(1) Every justice shall forthwith after making a conviction or order or an order of dismissal transmit to the clerk of the Court of the Judicial District in which the same is made the conviction or order or order of dismissal, together with the information, depositions and other papers relating to the case and any recognizances in respect of which proceedings are required to be taken in the court of general sessions of the peace.

(2) Where the evidence in any case is taken down in shorthand there shall be no transcription of the evidence unless—

- (a) one of the parties to the case requires a transcription;
- (b) an appeal is taken from the conviction or order; or
- (c) the attorney general requires a transcription to be made.

**9.**—(1) Where a justice of the peace is satisfied by information upon oath (Form 1) that there is reasonable ground for believing that there is in any building, receptacle or place—

- (a) anything upon or in respect of which an offence against a statute of the Province has been or is suspected to have been committed; or
- (b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence;

he may at any time issue a warrant (Form 2) under his hand authorizing some constable or other person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or some other justice for the same territorial division to be by him dealt with according to law.

(2) Every search warrant shall be executed between sunrise and sunset, unless the justice shall by the warrant authorize the constable or other person to execute it at night.

(3) When any such thing is seized and brought before a justice he may detain it, taking reasonable care to preserve it until the conclusion of the investigation; and, if no one is convicted, the justice shall direct such thing to be restored to the person from whom it was taken unless he is authorized or required by law to dispose of it otherwise.

**10.**—(1) Where a person charged with an offence against any statute of the Province or against any by-law passed under the authority of any such statute, is taken into custody either with or without the warrant of a justice of the peace and is brought into a police station in a city or town at any time between the hours of nine o'clock in the afternoon of the day of his arrest and nine o'clock in the forenoon of the next following day, the police officer in charge of the station, if he thinks the case a proper one, may admit the person so charged to bail on his entering into a recognizance conditioned for his appearance within two days before the police magistrate or other justice in the city or town at the time and place therein mentioned.

(2) The recognizance shall be of equal obligation on the persons entering into the same, and the same proceedings may be taken for the estreating thereof as if it had been taken before a justice of the peace.

(3) In lieu of a recognizance the police officer in charge of a police station or a magistrate or justice of the peace may accept a sum of money not exceeding fifty dollars by way of a cash deposit together with a written undertaking

by the accused in Form 3 to secure his appearance within two days before a police magistrate or other justice of the city or town at the time and place therein mentioned, and if the accused fails to appear to answer to the charge at the time stated, the moneys so deposited may be declared by the magistrate or justice of the peace to be forfeited to the Crown in the right of the Province.

**11.** The police officer shall enter in a book the name, residence and occupation of every person entering into the recognizance, and of his surety or sureties, if any, and of every person making a deposit in cash with particulars thereof with the condition of the recognizance and the sums acknowledged or deposited, as the case may be.

**12.** The police officer shall make a return of all recognizances and cash deposits taken by him to the police magistrate, or other justice present, at the time when, and the place where, the person charged is required to appear.

**13.** In all proceedings for offences against the statutes of the Province or against the provisions of any by-laws or regulations passed or made under such statutes, it shall not be necessary for the justice to affix his seal to any document, and no document shall be invalidated by reason of the lack of a seal even though it purports to be sealed.

**14.—(1)** If the Attorney General of Alberta certifies that in his opinion a judgment or decision of a Judge of the District Court on an appeal from any conviction or order to which this Act applies involves a question of law of sufficient importance to justify an appeal, an appeal shall lie therefrom to the Appellate Division of the Supreme Court.

(2) After the decision of the Appellate Division the justice from whom the appeal was had, or any other justice exercising the same jurisdiction, shall have authority to enforce the order of the court upon the appeal.

**15.** The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and from the day on which the prisoner is lodged in gaol thereunder but no time during which the convicted person is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced.

**16.** Section 9 of *The Magistrates and Justices Act*, being chapter 78 of the Revised Statutes of Alberta, 1922, is hereby repealed.

**17.** This Act shall come into force on the day upon which it is assented to.

## SCHEDULE.

## FORM 1.

## INFORMATION TO OBTAIN A SEARCH WARRANT.

PROVINCE OF ALBERTA,  
CANADA.

The information of *A.B.*, of \_\_\_\_\_, in the Province of Alberta, taken \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, *C.D., Esq.*, a Justice of the Peace for the Province of Alberta, who says that (insert general description of things to be searched for and offence in respect of which search is made), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them, are contained in the (dwelling-house, etc.) of *E.F.*, of \_\_\_\_\_, in the said Province of Alberta (here add the causes of suspicion, whatever they may be), Wherefore (he) prays that a search warrant may be granted to him to search the (dwelling-house, etc.) of the said *E.F.*, as aforesaid, for the said goods and chattels.

Sworn (*or affirmed*) before me  
the day and year first mentioned,  
at \_\_\_\_\_, in the Province of Alberta.

\_\_\_\_\_  
*C.D.*,  
J.P., in and for the Province of Alberta.

## FORM 2.

## SEARCH WARRANT.

PROVINCE OF ALBERTA,  
CANADA.

To all or any of the constables and other peace officers in the Province of Alberta:

Whereas it appears on the oath of *A.B.*, of \_\_\_\_\_, that there is reason to suspect that (describe the things to be searched for and the offence in respect of which search is made), are contained in \_\_\_\_\_, at \_\_\_\_\_ . This is, therefore, to authorize you to enter between the hours of (as the Justice shall direct) into the said premises, and to search for the said things and to bring the same before me or some other Justice of the Peace.

Dated at \_\_\_\_\_, in the said Province, this  
\_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

\_\_\_\_\_  
*C.D.*,  
J.P. in and for the Province of Alberta.

FORM 3.

FORM OF DEPOSIT.

I, \_\_\_\_\_ do hereby deposit the sum of \_\_\_\_\_ Dollars and undertake to appear at \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before such Magistrate or Justice of the Peace as shall then be there, to answer a charge of \_\_\_\_\_ and in default of my appearance the moneys so deposited may be forfeited to the Crown in the right of the Province of Alberta in accordance with the provisions of *The Summary Convictions Act*.

.....  
(Signature of Depositor.)

.....  
(Signature of Officer receiving Deposit.)



FIFTH SESSION  
SEVENTH LEGISLATURE  
25 GEORGE V  
1935

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**BILL**

An Act respecting Summary  
Convictions.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. LYMBURN.

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EDMONTON:  
W. D. McLEAN, KING'S PRINTER  
1935