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This Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted when determining the authoritative statement of the law.

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CHAPTER C-32

CROWN PROCEEDINGS ACT

- 1. In this Act** Definitions
- (a) “agent”, when used in relation to the Crown, includes an independent contractor employed by the Crown; agent
- (b) “Crown” means Her Majesty the Queen in right of the Province of Prince Edward Island; Crown
- (c) “officer”, in relation to the Crown, includes a minister of the Crown and any servant of the Crown; officer
- (d) “order” includes a judgment, decree, rule, award, and declaration; order
- (e) “person” does not include the Crown; person
- (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; and proceedings against the Crown
- (g) “rules of court” means rules of court made under the authority of the *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10. R.S.P.E.I. 1974, Cap. C-31, s.2; 1975, c.27, s.5. rules of court
- 2. (1)** This Act does not apply to Statutes and proceedings to which this Act does not apply
- (a) proceedings authorized by or arising out of the *Workers’ Compensation Act* R.S.P.E.I. 1988, Cap. W-7;
- (b) proceedings against the Registrar of Deeds under the *Real Property Act* R.S.P.E.I. 1988, Cap. R-3;
- (c) proceedings against the Registrar of Deeds under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10;
- (d) proceedings authorized by or arising out of the *Income Tax Act* R.S.P.E.I. 1988, Cap. I-1;
- (e) proceedings to which the *Expropriation Act* R.S.P.E.I. 1988, Cap. E-13 relates.
- (2)** Except as otherwise provided in this Act, nothing in this Act Saving clauses
- (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) affects any right of the Crown to intervene in proceedings affecting its rights, property or profits;

- (c) 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
- (d) subjects the Crown to proceedings under this Act with respect to anything done in the due enforcement of the criminal law or the penal provisions of any Act of the Legislature.

Limitations as to actions in respect of highways

(3) No action shall be brought against the Crown to enforce a claim for damages alleged to have been caused by an accident arising, after July 1, 1973, from the condition of a highway including a sidewalk, or from the presence of a nuisance on a highway including a sidewalk, unless

- (a) notice in writing of the accident, indicating the place where it occurred as well as the nature and alleged cause thereof is served upon, or mailed by registered mail to the Deputy Minister of Transportation and Public Works within ninety days of the happening thereof; and
- (b) the action is brought within two years after the date of the accident,

and this subsection applies whether the alleged liability of the Crown arises as the result of misfeasance or of non-feasance.

Limitation as to actions in respect of drainage works

(4) No action shall be brought against the Crown to enforce a claim for damages alleged to have been sustained in respect of drainage works unless it is brought within two years after the date on which the damages were, or are claimed to have been, sustained.

Effect of want of notice

(5) Where death results from an accident to which subsection (3) applies, the want of the notice required is not a bar to an action; and in all other cases the want or insufficiency of the notice is not a bar to an action, if the court before which the action is brought considers that there was reasonable excuse for the want or insufficiency. R.S.P.E.I. 1974, Cap. C-31, s.3, 1980, c.2, s.3; 1983, c.1, s.6.

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. R.S.P.E.I. 1974, Cap. C-31, s.4.

Liability of Crown

4. (1) Subject to this 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 bylaw made or passed under the authority of any statute.

(2) No proceedings lie against the Crown under clause (1)(a) with respect to 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

(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 of 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. R.S.P.E.I. 1974, Cap. C-31, s.5.

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. R.S.P.E.I. 1974, Cap. C-31, s.6.

Application of law as to indemnity and contribution

Proceedings in the Supreme Court	6. Subject to this Act, all proceedings against the Crown in the Supreme Court of Prince Edward Island shall be instituted and proceeded with in accordance with the <i>Supreme Court Act</i> . R.S.P.E.I. 1974, Cap. C-31, s.7.
Appeals and stay of execution of proceedings	7. Subject to this Act, all enactments and rules of court relating to appeals and stay of execution of proceedings, with necessary modifications, apply to proceedings against the Crown. R.S.P.E.I. 1974, Cap. C-31, s.9.
Application of rules as to discovery, inspection of documents etc.	8. 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. R.S.P.E.I. 1974, Cap. C-31, s.10.
Designation of the Crown in proceedings	9. In proceedings under this Act, the Crown shall be designated the "Government of Prince Edward Island". R.S.P.E.I. 1974, Cap. C-31, s.11.
Service on Crown	10. (1) A document to be served on the Crown shall be served by leaving a copy with the Attorney General, the Deputy Attorney General, or any barrister or solicitor employed in the office of the Attorney General.
Notice of intended proceedings	(2) Except in the case of a counterclaim or a claim by way of set-off and except as otherwise provided in section 2, no proceedings shall be commenced under this Act unless the claimant has at least ninety days before the commencement of the proceedings served a notice of the claim on any of the persons referred to in subsection (1), together with sufficient details of the facts upon which the claim is based to enable him to investigate it.
Extension of time	(3) Where a notice of claim is served under subsection (2) before the expiration of a limitation period applying to the commencement of an action for the claim and the ninety day period referred to in subsection (2) expires after the expiration of the limitation period, the limitation period is extended to the end of seven days after the expiration of ninety day period. R.S.P.E.I. 1974, Cap. C-31, s.12; 1993, c.29, s.4; 1997, c.20,s.3; 2000,c.5,s.3.
Trial without a jury	11. In proceedings against the Crown the trial shall be without a jury. R.S.P.E.I. 1974, Cap. C-31, s.13.
Interpleader	12. 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 *Supreme Court Act* shall, subject to this Act, have effect accordingly. R.S.P.E.I. 1974, Cap. C-31, s.14; 1977, c.38, s.3.

13. (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 real or personal property is claimed, the court shall not make an order for the recovery of the property 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 real or personal 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.

(6) Subject to subsection (5), a person may avail himself of any set-off or counterclaim in proceedings by the Crown if the subject matter of 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. R.S.P.E.I. 1974, Cap. C-31, s.15.

Restriction on set-off or counterclaim etc.

14. (1) In proceedings against the Crown, any defence that, if the proceedings were between persons, could be relied upon by the

Crown defence

defendant as a defence to the proceedings or otherwise may be relied upon by the Crown.

No default of appearance

(2) In proceedings against the Crown, judgment shall not be entered against the Crown in default of appearance or pleading without the leave of the court being first obtained on an application to the court.

Notice of application

(3) Notice of an application made pursuant to subsection (2), shall be given to the Crown prior to the date fixed for the hearing of the application. R.S.P.E.I. 1974, Cap. C-31, s.16.

Proceedings against the property

15. Nothing in this Act authorizes proceedings against the property in respect of any claim against the Crown or the seizure, attachment, arrest, detention or sale of any property of the Crown. R.S.P.E.I. 1974, Cap. C-31, s.1973, c.28, s.17.

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. R.S.P.E.I. 1974, Cap. C-31, s.18.

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.

Certificate as to costs

(3) In proceedings against the Crown, 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 or Crown corporation, as the case may be, shall pay out of the Operating Fund or out of the funds of the Corporation, as the case may be, 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, at such time as may be provided in the order.

Payment deferred on appeal

(4) Repealed by 1995, c.32, s.2.

Order suspending payment

(5) Repealed by 1995, c.32, s.2.

Execution or attachment, not against Crown

(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. R.S.P.E.I. 1974, Cap. C-31, s.19; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 1995, c.32, s.2; 1997,c.20,s.3.

Costs awarded to salaried officers of the Crown

18. In any proceedings under this Act costs awarded to the Crown shall not be disallowed or reduced upon taxation merely because the solicitor

or counsel who earned such costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing such services in the discharge of his duty and remunerated therefor by his salary, or for that or any other reason not entitled to recover any costs from the Crown in respect of the services so rendered; but the costs recovered by or on behalf of the Crown in any such case shall be paid into the Operating Fund. R.S.P.E.I. 1974, Cap. C-31, s.20; 1997,c.20,s.3.

19. This Act shall 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. R.S.P.E.I. 1974, Cap. C-31, s.21.

Right of Crown to take advantage of certain statutory provisions

20. Except as otherwise expressly provided in this Act, nothing in this Act affects any rule of evidence or any presumption relating to the extent to which the Crown is bound by an Act of the Legislature. R.S.P.E.I. 1974, Cap. C-31, s.23.

Application of Statutes to Crown