

1980

c 100 County Courts Act

Ontario

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CHAPTER 100

County Courts Act

1. In this Act, "chief judge" means the Chief Judge of the County and District Courts. Interpretation R.S.O. 1970, c. 94, s. 1.

2. There shall be in and for every county and district a court of record to be styled, in counties, the "County Court of the (County or Judicial District) of (*naming the county*)" and, in districts, the "District Court of the District of (*naming the district*)". Court for each county and district R.S.O. 1970, c. 94, s. 2.

3. Every county court and district court shall be presided over by a judge in accordance with this Act and the *County Judges Act*. Judges R.S.O. 1980, c. 101 R.S.O. 1970, c. 94, s. 3; 1979, c. 66, s. 15 (1).

4.—(1) The Lieutenant Governor in Council may appoint a clerk for each county court, and may appoint such persons to the staff of the clerk's office as he considers necessary and may fix their position specifications, salary ranges, and terms and conditions of employment. Appointment of clerk and staff

(2) The Attorney General, or any public servant designated by him in writing for the purpose, may make temporary appointments to the staff of the clerk's office for a term not exceeding one year. Temporary appointments R.S.O. 1970, c. 94, s. 4; 1972, c. 1, s. 9 (7).

5. The clerk shall give security for the due performance of the duties of his office in such sum and in such manner and form as the Lieutenant Governor in Council directs. Security R.S.O. 1970, c. 94, s. 5.

6. The clerk shall keep his office in the court house or, if there is no room available therein, at such place in the county or district as the judge directs. Place of office R.S.O. 1970, c. 94, s. 6.

7.—(1) In this section, "holiday" means, Holiday defined

(a) a holiday as defined in the *Interpretation Act*; R.S.O. 1980, c. 219

(b) Saturday;

(c) the day proclaimed as Civic Holiday in the municipality in which the court office is located;

(d) the 26th day of December in a year in which Christmas Day falls on a day other than Saturday, or the 27th day of December in a year in which Christmas Day falls on a Saturday.

Office hours (2) Except on holidays when they shall be closed, county court and district court offices shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon. R.S.O. 1970, c. 94, s. 7.

Taxation of costs 8.—(1) Subject to subsection (2), the clerk shall tax costs, subject to revision and appeal therefrom as provided by the rules of court. 1971, c. 60, s. 1.

Idem (2) Where costs are awarded on the Supreme Court scale, the party entitled thereto may require the costs to be taxed,

(a) in actions pending in the county courts of the Judicial District of Ottawa-Carleton and of the counties of Lanark, Leeds and Grenville, Stormont, Dundas and Glengarry, Russell, Renfrew or Prescott, by the taxing officer at Toronto or the local taxing officer at Ottawa;

(b) in actions pending in the county courts of the counties of Middlesex, Lambton, Elgin, Oxford or Perth, by the taxing officer at Toronto or the local taxing officer at London;

(c) in actions pending in all other county and district courts, by the taxing officer at Toronto.

Powers of taxing officers (3) The taxing officer at Toronto has power to tax costs required to be taxed under subsection (2), and, for the purposes of taxations required under subsection (2), the local taxing officers at Ottawa and London have the same powers as the taxing officer at Toronto.

Appeals (4) An appeal lies to a Supreme Court judge from any certificate of a taxation required under subsection (2).

Practice (5) The practice on taxations and appeals therefrom and the fees payable thereon shall be the same as in the Supreme Court. R.S.O. 1970, c. 94, s. 8 (2-5).

Not to draw or advise on documents 9. The clerk shall not for fee or reward draw or advise upon a chattel mortgage or other paper or document connected with the duties of his office, for which a fee is not expressly allowed by the tariff. R.S.O. 1970, c. 94, s. 9.

10.—(1) The special examiners of the Supreme Court are ^{Special examiners} officers of the county court and district courts, and they possess the like powers in county and district court cases as they possess in cases in the Supreme Court.

(2) The clerk of a county court or district court may act as ^{Idem} special examiner in any action in any county court or district court. R.S.O. 1970, c. 94, s. 10.

11. In each year the sittings of each county or district ^{Sittings} court shall be held at such time or times as is ordered by the chief judge, and the order of the chief judge shall be deemed to be a regulation to which the *Regulations Act* applies. ^{R.S.O. 1980, c. 446} R.S.O. 1970, c. 94, s. 11.

12. The judges of a county or district court may sit separately ^{Concurrent sittings} and concurrently for the despatch of the business of a sittings. R.S.O. 1970, c. 94, s. 12; 1979, c. 66, s. 15 (2).

13.—(1) Where the judge who is to hold a sitting is unable ^{Adjournment of sittings} to hold it at the time appointed, the sheriff or, in his absence, the deputy sheriff shall adjourn the court by proclamation to an hour on the following day to be named by him, and so from day to day until the judge is able to hold the court or until he receives other directions from the judge or from the chief judge.

(2) The sheriff shall forthwith notify the chief judge of the ^{Notice to chief judge} adjournment. R.S.O. 1970, c. 94, s. 13.

14.—(1) The county and district courts have jurisdiction ^{Jurisdiction} in,

- (a) actions arising out of contract, expressed or implied, ^{contract} where the sum claimed does not exceed \$7,500;
- (b) personal actions, except actions for libel, where the sum ^{tort} claimed does not exceed \$7,500;
- (c) actions for trespass or injury to land where the sum ^{injury to land} claimed does not exceed \$7,500, unless the title to the land is in question, and in that case also where the value of the land does not exceed \$7,500 and the sum claimed does not exceed that amount;
- (d) actions for the obstruction of or interference with ^{easements} a right-of-way or other easement where the sum claimed does not exceed \$7,500, unless the title to the right or easement is in question, and in that case also where

the value of the land over which the right or easement is claimed does not exceed that amount ;

recovery
of property

(e) actions for the recovery of property, real or personal, including actions of replevin and actions of detinue where the value of the property does not exceed \$7,500 ;

mortgages

(f) actions for the enforcement by foreclosure or sale or for the redemption of mortgages, charges or liens, with or without a claim for delivery of possession or payment or both, where the sum claimed to be due does not exceed \$7,500 ;

partnerships

(g) partnership actions where the joint stock or capital of the partnership does not exceed in amount or value \$50,000 ;

legacies

(h) actions by legatees under a will for the recovery or delivery of money or property bequeathed to them where the legacy does not exceed in value or amount \$7,500, and the estate of the testator does not exceed in value \$50,000 ;

equitable
relief

(i) in all other actions for equitable relief where the subject-matter involved does not exceed in value or amount \$7,500 ; and

insolvency

(j) actions and contestations for the determination of the right of creditors to rank upon insolvent estates where the claim of the creditor does not exceed \$7,500.

Dispute of
jurisdiction
by
defendant

(2) Where a defendant intends to dispute the jurisdiction of the court on the ground that the action, though otherwise within the proper competence of the court, is not within it because of the amount claimed or of the value of the property in question or of the amount or value of the subject-matter involved, or, in the cases mentioned in clauses (1) (g) and (h), because the joint stock or capital of the partnership exceeds in amount or value \$50,000 or the estate of the testator exceeds in value \$50,000, he shall in his appearance or in his statement of defence state that he disputes the jurisdiction of the court and the ground upon which he relies for disputing it, and, in default of his so doing, unless otherwise ordered by the court or a judge, the question of jurisdiction shall not afterwards be raised or the jurisdiction be brought in question, and in any such action tried or disposed of in a county or district court such court has the right to award all costs of or incidental to such

action on the scale of the Supreme Court in the same manner as if such action had been tried or disposed of in the Supreme Court.

(3) Where the notice mentioned in subsection (2) is given, the plaintiff may, within fifteen days after the entry of appearance if the defendant has given the notice in his appearance, or within fifteen days after the filing of the statement of defence if the defendant has given the notice in his statement of defence, on praecipe require all papers and proceedings in the action to be transmitted to the proper office of the Supreme Court in the county or district in which the action was brought, and the action is transferred to the Supreme Court when the papers and documents are so transmitted.

Transfer to
Supreme
Court by
plaintiff

(4) Where the plaintiff does not exercise the right conferred by subsection (3) within the period set out therein, the defendant may, within ten days after the expiration of such period, apply to a judge of the Supreme Court for an order transferring the action to that court.

Transfer to
Supreme
Court by
defendant

(5) If no application is made or praecipe issued under subsection (3) or (4) within the time prescribed therein or if an application made under subsection (4) has been refused, subject to subsection (6) and to section 15, the jurisdiction of the court to try and dispose of the action shall be deemed to be established.

When
jurisdiction
established

(6) Where the court or a judge makes an order under subsection (2) allowing the defendant to question the jurisdiction of the court, the court or judge may direct the action to be transferred to the Supreme Court upon such terms as to costs and otherwise as is considered just.

Terms of
order of
transfer

(7) Where an action is transferred to the Supreme Court under this section, if the plaintiff is awarded costs, unless otherwise ordered by the court or a judge, the costs shall after the date of the transfer be taxed according to the scale of the Supreme Court, whether or not the action is in fact within the proper competence of the county or district court. R.S.O. 1970, c. 94, s. 14.

Scale of
costs in
action
transferred

15.—(1) Where the defendant pleads a set-off or counterclaim, either party, within six days after the plaintiff has delivered his reply to the defence of set-off or his defence to the counterclaim, may apply to a judge of the Supreme Court for an order transferring the action and counterclaim to the Supreme Court on the ground that such set-off or counterclaim involves matter beyond the jurisdiction of the court.

Where set-off
or counter-
claim is
beyond
jurisdiction

Judge's order transferring

(2) The judge, if satisfied that the set-off or counterclaim involves matter that exceeds the jurisdiction of the court, may order the transfer upon such terms as to costs and otherwise as he considers just.

Jurisdiction established where no order of transfer made

(3) If no such application is made within the time limited or if an application so made has been refused, the jurisdiction of the court to hear and determine the whole matter involved in the set-off or counterclaim shall be deemed to be established. R.S.O. 1970, c. 94, s. 15.

Consequences of transfer

16. Where an action has been transferred to the Supreme Court or to another county or district court under this Act, it shall be in the same plight and condition as it was in at the time of the transfer, and thereafter may be proceeded with as if it had been commenced in the court into which it has been transferred. R.S.O. 1970, c. 94, s. 16.

Transfer of action to court having jurisdiction

17. Where it appears in an action brought in a county or district court that such court has not cognizance thereof, but that the court of some other county or district has jurisdiction to try it, the judge before whom it is pending may, at any time before or during the trial thereof, order it to be transferred to such other county or district court upon such terms as to costs and otherwise as he considers just. R.S.O. 1970, c. 94, s. 17.

Prohibition not to lie

18. Prohibition does not lie in respect of an action or counterclaim that may be transferred under this Act to the Supreme Court, or from one county or district court into another county or district court. R.S.O. 1970, c. 94, s. 18.

Abandonment of so much of claim as is in excess of jurisdiction

19.—(1) Where it appears that the claim of the plaintiff is for an amount beyond the jurisdiction of the court, he may, by writing signed by him and filed, upon such terms as the judge considers proper as to costs and otherwise, abandon the excess, and in such case the plaintiff shall forfeit such excess and is not entitled to recover it in any other action.

Idem

(2) A defendant has the like right in respect of his set-off or counterclaim. R.S.O. 1970, c. 94, s. 19.

Relief that may be granted

20. The court has, as regards all causes of action within its jurisdiction, power to grant and shall grant such relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to grant vesting orders and to relieve against penalties and forfeitures, but does not have power to remove a trustee or to appoint a new trustee under the *Trustee Act*, and shall give such and the like effect to every ground of defence or counterclaim, equitable or legal, by the same

mode of procedure and in as full and ample a manner as might and ought to be done in the like case by the Supreme Court. R.S.O. 1970, c. 94, s. 20.

21. Except in the cases mentioned in subsections 14 (3), (5) and (6) and in section 15, no action shall be removed by order of *certiorari* or otherwise into the Supreme Court unless the debt or damages claimed amount to more than \$100, and then only on affidavit and by leave of a judge of the Supreme Court, if it appears to the judge fit to be tried in the Supreme Court, and upon such terms as to costs, giving security for debt or costs and otherwise as he considers just. R.S.O. 1970, c. 94, s. 21.

In what cases and on what conditions causes are removable

22.—(1) Except by consent of the parties or unless the place of trial is changed, actions under clauses 14 (1) (c) and (d) shall be brought and tried in the court of the county or district in which the land is situate, and actions under clause 14 (1) (g) shall be brought and tried in the court of the county or district where the partnership has or had its principal place of business, and actions under clause 14 (1) (h) shall be brought and tried in the court of the county or district where letters probate or of administration have issued or where the deceased resided at the time of his death.

Venue for certain actions

(2) Actions for the recovery of real property shall be brought and tried in the court of the county or district in which the real property sought to be recovered is situate. R.S.O. 1970, c. 94, s. 22.

Actions for the recovery of real property

23. An action by or against a judge shall not be brought in the court of which he is judge, but shall be brought in the court of a county or district adjoining that in which he resides. R.S.O. 1970, c. 94, s. 23.

Where action against judge

24. Subject to the *Judicature Act* and to the rules of court, the practice and procedure of the Supreme Court apply to the county and district courts. R.S.O. 1970, c. 94, s. 24.

Procedure R.S.O. 1980, c. 223

25. Where the plaintiff fails to recover judgment by reason that the court has not jurisdiction, the court nevertheless has jurisdiction over the costs of the action or other proceeding and may order by and to whom they shall be paid. R.S.O. 1970, c. 94, s. 25.

Costs where action fails for want of jurisdiction

26. Every county and district court has the like power as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court and they have the like force and effect as writs and process issued out of the Supreme Court. R.S.O. 1970, c. 94, s. 26.

Power to enforce judgments and orders

Contempt
of court

27. Every county and district court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders, but the fine shall not in any case exceed \$100 nor shall the imprisonment exceed six months. R.S.O. 1970, c. 94, s. 27.

References:
generally

28.—(1) Where it is proper to direct a reference, it may be made to any officer to whom a reference may be directed by the Supreme Court or to the clerk of the court.

to judge

(2) Where the judge of the court is local master, the reference may be made to himself, but no fees shall be charged by him on such reference.

fees and
costs

(3) Upon every such reference the fees to be paid and the costs to be allowed, whether as between party and party or solicitor and client, shall be according to the county court tariff. R.S.O. 1970, c. 94, s. 28.

Powers of
judge as to
reference

29.—(1) In an action in a county or district court the judge has the same powers with regard to the making of an order of reference as may be exercised by a judge of the Supreme Court in an action therein.

Appeal from
referee

(2) An appeal, in like manner and within the same time as in like cases in actions in the Supreme Court, lies from the report on the reference to the judge of the county or district court in chambers, who has upon the appeal the same power as may be exercised by a judge in like cases in the Supreme Court.

Appeal to
Court of
Appeal

(3) An appeal lies from any order, judgment or decision of the judge of a county or district court, and from the report upon a reference made under subsection 28 (2) to the Court of Appeal, and the proceedings and practice on the appeal as to staying proceedings and otherwise shall be similar to the proceedings and practice relating to an appeal from a judgment under section 31.

Except
where the
Crown is
a party

(4) Nothing in this section empowers the judge of a county or district court to refer any proceeding to which Her Majesty is a party, or any question or issue in any such proceeding, to an official referee, without the consent of Her Majesty. R.S.O. 1970, c. 94, s. 29.

Rehearing

30.—(1) Where the judge before whom an action is tried, either with or without a jury, dies before giving judgment, or having reserved his judgment after having heard the evidence does not deliver judgment within six months thereafter, any party may, upon notice to all other parties,

apply to the chief judge for an order directing that the action be reheard by such judge of a county or district court as he designates.

(2) An order made under subsection (1) shall name the place ^{Idem} where the action shall be set down and reheard, and in making such order the chief judge may give such other directions as he considers fit.

(3) No further evidence shall be received upon such re- ^{Further evidence} hearing unless by leave of the court.

(4) No proceedings in the action shall thereafter be taken ^{Further proceedings} in the county court without the order of the chief judge after notice.

(5) Upon such rehearing, the evidence, exhibits and papers ^{Judgment on rehearing} used at the trial shall be read and after argument by counsel the presiding judge shall deal with the action as on an original trial and shall direct that judgment be entered by the county court clerk in accordance with his findings.

(6) The costs of the rehearing shall be fixed by the judge ^{Costs of rehearing} presiding at the rehearing, who shall also direct by whom they are to be paid.

(7) An appeal lies from such judgment or finding in the ^{Appeal} same manner and on the same terms as if the judgment had been pronounced at a trial in the county court. R.S.O. 1970, c. 94, s. 30.

31. Any party to a cause or matter may appeal to the ^{Appeal to Court of Appeal} Court of Appeal from any judgment directed to be entered at or after the trial or from a refusal to enter a judgment. R.S.O. 1970, c. 94, s. 31.

32. Where a party does not appear at the trial, a motion ^{Motion for new trial} for a new trial may be made before the judge, but in all other cases a motion for a new trial shall be made before the Court of Appeal. R.S.O. 1970, c. 94, s. 32.

33. Where in any Act an appeal to the county court is ^{Powers on statutory appeals} provided for, the county court has the same powers upon the hearing and disposition of the appeal as the Court of Appeal has under the *Judicature Act* in civil matters, sub- ^{R.S.O. 1980, c. 223} ject to any express provision in the Act that provides for the appeal. 1978, c. 102, s. 1.

34.—(1) An appeal lies to the Court of Appeal at the instance ^{Appeal from decision of judge} of any party to a cause or matter from,

- (a) every decision or order of a judge in court or chambers under any of the powers conferred upon him by the rules of court or by a statute, unless provision is made therein to the contrary;
- (b) every decision or order in a cause or matter disposing of any right or claim;
- (c) any decision or order of a judge, whether pronounced or made at the trial, or on appeal from taxation or otherwise, that has the effect of depriving the plaintiff of county court costs on the ground that his action is of the proper competence of the small claims court, or of entitling him to county court costs on the ground that the action is not of the proper competence of the small claims court.

Where
section not
applicable

(2) This section does not apply to an order or decision that is not final in its nature but is merely interlocutory or where jurisdiction is given to the judge as *persona designata*. R.S.O. 1970, c. 94, s. 33.

Trans-
mission of
pleadings,
etc.

35.—(1) The clerk shall, at the request of the appellant, transmit to the proper officer of the Supreme Court the pleadings in the cause and all motions or orders made, granted or refused therein together with the judgment or decision and all other papers in the cause affecting the question raised by the appeal.

Evidence,
etc., to be
certified

(2) The evidence and all objections and exceptions thereto, together with the judge's charge to the jury where the trial has been held with a jury, shall be certified under the hand of the stenographic reporter who was present at the trial. R.S.O. 1970, c. 94, s. 34.

Staying
proceedings
on appeal

36. Subject to section 37, the judge of the county or district court appealed from may, upon application to him, stay proceedings in the action to enable the appeal to be brought, upon such terms and for such time as he considers just. R.S.O. 1970, c. 94, s. 35.

Setting
down
appeals

37. The appeal shall be made within the time and in the manner prescribed by the rules of court. R.S.O. 1970, c. 94, s. 36.

Powers to
amend and
receive
further
evidence

38.—(1) The Court of Appeal has all the powers and duties, as to amendment and otherwise, of the judge appealed from, and full discretionary power to receive further evidence upon questions of fact, either by oral examination before the court or as may be directed.

(2) Such further evidence may be given without special leave as to matters that have occurred after the date of the judgment, order or decision complained of. ^{Further evidence}

(3) Except as provided by subsection (2), upon an appeal from a judgment, order or decision given upon the merits at the trial or hearing, such further evidence shall be admitted on special grounds only, and not without the special leave of the court. ^{Idem} R.S.O. 1970, c. 94, s. 37.

39.—(1) On an appeal, the Court of Appeal may set aside the judgment and direct any other judgment to be entered or may direct a new trial to be had, and may make such other order as to costs and otherwise as appears just. ^{Order of Court of Appeal on appeal}

(2) The decision of the Court of Appeal shall be certified by the registrar of the court to the clerk of the court with whom the judgment or order appealed from was entered, who shall thereupon cause the decision to be entered in the proper judgment or order book, and all subsequent proceedings may be taken thereupon as if the decision has been given in the court below. ^{Idem} R.S.O. 1970, c. 94, s. 38.

40. In the case of any decision or order made in an action by a county or district court judge in respect of which an appeal is not provided in section 34, an appeal lies to a judge of the Supreme Court, and the practice and procedure governing appeals from the Master of the Supreme Court apply to every such appeal. ^{Further rights of appeal} R.S.O. 1970, c. 94, s. 39.

41. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may, ^{Rules}

- (a) make rules for regulating the practice and procedure in the county and district courts;
- (b) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts;
- (c) prescribe forms and provide for their use. R.S.O. 1970, c. 94, s. 40; 1979, c. 49, s. 2.

