

# *The Proceedings against the Crown Act*

*being*

Chapter P-27 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979, c.57; 1979-80, c.92; 1983-84, c.16; 1988-89, c.54; 2000, c.I-2.01 and L-5.1; and 2004, c.10 and 65.*

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER P-27

### An Act respecting Proceedings against the Crown

#### Short title

1 This Act may be cited as *The Proceedings against the Crown Act*.

#### Interpretation

2 In this Act:

- (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 Saskatchewan;
- (c) “**officer**”, in relation to the Crown, includes a minister of the Crown and a servant of the Crown;
- (d) “**order**” includes 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 the rules of the Court of Appeal or The Queen’s Bench Rules.

R.S.S. 1978, c.P-27, s.2; 1979-80, c.92, s.76.

#### Statutes and proceedings to which this Act does not apply

3(1) This Act is subject to *The Workmen’s Compensation Act* and *The Workers’ Compensation Act* and does not apply to:

- (a) proceedings against the Registrar of Titles pursuant to *The Land Titles Act, 2000*;
- (b) proceedings authorized by or arising out of *The Succession Duty Act*, chapter 50 of *The Revised Statutes of Saskatchewan, 1940* or *The Succession Duty Act, 1972*;
- (c) proceedings authorized by or arising out of *The Income Tax Act* of these *Revised Statutes* or *The Income Tax Act, 2000*;
- (d) proceedings to which *The Federal Courts Act* relates.

#### Savings 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 an Act of the Legislature.

R.S.S. 1978, c.P-27, s.3; 2000, c.I-2.01, s.146  
and c.L-5.1, s.430.

## PART I Substantive Law

### Right to sue the Crown

4 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.S. 1978, c.P-27, s.4.

### Liability of the Crown in tort

5(1) Subject to this Act, and notwithstanding section 7 of *The 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 bylaw made or passed under the authority of any statute.

### Liability of Crown for acts of its officers or agents

(2) No proceedings lie against the Crown under clause (a) of subsection (1) 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 for acts of officers performing duties legally required**

(3) Where a function is conferred or imposed upon an officer of the Crown as such, either by a 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.

**Application of statutes limiting liability of officer of the Crown**

(4) An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of a 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.

**Property vesting in the Crown**

(5) Where property vests in the Crown by virtue of a 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 a person acting for the Crown, has in fact taken possession or control of the property or entered into occupation thereof.

**Limitation of liability in respect of judicial acts**

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

- (a) responsibilities of a judicial nature vested in him; or
- (b) responsibilities that he has in connection with the execution of judicial process.

**Limitation of liability in respect of things done or omitted in exercise of power under *ultra vires* enactment**

(7) No proceedings lie against the Crown under this or any other section of this Act in respect of anything heretofore or hereafter done or omitted and purporting to have been done or omitted in the exercise of a power or authority under a statute or a statutory provision purporting to confer or to have conferred on the Crown such power or authority, which statute or statutory provision is or was or may be beyond the legislative jurisdiction of the Legislature; and no action shall be brought against any person for any act or thing heretofore or hereafter done or omitted by him under the supposed authority of such statute or statutory provision, or of any proclamation, order in council or regulation made thereunder, provided such action would not lie against him if the said statute, statutory provision, proclamation, order in council or regulation is or had been or may be within the jurisdiction of the Legislature enacting or the Lieutenant Governor making the same.

**Application of law as to indemnity and contribution**

**6** 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.S. 1978, c.P-27, s.6.

**Retrospective effect**

**7** Subject to the appropriate provisions of the law relating to the limitation of time for bringing proceedings, the foregoing provisions of this Act shall be deemed to have always been in force and effect.

R.S.S. 1978, c.P-27, s.7.

**Right to sue without statutory consent**

**8** Subject to this Act, a claim against an officer of the Crown or a corporation owned or controlled by the Crown that, if this Act had not been passed, might be enforced subject to the consent of an officer of the Crown may be enforced as of right without such consent.

R.S.S. 1978, c.P-27, s.8.

## PART II Jurisdiction and Procedure

**Proceedings in the Court of Queen's Bench**

**9** Subject to this Act, all proceedings against the Crown in the Court of Queen's Bench shall be instituted and proceeded with in accordance with *The Queen's Bench Act, 1998*.

R.S.S. 1978, c.P-27, s.9; 2004, c.65, s.22.

**10 Repealed.** 1979-80, c.92, s.76.

**Appeals and stay of execution or proceedings**

**11** 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.

R.S.S. 1978, c.P-27, s.11.

**Certain proceedings prohibited**

**12** Nothing in this Act authorizes proceedings against the Crown under *The Wages Recovery Act* or under Part VII of *The Labour Standards Act*.

R.S.S. 1978, c.P-27, s.12; 1988-89, c.54, s.4.

**Application of rules as to discovery, inspection of documents, etc.**

**13** 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.S. 1978, c.P-27, s.13.

**Designation of the Crown in proceedings**

**14** In proceedings under this Act the Crown shall be designated “The Government of Saskatchewan”.

R.S.S. 1978, c.P-27, s.14.

**Service on the Crown**

**15** 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 and solicitor employed in the Department of Justice and designated by the Attorney General for the purpose of this section.

R.S.S. 1978, c.P-27, s.15; 1979, c.57, s.2; 1983-84, c.16, s.17.

**Interpleader**

**16** 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, 1998* shall, subject to this Act, have effect accordingly.

R.S.S. 1978, c.P-27, s.16; 1979-80, c.92, s.76; 2004, c.65, s.22.

**Rights of parties and authority of court**

**17(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:

- (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.

**Injunction or specific performance not to lie against the Crown**

(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.

**Order for recovery of land not to be made 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.

**Limitation on orders or injunctions 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 may in lieu thereof make an order declaratory of the rights of the parties.

**Set-off or counterclaim**

(5) No person may avail himself:

- (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, counter-claim, 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.

R.S.S. 1978, c.P-27, s.17.

### PART III Judgments and Execution

**Interest on judgments**

**18** 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.S. 1978, c.P-27, s.18.

**Certificate respecting orders against the Crown**

**19(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 Minister of Finance**

(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 Minister of Finance shall, subject to subsection (5), pay out of the general revenue 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.

**Prohibition of execution, etc., against the 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.S. 1978, c.P-27, s.19; 2004, c.10, s.17.

## PART IV Miscellaneous and Supplemental

**Right of Crown to take advantage of certain statutory provisions**

**20** This Act does not prejudice the right of the Crown to take advantage of any Act of the Legislature; and, in proceedings against the Crown, an 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.S. 1978, c.P-27, s.20.

**Financial provisions**

**21** Expenditure incurred by or on behalf of the Crown under this Act shall be defrayed out of the general revenue fund.

R.S.S. 1978, c.P-27, s.21; 2004, c.10, s.17.

**Common law petition of right abolished**

**22** Subject to this Act, proceedings against the Crown by way of petition of right at common law are abolished.

R.S.S. 1978, c.P-27, s.22.

**Uniform construction**

**23** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

R.S.S. 1978, c.P-27, s.23.

