



Province of Alberta

## **PROVINCIAL COURT ACT**

Revised Statutes of Alberta 2000  
Chapter P-31

Current as of June 13, 2016

### Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2012 cE-0.3 s288 amends s22(e).

2013 c23 s11 (2014 c13 s11 - effective December 17, 2014) (2015 c12 s12 adds s9.91, s12 amends s37(1)(a).

2015 c12 s6 (2016 c17 s18 - effective June 13, 2016) amends s1, repeals and substitutes s6.1, amends ss9 and 9.6(3)(a), repeals ss9.8, 22(b), (c), (d), (d.2) and (e), adds ss24.1 and 24.2, repeals and substitutes ss25 to 35, adds s36.1, amends s37, adds s37.1, repeals ss38 and 40 to 44, repeals and substitutes ss46(1)(b)(iii) and 61, amends s63, adds s64.1, amends s67.

2015 c12 s9 amends s1(e.2).

### Regulations

The following is a list of the regulations made under the *Provincial Court Act* that are filed as Alberta Regulations under the Regulations Act

<b>Alta. Reg.</b>	<i>Amendments</i>
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#### **Provincial Court Act**

Constitutional Notice .....	102/99 .....	251/2001, 110/2012
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Fees and Expenses for Witnesses and Interpreters .....	123/84 .....	80/87, 289/88, 187/91, 206/2001, 64/2005, 221/2006, 306/2006, 68/2008, 31/2012, 170/2012
Intake and Caseflow Management .....	150/2005	
Mediation Rules of the Provincial Court - Civil Division.....	271/97	
Provincial Court of Alberta Court Offices.....	322/2003	
Provincial Court of Alberta Seal .....	255/80	
Provincial Court Civil Division.....	329/89 .....	179/97, 251/2001, 215/2002, 164/2010, 139/2014
Provincial Court Civil Claims Forms .....	55/2001 .....	176/2012
Provincial Court Fees and Costs .....	18/91 .....	220/93, 251/2001, 47/2002, 216/2002, 91/2003, 139/2008, 164/2010, 71/2015, 76/2015
Provincial Court Judges and Masters in Chambers Compensation .....	176/98 .....	14/99, 104/99, 211/99, 216/2000, 54/2001, 197/2001, 251/2001, 198/2002, 131/2003, 221/2004, 239/2004, 66/2005, 117/2005, 266/2006, 104/2007, 170/2007, 61/2008, 12/2009, 43/2009, 20/2012, 170/2012, 178/2015
Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plans.....	196/2001 .....	251/2001, 24/2002, 78/2002, 97/2002, 118/2005, 267/2006, 68/2008, 13/2009, 43/2009, 21/2012, 31/2012, 170/2012
Sittings of the Provincial Court.....	144/80 .....	414/81
Transcript Fees and Format.....	167/2010 .....	31/2012, 170/2012, 62/2013, 145/2015



# PROVINCIAL COURT ACT

## Chapter P-31

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

**Definitions**

**1** In this Act,

- (a) "clerk" means a clerk or deputy clerk of the Provincial Court;
- (b) "judge" means a judge of the Provincial Court appointed or reappointed under this Act and includes a Chief Judge, Deputy Chief Judge, Assistant Chief Judge, part-time judge and supernumerary judge;

- (b.1) “Judicial Council” means the Judicial Council established under Part 6 of the *Judicature Act*;
- (c) “justice of the peace” has the same meaning as in the *Justice of the Peace Act*;
- (d) repealed 2011 c20 s8;
- (e) “Provincial Court” or “Court” means The Provincial Court of Alberta;
- (f) repealed 2011 c20 s8.

RSA 2000 cP-31 s1;RSA 2000 c16(Supp) s2;  
2005 c15 s2;2011 c20 s8

## **Part 1**

### **The Provincial Court of Alberta**

#### **The Provincial Court**

**2(1)** There shall be a provincial court for Alberta to be styled “The Provincial Court of Alberta”.

**(2)** Repealed RSA 2000 c16(Supp) s3.

**(3)** The Provincial Court is a court of record.

RSA 2000 cP-31 s2;RSA 2000 c16(Supp) s3

#### **Staff**

**3(1)** In accordance with the *Public Service Act*, there may be appointed officers and employees required to conduct the business of the Court.

**(2)** The Minister of Justice and Solicitor General may designate any officer or employee appointed under subsection (1) as a clerk or deputy clerk.

RSA 2000 cP-31 s3;RSA 2000 c16(Supp) s4;2013 c10 s34

#### **Delegation of clerk’s duties**

**4(1)** A clerk may authorize in writing a person to do any act or thing required or permitted to be done by a clerk under this or any other Act.

**(2)** An authorization given under this section may be

- (a) general or applicable to a particular case, and
- (b) conditional or unconditional.

**(3)** An authorization given under subsection (1)



- (a) purporting to be signed by the person giving it, and
- (b) stating that the person named in it is authorized under this section to do the act or thing set out in the written authorization,

or a copy of it, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of that person's authorization to do the act or thing without proof of the signature or official character of the person appearing to have signed the authorization.

RSA 1980 cP-20 s16

#### **Duties of clerk**

**5** In addition to performing the duties prescribed under this Act or any other Act, a clerk shall perform those duties assigned to the clerk by the Minister of Justice and Solicitor General.

RSA 2000 cP-31 s5;2013 c10 s34

#### **Powers of clerk**

**6** A clerk, for the purpose of matters directed by the Court to be taken before the clerk, has power to administer oaths, take affidavits and statutory declarations, receive affirmations and examine parties and witnesses, as the Court may direct.

RSA 1980 cP-20 s18

#### **Sending of documents by a clerk**

**6.1** Where a clerk is required or permitted to send a document, notice or other thing under this Act, the clerk may send it by ordinary or registered mail.

2001 c24 s2

#### **Duties of sheriffs, etc.**

**7** Sheriffs, deputy sheriffs, civil enforcement bailiffs, persons employed at correctional institutions and peace officers shall give assistance to and comply with the directions of the Court, the judges, and the justices of the peace in the exercise of the jurisdiction of the Court.

RSA 2000 cP-31 s7;AR 49/2002 s7;  
2002 c30 s25;2011 c20 s8

#### **Rules of Court**

**8(1)** The practice and procedure of the Court shall be as provided in this Act and the regulations.

**(2)** Where this Act or the regulations do not provide for a specific practice or procedure of the Court that is necessary to ensure an expeditious and inexpensive resolution of a matter before the Court, the Court may

- (a) apply the *Alberta Rules of Court*, and

- (b) modify the *Alberta Rules of Court* as needed.

1996 c28 s37

**Regulations****9(1)** The Lieutenant Governor in Council may make regulations

- (a) repealed RSA 2000 c16(Supp) s5;
- (b) respecting costs that may be awarded in respect of proceedings in the Court;
- (c) governing the rates of fees and expenses payable to witnesses and interpreters;
- (d) prescribing fees payable for the filing or issuing of documents in respect of proceedings in the Court and providing for waiving the payment of those fees;
- (e) prescribing fees, expenses and other forms of remuneration payable to court reporters;
- (f) prescribing fees, expenses and other forms of remuneration payable to operators and transcribers of sound-recording machines;
- (g) respecting fees for making copies of transcripts, orders, judgments and other documents;
- (h) respecting fees for searches of court files;
- (i) prescribing an amount, not to exceed \$50 000, for the purposes of section 9.6;
- (i.1) respecting the preparation of judgments and orders;
- (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,
    - (A) respecting any practice or procedural matters not specifically provided for under sections 64 to 68;
    - (B) governing confidentiality of matters considered at pre-trial conferences and mediations;

- (C) making sections 9.8(2) and 64 to 68 applicable to other matters before the Court that do not come under 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 64 to 68 and making those varied or substituted provisions applicable to other matters before the Court that do not come under Part 4;
- (iii) except as otherwise provided for under this Act or another enactment, governing in respect of any matter before the Court the period of time within which an act is to be carried out, an attendance of a person is required, a document must be filed with the Court or a document must be served on any party;
- (iv) determining when a notice period commences or concludes or both;
- (v) in respect of family law proceedings, governing the obligations of parties to attend courses, workshops or similar undertakings;
- (j) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

**(1.1)** The Court may make recommendations to the Minister of Justice and Solicitor General respecting rules to be made under subsection (1)(i.2).

**(2)** The Minister of Justice and Solicitor General may make regulations

- (a) prescribing locations at which the Court shall maintain court offices;
- (b) requiring and governing the making of returns and reports by judges and clerks;
- (c) prescribing the records that must be maintained by the Court;
- (d) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court and judges;
- (e) providing for the appointment and employment of court reporters to take down evidence in respect of proceedings in the Court;

- (f) providing for the appointment of operators and transcribers of sound-recording machines when used to record evidence in respect of proceedings in the Court;
- (g) defining the classes of cases and conditions in which court reporters may be used;
- (h) prescribing forms to be used in the Court or issued by the Court.

RSA 2000 cP-31 s9;RSA 2000 c16(Supp) s5;  
2008 c32 s1;2009 c53 s146;2013 c10 s34

## **Part 1.1 Provincial Court Judges**

### **Appointment of judges**

- 9.1(1)** The Lieutenant Governor in Council may appoint judges.
- (2)** No person other than a Canadian citizen may be appointed a judge.
- (3)** The Lieutenant Governor in Council shall designate one judge to be Chief Judge of the Court and may designate one judge to be Deputy Chief Judge of the Court.
- (4)** If the Chief Judge is ill, absent from Alberta or unable to act, the Deputy Chief Judge has all the powers and duties of the Chief Judge.
- (5)** Subject to section 9.42, the Chief Judge has the power and duty to supervise the judges in the performance of their duties, including the power and duty to
- (a) designate a particular case or other matter or class of cases or matters in respect of which a particular judge is to act;
  - (b) designate which court facilities shall be used by particular judges;
  - (c) assign duties to judges;
  - (d) exercise any other powers and perform any other duties prescribed by the Lieutenant Governor in Council.
- (6)** The Chief Judge in consultation with the Assistant Chief Judges may designate the sittings of the Court.
- (7)** Where the Chief Judge makes any decision or takes any action with respect to a matter referred to in subsection (5) or (6) or any other matter relating to the administration of the Court, that

decision or action is not subject to any type of judicial review by a superior court unless that decision or action is, in the opinion of a superior court, patently unreasonable or not within the powers, duties or jurisdiction of the Chief Judge.

**(8)** The Lieutenant Governor in Council may designate one or more judges as Assistant Chief Judges in respect of or for one or more of the following:

- (a) the Court;
- (b) a location within Alberta;
- (c) any particular matter or class of matters;
- (d) any circumstance or situation not referred to in clauses (a) to (c) that the Minister of Justice and Solicitor General considers appropriate.

**(9)** The Assistant Chief Judges shall perform those functions that are delegated to them by the Chief Judge.

**(10)** The Minister of Justice and Solicitor General may designate a judge to act in the place of the Chief Judge, Deputy Chief Judge or an Assistant Chief Judge

- (a) who is ill, absent from Alberta or unable to act, or
- (b) when the office is vacant.

**(11)** A judge designated under subsection (10) has the powers and duties of the Chief Judge, Deputy Chief Judge or Assistant Chief Judge, as the case may be.

RSA 2000 c16(Supp) s6;2013 c10 s34

#### **Appointments of Chief Judge and Deputy and Assistant Chief Judges**

**9.11(1)** A judge appointed as Chief Judge holds that office for a term of 7 years and may not be reappointed to that office.

**(2)** A judge appointed as Deputy Chief Judge holds that office for a term not exceeding 7 years as set out in the order appointing the Deputy Chief Judge and may not be reappointed to that office.

**(3)** A judge appointed as Assistant Chief Judge holds that office for a term of 5 years and may not be reappointed to that office or appointed to any other office of Assistant Chief Judge.

(4) This section applies only to a judge appointed as the Chief Judge, the Deputy Chief Judge or an Assistant Chief Judge after April 28, 1999.

RSA 2000 c16(Supp) s6

#### **Oath of office**

**9.12(1)** Every judge, before taking office as Chief Judge, Deputy Chief Judge, Assistant Chief Judge, judge or supernumerary judge, shall take and subscribe before the Chief Justice of Alberta, the Chief Justice of the Court of Queen's Bench of Alberta or the Chief Judge, the Deputy Chief Judge or an Assistant Chief Judge of the Provincial Court the oath of allegiance and the judicial oath prescribed by the *Oaths of Office Act*.

(2) The oath of allegiance and the judicial oath are to be transmitted forthwith by the judge to the Minister of Justice and Solicitor General or a person designated by that Minister.

RSA 2000 c16(Supp) s6;2013 c10 s34

#### **Jurisdiction**

**9.2** Every judge has jurisdiction throughout Alberta and

- (a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge or a judge of the Provincial Court by or under any Act of the Legislature or of the Parliament of Canada,
- (b) has all the power and authority vested by or under any Act of the Legislature in a magistrate or 2 justices of the peace sitting together,
- (c) may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada, and
- (d) is, by virtue of being a judge, a justice of the peace, a notary public and a commissioner for administering oaths and taking affidavits.

RSA 2000 c16(Supp) s6

#### **Inability of judge to complete proceedings**

**9.21** If a proceeding, other than a trial or application under the *Criminal Code* (Canada), has commenced and the presiding judge is unable for any reason to complete the proceedings, any judge requested to act by the Chief Judge or Deputy Chief Judge may continue the proceedings from where the proceedings were left off and, according to the opinion of the judge requested to act as to

what is required to ensure justice, that judge may continue the proceedings to completion or recommence the proceedings.

RSA 2000 c16(Supp) s6

#### **Judgment by former judge**

**9.211** If a judge ceases to hold office without giving a judgment in any matter that was fully heard by that judge, that person may, within 3 months after ceasing to hold office, give judgment in that matter as if that person were still a judge of the Court, and that judgment has the same effect as though given by a judge of the Court.

2001 c24 s3

#### **Retirement age**

**9.22(1)** Subject to Part 6 of the *Judicature Act*, every judge must retire on attaining the age of 70 years.

**(2)** Subject to Part 6 of the *Judicature Act*, no judge may be removed from office before attaining retirement age.

RSA 2000 c16(Supp) s6

#### **Reappointment of judges**

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

**(2)** Where a judge, other than a judge referred to in subsection (3), has attained the age of 70 years, the Chief Judge may request that the Lieutenant Governor in Council reappoint that person as a judge for a term of one year.

**(3)** Where a judge who is the Chief Judge, the Deputy Chief Judge or an Assistant Chief Judge has attained the age of 70 years, the Judicial Council may request that the Lieutenant Governor in Council reappoint that person as a judge for a term of one year.

**(4)** Where a judge has been reappointed as a judge under this section,

- (a)** in the case of a judge, other than a judge referred to in clause (b), the Chief Judge may request that the Minister of Justice and Solicitor General reappoint that person as a judge for a term of one year, and
- (b)** in the case of a judge who is the Chief Judge, the Deputy Chief Judge or an Assistant Chief Judge, the Judicial Council may request that the Minister of Justice and Solicitor General reappoint that person as a judge for a term of one year.

**(5)** The request of the Chief Judge or the Judicial Council for the reappointment of a person as judge under this section may be made if

- (a) the Chief Judge or the Judicial Council, as the case may be, determines that the reappointment will enhance the efficient and effective administration of the Court, and
- (b) the request is made in accordance with and subject to the criteria established by the Chief Judge and approved by the Judicial Council.

**(6)** The Lieutenant Governor in Council shall, subject to subsection (7), reappoint a judge for a term of one year, where

- (a) the Chief Judge makes a request under subsection (2) in respect of that judge, or
- (b) the Judicial Council makes a request under subsection (3) in respect of that judge.

**(6.1)** The Minister of Justice and Solicitor General shall, subject to subsection (7), reappoint a judge for a term of one year, where

- (a) the Chief Judge makes a request under subsection (4)(a) in respect of that judge, or
- (b) the Judicial Council makes a request under subsection (4)(b) in respect of that judge.

**(7)** A reappointment of a judge under this section shall be made only if

- (a) a request for the reappointment has been made under subsection (2), (3) or (4),
- (b) the judge in respect of whom the request has been made has consented to the reappointment,
- (c) the judge is not nor has been a supernumerary judge, and
- (d) the judge has not attained the age of 75 years.

**(8)** A judge who has been reappointed under this section may, subject to subsection (7), be reappointed under subsection (6.1) for further terms of one year.

**(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.

**(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.

2001 c24 s4;2008 c32 s1;2014 c13 s10

### **Reappointment of part-time judges**

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

**(2)** Where a judge

- (a) has attained the age of 60 years,
- (b) has completed 10 years of service as a judge, and
- (c) states in writing to the Chief Judge that the judge is prepared to retire as a full-time judge in order to be appointed as a part-time judge,

the Chief Judge may request that the Lieutenant Governor in Council appoint that person as a part-time judge on that person's retirement as a full-time judge if the Chief Judge determines that the appointment will enhance the efficient and effective administration of the Court.

**(3)** Where a judge

- (a) is approaching the age of 70 years but has not attained age 70, and
- (b) states in writing to the Chief Judge that the judge is prepared to retire at age 70 as a full-time judge in order to be appointed as a part-time judge,

the Chief Judge may request that the Lieutenant Governor in Council appoint that person as a part-time judge on that person's retirement as a full-time judge if the conditions in subsection (5) are met.

**(3.1)** Where a judge

- (a) has been reappointed as a full-time judge pursuant to section 9.23, and
- (b) states in writing to the Chief Judge that the judge is prepared to retire as a full-time judge in order to be appointed as a part-time judge,

the Chief Judge may request that the Lieutenant Governor in Council appoint that judge as a part-time judge on the judge's retirement as a full-time judge if the conditions in subsection (5) are met.

**(4)** Where a judge

- (a) is a part-time judge and the appointment is about to expire, and
- (b) states in writing to the Chief Judge that the judge is prepared to be reappointed as a part-time judge,

the Chief Judge may request that the Minister of Justice and Solicitor General reappoint that person for one year as a part-time judge if the conditions in subsection (5) are met.

**(5)** A request under subsection (3), (3.1) or (4) may be made if

- (a) the Chief Judge determines that the appointment under subsection (3) or (3.1) or reappointment under subsection (4) will enhance the efficient and effective administration of the Court, and
- (b) the request is made in accordance with and subject to the criteria established by the Chief Judge and approved by the Judicial Council.

**(6)** The Lieutenant Governor in Council shall, subject to subsection (7), appoint a person as a part-time judge for a term set out in subsection (8) where the Chief Judge makes a request under subsection (2), (3) or (3.1) in respect of that person.

**(6.1)** The Minister of Justice and Solicitor General shall, subject to subsection (7), reappoint a person as a part-time judge for a term set out in subsection (8) where the Chief Judge makes a request under subsection (4) in respect of that person.

**(7)** An appointment or reappointment of a judge as a part-time judge shall be made only if

- (a) the judge has consented to the appointment or reappointment,
- (b) the judge is not nor has been appointed as a supernumerary judge, and
- (c) the judge has not attained the age of 75 years.

**(8)** The term for which a part-time judge is appointed or reappointed under this section is as follows:

- (a) if the request for appointment is made under subsection (2), the term commences on the date the judge is appointed as a part-time judge and expires on the commencement of the judge's 70th birthday;
- (b) if the request for appointment is made under subsection (3), the term is one year commencing on the judge's 70th birthday;
- (b.1) if the request for appointment is made under subsection (3.1), the term commences on the date the judge is appointed as a part-time judge and expires on the commencement of the judge's next birthday;
- (c) if the request for reappointment is made under subsection (4), the term is one year commencing on the expiry of the previous appointment.

**(9)** A part-time judge must serve the equivalent of 6 months of full-time service during the year.

**(10)** Part-time judges shall, in addition to any pension benefits, be paid an annual salary of up to 50% of the annual salary of a full-time judge, but the total annual salary and pension benefits payable to a part-time judge cannot exceed the annual salary of a full-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.

**(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.

2005 c15 s3;2007 c9 s2;2007 c36 s3;2008 c32 s1;  
2011 c20 s11;2014 c13 s10

### **Appointment of supernumerary judge**

**9.3(1)** Where

- (a) a judge retires,
- (b) the term of office of a judge reappointed under section 9.23 expires, or
- (c) the term of office of a judge appointed or reappointed under section 9.24 expires,

that person may elect to become a supernumerary judge.

(2) A judge who is retired from office under Part 6 of the *Judicature Act* is not entitled to elect to become a supernumerary judge.

(3) The Lieutenant Governor in Council, on the recommendation of the Chief Judge, may appoint a person as a supernumerary judge if the person has made an election under subsection (1).

(4) The term of appointment as a supernumerary judge is 2 years, but the Minister of Justice and Solicitor General shall renew the appointment for further periods of 2 years on the recommendation of the Chief Judge.

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

(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.

RSA 2000 c16(Supp) s6;2001 c24 s5;2005 c15 s4;  
2008 c32 s1;2013 c10 s34

#### **Resignation**

**9.31** A judge may at any time resign from being a judge by giving a written notice signed by that judge that includes the effective date of the resignation and delivering that notice to the Minister of Justice and Solicitor General.

RSA 2000 c16(Supp) s6;2013 c10 s34

#### **Confidentiality of selection process**

**9.32** Records containing information arising during the process for the selection of judges are confidential and notwithstanding the *Freedom of Information and Protection of Privacy Act* are not subject to that Act.

RSA 2000 c16(Supp) s6

#### **Complaints**

**9.4** A complaint about the competence, conduct, misbehaviour or neglect of duty of a judge or the inability of a judge to perform duties is to be dealt with in accordance with Part 6 of the *Judicature Act*.

RSA 2000 c16(Supp) s6

#### **Restriction on other employment**

**9.41** Unless otherwise authorized by the Lieutenant Governor in Council, a judge who is employed as a full-time or part-time judge shall not carry on or practise any other business, profession, trade or occupation.

RSA 2000 c16(Supp) s6;2005 c15 s5

**Judge's residence**

**9.42(1)** The Minister of Justice and Solicitor General or a person authorized by that Minister may, on the appointment of a judge, designate the place at which the judge is to reside.

**(2)** Where a designation is made under subsection (1), any subsequent change in designation may only be made by the Judicial Council at the request of the Chief Judge and only if, in the opinion of the Judicial Council, the change in residence is required for the better administration of the Court.

**(3)** Nothing in this section affects a judge's jurisdiction throughout Alberta.

RSA 2000 c16(Supp) s6;2013 c10 s34

**Conflict of interest**

**9.5** A judge does not have jurisdiction to hear any matter in which the judge has or has had an interest.

RSA 2000 c16(Supp) s6

**Action for damages**

**9.51(1)** No action may be brought against a judge for any act done or omitted to be done in the execution of the judge's duty or for any act done in a matter in which the judge has exceeded the judge's jurisdiction unless it is proved that the judge acted maliciously and without reasonable and probable cause.

**(2)** No action for the recovery of damages lies against a judge in respect of an order or warrant made or sentence imposed, whether before or after the coming into force of this Act, by a judge while acting in the place of any other judge who has then ceased for any reason to be a judge, if the order, warrant or sentence could have been lawfully made or imposed by the judge by whom the conviction was made.

**(3)** No action for the recovery of damages lies against a judge in respect of an order or warrant made or sentence imposed, whether before or after the coming into force of this Act, against, on or in respect of a person who had been previously convicted by another judge but had not been sentenced by that other judge, if the order, warrant or sentence could have been lawfully made or imposed by the judge by whom the conviction was made.

**(4)** 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 Act, in the execution of an order, warrant or sentence to which subsection (1), (2) or (3) relates, or purporting to be done in compliance with or incidental to an order, warrant or sentence.

(5) The Minister of Justice and Solicitor General may make a payment for damages or costs, including lawyer's charges incurred by the judge in respect of an act, omission or matter described in subsection (1), (2) or (3).

RSA 2000 c16(Supp) s6;2009 c43 s146;2013 c10 s34

### Regulations

**9.52(1)** The Lieutenant Governor in Council shall make regulations

- (a) governing the salaries to be paid to judges;
- (b) governing the amount to be paid to judges sitting part time;
- (c) prescribing fees to be paid for each proceeding or specified service;
- (d) providing for the benefits to which judges are entitled, including
  - (i) personal expense allowances and services;
  - (ii) travel and moving allowances;
  - (iii) leaves of absence and vacations;
  - (iv) sick leave credits and payment in respect of those credits;
  - (v) benefits under one or more pension plans for specified judges and other individuals deriving benefit entitlements through them;
- (e) respecting the terms and conditions of appointment of supernumerary judges;
- (f) without limiting anything in clause (d), providing for the continuation or establishment of
  - (i) one or more pension plans, including a supplemental retirement plan that may or may not be registrable under the *Income Tax Act* (Canada), and
  - (ii) one or more pension funds,including the making of any provisions in respect of those plans or funds that are made, or that are similar to or that correspond to provisions made, by or under, or that could be made under, the *Public Sector Pension Plans Act* with

respect to any pension plan or pension fund continued or established by that Act;

- (g) providing for the transfer or other disposition of those benefits to which persons appointed as judges under the *Provincial Court Judges Act* or this Act were entitled under the *Public Service Act* and the regulations under that Act or the Public Service Pension Plan, the Public Service Management (Closed Membership) Pension Plan or the Management Employees Pension Plan at the time of their appointment under the *Provincial Court Judges Act* or under this Act.

(2) A regulation made under subsection (1) shall, if so provided in the regulation, be effective from a date prior to the making of the regulation.

RSA 2000 c16(Supp) s6;2005 c15 s6

#### **Previous appointments**

**9.53** Every person who, immediately prior to the coming into force of this Part, was a judge under the *Provincial Court Judges Act*, and whose appointment is in full force and effect on the coming into force of this Part is deemed to have been appointed a judge under this Act.

RSA 2000 c16(Supp) s6

## **Part 1.2 General Judicial Matters**

#### **Jurisdiction**

**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,
    - (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) 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 Act or by agreement on the amount claimed, does not exceed the amount prescribed by the regulations,
  - (C) for a determination of the title to and the right of possession of personal property, and for the delivery 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);
- (b) where provided for or directed under any enactment, and subject to that enactment, to hear and adjudicate on any matter, provide any relief, carry out any duty or perform any function assigned to the Court under that enactment or in respect of which the Court is empowered to undertake or provide under that enactment;
  - (c) for the purposes of the *Mobile Home Sites Tenancies Act* and the *Residential Tenancies Act*, without limiting the jurisdiction of the Court provided for under those Acts, to grant
    - (i) an order terminating a tenancy;
    - (ii) an order for the recovery of possession of premises;
    - (iii) an order to vacate premises.
- (2) The Court does not have jurisdiction to hear and adjudicate on a claim or counterclaim
- (a) in which the title to land is brought into question,
  - (b) in which the validity of any devise, bequest or limitation is disputed,
  - (c) for malicious prosecution, false imprisonment, defamation, criminal conversation or breach of promise of marriage,



- (d) against a judge, justice of the peace or peace officer for anything done by that person while executing the duties of that office, or
- (e) by a local authority or school board for the recovery of taxes, other than taxes imposed in respect of the occupancy of or an interest in land that is itself exempt from taxation.

(3) Where an amount is prescribed by the regulations for the purposes of subsection (1), that amount applies with respect

- (a) to civil claims issued, or
- (b) subject to clause (a), to matters that arose,

after the prescribed amount came into effect.

(4) If the claim of a plaintiff or the counterclaim of a defendant exceeds the amount prescribed for the purposes of subsection (1), the plaintiff or the defendant, as the case may be, may abandon that part of the claim or counterclaim that is in excess by filing a notice to that effect with the Court.

(5) Subject to section 56(4), where a notice is filed under subsection (4), the person forfeits the excess and is not entitled to recover it in the Provincial Court or in any other court.

RSA 2000 c16(Supp) s6;2008 c32 s1

#### **Litigation representative**

**9.601** In any proceeding in which a minor is or may be interested, an individual may be appointed as the minor's litigation representative in accordance with the *Alberta Rules of Court* (AR 124/2010).

2008 c32 s1;2011 c14 s23

#### **Contempt**

**9.61(1)** For the purposes of enforcing compliance or the continuing of compliance, as the case may be, with an order of the Court, a judge may, on application or on the judge's own initiative, declare that a person is in civil contempt of the Court if that person fails, without adequate excuse, to obey an order of a judge or an order of a justice of the peace.

(2) Where a judge is satisfied that there are reasonable and probable grounds for believing that a person may be in civil contempt of the Court, the judge may order

- (a) the person to appear before a judge, or

- (b) a peace officer to take the person into custody and bring that person before a judge,

to show cause why the person should not be held in civil contempt of the Court.

(3) Every person in civil contempt of the Court is liable to any one or more of the following:

- (a) imprisonment until the person has purged the contempt;
- (b) imprisonment for not more than 2 years;
- (c) a fine not exceeding \$25 000 and in default of paying the fine to imprisonment for not more than 2 years.

(4) The judge who imposed a sanction on a person whom the judge declared to be in civil contempt may waive the sanction in whole or in part or suspend any imprisonment where the judge is satisfied that the person has purged that person's contempt.

(5) This section does not apply

- (a) to an order for the payment of money, or
- (b) to an order made under the *Criminal Code* (Canada).

(6) Section 36 does not apply to proceedings under this section.

RSA 2000 c16(Supp) s6;2011 c20 s8

### **Adjournment**

**9.62** The Court may at any time in any proceeding before the Court and on any conditions that the Court considers proper grant adjournments.

RSA 2000 c16(Supp) s6

### **Notice of application**

**9.63** Unless otherwise directed by the Court or otherwise provided for under an enactment, an application shall not be made to the Court except on at least 7 days' notice to the respondent to the application or, in the case of an application on the Court's own motion, the parties to the proceedings.

RSA 2000 c16(Supp) s6

### **Exhibits**

**9.7(1)** Where exhibits are in the possession or under the control of the Court and the party on whose behalf the exhibits were put into evidence has not made an application to the Court for the return of the exhibits

- (a) within 6 months from the conclusion of the proceeding in respect of which the exhibits were put into evidence, or
- (b) in the case of an appeal from the judgment or direction of the Court, within 6 months from the conclusion of the appeal,

a clerk may notify that party that unless within 3 months from a date specified in the notice that party applies to the clerk for the return of the exhibits the clerk may destroy or otherwise dispose of the exhibits.

**(2)** If a party who was given a notice by a clerk under subsection (1) does not apply for the return of the exhibits within the time period specified in the notice, the clerk may destroy or otherwise dispose of the exhibits.

**(3)** Notwithstanding subsection (1) or (2), where

- (a) requested to do so by a party to the proceedings, the clerk may retain possession or control of the exhibits for a further period of time that appears appropriate to the clerk, or as otherwise directed by the Court, or
- (b) directed to do so by the Court, the clerk shall retain possession or control of the exhibits as directed by the Court.

**(4)** Notwithstanding subsections (1), (2) and (3), the clerk may, unless otherwise directed by the Court, at any time after

- (a) the expiration of the appeal period, or
- (b) the disposition of the appeal,

as the case may be, return the exhibits to the party on whose behalf the exhibits were put into evidence at the proceeding before the Court.

**(5)** Notwithstanding anything in this section, a clerk at any time may, where permitted by the Court and subject to any directions by the Court, return or otherwise dispose of any exhibit that is in the possession or control of the Court.

**(6)** This section,

- (a) in respect of proceedings before the Court that are governed under another enactment, applies subject to any provisions of that enactment respecting exhibits, and

- (b) does not apply in respect of proceedings under the *Criminal Code* (Canada).

RSA 2000 c16(Supp) s6

**Certificate of judgment, etc.**

**9.71(1)** If a judgment is entered or given under Part 4, the party in whose favour the judgment is made is, unless otherwise provided for by the regulations or directed by the Court, responsible for

- (a) preparing a certificate of judgment that accurately reflects the Court's judgment,
- (b) filing a copy of the certificate of judgment with the Court, and
- (c) sending a copy of the filed certificate of judgment to the other parties to the action.

**(2)** If an order is made by the Court under this Act or any other enactment, the party in whose favour the order is made is, unless otherwise provided for by the regulations or directed by the Court, responsible for

- (a) preparing the order,
- (a.1) filing a copy of the order with the Court, and
- (b) sending a copy of the filed order to the other party to the proceeding.

**(3)** Notwithstanding subsections (1) and (2), a clerk

- (a) may, where the clerk considers it appropriate to do so in the circumstances, or
- (b) shall, where directed to do so by the Court,

prepare a certificate of judgment or order referred to in subsection (1) or (2) and send the certificate of judgment or order to the parties to the proceedings.

**(4)** A copy of the certificate or the order referred to in subsection (1) or (2), at any time after it is filed with the Court or otherwise acknowledged by a clerk as being the judgment or order made by the Court, is admissible in evidence as proof, in the absence of evidence to the contrary, of its contents in any court dealing with a subsequent proceeding without proof of the signature or official character of the person appearing to have signed the certificate or order.

(5) A certificate of judgment, or an order of the Court under which money is payable, may be filed in the Court of Queen's Bench and on its being filed,

- (a) the judgment for which the certificate of judgment was prepared or the order, as the case may be, becomes a judgment or order of the Court of Queen's Bench, and
- (b) writ proceedings may be taken pursuant to the *Civil Enforcement Act*.

RSA 2000 c16(Supp) s6;2001 c24 s6

#### Costs of action

**9.8(1)** The Court may at any time in any proceeding before the Court and on any conditions that the Court considers proper award costs in respect of any matters coming under Part 4.

(2) The Court may award costs at any time in respect of pre-trial conferences conducted under Part 4.

RSA 2000 c16(Supp) s6;2003 cF-4.5 s122

#### Fees

**9.9** A clerk shall not file or issue a document in respect of proceedings in the Court until the prescribed fee payable in respect of the filing or issuance has been paid.

RSA 2000 c16(Supp) s6

## Part 2 Young Persons Matters

#### Definitions

**10** In this Part,

- (a) "child in need of protective services" means a child in need of intervention under the *Child, Youth and Family Enhancement Act*;
- (b) "young person" has the same meaning as in the *Youth Justice Act* or the *Youth Criminal Justice Act (Canada)*, as the case may be.

RSA 2000 cP-31 s10;2003 c16 s117;2003 c41 s4(28)

#### Powers of Court

**11** The Court is a youth justice court within the meaning of and for the purposes of the *Youth Justice Act* and the *Youth Criminal Justice Act (Canada)*, and has all the powers vested in a youth justice court under those Acts.

RSA 2000 cP-31 s11;2003 c41 s4(28)

**Judges**

**12** Each judge of the Court of Queen's Bench is by virtue of the judge's office a judge of The Provincial Court of Alberta for the purpose of hearing matters that come under the *Youth Justice Act* and the *Youth Criminal Justice Act* (Canada).

RSA 2000 cP-31 s12;2003 c41 s4(28)

**Complaints**

**13(1)** A complaint under this Part may be sworn before any justice of the peace and any justice of the peace may adjourn any matter from time to time until the matter can be heard by the Court.

**(2)** A justice of the peace may exercise all duties conferred or imposed on a justice of the peace with respect to judicial interim release by or under any Act of the Legislature or the Parliament of Canada.

RSA 1980 cP-20 s25;1983 c93 s2

**Neglected children**

**14** In the case of a child in need of protective services, a clerk shall

- (a) prepare and keep the reports and information that the Minister responsible for the *Child, Youth and Family Enhancement Act* requires, and
- (b) forward the reports and information at the times and on the forms that the Minister responsible for the *Child, Youth and Family Enhancement Act* requires.

RSA 2000 cP-31 s14;2003 c16 s117

**Part 3** Repealed 2003 cF-4.5 s122.

## **Part 4 Civil Claims**

**Definitions**

**22** In this Part,

- (a) "Court" includes a justice of the peace;
- (b) "defendant" means a person to whom a civil claim is issued under this Part;
- (c) "local authority" means
  - (i) a city, town, village, summer village, municipal district, specialized municipality or Metis settlement,

- (ii) the Minister responsible for the *Municipal Government Act*, in the case of an improvement district, or
  - (iii) the Minister responsible for the *Special Areas Act*, in the case of a special area;
- (c.1) “mediation” means mediation referred to in section 65;
- (d) “plaintiff” means a person at whose instance a civil claim is issued under this Part;
- (d.1) “pre-trial conference” means a pre-trial conference referred to in section 64;
- (d.2) “registered mail” means any form of mail for which the addressee or a person on behalf of the addressee is required to acknowledge receipt of the mail by providing a signature;
- (e) “school board” means a board as defined in the *School Act*.  
RSA 2000 cP-31 s22;RSA 2000 c16(Supp) s8;  
2011 c20 s8;2016 c18 s15

**23, 24** Repealed RSA 2000 c16(Supp) s9.

#### **Issue of civil claim**

**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.

**(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.

RSA 2000 cP-31 s25;RSA 2000 c16(Supp) s10;  
2008 c32 s1

#### **Dispute note**

**26(1)** The defendant shall satisfy the civil claim or file a dispute note with a clerk,

- (a) where the defendant has been served in Alberta, within 20 days from the date of service of the civil claim and a copy of the form of a dispute note;
- (b) where the defendant has been served outside Alberta, within 30 days from the date of service of the civil claim and a copy of the form of a dispute note.

**(2)** The dispute note shall

- (a) state clearly the nature or grounds of the defendant's defence,
- (b) where a claim is disputed in part only, state which part or which items are disputed,
- (c) state clearly the particulars of the defendant's counterclaim, if any,
- (d) state clearly the particulars of the defendant's claim for set-off, if any, and
- (e) have endorsed on it the defendant's address and, if it is different, the defendant's address for service.

RSA 2000 cP-31 s26;RSA 2000 c16(Supp) s11

**Notice of hearing**

**27(1)** On the filing of a dispute note under section 26, a clerk shall

- (a) set the time, date and place either for a hearing or for a pre-trial conference or mediation,
- (b) send to all parties a notice of the time, date and place set for the hearing, pre-trial conference or mediation, as the case may be, and
- (c) send a copy of the dispute note to all parties other than the party filing the dispute note.

**(1.1)** For the purposes of subsection (1)(c),

- (a) a copy of a dispute note may be sent to a party by ordinary mail addressed to that party at that party's last known address, and
- (b) notwithstanding section 29, the sending of a copy of a dispute note to a party under clause (a) constitutes service of the dispute note by mail on that party.



(2) A proceeding referred to in subsection (1) is not invalid only because it was held at a time, date or place other than the time, date or place set out in the notice referred to in subsection (1)(b).

RSA 2000 cP-31 s27;RSA 2000 c16(Supp) s12

#### **Change of hearing**

**28** The Court may, on its own direction or on application by a party, order that the hearing be held at a time, date or place other than that set out in the notice referred to in section 27(1)(b).

RSA 1980 cP-20 s40;1989 c18 s4

#### **Service of documents**

**29(1)** Service of documents under this Part, other than notices to attend, may be made on the person to be served

- (a) either personally or by leaving a copy of the document for the person at the person's most usual place of abode with some resident of the abode apparently 16 years of age or older,
- (b) by mailing a copy to the person by registered mail, and service is deemed to be effected at the time that the acknowledgment of receipt of that mail is signed by the person to be served or the person receiving that mail on that person's behalf, or
- (c) as directed by the Court.

(2) Service of a document on a partnership may be made by serving it on one of the partners of the partnership.

(3) Service of a document on a local authority may be made by serving it on the chief elected official or chief administrative officer and, in the case of an improvement district, the Minister responsible for the *Municipal Government Act* and, in the case of a special area, the Minister responsible for the *Special Areas Act* and, in the case of a Metis settlement, the settlement chair or settlement administrator.

(4) Service of a document on a corporation, other than a local authority, may be made

- (a) by serving it on the president, chair or other head officer by whatever name the person is known, a director or the secretary of the corporation,
- (b) by serving it on a manager, agent or officer of the corporation transacting business on behalf of the corporation at its place of business or activity in Alberta closest to where the civil claim was issued, or

(c) by leaving it at or sending it by registered mail to the registered office of the corporation.

(5) The Court may dispense with service of any document if sufficient cause is shown.

RSA 2000 cP-31 s29;RSA 2000 c16(Supp) s13;2011 c14 s23

#### **Service of counterclaims**

**29.1** Where a dispute note includes a counterclaim by the defendant, service of the dispute note constitutes service of the counterclaim.

RSA 2000 c16(Supp) s14

#### **Notice to attend**

**30(1)** A party may apply to a clerk to issue notices to attend to persons who may be witnesses at the hearing and, subject to section 61, the clerk shall issue the notices to attend.

(2) A person may serve a notice to attend

(a) by delivering to that person at least 21 days prior to the hearing a copy of the notice to attend together with the prescribed witness fee, or

(b) as directed by the Court.

(3) A person served with a notice to attend shall attend the hearing in accordance with the terms prescribed in the notice.

(4) A notice to attend has the same effect as a notice to attend given in a proceeding in the Court of Queen's Bench and is enforceable in the same manner.

RSA 2000 cP-31 s30;2008 c32 s1

#### **Proof of service**

**31(1)** For the purposes of this Part, service of a document may be proved

(a) by the oral testimony of the person serving it,

(b) by an affidavit of service proving the service,

(c) in the case of service on a corporation by registered mail, by an affidavit of service proving the mailing by registered mail and exhibiting the receipt provided by the post office showing that the document was sent by registered mail, or

(d) by an affidavit of service proving the mailing by registered mail and exhibiting the acknowledgment of receipt of that

mail purporting to be signed by the person to be served or by any person receiving that mail on that person's behalf.

(2) Notwithstanding that a document has not been served in the required manner, the Court may, if it is satisfied that the document has come to the attention of the defendant, deem the service to be valid service on the party being served.

RSA 2000 cP-31 s31;RSA 2000 c16(Supp) s15;  
2001 c24 s7

### **Payment into Court**

**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.

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

RSA 2000 cP-31 s32;2008 c32 s1

### **Adjournment**

**33** The Court may adjourn a hearing to another date

- (a) on the application of a party, on serving notice to the other parties,
- (b) on the non-appearance of a party, or

- (c) if there is insufficient time to hold the hearing.

RSA 1980 cP-20 s48;1989 c18 s4

#### **Parties confined to particulars**

**34(1)** At a hearing, the parties are confined to the particulars set out in the civil claim and the dispute note.

- (2) If the Court is satisfied that sufficient cause is shown, it may allow the civil claim or the dispute note to be amended.

RSA 1980 cP-20 s49;1989 c18 s4;1990 c29 s21

#### **Admission of liability**

**35(1)** A party may admit the party's indebtedness or liability by filing a notice to that effect with the Court.

- (2) When the notice is filed, the Court may order that judgment be given with respect to the claim or counterclaim, as the case may be.

RSA 1980 cP-20 s50;1989 c18 s4

#### **Taking of evidence**

**36(1)** For the purposes of a hearing, the Court

- (a) is not bound by the laws of evidence applicable to judicial proceedings, and
- (b) may admit any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not.

- (2) Nothing is admissible in evidence at a hearing

- (a) that would be inadmissible by reason of any privilege under the law of evidence, or
- (b) that is inadmissible by any Act.

1989 c18 s4

#### **Recording of evidence**

**37(1)** A complete record of the evidence of a hearing shall be taken

- (a) by an official court reporter appointed pursuant to the *Recording of Evidence Act*, or
- (b) by means of a sound-recording machine as provided under the *Recording of Evidence Act*.

- (2) If for any reason the evidence given at a hearing cannot be taken in accordance with subsection (1), the Court shall

- (a) cause a summary of the evidence of a witness to be taken in a manner determined by the Court,
  - (b) read to the witness the summary taken of the witness's evidence, and
  - (c) certify on the summary that it is a summary of the evidence given by that witness at the hearing.
- (3) On payment of the prescribed fee, a party may obtain a record of the evidence taken at the hearing.

RSA 2000 cP-31 s37;2006 c4 s3;2009 c53 s146

#### **Withdrawal of claim**

**38(1)** A party may

- (a) withdraw the party's claim or counterclaim, as the case may be, or
- (b) consent to a judgment's being entered in favour of the other party

at any time prior to the hearing by filing a notice to that effect with the Court.

(2) When a person files a notice under subsection (1), a clerk shall send to the other party a notice stating that the claim or counterclaim has been withdrawn or that a judgment has been entered in favour of the other party, as the case may be.

(3) Within 30 days after the day that notice of the withdrawal of the claim or counterclaim is sent by the clerk to the other party, the other party to the claim or counterclaim may apply to the Court for costs.

RSA 2000 cP-31 s38;RSA 2000 c16(Supp) s16

**39** Repealed 2008 c32 s1.

#### **Default judgment**

**40(1)** Where a civil claim includes a claim for a debt or liquidated demand and no dispute note has been filed within the time specified in section 26, a clerk shall, on proof of service of the civil claim and a copy of the form of a dispute note on the defendant and on the request of the plaintiff, enter judgment against the defendant for the full amount of the claim.

(2) With respect to other claims, the plaintiff may, on proof of service of the civil claim and a copy of the form of a dispute note

on the defendant, apply to a clerk to note the defendant in default and may either

- (a) apply ex parte to the Court for judgment, and the judge hearing the application may
  - (i) on proof of the plaintiff's claim make an order for judgment, or
  - (ii) set the matter over for a hearing to hear the claim or assess the damages,

or

- (b) apply to the clerk to set a hearing to assess the damages.

(3) The plaintiff shall serve on the defendant at least 10 days' notice of the time, date and place

- (a) of the hearing referred to in subsection (2)(a)(ii), and
- (b) of the hearing to assess the damages referred to in subsection (2)(b).

(4) After the hearing referred to in subsection (2)(b), the clerk shall enter judgment against the defendant for the amount determined.

RSA 2000 cP-31 s40;RSA 2000 c16(Supp) s17

#### **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 circumstances, or adjourn the matter to a subsequent date for the determination and granting of the remedy;
- (d) dismiss the claim of the plaintiff.

RSA 2000 cP-31 s41;RSA 2000 c16(Supp) s18;  
2008 c32 s1

#### **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.

RSA 2000 cP-31 s42;2008 c32 s1

#### **Counterclaim**

**43(1)** Subject to this section, a counterclaim may, 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 may give judgment in favour of the defendant in the amount of the excess, or
- (b) is less than the amount of the established plaintiff's claim, the Court may 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.

RSA 2000 cP-31 s43;2008 c32 s1

#### **Costs and interest**

**44** Where judgment is entered or given under this Part, the amount of the judgment shall include costs and any prejudgment interest claimed or payable pursuant to the *Judgment Interest Act*.

1989 c18 s4

#### **Stay of judgment**

**44.1** The Court may stay a judgment entered or given under this Part subject to any terms or conditions that the Court considers appropriate.

RSA 2000 c16(Supp) s19

#### **Payment hearings, etc.**

**44.2** Where a person owes money under a judgment or an order of the Court, the Court may, subject to the regulations,

- (a) conduct a payment hearing for the purposes of determining that person's ability to pay the money owing under the judgment or order, and
- (b) if the Court considers it appropriate to do so, establish a schedule or other method under which the amount owing is to be paid.

RSA 2000 c16(Supp) s19

**45** Repealed RSA 2000 c16(Supp) s20.

#### **Time of appeal**

**46(1)** Any party may appeal a decision of the Provincial Court to the Court of Queen's Bench,

- (a) within 30 days after the judgment is given, by
  - (i) filing in the Provincial Court a notice of appeal setting out the grounds of appeal, and



- (ii) serving the notice of appeal on
  - (A) the respondent, and
  - (B) any other person that the Court of Queen's Bench directs,

and

- (b) by filing in the Court of Queen's Bench not later than 7 days after the last day for service of the notice of appeal on those parties served pursuant to clause (a)
  - (i) a copy of the notice of appeal referred to in clause (a)(ii),
  - (ii) an affidavit of service of the notice of appeal, and
  - (iii) a copy of a requisition to a clerk of the Provincial Court for a transcript of evidence together with a receipt for payment of the transcript.

**(2)** The Court of Queen's Bench may, on application made before or after the expiration of the periods fixed by subsection (1)(a) and (b), by order fix a further period, not exceeding 30 days from the date of the order, within which the service and filing referred to in subsection (1)(a) and (b) may be effected.

**(3)** The appellant shall file with the Court of Queen's Bench, and serve copies on those parties served pursuant to subsection (1)(a)(ii), 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.

**(4)** Where a judge of the Court of Queen's Bench is satisfied that a transcript cannot be provided for the appeal, the judge may, on application by the appellant,

- (a) order that the matter be returned to the Provincial Court for a new hearing, or
- (b) make any other order that the judge considers appropriate.

RSA 2000 cP-31 s46;RSA 2000 c16(Supp) s21;  
2008 c32 s1

#### **Transfer of action**

**47** When a notice of appeal is filed with a clerk of the Provincial Court, the clerk shall forward to a clerk of the Court of Queen's

Bench any money paid into the Provincial Court, other than court fees, and all other documents and exhibits in the possession of the Provincial Court that pertain to the matter being appealed.

RSA 1980 cP-20 s59;1989 c18 s4

#### **Failure to comply**

**48(1)** If an appellant fails to comply with the requirements of section 46, the appeal shall be dismissed by the Court of Queen's Bench.

**(2)** If an appeal is dismissed under subsection (1), the Court of Queen's Bench may make any order as to costs that it considers proper.

RSA 1980 cP-20 s60;1989 c18 s4

#### **Stay of proceedings**

**49** On section 46(1)(a) and (b) being complied with, an appeal operates as a stay of proceedings under the judgment being appealed, subject to the order of the Court of Queen's Bench.

RSA 1980 cP-20 s61;1989 c18 s4

#### **Hearing at regular sitting**

**50** On sections 46 and 47 being complied with, the Court of Queen's Bench shall set down the appeal for hearing at a regular sitting.

RSA 1980 cP-20 s62;1989 c18 s4

#### **Appeal on the record**

**51** An appeal is to be heard as an appeal on the record unless, on application by a party, the Court of Queen's Bench orders the appeal to be heard as a trial de novo.

RSA 1980 cP-20 s63;1989 c18 s4

#### **Adjournment and costs of appeal**

**52** The Court of Queen's Bench may adjourn an appeal from time to time as circumstances require and may make any order that it considers proper in respect of costs.

RSA 1980 cP-20 s64;1989 c18 s4

#### **Hearing of appeal**

**53(1)** The Court of Queen's Bench shall

- (a) hear and determine an appeal,
- (b) give its judgment, and
- (c) make an order awarding costs, if any, to the parties, including costs of all proceedings previous to the appeal.

**(1.1)** Unless section 46(4) applies, the Court of Queen's Bench may not refer the matter back to the Provincial Court for the purposes of conducting a new trial.

**(2)** The decision of the Court of Queen's Bench is final and cannot be further appealed.

RSA 2000 cP-31 s53;2011 c20 s11

#### **Failure to appear**

**54(1)** Notwithstanding section 53, if the appellant fails to appear on the date set for the hearing of the appeal, the Court of Queen's Bench may dismiss the appeal.

**(2)** If an appeal is dismissed under subsection (1), the Court of Queen's Bench may make any order as to costs that it considers proper.

1996 c28 s37

#### **Entry of judgment**

**55** A party to an appeal may have the judgment entered as a judgment of the Court of Queen's Bench and execution and garnishee summons may be issued on it in accordance with the procedure of the Court of Queen's Bench.

RSA 1980 cP-20 s66;1989 c18 s4

#### **Transfer into Court of Queen's Bench**

**56(1)** If at any time a claim, counterclaim or defence involves a matter that is beyond the jurisdiction of the Court, the Court may order that the matter be transferred to the Court of Queen's Bench.

**(2)** When an order is made under subsection (1), a clerk of the Provincial Court shall forward to a clerk of the Court of Queen's Bench the record of any evidence in the form in which it was taken, any money paid into the Provincial Court, other than court fees, and all other documents and exhibits in the possession of the Provincial Court pertaining to the matter.

**(3)** When a matter is transferred into the Court of Queen's Bench, the Court of Queen's Bench may, on any conditions it considers proper,

- (a) continue the matter to completion, or
- (b) order the matter to be recommenced.

**(4)** If a matter is transferred into the Court of Queen's Bench and a party had abandoned a portion of the party's claim or counterclaim under section 9.6(4), that party may, subject to any conditions that the Court of Queen's Bench considers proper, withdraw the

abandonment of that portion of the claim or counterclaim and proceed on the entire claim or counterclaim, as the case may be.

RSA 2000 cP-31 s56;RSA 2000 c16(Supp) s22

#### **Transfer into Provincial Court**

**57(1)** On application by a party to the clerk, with the consent of the other parties, before the hearing commences, an action in the Court of Queen's Bench in which the claim is within the jurisdiction of the Provincial Court may be transferred into the Provincial Court by the clerk of the Court of Queen's Bench at the judicial centre where the action was commenced.

**(2)** An action transferred into the Court under subsection (1) continues as if it had been commenced in that Court.

RSA 2000 cP-31 s57;2009 c53 s146

**58, 59** Repealed RSA 2000 c16(Supp) s23.

**60** Repealed 2001 c24 s8.

#### **Refusal to issue documents**

**61(1)** The Court may, on application, if it considers it proper to do so, order a clerk not to issue

(a) a civil claim under section 25, or

(b) a notice to attend under section 30.

**(2)** An order made under subsection (1)(a) or (b) does not prejudice the right of a person having a claim or counterclaim to proceed on it in any other manner permitted by law.

RSA 1980 cP-20 s70;1989 c18 s4;1990 c29 s21

#### **Representation of party**

**62(1)** A person is entitled to be represented by

(a) a barrister and solicitor, or

(b) an agent

in respect of any proceedings under this Part.

**(2)** Subsection (1)(b) does not apply to proceedings that take place in the Court of Queen's Bench.

RSA 1980 cP-20 s71;1989 c18 s4

#### **Effect of informality**

**63** No proceeding is invalid for informality if there has been substantial compliance with the requirements of this Part.

RSA 1980 cP-20 s72;1989 c18 s4

**Pre-trial conference**

**64(1)** In any action under this Part, the Court may direct the parties or their lawyers or agents, as the case may be, to appear before the Court for a pre-trial conference to consider one or more of the following:

- (a) the possibility of settling the claim, counterclaim or other matter, as the case may be, by agreement;
- (b) the simplification of the issues;
- (c) the necessity or desirability of amendments to pleadings;
- (d) the possibility of obtaining any admission that will facilitate the trial;
- (e) any other matters that may aid in the disposition of the action.

**(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 and entering judgment by reason of the failure of a party to attend a pre-trial conference;
- (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;
- (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.

**(3)** An order, when entered, shall control the subsequent course of the action unless modified at the trial of the action to prevent injustice.

**(4)** The judge who conducts a pre-trial conference in an action shall not, except where all the parties to the action give their consent for the judge to do so, conduct the trial of the action.

RSA 2000 c16(Supp) s24;2008 c32 s1

### **Mediation**

**65** At any time after a dispute note is filed, the Court, or a person authorized by the Court to do so, may refer the action for mediation.

RSA 2000 c16(Supp) s24

### **Action in abeyance**

**66** Except as otherwise directed by the Court, if a pre-trial conference or mediation is to be conducted in respect of an action, that action shall not be set down for trial or otherwise continued until the conclusion of the pre-trial conference or the mediation, as the case may be.

RSA 2000 c16(Supp) s24

### **Privilege**

**67(1)** Any settlement discussions in respect of an action that take place during a pre-trial conference or mediation are privileged and are not admissible in any action under this Part or in any other civil action.

**(2)** Neither a judge who conducts a pre-trial conference nor a mediator who conducts a mediation is compellable to give evidence in any court or in any proceedings of a judicial nature concerning any proceeding, discussion or matter that takes place during or with respect to the pre-trial conference or mediation.

**(3)** Subsection (1) does not apply

- (a) to any order made under section 64;
- (b) to any written agreement arising from a pre-trial conference or mediation;
- (c) to the admission in evidence of factual evidence relating to the claim or counterclaim that would otherwise be admissible except for the operation of subsection (1);

(d) to any facts that are relevant to the issue of the validity or enforceability of an agreement arising from a pre-trial conference or mediation.

(4) Subsection (2) does not apply where a judge or a mediator is required by law to disclose those discussions if the disclosure is to the person who under that law is entitled to receive the disclosure.

(5) The *Freedom of Information and Protection of Privacy Act* does not apply to any document, information or record arising during or as a result of a pre-trial conference or mediation.

RSA 2000 c16(Supp) s24

### **Immunities**

**68** No action may be brought against a mediator who conducts a mediation for any act done or omitted to be done in the execution of the mediator's duty or for any act done in respect of that mediation unless it is proved that the mediator acted maliciously and without reasonable and probable cause.

RSA 2000 c16(Supp) s24

*(NOTE: For transitional provisions that may affect the application of this Act, see RSA 2000 c16(Supp) s25.)*



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