

Uniform Proceedings against the Crown Act

(1962 Consolidation, page 244)

1. In this Act

Interpretation

- (a) "agent", when used in relation to the Crown, includes an independent contractor employed by the Crown;
- (b) "Crown" means Her Majesty the Queen in right of the Province of
- (c) "officer", in relation to the Crown, includes a minister of the Crown and any servant of the Crown;
- (d) "order" includes a judgment, decree, rule, award, and declaration;
- (e) "person" does not include the Crown;
- (f) "proceedings against the Crown" includes a claim by way of set-off or counterclaim raised in proceedings by the Crown, and interpleader proceedings to which the Crown is a party;
- (g) "rules of court" means rules of court made under the authority of the (*Court of Appeal Act*) or of the (*King's Bench Act*) or of the (*County Courts Act*).

2. (1) This Act is subject to the (*Workmen's Compensation Act*) and does not apply to,

Statutes and proceedings to which this Act does not apply

- (a) proceedings against a district registrar as provided in the (*Real Property Act*);
- (b) proceedings against a registrar as provided in the (*Registry Act*);
- (c) proceedings authorized by or arising out of the (*Succession Duty Act*);
- (d) proceedings authorized by or arising out of the (*Income Tax Act*);
- (e) proceedings authorized by or arising out of the (*Manitoba Corporation Income Tax Act, 1947*) or the (*Manitoba Corporation Income Tax Act, 1949*); and
- (f) proceedings to which the (*Federal Courts Jurisdiction Act*) relates.

Saving clauses

(2) Except as otherwise provided in this Act, nothing in this Act

- (a) subjects the Crown to greater liability in respect of the acts or omissions of an independent contractor employed by the Crown than that to which the Crown would be subject in respect of such acts or omissions if it were a private person;
- (b) subjects the Crown, in its capacity as a highway authority, to any greater liability than that to which a municipal corporation is subject in that capacity;
- (c) affects any right of the Crown to intervene in proceedings affecting its rights, property or profits;
- (d) subjects the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown; or
- (e) subjects the Crown to proceedings under this Act in respect of anything done in the due enforcement of the criminal law or the penal provisions of any Act of the Legislature.

(NOTE: Subsection (2)(b) and (c) above are to be regarded as optional and each province should decide whether those clauses are required in that province.)

PART I

Substantive Law

Right to sue the Crown

3. Subject to this Act, a claim against the Crown, that, if this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the Lieutenant Governor, may be enforced as of right by proceedings against the Crown in accordance with this Act, without the grant of a fiat by the Lieutenant Governor.

Liability of the Crown in tort

4. (1) Subject to this Act and notwithstanding section of the *Uniform Interpretation Act*, the Crown is subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its officers or agents;
- (b) in respect of any breach of those duties that a person owes to his servants or agents by reason of being their employer;

- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute.

(2) No proceedings lie against the Crown under subsection (1)(a) in respect of any act or omission of an officer or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his personal representative.

Liability of Crown for acts of its officers or agents

(3) Where a function is conferred or imposed upon an officer of the Crown as such, either by any rule of the common law or by statute, and that officer commits a tort in the course of performing or purporting to perform that function, the liability of the Crown in respect of the tort is such as it would have been if that function had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

Liability for acts of officers performing duties legally required

(4) An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of any tort committed by that officer, in the case of proceedings against the Crown under this section in respect of a tort committed by that officer, applies in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

Application of statutes limiting liability of officers of the Crown

(NOTE: Subsection (4) above may be regarded as optional and each province should consider whether it is desired to retain the exemption for which provision is therein made.)

(5) Where property vests in the Crown by virtue of any rule of law that operates independently of the acts or the intentions of the Crown, the Crown is not, by virtue of this Act, subject to liability in tort by reason only of the property being so vested; but this subsection is without prejudice to the liability of the Crown under this Act in respect of any period after the Crown, or any person acting for the Crown, has in fact taken possession or control of the property, or entered into occupation thereof.

Property vesting in the Crown

(6) No proceedings lie against the Crown under this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge

Limitation or liability in respect of judicial acts

- (a) responsibilities of a judicial nature vested in him, or

(b) responsibilities that he has in connection with the execution of judicial process.

Application of law as to indemnity and contribution

5. The law relating to indemnity and contribution is enforceable by and against the Crown in respect of any liability to which it is subject, as if the Crown were a person of full age and capacity.

PART II

Jurisdiction and Procedure

Proceedings in the Court of Queen's Bench

6. Subject to this Act, all proceedings against the Crown in (*Her Majesty's Court of Queen's Bench for Manitoba*) shall be instituted and proceeded with in accordance with the (*Queen's Bench Act*).

Proceedings in the County Court

7. Subject to this Act and to any enactment limiting the jurisdiction of a county court, any proceedings against the Crown may be instituted in a county court and proceeded with in accordance with the (*County Courts Act*).

Appeals and stay of execution or proceedings

8. Subject to this Act, all enactments and rules of court relating to appeals and stay of execution or proceedings, with necessary modifications, apply to proceedings against the Crown.

Proceedings under the *Small Debts Recovery Act* or *Wages Recovery Act* prohibited
Application of rules as to discovery, inspection of documents, etc.

9. Nothing in this act authorizes proceedings against the Crown under the (*Small Debts Recovery Act*) or the (*Wages Recovery Act*).

Designation of the Crown in proceedings

10. In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents, examination for discovery, and interrogatories apply in the same manner as if the Crown were a corporation, except that the Crown may refuse to produce a document or to make answer to a question on discovery or interrogatories on the ground that the production thereof or the answer would be injurious to the public interest.

11. In proceedings under this Act, the Crown shall be designated ".....".

(NOTE: Each province will decide the name in which actions against the Crown shall be brought.)

Service on the Crown

12. A document to be served on the Crown shall be served by leaving a copy with the Attorney General or the Deputy Attorney General (or any barrister or solicitor employed in the Department of the Attorney General).

(NOTE: The words in parentheses are optional.)

13. In proceedings against the Crown the trial shall be without a jury. Trial without a jury

14. The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings in the same manner as a person may obtain relief by way of such proceedings or be made a party thereto, notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer; and the provisions relating to interpleader proceedings under the (*Queen's Bench Act* and the (*County Courts Act*) shall, subject to this Act, have effect accordingly. Interpleader

15. (1) Subject to this Act, in proceedings against the Crown the rights of the parties are as nearly as possible the same as in a suit between person and person; and the court may Rights of parties and authority of court

- (a) make any order, including an order as to costs, that it may make in proceedings between persons; and
- (b) otherwise give such appropriate relief as the case may require.

(2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may, in lieu thereof, make an order declaratory of the rights of the parties. Injunction or specific performance not to lie against the Crown

(3) In proceedings against the Crown in which the recovery of land or other property is claimed, the court shall not make an order for the recovery of the land or the delivery of the property; but may, in lieu thereof, make an order declaring that the claimant is entitled, as against the Crown, to the land or property or to the possession thereof. Order, for recovery of land not to be made against the Crown

(4) The court shall not in any proceedings grant an injunction or make an order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. Limitation on orders or injunctions against the Crown

(5) No person may avail himself Set-off or counterclaim

- (a) of any set-off or counterclaim in proceedings by the Crown for the recovery of taxes, duties, or penalties; or
- (b) in proceedings of any other nature by the Crown, of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

Restriction on set-off, counterclaim, etc.

(6) No person may, without leave of the court, avail himself of any set-off or counterclaim in proceedings by the Crown unless the subject-matter of either the set-off or the counterclaim relates to a matter under the administration of the particular government department with respect to which the proceedings are brought by the Crown.

PART III

Judgments and Execution

Interest on judgments

16. A judgment debt due to or from the Crown bears interest in the same way as a judgment debt due from one person to another.

Certificate respecting orders against the Crown

17. (1) Subject to this Act, where in proceedings against the Crown, an order for costs or any other order is made by a court against the Crown, the proper officer of the court shall, on an application in that behalf, issue a certificate thereof.

Certificate as to costs

(2) If the court so directs, a separate certificate shall be issued with respect to the costs, if any, ordered to be paid to the applicant.

Service of certificate

(3) A certificate issued under this section may be served upon the person for the time being named in the record as the solicitor, or as the person acting as solicitor, for the Crown.

Payment by the Provincial Treasurer

(4) If the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate shall state the amount so payable; and the Provincial Treasurer shall, subject as hereinafter provided, pay out of the Consolidated Fund to the person entitled, or to his order, the amount appearing by the certificate to be due together with the interest, if any, lawfully due thereon.

Suspension of payment pending appeal, etc.

(5) The court by which such an order is made or a court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of the

amount so payable, or any part thereof, shall be suspended; and, if the certificate has not been issued, may order the direction to be inserted therein.

(6) No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of money or costs.

Prohibition of execution etc., against the Crown

(7) This section applies to litigation pending at the time this Act comes into force.

Application pending litigation

PART IV

Miscellaneous and Supplemental

18. This Act does not prejudice the right of the Crown to take advantage of the provisions of any Act of the Legislature; and, in proceedings against the Crown, any Act of the Legislature that could, if the proceedings were between persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

Right of Crown to take advantage of certain statutory provisions

19. Except as otherwise provided in this Act, this Act does not affect proceedings against the Crown that have been instituted before the coming into force of this Act; and, for the purposes of this section, proceedings against the Crown by petition of right shall be deemed to have been instituted if a petition of right with respect to the matter in question has been submitted for consideration to the Lieutenant Governor in Council before the coming into force of this Act.

Pending proceedings

(NOTE: Some provinces may require to vary the language of this section to conform to the wording of their legislation respecting petitions of right. This section should also be regarded as optional, and each province should decide whether it is required.)

20. Expenditure incurred by or on behalf of the Crown under this Act shall be defrayed out of the Consolidated Fund.

Financial provisions

21. Subject to this Act, proceedings against the Crown by way of petition of right are abolished.

Common law petition of right abolished

22. *(As required).*

Repeal

23. This Act shall come into force on a day fixed by Proclamation.

Commencement of Act

