

1980

c 223 Judicature Act

Ontario

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CHAPTER 223

Judicature Act

1. In this Act,

Interpre-
tation

- (a) “action” means a civil proceeding commenced by writ or in such other manner as is prescribed by the rules;
- (b) “cause” includes an action, suit or other original proceeding between a plaintiff and a defendant;
- (c) “county” includes a district;
- (d) “county court” includes a district court;
- (e) “county town” includes a district town;
- (f) “Court of Appeal” means the Court of Appeal for Ontario;
- (g) “defendant” includes a person served with a writ of summons or process, or served with notice of, or entitled to attend a proceeding;
- (h) “Divisional Court” means the Divisional Court of the High Court;
- (i) “finance committee” means the finance committee appointed by the Lieutenant Governor in Council under this Act;
- (j) “High Court” means the High Court of Justice for Ontario;
- (k) “judge” includes a chief justice, an associate chief justice, an *ex officio* judge and a supernumerary judge;
- (l) “judgment” includes an order;
- (m) “master” means a Master of the Supreme Court and includes the Senior Master;
- (n) “matter” includes every proceeding in the court not in a cause;

- (o) "party" includes a person served with notice of or attending a proceeding, although not named on the record;
- (p) "petitioner" includes a person making an application to the court, either by petition, motion or summons, otherwise than as against a defendant;
- (q) "plaintiff" includes a person asking any relief otherwise than by way of counterclaim as a defendant against any other person by any form of proceeding;
- (r) "pleading" includes a petition or summons, the statement in writing of the claim or demand of a plaintiff, of the defence of a defendant thereto, and of the reply of the plaintiff to a counterclaim of a defendant;
- (s) "proper officer", where the expression is used with respect to a duty to be discharged under this Act or the rules and the duty has been discharged by a particular officer, means that officer and, where the expression is used in respect of a new duty under this Act or the rules, means the officer to whom the duty is assigned by this Act or by the rules, or, if it is not assigned to any officer, means such officer as is from time to time directed to discharge the duty, if it relates to the Court of Appeal, by the Chief Justice of Ontario or, if it relates to the High Court, by the Chief Justice of the High Court;
- (t) "rules" means the rules of court;
- (u) "Rules Committee" means the Rules Committee established under this Act;
- (v) "Supreme Court" means the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 1; 1972, c. 159, s. 1; 1975, c. 30, s. 1; 1979, c. 65, s. 1.

CONSTITUTION AND JUDGES OF SUPREME COURT

Jurisdiction
of Supreme
Court

2. The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a divisional court of that court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 2.

3. The Supreme Court shall continue to consist of two Branches branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario. R.S.O. 1970, c. 228, s. 3.

4.—(1) The Court of Appeal shall consist of a chief Court of Appeal justice who shall be the president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario, and thirteen other judges to be called justices of appeal. R.S.O. 1970, c. 228, s. 4 (1); 1974, c. 81, s. 1; 1977, c. 45, s. 1 (1).

(2) Where the Chief Justice of Ontario is absent from Absence of Chief Justice the Judicial District of York or where he is for any reason unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario in his stead or, where both are absent or unable to act, by the senior justice of appeal who is able to act. 1977, c. 45, s. 1 (2).

5.—(1) The High Court shall consist of a chief justice High Court of Justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court, and forty other judges. R.S.O. 1970, c. 228, s. 5 (1); 1977, c. 45, s. 2 (1).

(2) Where the Chief Justice of the High Court is absent Absence of Chief Justice of the High Court from Ontario or where he is for any reason unable to act, his powers shall be exercised and his duties performed by the Associate Chief Justice of the High Court in his stead or, where both are absent or unable to act, by the senior judge of the High Court who is able to act. 1977, c. 45, s. 2 (2).

6. For each office of judge of the Court of Appeal Super-numerary judge and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act* R.S.C. 1970, c. J-1 (Canada) to hold office only as a supernumerary judge of that court. 1972, c. 159, s. 2.

7.—(1) There shall be a division of the High Court Divisional Court of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as may be designated by him from time to time.

(2) Every judge of the High Court is also a judge of Jurisdiction of judges the Divisional Court. R.S.O. 1970, c. 228, s. 6.

Rank and
precedence

8.—(1) The Chief Justice of Ontario has rank and precedence over all the other judges.

Idem

(2) The Chief Justice of the High Court has rank and precedence next after the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 8 (1, 2).

Idem

(3) The Associate Chief Justice of Ontario has rank and precedence next after the Chief Justice of the High Court and the Associate Chief Justice of the High Court has rank and precedence next after the Associate Chief Justice of Ontario. 1977, c. 45, s. 3 (1).

Idem

(4) The justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment. 1979, c. 65, s. 2 (1).

Judges
of the
Supreme
Court

9. A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is *ex officio* a judge of the branch of which he is not a member, and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority. R.S.O. 1970, c. 228, s. 9.

Oath of
office

10.—(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

I do solemnly and sincerely promise and swear that I will
duly and faithfully, and to the best of my skill and knowledge,
execute the powers and trust reposed in me as
So help me God.

How oath
to be
administered

(2) The oath shall be administered to a chief justice before the Lieutenant Governor in Council, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court, unless the Lieutenant Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant Governor in Council may direct. R.S.O. 1970, c. 228, s. 10.

Judgment
after leaving
office

11.—(1) Where a judge resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within eight weeks after such event, give judgment in any cause, action or matter previously tried or heard before him, as if he had not so

resigned, been appointed, elected or ceased to hold office. 1972, c. 159, s. 4; 1979, c. 65, s. 3.

(2) Where he has heard a cause, action or matter jointly with other judges in the Court of Appeal or Divisional Court, he may at any time within the period mentioned in subsection (1) take part in the giving of judgment by that court as if he were still a member of it. R.S.O. 1970, c. 228, s. 11 (2); 1976, c. 16, s. 2 (1). When to take part in judgment

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in the Court of Appeal or Divisional Court is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them, may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and, in the case of absence, as if the absent judge were present and taking part in the judgment. R.S.O. 1970, c. 228, s. 11 (3); 1976, c. 16, s. 2 (2). Judgment of remaining judges or majority

(4) Where a judge who has heard a cause, action or matter in the Court of Appeal or Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present. R.S.O. 1970, c. 228, s. 11 (4); 1976, c. 16, s. 2 (3). Reading judgment of absent judge

SEAL

12. There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 12. Seal

JURISDICTION AND LAW

13.—(1) The Court of Appeal shall exercise that part of the jurisdiction vested in the Supreme Court that on the 31st day of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by the Court of Appeal in the name of the Supreme Court. Jurisdiction of Court of Appeal

(2) Except as provided by subsection (1), all the jurisdiction vested in the Supreme Court shall be exercised by the High Court in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 13. Jurisdiction of High Court

14.—(1) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by the Chief Justice of Ontario or by a justice of appeal Jurisdiction of Chief Justice and justices of appeal

appeal, is vested in and may be exercised by a judge of the Court of Appeal, and shall be exercised in the name of the Supreme Court.

Jurisdiction
of judges of
the High
Court

(2) All jurisdiction, power and authority that on the 31st day of December, 1912, was vested in or exercisable by a judge of the High Court is vested in and may be exercised by a judge of the High Court, and shall be exercised in the name of the Supreme Court. R.S.O. 1970, c. 228, s. 14.

Provisions
for absence
or vacancy
in office of
a judge

15. Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the Chief Justice of the High Court, any judge of the Supreme Court may sit and act as a judge of either of the branches of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of the Court of Appeal, and while so sitting and acting, any such judge has all the power and authority of a judge of the Supreme Court. R.S.O. 1970, c. 228, s. 15; 1972, c. 159, s. 5.

Sittings of
courts

16.—(1) Subject to the rules, the courts and the judges thereof, or any commissioner appointed under section 53, may sit and act, at any time and at any place, for the transaction of any part of the business of the courts, or of the judges or commissioner, or for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

Where
Court of
Appeal to sit

(2) Subject to subsection (1), the Court of Appeal shall sit at Toronto. R.S.O. 1970, c. 228, s. 16.

Jurisdiction
of Divisional
Court

17. The Divisional Court has jurisdiction to hear, determine and dispose of,

- (a) applications and appeals referred to the Divisional Court under any Act;
- (b) all appeals from interlocutory judgments or orders of a judge of the High Court with leave as provided in the rules;
- (c) all appeals from final judgments or orders of the master, local judge, local master, or other officer of the Supreme Court, except final judgments or orders made by a local judge under the *Divorce Act* (Canada). 1971, c. 57, s. 1, *part*; 1972, c. 48, s. 1; 1977, c. 51, s. 1, *revised*.

ADMINISTRATION OF JUSTICE

18. In every civil cause or matter, law and equity shall be administered according to the following rules: Rules of law and equity

1. Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a defendant in such cause or matter, or to any relief founded upon a legal right that before the commencement of *The Ontario Judicature Act, 1881* could only have been given by a court of equity, the Supreme Court and every judge shall give to the plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the commencement of that Act. Equitable relief
44 V., c. 5
2. No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right, whether or not any consequential relief is or could be claimed. Declaratory judgments and orders
3. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by a plaintiff in such cause or matter, or alleges any ground of equitable defence to a claim of the plaintiff in such cause or matter, the court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the commencement of *The Ontario Judicature Act, 1881*. Equitable defences
4. The court and every judge also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff as such defendant has properly claimed by his pleading, and as the court or any judge might have granted in a suit instituted for that Relief that may be granted to defendants

purpose by the same defendant against the same plaintiff, and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to the rules or to any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose, and every person served with any such notice shall henceforth be considered a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

Courts to
take notice
of equitable
rights and
duties

5. The court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of *The Ontario Judicature Act, 1881*.

44 V., c. 5

Restraining
proceedings

6. No cause or proceeding shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to *The Ontario Judicature Act, 1881*, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto, but nothing in this Act disables the court from directing a stay of proceedings in any cause or matter pending before it, and any person, whether or not a party to any such cause or matter, who would have been entitled, before the commencement of *The Ontario Judicature Act, 1881*, to apply to a court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the court by motion in a summary way, for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is considered just.

7. Subject to the foregoing provisions for giving ^{Giving effect to legal claims} effect to equitable rights and other matters of equity and the other express provisions of this Act, the court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as they would have been recognized and given effect to before the commencement of *The Ontario Judicature Act, 1881* ^{44 V., c. 5} by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court.
8. The court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it has power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies as any of the parties appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. ^{Multiplicity of proceedings to be avoided}
9. (i) In case bonds or debentures are secured by a mortgage or charge by virtue of a trust deed or other instrument and whether or not provision is contained in the trust deed or other instrument creating such mortgage or charge giving to the holders of such bonds or debentures or a majority, or a specified majority of them, power to sanction the sale, transfer or exchange of the mortgaged or charged premises for a consideration other than cash, and in case any action has been brought or is brought for the purpose of enforcing or realizing upon any such mortgage or charge, or for the execution of the trusts in any such trust deed or other instrument with or without other relief, the court may order a meeting or meetings of the holders of such bonds or debentures to be summoned and held in such manner as the court directs, and if the holders of such bonds or debentures sanction or approve the sale, transfer or exchange of the property so mortgaged or charged for a consideration wholly or in part other than cash, the court may in such action order and approve such sale on such terms in all ^{Sanction of court to sale under mortgage securing debentures}

respects as the court thinks fair and reasonable having regard to the interests of all parties interested in the premises and property so mortgaged or charged, and in such order or by a subsequent order may make provision in such manner, on such terms in all respects as the court considers proper, for the transfer to and vesting in the purchaser or his or its assigns of the whole or any part of the premises and property so mortgaged or charged and so sold, and for the payment of the proper costs, charges and expenses and remuneration of any trustee or trustees under such trust deed or other instrument and of any receiver or receiver and manager appointed by the court, and of any committee or other persons representing holders of such bonds or debentures, and for the distribution or other disposition of the proceeds of such sale, and for the protection of any or all persons whose interests are affected by such order, and for all such incidental, consequential and supplemental matters as the court considers just.

(ii) The approval of the holders of any such bonds or debentures may be given by resolution passed at a meeting by the votes of the holders of a majority in principal amount of such bonds or debentures, represented and voting in person or by proxy, and holding not less than 50 per cent in principal amount, or such lesser amount as the court under all the circumstances approves, of the issued and outstanding bonds or debentures in question. R.S.O. 1970, c. 228, s. 18.

**Injunctions
and receivers**

19.—(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the court considers just, and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or, if out of possession, does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable. R.S.O. 1970, c. 228, s. 19 (1).

(2) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral, or otherwise injurious to public morals. R.S.O. 1970, c. 228, s. 19 (2); 1972, c. 1, s. 9 (7).

Mandamus
or injunction
restraining
obscene
publications

(3) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt, ridicule or mockery Her Majesty or any member of the Royal Family. R.S.O. 1970, c. 228, s. 19 (3); 1972, c. 1, s. 9 (7).

Actions
restraining
publication
of articles
or pictures
insulting
Her Majesty

(4) The court may, in addition to making such order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature. R.S.O. 1970, c. 228, s. 19 (4).

Recognizance

(5) Upon the making of such order, the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings. R.S.O. 1970, c. 228, s. 19 (5); 1972, c. 1, s. 9 (7).

Service
of order

(6) An action under subsection (2) or (3) may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (2) or (3).

Against
whom
action may
be brought

(7) In an action brought under subsection (2), (3) or (6), the judge may on such material as he sees fit grant an interlocutory injunction or mandamus. R.S.O. 1970, c. 228, s. 19 (6, 7).

Inter-
locutory
injunctions

20.—(1) In this section, “labour dispute” means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Interpre-
tation

No *ex parte*
applications
for
injunctions

(2) Subject to subsection (7), no injunction to restrain a person from any act in connection with a labour dispute shall be granted *ex parte*.

Steps before
application
for
injunction

(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

Evidence

(4) Subject to subsection (7), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.

Notice of
application
for interim
injunction

(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection (7), only after two days notice of the application therefor has been given to the person or persons named in the application.

Idem

(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,

- (a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and
- (b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

Idem

(7) Where notice as required by subsections (5) and (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction; and

- (b) notice as required by subsections (5) and (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 87 of the *Labour Relations Act*, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by *viva voce* evidence.

R.S.O. 1980,
c. 228

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

Misrepresentation
as contempt
of court

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal. R.S.O. 1970, c. 228, s. 20.

Appeal

21. Where the court has jurisdiction to entertain an application for an injunction against a breach of a covenant, contract or agreement, or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the court directs, or the court may grant such other relief as is considered just. R.S.O. 1970, c. 228, s. 21.

Damages,
etc.

22. The court has power to relieve against all penalties and forfeitures, and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters, as are considered just. R.S.O. 1970, c. 228, s. 22.

Relief
against
penalties,
etc.

23.—(1) In any action in which the Attorney General for Canada or the Attorney General for Ontario is a party plaintiff and the other attorney general is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any Act of the

Jurisdiction
as to validity
of statutes

Legislature or any Act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief be prayed or sought. R.S.O. 1970, c. 228, s. 23 (1); 1972, c. 1, s. 9 (7).

Appeal

(2) The judgment in any such action is subject to appeal as in ordinary cases. R.S.O. 1970, c. 228, s. 23 (2).

Stay of proceedings if action for same cause is pending out of Ontario

24. Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the court may make an order staying proceedings in the Supreme Court until satisfactory proof is offered to the court that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. R.S.O. 1970, c. 228, s. 24.

Rules of equity prevail

25. In questions relating to the custody and education of minors and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail. R.S.O. 1970, c. 228, s. 25.

Sections 18 to 25 apply to all courts

26. Sections 18 to 25 are in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts. R.S.O. 1970, c. 228, s. 26.

APPEALS

Certain orders not subject to appeal

27. No order of the High Court or of a judge thereof made with the consent of the parties is subject to appeal, and no order of the High Court or of a judge thereof as to costs only that by law are left to the discretion of the court is subject to appeal on the ground that the discretion was wrongly exercised or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the court or judge making the order. R.S.O. 1970, c. 228, s. 27.

Appeals to Court of Appeal

28.—(1) Except where it is otherwise provided by statute and subject to the rules regulating the terms and conditions on which appeals may be brought, an appeal lies to the Court of Appeal from,

(a) any final judgment or order of a judge of the High Court, whether at trial or otherwise; or

- (b) any judgment or order of the Divisional Court, with leave as provided by the rules, on any question that is not a question of fact alone. 1971, c. 57, s. 3, *part*; 1977, c. 51, s. 2.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature. Statutory appeals

(3) The Court of Appeal also has jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court. New trials

(4) Nothing in this section limits the generality of subsection 13 (1). R.S.O. 1970, c. 228, s. 29 (3-5). Generality of s. 13 (1) not affected

29.—(1) The court upon an appeal may give any judgment that ought to have been pronounced and may make such further or other order as is considered just. Court may pronounce proper judgment

(2) The court has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy. Power to draw inferences of fact and to give judgment

(3) The powers conferred by subsections (1) and (2) may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed. R.S.O. 1970, c. 228, s. 30. Where appeal is against part only

30.—(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned. New trial not to be granted in certain cases

Judgment
as to one
part and
new trial
as to others

(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties. R.S.O. 1970, c. 228, s. 31.

New trial
may be
ordered
on any
question

31. A new trial may be ordered upon any question without interfering with the decision upon any other question. R.S.O. 1970, c. 228, s. 32.

Disagreement
of jury

32. Where the jury disagrees or makes no finding on which judgment can be entered, the court may, on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment. R.S.O. 1970, c. 228, s. 33.

Power of
judge of
Court of
Appeal

33. In any cause or matter pending before the Court of Appeal, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Court of Appeal. R.S.O. 1970, c. 228, s. 34.

Decisions
may be
referred to
Court of
Appeal

34.—(1) If a judge considers a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to the Court of Appeal.

Procedure

(2) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal. R.S.O. 1970, c. 228, s. 35.

CONSTITUTIONAL QUESTIONS

Notice to
be given
before Act
declared
invalid

35.—(1) Where in an action or other proceeding the constitutional validity of any Act or enactment of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Attorney General for Ontario. R.S.O. 1970, c. 228, s. 36 (1); 1972, c. 1, s. 9 (7).

Form of
notice

(2) The notice shall state what Act or part of an Act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument. R.S.O. 1970, c. 228, s. 36 (2, 3). Six days notice

(4) The Attorney General for Canada and the Attorney General for Ontario are entitled as of right to be heard either in person or by counsel notwithstanding that the Crown is not a party to the action or proceeding. R.S.O. 1970, c. 228, s. 36 (4); 1972, c. 1, s. 9 (7). Right of Attorneys General to be heard

(5) Where in an action or proceeding to which this section applies the Attorney General for Canada or the Attorney General for Ontario appears in person or by counsel, each shall be deemed to be a party to the action or proceeding for the purpose of an appeal from any adjudication as to the constitutional validity of any Act or enactment in question in the action or proceeding and each has the same rights with respect to an appeal as any other party to the action or proceeding. R.S.O. 1970, c. 228, s. 36 (5); 1972, c. 1, s. 9 (7). Right of Attorneys General to appeal

INTEREST

36.—(1) In this section, “prime rate” means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada. Prime rate defined

(2) For the purposes of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication. Idem

(3) Subject to subsection (6), a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon, Prejudgment interest

(a) at the prime rate existing for the month preceding the month on which the action was commenced; and

(b) calculated,

(i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of the judgment, or

(ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim

to the person liable therefor to the date of the judgment.

Special damages

(4) Where the judgment includes an amount for special damages, the interest calculated under subsection (3) shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in subclause (3) (b) (ii) and at the date of the judgment.

Exclusions

(5) Interest under this section shall not be awarded,

- (a) on exemplary or punitive damages;
- (b) on interest accruing under this section;
- (c) on an award of costs in the action;
- (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;
- (e) except by consent of the judgment debtor, where the judgment is given on consent; or
- (f) where interest is payable by a right other than under this section.

Discretion of judge

(6) The judge may, where he considers it to be just to do so in all the circumstances,

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) allow interest under this section for a period other than that provided,

in respect of the whole or any part of the amount for which judgment is given. 1977, c. 51, s. 3 (1), *part*.

Application of section

(7) This section applies to the payment of money under judgments delivered on or after the 25th day of November, 1977, but no interest shall be awarded under this section for a period before that date. 1977, c. 51, s. 3 (2).

Interest on judgments

37.—(1) A verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, at the prime rate established in the same manner as for the purposes of section 36, notwithstanding that the entry of judg-

ment has been suspended by a proceeding in the action, including an appeal.

(2) The judge may, where he considers it to be just to do so in all the circumstances, Discretion of judge

- (a) disallow interest under this section;
- (b) fix a rate of interest higher or lower than the prime rate;
- (c) fix a date other than the date of judgment from which interest is to run,

in respect of the whole or any part of the amount for which judgment is given. 1979, c. 65, s. 4 (1).

(3) This section does not apply to a verdict rendered or judgment given before the 22nd day of June, 1979. 1979, c. 65, s. 4 (2). Application of section

CERTIFICATE OF LIS PENDENS

38.—(1) The institution of an action or the taking of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the action or proceeding to any person not a party to it until, where the land is registered under the *Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the proper officer of the court, has been registered in the land registry office of the registry division in which the land is situate. Action, etc., not notice unless caution or certificate registered R.S.O. 1980, c. 230

(2) The certificate may be in the following form: Form

I certify that in an action or proceeding in the Supreme Court of Ontario between *A.B.*, of.....and *C.D.*, of....., some title or interest is called in question in the following land: (*describing it*).

Dated at (*stating place and date*).

(3) Subsection (1) does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or to enforce a lien under the *Mechanics' Lien Act*. R.S.O. 1970, c. 228, s. 41. Exception R.S.O. 1980, c. 261

(4) Any person who registers a certificate or caution referred to in subsection (1) without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration. Liability for unsubstantiated claim

(5) The liability for damages under subsection (4) and the amount thereof may be determined in an action commenced therefor in the court in which the certificate is issued or by Recovery of damages

application in the proceeding for an order to vacate the caution or certificate or in the action or proceeding in which the question of title to or interest in the land is determined. 1977, c. 51, s. 4 (1).

Application

(6) Subsections (4) and (5) do not apply in respect of cautions or certificates registered before the 25th day of November, 1977. 1977, c. 51, s. 4 (2).

Order
vacating
caution or
certificate

39.—(1) Where a caution or certificate has been registered and the plaintiff or other party at whose instance it was issued does not in good faith prosecute the action or proceeding, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate. R.S.O. 1970, c. 228, s. 42 (1); 1974, c. 81, s. 2.

Where land,
etc., not
claimed

(2) Where a caution or certificate has been registered and the plaintiff's claim is not solely to recover land or an estate or interest in land but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a judge of the court in which the action or proceeding was commenced may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as is considered just. R.S.O. 1970, c. 228, s. 42 (2); 1977, c. 51, s. 5 (1).

Upon other
grounds

(3) A judge of the court in which the action or proceeding was commenced may at any time vacate the registration upon any other ground that is considered just. R.S.O. 1970, c. 228, s. 42 (3); 1977, c. 51, s. 5 (2).

Costs

(4) On an application under this section, the judge may order any of the parties to it to pay the costs of any of the other parties to it, or may make any other order with respect to costs that under all the circumstances is considered just. R.S.O. 1970, c. 228, s. 42 (4).

Appeal and
registration

(5) The order vacating a caution or certificate is subject to appeal according to the practice in like cases and may be registered in the same manner as a judgment affecting land, except that the judge granting the order may order a stay of the registration for the purposes of the appeal. 1977, c. 51, s. 5 (3).

Effect

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not

incumbent on any purchaser or mortgagee to inquire as to the allegations in the action or proceeding, and his rights are not affected by his being aware of such allegations. R.S.O. 1970, c. 228, s. 42 (6).

(7) The jurisdiction of a judge of the High Court under this section and section 38 may be exercised by a local judge of the High Court. 1977, c. 51, s. 5 (4). Jurisdiction of local judge

APPELLATE COURTS

40. In any cause or matter pending before the Divisional Court, any direction incidental to it not involving the decision of the appeal may be given by a judge of that court, and a judge of that court may, during vacation, make any interim order that he thinks fit to prevent prejudice to the claim of any of the parties pending an appeal, but every such order is subject to appeal to the Divisional Court. 1976, c. 16, s. 3. Power of judge of Divisional Court

41.—(1) Except where otherwise provided, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together, and always before an uneven number of justices. Hearing of appeals

(2) An appeal to the Court of Appeal from an interlocutory order for corollary relief under the *Divorce Act* (Canada) may be heard without leave before one justice of appeal sitting alone. Exception R.S.C. 1970, c. D-8

(3) The Court of Appeal may sit in one division or in two or more divisions as the Chief Justice of Ontario directs from time to time. Divisions

(4) The justices to sit from time to time and the appeals to be heard shall be determined by the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 43. C.J.O. to determine

42.—(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court. C.J.O. may assign certain work

(2) Whenever occasion requires, a judge who is not a member of the Court of Appeal may sit in the place of a judge of the Court of Appeal. Ad hoc judges of Court of Appeal

(3) Subsection (2) applies where a vacancy occurs in the Court of Appeal by death or resignation of a judge or otherwise, until his successor is appointed. When judges of one court may sit in another

(4) A judge who sits in the place of a judge of the Court of Appeal shall be conclusively deemed to have Right of judge who sits in place of another not to be questioned

been entitled and qualified to so sit within the meaning of subsections (2) and (3).

Judge may give judgment after ceasing to be judge of the Court of Appeal

(5) A judge who has sat in the Court of Appeal on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that court.

Judge not to hear appeal from his own judgment

(6) A judge shall not sit on the hearing of an appeal from a judgment or order made by himself. R.S.O. 1970, c. 228, s. 44.

C.J.O. and justices of appeal not to be assigned certain work without consent

43. Except as provided in section 42, neither the Chief Justice of Ontario nor any of the justices of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal. R.S.O. 1970, c. 228, s. 45.

Presiding judge

44. The Chief Justice of Ontario, when present, shall preside and, in his absence, the senior justice present shall preside. R.S.O. 1970, c. 228, s. 46.

HIGH COURT

Business to be disposed of by one judge

45.—(1) Every action and proceeding in the High Court and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a judge, and where he sits in court, he constitutes the court.

Judge not to reserve questions

(2) Subject to section 34, a judge of the High Court shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal.

Arrangements for holding of courts

(3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court, or the arrangement from time to time of judges to hold such courts, or to transact such business, shall be made by the judges of that branch, with power in the Chief Justice of the High Court to make such readjustment or reassignment as is necessary from time to time. R.S.O. 1970, c. 228, s. 47.

DIVISIONAL COURT

Hearings of Divisional Court

46.—(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of before three judges thereof sitting together of whom one shall be the Chief Justice of the High Court or a judge of the High Court designated by him, and the sitting shall be presided over by the Chief Justice of the High Court or his designee. R.S.O. 1970, c. 228, s. 48(1).

(2) A proceeding in the Divisional Court may be heard, Judge sitting singly determined and disposed of by a judge of the Divisional Court sitting singly where the proceeding,

(a) is an appeal under clause 17 (c); or

(b) is in a matter that the Chief Justice of the High Court or a judge designated by him is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard by a judge sitting singly.
1979, c. 65, s. 5.

(3) The Divisional Court may sit in two or more sections Sections as the Chief Justice of the High Court may direct from time to time.

(4) In accordance with the rules, sittings of the Divisional Court shall be held in Toronto continuously, except during vacations and holidays, and shall be held in London, Ottawa, Sudbury, Sault Ste. Marie and Thunder Bay at such times as the Chief Justice of the High Court may fix for the expeditious dispatch of the matters set down for hearing at those places. Time and place of sittings

(5) A judge of the Divisional Court shall not sit as a member of the Divisional Court considering an appeal from his own decision. Judge not to sit on own appeal R.S.O. 1970, c. 228, s. 48 (2-4).

WEEKLY COURTS

47.—(1) Sittings of the High Court shall be held in accordance with the rules of court at Ottawa and London on at least one day in each alternate week, except during vacation. Ottawa and London

(2) Nothing in subsection (1) affects any other sittings of the High Court. Elsewhere R.S.O. 1970, c. 228, s. 49.

TRIAL SITTINGS

48.—(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil causes, matters and issues and for the trial of criminal matters and proceedings. Sittings for trials

(2) Separate sittings may be held for the trial of civil causes, matters and issues that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings. Separate sittings may be held

(3) Sittings may be held concurrently or separately as may be directed by the judges appointing the days therefor or by the judges presiding at the sittings. Sittings may be held concurrently

Jury cases
to be tried
first

(4) Subject to the rules, where a sittings is held for the trial of civil causes, matters and issues that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

Sittings
to be held
in court
house

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge may direct.

Two sittings
yearly in
each county

(6) Subject to the rules, at least two sittings shall be held in each year in and for every county, and additional sittings shall be provided when necessary for the due dispatch of business. R.S.O. 1970, c. 228, s. 50.

Who may
preside

49.—(1) Every such sittings shall be presided over by one of the judges of the Supreme Court, or, on the request in writing of a judge of the Supreme Court, by a retired judge of that court, or by a judge of a county court, or by one of Her Majesty's counsel learned in the law appointed for Ontario.

Powers of
presiding
judge

(2) Such judge or counsel while holding the sittings possesses and enjoys and may exercise all the powers and authorities of a judge of the High Court, and in civil proceedings may reserve the giving of his decision on questions raised at the trial and afterwards give the same, and such decisions have the like force and effect as the decision of a judge of the High Court. R.S.O. 1970, c. 228, s. 51.

Non-arrival
of judge

50. Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 6 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge or from the Chief Justice of the High Court are received. R.S.O. 1970, c. 228, s. 52.

Hours of
sittings

51.—(1) No sittings shall begin on any day before 9 o'clock in the forenoon, nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon.

Non-
observance
of hours

(2) Failure to observe any of the provisions of subsection (1) does not render the trial or other proceedings void. R.S.O. 1970, c. 228, s. 53.

52. Non-jury actions to be tried in any county, except the Judicial District of York or the Judicial District of York Region, may be entered for trial at any sittings of the High Court in such county. R.S.O. 1970, c. 228, s. 54.

Entering
non-jury
actions
for trial

53.—(1) A commission of assize or any other commission, either general or special, may be issued by the Lieutenant Governor in Council assigning to the person therein named the duty of trying and determining within any place or district named for that purpose by the commission, any cause or matter, or any question or issue of fact or of law or partly of fact and partly of law, in any cause or matter depending in the Supreme Court, or for the exercise of any civil or criminal jurisdiction capable of being exercised by the court.

Commissions
of assize
and other
commissions

(2) A commissioner, when exercising any jurisdiction so assigned to him, shall be deemed to constitute the court. R.S.O. 1970, c. 228, s. 55.

Commis-
sioner to
be a court

ACTIONS ON QUEBEC JUDGMENTS

54. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service on the defendant or party sued was personal, no defence that might have been set up to the original action may be made to the action on the judgment. R.S.O. 1970, c. 228, s. 56.

Action on
Quebec
judgment
where
service
personal

55. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made, any defence that might have been set up to the original action may be made to the action on the judgment. R.S.O. 1970, c. 228, s. 57.

Action on
Quebec
judgment
where
service not
personal

56.—(1) Where an action is brought on a judgment obtained in the Province of Quebec, the costs incurred in obtaining the judgment in that Province are not recoverable without the order of a judge directing their allowance.

Costs

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred, nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim. R.S.O. 1970, c. 228, s. 58.

Conditions
under which
order may
be made

MANNER AND PLACE OF TRIAL

57. Actions of libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury, unless the parties in person or by their solicitors or counsel waive such trial. R.S.O. 1970, c. 228, s. 59; 1978, c. 2, s. 69 (6).

Certain
actions to
be tried
by a jury

Certain actions to be tried without a jury

58. Actions against a municipal corporation or a board of trustees of a police village for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county that constitutes the municipality or in which the municipality or police village is situate. R.S.O. 1970, c. 228, s. 60.

Issues of fact to be tried without jury

59.—(1) Subject to the rules and except where otherwise expressly provided by this Act, all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

Judge may direct trial by jury

(2) The judge may nevertheless direct that the issues or any of them be tried and the damages be assessed by a jury. R.S.O. 1970, c. 228, s. 61.

Jury notice

60.—(1) Subject to the rules, if a party desires that the issues of fact be tried or the damages be assessed by a jury, he may, at any stage of the proceedings, but not later than the fourth day after the close of the pleadings, or, if notice of trial or assessment is served before that time, within two days after service of such notice or within such other time as is allowed by a judge, file and serve on the opposite party a notice in writing requiring that the issues be tried or the damages be assessed by a jury, and if such notice is given, subject to subsection (3), they shall be tried or assessed accordingly.

Copy of notice

(2) A copy of the notice shall be attached to the certified copy of the pleadings prepared for use at the trial.

Jury may be dispensed with

(3) Notwithstanding the giving of the notice, the issues of fact may be tried or the damages may be assessed without the intervention of a jury if the judge presiding at the sittings so directs or if it is so ordered by a judge.

Subs. (1) not to apply to certain causes, etc.

36 V., c. 8

(4) Subsection (1) does not apply to causes, matters or issues over the subject of which the Court of Chancery had exclusive jurisdiction before the commencement of *The Administration of Justice Act of 1873*. R.S.O. 1970, c. 228, s. 62.

Effect of agreement, etc., as to place of trial

61.—(1) Subject to subsection (2), no proviso, condition, stipulation, agreement or statement that provides for the place of trial of an action, matter or other proceeding is of any force or effect.

Motion by defendant to change venue

(2) Subsection (1) does not apply unless and until the defendant moves to change the place of trial. R.S.O. 1970, c. 228, s. 63.

JURY TRIALS

62.—(1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors.

Agreement of five jurors to be sufficient

(2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer. R.S.O. 1970, c. 228, s. 64.

Not necessary for same five jurors to agree to all answers

63. If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he considers just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous. R.S.O. 1970, c. 228, s. 65.

Death or illness of juror or discovery of interest during trial

64.—(1) In the absence of a direction to the contrary of the judge, a jury may give a general or special verdict, but shall give a special verdict if he so directs and shall not give a general verdict if directed by him not to do so.

General or special verdicts

(2) This section does not apply to actions of libel. R.S.O. 1970, c. 228, s. 66.

Exception

65.—(1) Upon a trial by jury, except in an action of libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him, and the jury shall answer such questions, and shall not give any verdict.

Answers to questions

(2) In an action, tried by a judge and jury, to which subsection 167 (1) of the *Highway Traffic Act* applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought.

Negligent acts specified by jury
R.S.O. 1980, c. 198

(3) Judgment may be directed to be entered on the answers to such questions. R.S.O. 1970, c. 228, s. 67.

Judgment

66. In actions of malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution. R.S.O. 1970, c. 228, s. 68.

Malicious prosecution actions

Interpre-
tation

67.—(1) In this section,

- (a) “judge” means the person presiding at a judicial proceeding;
- (b) “judicial proceeding” means a proceeding of a court of record;
- (c) “precincts of the building” means the space enclosed by the walls of the building.

Prohibition
against
photography,
etc., at
judicial
proceedings

(2) Subject to subsection (3), no person shall,

- (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
 - (i) at a judicial proceeding, or
 - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
 - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or
- (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause (a).

Exceptions

(3) Subsection (2) does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
- (b) in connection with any investive, ceremonial, naturalization or similar proceedings; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.

Offence

(4) Every person who is in contravention of this section is guilty of an offence and on conviction is liable to a

fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. 1974, c. 81, s. 3.

QUASHING CONVICTIONS, ETC.

68.—(1) Where it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by motion in the first instance instead of by certiorari, rule or order nisi. Motion substituted for certiorari, etc.

(2) Notice of the motion shall be served at least six days before the return day thereof upon the provincial judge or justice of the peace making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant, if any, and upon the clerk of the peace if the proceedings have been returned to his office, and the notice shall specify the objections intended to be raised. Service of notice of motion

(3) Upon the notice of motion shall be endorsed a copy of subsection (4) and a notice in the following form, addressed to the provincial judge or justice of the peace, coroner, or clerk of the peace, as the case may be: Endorsement on notice of motion

You are hereby required forthwith after service hereof to return to the office of the Registrar of the Supreme Court at Toronto, the conviction (*or as the case may be*) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and entirely as they remain in your custody, together with this notice.

Dated

To A.B.

Provincial Judge (*or as the case may be*).

C.D.

Solicitor for the Applicant.

(4) Upon receiving the notice so endorsed, the provincial judge, justice of the peace, coroner or clerk of the peace shall forthwith return to the office of the Registrar of the Supreme Court at Toronto, the conviction, order, warrant or inquisition, and the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed upon it in the following form: Return by provincial judge, etc.

Pursuant to the within notice I herewith return to this Honourable Court the following papers and documents:

1. The conviction (*or as the case may be*).
2. The information and the warrant issued thereon.

3. The evidence taken at the hearing.

4. (*Any other papers or documents touching the matter*).

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in this notice of motion.

Effect of certificate

(5) The certificate has the same effect as a return to a writ of certiorari or to an order under the rules. R.S.O. 1970, c. 228, s. 69 (1-5).

Where notice returnable

(6) The notice is returnable before a judge of the High Court. R.S.O. 1970, c. 228, s. 69 (6); 1977, c. 51, s. 6.

Limitations

(7) The motion shall not be entertained unless,

(a) the return day thereof is within six months after the conviction, order, warrant or inquisition; and

(b) the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a provincial judge of the county in which the conviction, order or inquisition was made or the warrant was issued, or before a judge of the county court of that county or before a judge of the High Court, conditioned that the applicant will prosecute the application at his own costs and charges without any wilful or affected delay and that he will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the court in case the conviction, order or other proceeding is affirmed, or has paid into court the like sum as security that he will do so.

Recognizance to be filed

(8) The recognizance, with an affidavit of its due execution, shall be filed in the office of the Registrar of the Supreme Court.

Powers of judge

(9) The judge has all the powers of the court in the like matters and may order the production of such papers and documents as he considers necessary.

No appeal without leave

(10) No appeal from the order of the judge lies unless leave is granted by a judge of the High Court. R.S.O. 1970, c. 228, s. 69 (7-10).

69. Upon a motion to quash a conviction, it is the duty of the judge to examine and consider the proceedings returned to the court and, if such proceedings show that the person accused has been convicted of any offence known to the law and that there is any evidence to sustain the conviction, the conviction shall be affirmed, but otherwise the conviction shall be quashed, provided that if the evidence returned shows that the accused is guilty of an offence against the law, or that the conviction, though irregular, ought to be amended or drawn so as to duly describe the offence, the conviction shall be affirmed or amended as justice requires. R.S.O. 1970, c. 228, s. 70.

Review of proceedings on motion to quash conviction

REFERENCES TO REFEREES

70.—(1) Subject to the rules and to a right to have particular cases tried by a jury, a judge of the High Court may refer a question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties.

Reference for inquiry and report

(2) Subsection (1) does not, unless with the consent of the Crown, authorize the reference to an official referee of an action to which the Crown is a party or of a question or issue therein. R.S.O. 1970, c. 228, s. 71.

Where Crown interested

71. In an action,

- (a) if all the parties interested who are not under disability consent, and, where there are parties under disability, the judge is of opinion that the reference should be made and the other parties interested consent; or
- (b) where a prolonged examination of documents or a scientific or local investigation is required that cannot, in the opinion of a court or a judge, conveniently be made before a jury or conducted by the court directly; or
- (c) where the question in dispute consists wholly or partly of matters of account,

Power to refer in certain cases

a judge of the High Court may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. R.S.O. 1970, c. 228; s. 72.

Reference of
boundary
line question
to surveyor

72.—(1) If it appears in any action that a material question to be determined is the true definition of a boundary line, the question may be referred to a special referee who is an Ontario land surveyor.

Proceedings
R.S.O. 1980,
c. 493

(2) The referee shall, by a proper survey as directed by the *Surveys Act*, and upon hearing the evidence adduced by the parties and their counsel, if any, define upon the ground by such posts and monuments as he considers sufficient the true boundary or division line so in dispute.

Report

(3) The referee shall make a report to the court and shall therein set forth his mode of procedure and what he has done in the premises, and also such further or other facts and circumstances as are necessary to enable the court finally to determine the question and how the costs should be borne. R.S.O. 1970, c. 228, s. 73.

Special
referee,
status

73.—(1) In the case of a reference to a special referee, he shall be deemed to be an officer of the Supreme Court.

remunera-
tion

(2) The remuneration to be paid to a special referee may be determined by a judge of the High Court.

scale of
remunera-
tion

(3) The remuneration, fees, charges and disbursements payable to an official referee, and, in the absence of any special direction, to a special referee, shall be the same as are payable to a local master.

Where no
fees
payable

(4) Where the judge at the trial instead of trying an action refers the whole action under section 71 to an official referee who is a local registrar or deputy registrar, a local master or other officer of the court, paid wholly or partly by salary, no fees shall be charged by the referee. R.S.O. 1970, c. 228, s. 74.

Referee's
report

74. The referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to the Court of Appeal, except that, where a whole action has been referred under section 71, the appeal from the report lies direct to the Court of Appeal. R.S.O. 1970, c. 228, s. 75.

Transmission
of evidence
and exhibits

75. The evidence of witnesses examined upon the reference and the exhibits shall forthwith after the making of the report be transmitted by the referee to the proper officer of the court. R.S.O. 1970, c. 228, s. 76.

SURETY BONDS

76.—(1) In this section, “surety company” means a corporation empowered to give bonds by way of indemnity. Interpretation

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice. Bonds of company may be taken as security

(3) Every order in council made under subsection (2) shall be published forthwith in *The Ontario Gazette* and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session. Order in council to be published and tabled

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary. Other surety or affidavit of justification not required

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient. Disallowance of bond on motion
R.S.O. 1970, c. 228, s. 77.

PHYSICAL EXAMINATION OF PARTIES

77.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of the damages or compensation, may order that the person in respect of whose injury damages or compensation are sought submit himself to a physical examination by a legally qualified medical practitioner or by more than one legally qualified medical practitioners, but no medical practitioner who is a witness on either side shall be appointed to make the examination. Where examination may be ordered

(2) Any legally qualified medical practitioner may in connection with an examination under subsection (1) ask the person being examined any questions that may be relevant to the purpose of the examination. Examiners may ask questions

Admissibility
of answers

(3) Any answer given or statement made by a person being examined during an examination under subsection (1) that is relevant to the purpose of the examination is admissible in evidence.

Presence
of others

(4) No person, other than the person being examined and the one or more medical practitioners making the examination, shall be present during the examination except with the consent of the parties or as may be ordered by the court, judge or other person who ordered the examination.

(5) The court, judge or other person may order a second examination or further examinations upon such terms as to costs as are considered proper.

Medical
practitioner
to be
selected by
judge and
may be a
witness

(6) Every such medical practitioner shall be selected by the court, judge or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs. R.S.O. 1970, c. 228, s. 78 (1-6).

Interpre-
tation

R.S.O. 1980,
c. 196

(7) In this section, "legally qualified medical practitioner" includes a person licensed to practise dentistry under Part II of the *Health Disciplines Act*. R.S.O. 1970, c. 228, s. 78 (7); 1974, c. 47, s. 44 (3).

TENDER OF AMENDS IN TORT ACTIONS

Tender of
amends in
tort cases

78. A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends, and the tender has the same effect as a tender in an action for the recovery of a debt. R.S.O. 1970, c. 228, s. 79.

VESTING ORDERS

Vesting
orders,
effect

79. Where the court has authority to direct the sale of any real or personal property or to order the execution of a deed, conveyance, transfer or assignment of any real or personal property, the court may by order vest the property in such person and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and the order has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the property is so ordered to be vested or, in the case of a chose in action, as if it had been actually assigned to the last-mentioned person. R.S.O. 1970, c. 228, s. 80.

COSTS

80.—(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and to what extent the costs shall be paid. Determination of costs

(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund. Rights of trustees, etc., preserved

(3) Where an action or issue is tried by a jury, the costs shall follow the event, unless the judge before whom the action or issue is tried in his discretion otherwise orders. Where costs to follow the event

(4) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal. R.S.O. 1970, c. 228, s. 82 (1-4). In proceedings before judicial officers

(5) In any proceeding to which Her Majesty is a party, either as represented by the Attorney General for Ontario or otherwise, costs adjudged to Her Majesty shall not be disallowed or reduced upon taxation merely because the solicitor or the 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, and the costs recovered by or on behalf of Her Majesty in any such case shall be paid into the Consolidated Revenue Fund. R.S.O. 1970, c. 228, s. 82 (5); 1972, c. 1, s. 9 (7). Crown costs

PROCEDURE ON APPEALS

81. Subject as to appeals under Part VIII of the *Election Act* to that Act, and as to appeals and applications for new trials under the *Criminal Code* (Canada) to that Act, the practice and procedure upon appeals to the Court of Appeal shall be that provided by the rules. R.S.O. 1970, c. 228, s. 83. Practice and procedure on appeals
R.S.O. 1980, c. 133
R.S.C. 1970, c. C-34

EXCLUSION OF PUBLIC

82. When the judge presiding at the hearing or trial of a cause or matter deems it to be in the interest of Excluding public from court

public decency and morals, he may order that the public be excluded from the court. R.S.O. 1970, c. 228, s. 84.

OFFICES AND OFFICERS

Officers of
Supreme
Court

83.—(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers, subject to section 104 as to special examiners, shall be appointed by the Lieutenant Governor in Council.

Duties

(2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers. R.S.O. 1970, c. 228, s. 85 (1, 2).

Oath of
officers

84.—(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

I,....., of.....solemnly swear that I will according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of.....without favour or affection, prejudice or partiality to any person. So help me God.

Administra-
tion of oath

(2) The oath shall be administered by a judge in court.

Exception

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, and in every such case the judge shall forthwith transmit the oath to and it shall be filed in the office of the Registrar of the Supreme Court at Toronto. R.S.O. 1970, c. 228, s. 86.

Appointment
of deputies
by local
registrars,
etc.

85. With the approval of the Lieutenant Governor in Council, every local officer of the Supreme Court, county court clerk, and surrogate registrar, may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment. R.S.O. 1970, c. 228, s. 87.

Vacancy in
office of
local
registrar,
etc.

86.—(1) In the event of the death, suspension, resignation, retirement or removal of a local registrar, county court clerk or surrogate registrar, the deputy local registrar, deputy county court clerk or deputy surrogate registrar,

as the case may be, is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be.

(2) Where there is no deputy local registrar, deputy ^{Idem} county court clerk or deputy surrogate registrar, in the absence of or in the event of the death, suspension, resignation, retirement or removal of the local registrar, county court clerk or surrogate registrar, as the case may be, the Crown attorney for the county is *pro tempore* the local registrar, county court clerk or surrogate registrar, as the case may be, until the suspension is terminated or another person has been appointed and has assumed the duties of the local registrar, county court clerk or surrogate registrar, as the case may be. R.S.O. 1970, c. 228, s. 88.

87.—(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled, and the fees payable in respect of proceedings in his office are payable to the Crown. Officers paid by salary not to take fees

(2) Subsection (1) does not apply to the fees of,

Exceptions

(a) a local registrar appointed before the 1st day of April, 1953, on an examination had before him as a special examiner or on a reference made to him as an official referee;

(b) a stenographic reporter for copies of shorthand notes of evidence, who is entitled to take the fees prescribed by order in council. R.S.O. 1970, c. 228, s. 89.

88.—(1) Every officer paid wholly or partly by fees, ^{Return of fees} whether commuted or not, shall on or before the 15th day of January in every year, transmit to the Inspector of Legal Offices a just, true and faithful account, verified by his oath, of the amount of fees paid or payable to him in respect of his office during the next preceding calendar year, and such other particulars with reference to the business of his office as the Inspector may require.

(2) The Lieutenant Governor in Council or the minister having charge of the matter may require the return to state any particulars, or to be made in any form that is ^{Form of return}

considered proper, and the return shall be made accordingly. R.S.O. 1970, c. 228, s. 90.

WHERE OFFICES TO BE KEPT

Certain officers to keep their offices at Osgoode Hall

89. The officers in Toronto, save the Official Guardian, special examiners, stenographic reporters and any official referee other than one holding that office *ex officio*, shall keep their offices at or adjacent to Osgoode Hall, in the City of Toronto. R.S.O. 1970, c. 228, s. 91.

Local master to keep office in court house

90. Unless otherwise directed by the Lieutenant Governor in Council, every local master shall keep his office in the court house of the county for which he is appointed. R.S.O. 1970, c. 228, s. 92.

Certain offices to be kept at court house

91. Every local registrar and every deputy registrar shall, if proper accommodation is afforded to him there, keep his office in the court house of the county for which he is appointed, and, until he can obtain such accommodation, he shall keep his office in some convenient place in the county town. R.S.O. 1970, c. 228, s. 93.

Holiday defined

92.—(1) In this section, “holiday” means,

(a) Saturday;

(b) Sunday;

(c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*. 1977, c. 51, s. 7.

R.S.O. 1980, c. 418

Office hours

(2) Except on holidays when they shall be closed, every local registrar’s office and the offices of the Supreme Court in Toronto 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. 228, s. 94 (2).

SECURITY FROM OFFICERS

Officers to give security if required

93.—(1) Every officer of the Supreme Court, if so required by the Lieutenant Governor in Council, shall give security to Her Majesty for the due performance of the duties of his office in such sum as the Lieutenant Governor in Council may direct.

Consequences of neglecting to do so

(2) The neglect to give such security renders the appointment of the officer void, but the forfeiture of office does not affect any act done by him while he continues to act. R.S.O. 1970, c. 228, s. 95.

SEALS

94.—(1) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct and they shall be impressed on every writ and other document issued out of such offices, and every such writ and document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof. Seals of local registrars and deputy registrars

(2) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used. Seals to be used R.S.O. 1970, c. 228, s. 96.

OFFICIAL REFEREES

95.—(1) Judges of county courts, masters, registrars, local masters, local registrars, and deputy registrars are official referees for the trial of such questions as are directed to be tried by an official referee. Official referees R.S.O. 1970, c. 228, s. 97 (1); 1975, c. 30, s. 3.

(2) Where the business requires additional official referees, the Lieutenant Governor in Council may appoint them. Additional referees

(3) Subject to subsection 73 (4), the fees on a reference or trial shall be paid in money. Fees of referees R.S.O. 1970, c. 228, s. 97 (2, 3).

MASTERS

96.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such masters of the Supreme Court as are considered necessary. Appointment of masters

(2) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if, Removal for cause

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

Inquiry

(3) For the purpose of making an inquiry under subsection (2), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Order for removal

(4) An order removing a master from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session. 1975, c. 30, s. 4, *part*.

Retirement

97.—(1) Every master shall retire upon attaining the age of sixty-five years.

Idem

(2) Notwithstanding subsection (1), a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

Reappointment

(3) Upon attaining an age for retirement under subsection (1) or (2), a master may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.

Resignation

(4) A master may at any time resign his office in writing, signed by him and delivered to the Attorney General. 1975, c. 30, s. 4, *part*.

Duties of Judicial Council for Provincial Judges

R.S.O. 1980,
c. 398

98. The Judicial Council for Provincial Judges established under the *Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges. 1975, c. 30, s. 4, *part*.

Senior Master

99.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a master as Senior Master.

Temporary appointments

(2) The Attorney General may designate masters to act in the place of the Senior Master for all purposes during his illness or absence.

Duties

(3) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and arranging and assigning masters for hearings as circumstances require. 1975, c. 30, s. 4, *part*.

100.—(1) The Lieutenant Governor in Council may make ^{Remuneration, etc.} regulations,

- (a) fixing the remuneration of masters;
- (b) providing for the benefits to which masters are entitled, including,
 - (i) leave of absence and vacations,
 - (ii) sick leave credits and payments in respect of such credits,
 - (iii) pension benefits for masters and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under the *Public Service Act* or the *Public Service Superannuation Act* at the time of their appointment under this Act.

R.S.O. 1980,
cc. 418, 419

(2) Subject to subsection (3), unless authorized by the ^{Other employment} Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a master.

(3) A master, with the previous consent of the Attorney ^{Idem} General, may act as arbitrator or conciliator.

(4) The *Public Authorities Protection Act* applies to masters ^{Application of R.S.O. 1980, c. 406} in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to masters under the law in respect of acts done in the execution of their duties. 1975, c. 30, s. 4, *part*.

101.—(1) The Lieutenant Governor in Council, on the ^{Local masters} recommendation of the Attorney General, may appoint such local masters as are considered necessary.

(2) Where a master or local master is not appointed in ^{Idem} respect of a county, the county court judge is and shall perform the duties and exercise the powers of local master.

(3) In the absence or inability to act of a local master ^{Idem} appointed under subsection (1), the county court judge may perform the duties and exercise the powers of the local master. 1975, c. 30, s. 4, *part*.

LOCAL REGISTRARS, EX OFFICIO

Clerks of district courts to be local registrars

102. Unless another person is appointed, the clerk of the district court is *ex officio* local registrar for his district. R.S.O. 1970, c. 228, s. 100.

STENOGRAPHIC REPORTERS

Stenographic reporters

103.—(1) The stenographic reporters are officers of the court to which they are appointed, and shall perform such other duties as are assigned to them by the Lieutenant Governor in Council or by the rules.

Reporter's oath

(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that court:

I,....., solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God.

R.S.O. 1970, c. 228, s. 101.

SPECIAL EXAMINERS

Ex officio special examiners

104.—(1) Every local registrar, deputy registrar and clerk of the county court is *ex officio* a special examiner for the county for which he is appointed.

Additional special examiners

(2) The Lieutenant Governor in Council may appoint additional special examiners.

Number in Toronto

(3) There shall be at least four special examiners in Toronto.

Examinations to be taken in presence of special examiner

(4) Where an examination is taken by a stenographer or other person who is not a special examiner, it shall be taken in the presence of the special examiner.

Examinations not to be solicited

(5) A special examiner shall not solicit or make request from any suitor, solicitor, or other person, or offer any inducement to have a special examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

Appointment of special examiners, *pro tem.*

(6) Where it appears to the Lieutenant Governor in Council that a local registrar, a deputy registrar, or a clerk of a county court, elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieuten-

ant Governor in Council may appoint the stenographic reporter for the county court or some other person to act temporarily or otherwise as such special examiner in his stead.

(7) In case of the absence on leave or illness of any other special examiner he may, with the approval of the Chief Justice of Ontario, appoint a deputy to act for him during such absence or illness. R.S.O. 1970, c. 228, s. 102.

Appointment
of deputy
by special
examiner

COMMUTATION OF FEES

105.—(1) The Lieutenant Governor in Council may commute the fees payable to an officer entitled to take fees to his own use for a fixed annual sum, not exceeding the average income derived from such fees during the next preceding five years.

Commutation
of fees of
certain
officers

(2) An annual sum so fixed and any order in council for payment of any such annual sum may be rescinded, and the amount may be increased or diminished, but in no case shall it exceed the average income or fees, as the case may be, during the next preceding five years. R.S.O. 1970, c. 228, s. 103.

Amount of
commutation
may be
changed

106.—(1) Every order in council determining a commutation allowance under this Act shall be laid before the Assembly forthwith, if the Assembly is then in session, and, if the Assembly is not then in session, within the first fifteen days after the opening of the next session.

Order in
council as
to commu-
tations to be
laid before
Assembly

(2) If the Assembly at such session, or, if the session does not continue for three weeks after the order in council is laid before the Assembly, then at the next ensuing session, disapproves by resolution of such order in council, either wholly or so far as relates to any person named in it, the order in council, so far as so disapproved, has no effect from the time of the passing of the resolution. R.S.O. 1970, c. 228, s. 104.

Disapproval
by Assembly

INSPECTOR OF LEGAL OFFICES

107.—(1) The Lieutenant Governor in Council may appoint an officer, to be called the Inspector of Legal Offices, to inspect the offices of the Supreme Court, of local courts, of Crown attorneys, and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct.

Inspector
of Legal
Offices

Assistant
Inspector

(2) The Lieutenant Governor in Council may appoint a barrister or solicitor to be the Assistant Inspector of Legal Offices, and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act. R.S.O. 1970, c. 228, s. 105.

Duties of
Inspector

108.—(1) In addition to any other duties assigned to him by any Act of the Legislature or by the Lieutenant Governor in Council, the Inspector shall,

- (a) make a personal inspection of the offices mentioned in subsection 107 (1) and of the books and court papers belonging to them;
- (b) see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times and in proper form and order, and that the court papers and documents are properly classified and preserved;
- (c) ascertain that the duties of the officers, other than masters, are duly and efficiently performed;
- (d) see that proper costs and charges only are allowed or exacted;
- (e) ascertain whether uniformity of practice prevails in the offices; and
- (f) report upon all such matters to the Lieutenant Governor. R.S.O. 1970, c. 228, s. 106 (1); 1975, c. 30, s. 5 (1).

Inquiries by
Inspector

(2) Where the Inspector has occasion to inquire into the conduct of any officer, other than a master, in relation to his official duties or acts, he may require the officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases. R.S.O. 1970, c. 228, s. 106 (2); 1975, c. 30, s. 5 (2).

Books, etc.,
to be
produced for
inspection

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by

them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires.

(4) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or district court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made, ^{Destruction of documents}

(a) in the Supreme Court by the Chief Justice of Ontario; and

(b) in the other courts, by the Chief Judge of the County and District Courts. R.S.O. 1970, c. 228, s. 106 (3, 4).

OFFICIAL GUARDIAN

109.—(1) No person shall be appointed Official Guardian unless he is a barrister and solicitor of Ontario of not less than ten years standing. ^{Qualification of Official Guardian}

(2) The Official Guardian shall be the guardian *ad litem* or next friend of minors and other persons in accordance with any Act or the rules or an order of a court or judge. ^{Duties}

(3) The same costs as are payable to counsel and solicitors are payable to the Official Guardian, but all costs paid to him shall be entered in his books of account or may be paid into court to the credit of an account entitled "Account of the Official Guardian". ^{Costs}

(4) Where an estate is small and the amount at the credit of the Account of the Official Guardian is adequate to pay his salary and the disbursements of his office, the court may direct that no costs be paid to him out of the estate. ^{Dispensing with payment of costs out of small estates}

(5) There shall be paid to the Official Guardian for all business done and all costs in respect of it over and above all disbursements, a fixed annual salary of such sum as, in view of the amount of the business done or to be done by him and the sum at the credit of the account, the finance committee considers reasonable and the Lieutenant Governor in Council approves. ^{Remuneration}

(6) The salary and disbursements shall be paid monthly out of the moneys that are appropriated by the Legis- ^{Salary and disbursements}

lature for that purpose and the Lieutenant Governor in Council may provide for the payment out of the moneys at the credit of the account into the Consolidated Revenue Fund of amounts equal to such salary and disbursements.

Idem

(7) Out of the surplus at the credit of the account shall be transferred to the Suitors Fee Fund Account such amount as the finance committee may direct.

Deficiency

(8) If in any year the amount at the credit of the account is insufficient to pay the salary and disbursements, the deficiency shall be paid out of such reserve funds as the finance committee may direct.

Deputy or deputies

(9) The Lieutenant Governor in Council may appoint one or two persons to act as the deputy or the deputies, as the case may be, of the Official Guardian during his absence or illness, and while so acting each such deputy has all the powers and may perform any of the duties of the Official Guardian. R.S.O. 1970, c. 228, s. 107 (1-9).

When Attorney General to act

(10) If the office of Official Guardian becomes vacant, the Attorney General is *ex officio* Official Guardian until another appointment is made. R.S.O. 1970, c. 228, s. 107 (10); 1972, c. 1, s. 9 (7).

Agents

(11) The Official Guardian may retain solicitors out of Toronto as agents for the purpose of any proceeding being carried on out of Toronto, and a solicitor so retained is entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the Official Guardian and the agent's fees and disbursements shall be paid by the Official Guardian and shall be deemed a disbursement of the Official Guardian.

Audit

(12) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian.

Official Guardian not to practise law, etc.

(13) If the Lieutenant Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter of conveyancing or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this Act.

Penalty

(14) For every contravention of subsection (13), the Official Guardian shall incur a penalty of \$400.

(15) Unless otherwise ordered by the court or a judge, the Official Guardian shall not be required to give security for the cost of any proceeding. Official Guardian not to give security for costs

(16) When a new Official Guardian is appointed, he *ipso facto* becomes and is by virtue of his appointment guardian *ad litem* of all minors in the place and stead of his predecessor with the same rights, duties and powers, and the latter or his executors or administrators shall forthwith deliver to the new Official Guardian all letters, papers, documents and books in his or their possession or power relating to matters in which such predecessor acted as official or other guardian *ad litem* of minors, and the new Official Guardian shall forthwith notify all persons concerned of his appointment. R.S.O. 1970, c. 228, s. 107 (11-16). New Official Guardian

ACCOUNTANT

110.—(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation sole has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts. Accountant a corporation sole

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act. Money, mortgages, etc., to be vested in Accountant

(3) Where there is a vacancy in the office of Accountant, such officer or person as is directed by the rules to perform the duties of the office shall be deemed to be and have all the powers of the Accountant. Where there is no Accountant

(4) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court into the Consolidated Revenue Fund of amounts equal to such expenses, and such amounts are the first charge on the income from the funds in court. R.S.O. 1970, c. 228, s. 108. Expenses of Accountant's office

INVESTMENT OF COURT FUNDS

111.—(1) The finance committee shall continue to be composed of three persons who shall be appointed by and Finance committee

hold office during the pleasure of the Lieutenant Governor in Council, and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money.

Interest (2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid.

Reserve funds (3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.

Investment of court funds (4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 109 (1-4).

Investment of money (5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Economics may invest public money under section 3 of the *Financial Administration Act*. R.S.O. 1970, c. 228, s. 109 (5); 1972, c. 3, s. 17 (1); 1975 (2nd Sess.), c. 1, s. 1.

R.S.O. 1980,
c. 161

Debentures invested in not open question (6) Where an investment in debentures of a municipal corporation is made, the validity of the debentures is not thereafter open to question but they shall be deemed to be valid.

Trust company may be employed (7) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed.

Investment of court funds (8) When an amount exceeding \$50,000 is in court to the credit of an account for investment, the Accountant may, if so directed by the finance committee, notwithstanding any order for payment out of court, withhold payment for three months to enable him to realize upon the securities in which money in court is invested. R.S.O. 1970, c. 228, s. 109 (6-8).

Money, etc., vested in Accountant, Guardian, etc., to be deemed to be held in trust for Crown **112.** All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for Her Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment,

or order of court, or order of the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 110.

113. Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul. R.S.O. 1970, c. 228, s. 111.

Payment of moneys to which foreigners are entitled

114. The Suitors Fee Fund Account shall be kept and managed by the finance committee, and the Court of Appeal or any judge of the Supreme Court may with the approval of the finance committee apply so much of the money at the credit of the account as may be necessary for the protection of any minor or other person not *sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the court, or may be ordered to be had in another court, and the finance committee may also, from time to time, order to be paid out of the money at the credit of the account any sum required to make good a default in respect of any suitor's money or securities from any mistake, act or omission of any officer of the court, but such payment does not prejudice the right to require the officer or his sureties to make good the loss occasioned by the mistake, act or omission. R.S.O. 1970, c. 228, s. 112.

Suitors Fee Fund

115. The Provincial Auditor shall examine and report upon the accounts and financial transactions of The Accountant of the Supreme Court of Ontario. R.S.O. 1970, c. 228, s. 113.

Audit

RULES

116.—(1) The Rules Committee shall continue to be composed of,

Rules Committee

- (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;
- (b) the Chief Judge of the County and District Courts;
- (c) two county or district court judges who shall be appointed by the Attorney General;
- (d) the Attorney General or such law officer of the Crown as he may from time to time appoint;

- (e) the Senior Master;
- (f) the Registrar of the Supreme Court;
- (g) three barristers or solicitors who shall be appointed by the Benchers of the Law Society of Upper Canada in convocation; and
- (h) such other barristers or solicitors, not exceeding three at any one time, as may be appointed by the Chief Justice of Ontario. R.S.O. 1970, c. 228, s. 114 (1); 1972, c. 1, s. 9 (7); 1975, c. 30, s. 6 (1); 1979, c. 65, s. 6 (1, 2).

Chairman (2) The Chief Justice of Ontario is the chairman of the Rules Committee, but, in his absence or at his request, the Chief Justice of the High Court shall preside. R.S.O. 1970, c. 228, s. 114 (2).

Idem (3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment. 1979, c. 65, s. 6 (3).

Tenure of office (4) Each of the members of the Rules Committee appointed under clause (1) (a), (c) or (g) shall hold office for a period of three years and is eligible for a reappointment.

Idem (5) Each of the members of the Rules Committee appointed under clause (1) (h) shall hold office for a period of one year and is eligible for reappointment. R.S.O. 1970, c. 228, s. 114 (4, 5).

Vacancy in office (6) In case of the resignation, death or inability to act of any member appointed under clause (1) (a), (c), (g) or (h), the Chief Justice of Ontario, Attorney General or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act. R.S.O. 1970, c. 228, s. 114 (6); 1972, c. 1, s. 9 (7).

Quorum (7) A majority of the members of the Rules Committee constitutes a quorum.

Annual meeting (8) The Rules Committee shall hold an annual meeting on the first Monday following Christmas Day that is not a holiday at the City of Toronto or at such other time and place as the chairman may direct.

(9) The chairman may at any time and upon the written request of any three members shall direct the secretary to call a meeting of the Rules Committee at such time and place as he may determine. R.S.O. 1970, c. 228, s. 114 (7-9). ^{Other meetings}

(10) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for, ^{Power to make rules}

- (a) regulating the sittings of the courts;
- (b) regulating the pleading, practice and procedure in the Supreme Court and in the county and surrogate courts;
- (c) prescribing the rate of interest to be used in determining the capitalized value of an award in respect of future damages;
- (d) allowing service out of Ontario;
- (e) prescribing and regulating the proceedings under any statute that confers jurisdiction upon the court or a judge;
- (f) prescribing the time and manner for making an appeal to the Divisional Court;
- (g) fixing the vacations;
- (h) empowering the masters or the local judges, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as are or may be done, transacted or exercised by a judge of the Supreme Court in court upon motions for judgment in undefended actions, for the appointment of receivers by way of equitable execution and for *ex parte* injunctions and upon motions or as are specified in the rules except in respect of matters relating to,
 - (i) the liberty of the subject,
 - (ii) appeals and applications in the nature of appeals,
 - (iii) proceedings under the *Mental Incompetency Act*, ^{R.S.O. 1980, c. 264}

R.S.O. 1980,
c. 512

- (iv) applications for advice under the *Trustee Act*,
- (v) matters affecting the custody of children, other than interlocutory applications for their interim custody or maintenance,
- (vi) proceedings enabling minors to make binding settlements of their real and personal property on marriage;
- (i) prescribing motions that need not be heard in open court;
- (j) regulating generally any matters relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect this Act and all other Acts respecting the courts. R.S.O. 1970, c. 228, s. 114 (10); 1971, c. 57, s. 4; 1975, c. 30, s. 6 (2); 1977, c. 51, s. 8; 1979, c. 65, s. 6 (5, 6).

Power to
modify
statutory
provisions
as to
procedure

(11) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and usage of the court, unless that power is expressly excluded.

Provisions
as to
payment into
or out of
court of
money, etc.

(12) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. R.S.O. 1970, c. 228, s. 114 (11, 12).

Motions in
open court

117. Notwithstanding the provisions of this or any other Act or regulation, all motions and applications shall be heard in open court, except as provided by the rules. 1977, c. 51, s. 9.

COUNCIL OF JUDGES

Council of
judges

118.—(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and

of enquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority. R.S.O. 1970, c. 228, s. 115 (1).

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice. R.S.O. 1970, c. 228, s. 115 (2); 1977, c. 51, s. 10. .

Council to report to Attorney General

(3) An extraordinary council for the purposes mentioned in subsection (1) may also be convened at any time by the Lieutenant Governor in Council. R.S.O. 1970, c. 228, s. 115 (3).

Extraordinary councils

DELEGATION OF POWERS OF JUDGES

119.—(1) Where by this or any other Act any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed.

Delegation of powers of judges

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business. R.S.O. 1970, c. 228, s. 116 (1, 2).

Quorum

QUORUM OF MEETINGS OF JUDGES

120. Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present. R.S.O. 1970, c. 228, s. 117.

Quorum of meetings of judges

LOCAL JUDGES OF THE HIGH COURT

121.—(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court, and may be styled a local judge of the Supreme Court, and has, in all causes

County court judges are local judges

and actions in the Supreme Court, subject to the rules, power and authority to do and perform all such acts and transact all such business in respect of matters and causes in or before the High Court as he is by statute or the rules empowered to do and perform.

Powers of
county
judge
outside
county

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the like power as a local judge of the High Court as though he were a judge of the county court of such county. R.S.O. 1970, c. 228, s. 118 (1,2).

Jurisdiction
of local
judges in
divorce
actions

(3) Without limiting the generality of subsections (1) and (2), the jurisdiction of the local judges of the High Court extends to the exercising of all such powers and authorities and the performing of such acts and the transacting of all such business as may be exercised, performed or transacted by the Supreme Court or a judge thereof under the *Divorce Act* (Canada) and, where a claim for other relief is joined in a petition for divorce, the local judges of the High Court have the same jurisdiction and authorities to deal with such claim as may be exercised by the Supreme Court or a judge thereof. R.S.O. 1970, c. 228, s. 118 (3); 1975, c. 30, s. 7; 1978, c. 2, s. 81 (3).

R.S.C. 1970,
c. D-8

SHERIFFS, ETC.

Sheriffs,
jailers, etc.,
to obey
orders of
the court

122. Sheriffs, deputy sheriffs, jailers, constables and other peace officers, shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by the order of the court or of a judge required so to do. R.S.O. 1970, c. 228, s. 119.

PRISONS OF THE COURT

Correctional
institutions
to be
prisons of
the court

123. All correctional institutions in Ontario are prisons of the court. R.S.O. 1970, c. 228, s. 120.

OATHS AND AFFIDAVITS

Administra-
tion of oaths

124. Every officer of the Supreme Court has, for the purposes of any proceeding before him, power to administer oaths and to examine parties and witnesses. R.S.O. 1970, c. 228, s. 121.

WITNESS FEES

Fees of
certain
officers
producing
documents

125. A public official or other witness subpoenaed or called upon to produce before any court or other tribunal any public or other document is not entitled to more

than ordinary witness fees, unless the court or other tribunal otherwise orders. R.S.O. 1970, c. 228, s. 122.

PROVISIONS APPLICABLE TO COUNTY COURTS

126. In addition to the provisions of this Act that are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 27, 34, 36, 38, 54 to 56, 62 to 66, 78, 79, 80, 117, 122 and 123, with necessary modifications apply to the county courts. R.S.O. 1970, c. 228, s. 123; 1977, c. 51, s. 12.

Certain sections apply to county courts

COMMISSIONS FOR HOLDING SITTINGS, ETC.

127. This Act does not affect the power to issue commissions for the discharge of civil or criminal business on circuit or otherwise. R.S.O. 1970, c. 228, s. 124.

Power to issue commissions not to be affected

128. Any judge presiding at any sittings of the court shall be deemed to constitute the court. R.S.O. 1970, c. 228, s. 125; 1977, c. 51, s. 13.

Judge to constitute court

ACCESS TO BOOKS

129.—(1) Every person shall have access to and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued and judgments entered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which the access or inspection is sought.

Books in which writs, judgments, etc., are entered to be open to inspection

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, of which records or entries are by law required to be kept in such book.

Production of writs of summons, etc.

(3) The fee payable in respect of such inspection is 25 cents for a general search, and 10 cents for each writ of summons or judgment roll inspected, and 10 cents per folio is also payable for all extracts, whether made by the person making the search or by the officer.

Fee

(4) A person affected by any record in any court, whether it concerns the Queen or other person, is entitled, upon payment of the proper fee, to search and examine it and to have an exemplification or a certified copy thereof made and delivered to him by the proper officer. R.S.O. 1970, c. 228, s. 126.

Persons entitled to search and to copies of records of courts

LANGUAGE

Writs,
pleadings, and
proceedings

130.—(1) Subject to subsections (2) to (9), writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as has been commonly used. R.S.O. 1970, c. 228, s. 127; 1978, c. 26, s. 1 (1).

Designated
counties
and
districts

(2) The Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection (3) are designated counties and districts for the purposes of this section.

Designation
of courts
and
additional
counties and
districts

(3) The Lieutenant Governor in Council may designate,

(a) counties and districts in addition to those named in subsection (2); and

(b) courts in a designated county or district,

for the purposes of this section.

Bilingual
trier of fact

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

Time of
application

(5) Except by leave of the court, an application under subsection (4) shall be made,

(a) where the proceeding is in the Supreme Court or a county or district court, before the giving of a jury notice or, if none, before the proceeding is set down for trial;

(b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

Hearing
in French
language

(6) Where an application is made under subsection (4) in addition to a direction made thereunder, the court may direct,

(a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and

(b) that subsection (7) apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.

(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.

Evidence recorded in French

(8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

Pleadings in French

(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use. 1978, c. 26, s. 1 (2).

Bilingual forms

DEMISE OF CROWN

131. No action or other proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but it shall be proceeded with as if such demise had not happened. R.S.O. 1970, c. 228, s. 128.

Demise of Crown not to affect pending proceedings

SERVICE OF PROCESS ON THE LORD'S DAY

132. No person upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order or judgment, except in cases of treason, felony, or breach of the peace, and the service of every such writ, process, warrant, order or judgment on the Lord's Day is void, and the person so serving or executing it is as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he had done the same without any writ, process, warrant, order or judgment. R.S.O. 1970, c. 228, s. 129.

Service of process on the Lord's Day

ACTIONS ON BONDS

133.—(1) In an action commenced or prosecuted in any court upon a bond for non-performance of any covenant

In actions on bonds, etc., plaintiff may assign as many breaches as he pleases

or agreement in any indenture, deed or writing, the plaintiff may assign as many breaches as he thinks fit, and, upon trial of such action, not only such damages and costs as have heretofore been usually assessed shall be assessed, but also damages for such of the breaches so assigned as the plaintiff upon the trial of the issues proves, and the like judgment shall be entered as heretofore in such action.

Default
judgment

(2) If judgment is given for the plaintiff by confession or default, he may suggest as many breaches of the covenants and agreements as he thinks fit, and the damages that he has sustained thereby shall be assessed, and, if the defendant after such judgment entered and before any execution executed, pays into the court in which the action is brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants or agreements, together with the costs of suit, a stay of execution on the judgment shall be entered upon record.

Judgment
to remain to
answer any
further
breach

(3) If by reason of any execution executed the plaintiff or his executors or administrators are fully paid or satisfied, all such damages so to be assessed, together with his or their costs of suit and all reasonable charges and expenses for executing the execution the body, land or goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but such judgment shall, nevertheless, remain, continue and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or agreement in the same indenture, deed or writing contained upon which the plaintiff may apply to the court in which judgment is entered for leave to issue execution upon the judgment against the defendant, or his executors or administrators, suggesting other breaches of the covenants or agreements, and to call upon him or them to show cause why execution shall not be awarded upon the judgment, upon which the court shall make such order as is considered just.

Stay of
proceedings

(4) Upon payment or satisfaction of such future damages, costs and charges, all further proceedings on the judgment shall again be stayed as often as occasion arises, and the defendant, his body, land or goods shall be discharged out of execution. R.S.O. 1970, c. 228, s. 130.

SET OFF

134. Where there are mutual debts between the plaintiff and defendant or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other. R.S.O. 1970, c. 228, s. 131. Mutual debts

135.—(1) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty. Idem

(2) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other. R.S.O. 1970, c. 228, s. 132. Judgment only for balance due after set off

136. If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him. R.S.O. 1970, c. 228, s. 133. Defendant to be entitled to judgment for balance due after set off

PAYMENT POST DIEM

137. Where an action is brought upon a bill or where an action is brought upon a judgment, if the defendant has paid the money due upon the bill or judgment the payment may be pleaded in the action, and where an action is brought upon a bond that has a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the condition or defeazance of the bond, though the payment was not made strictly according to the condition or defeazance, yet it may nevertheless be pleaded in the action, and is as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance and had been so pleaded. R.S.O. 1970, c. 228, s. 134. Plea of payment bar in action of debt, etc.

Principal,
interest,
and costs
brought
into court
pending
action upon
bond

138. If, at any time pending an action upon a bond with a penalty, the defendant brings into court all the principal money and interest due on the bond and also all such costs as have been expended in any suit upon the bond, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of the bond, and the court may give judgment to discharge the defendant of and from the bond accordingly. R.S.O. 1970, c. 228, s. 135.

ACTIONS OF ACCOUNT

Actions of
account by
and between
joint tenants
as bailiffs,
etc.

139. Actions of account may be brought and maintained against the executors or administrators of a guardian, bailiff or receiver, and also by one joint tenant or tenant in common, his executors or administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint tenant or tenant in common. R.S.O. 1970, c. 228, s. 136.

PERPETUATING TESTIMONY

Actions to
perpetuate
testimony

140. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of the event, is entitled to maintain an action in the Supreme Court to perpetuate any testimony that may be material for establishing his claim or right, and all laws, rules and regulations, not contrary to this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, are in force and shall be used and applied in all actions instituted under this section and in respect of depositions taken in the action. R.S.O. 1970, c. 228, s. 137.

Attorney
General may
be party
defendant in
actions in
which the
Crown may
have any
estate or
interest

141. In all actions instituted under section 140 touching any office or any other matter or thing in which the Crown may have any estate or interest, it is lawful to make the Attorney General a party defendant thereto, and in all proceedings in which the depositions taken in any such action in which the Attorney General was so made a defendant may be offered in evidence, the depositions may be admissible notwithstanding any objection to the depositions upon the ground that the Crown was not a party to the action in which the depositions were taken. R.S.O. 1970, c. 228, s. 138; 1972, c. 1, s. 9 (7).

INDEMNITY TO PERSONS ACTING UNDER JUDGMENT

142. Any order or judgment of the court made in an action or upon an originating motion, special case or in any other way permitted by the rules or any statute effectually protects and indemnifies any person acting thereon in good faith. R.S.O. 1970, c. 228, s. 139.

Protection
of persons
acting on
order or
judgment

CONTEMPT

143.—(1) Where a person has been directed by a judgment or order to execute a deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute the deed or instrument, or make the surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt and remains in prison, the court may grant a vesting order or may order or appoint an officer of the court to execute the deed or other instrument or to make the surrender or transfer for and in the name of such person.

Court may
appoint
person to
execute
instrument
for person
in contempt

(2) The execution of such deed or other instrument, or the surrender or transfer in his name made by such officer, has in all respects the same force and validity as if it had been executed or made by the person himself.

Effect of
instrument

(3) Thereupon the person in contempt shall be considered as having cleared his contempt, except as regards the payment of the costs of the contempt, and is entitled to an order that he be discharged from custody, and the court shall make such order as is considered just touching the payment of the cost of or concerning the deed or other instrument, surrender or transfer. R.S.O. 1970, c. 228, s. 140.

Discharge
of person in
contempt

144.—(1) Where a person is committed for a contempt in not delivering to any person, or depositing in court or elsewhere, as by an order may be directed, books, papers, or any other articles or things, any sequestrator appointed under any commission of sequestration has the same power to seize and take the books, papers, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property, and thereupon the books, papers, or other articles or things so seized and taken shall be dealt with as the court considers proper.

Power of
sequestrator
in cases of
contempt

Power of
court to
discharge

(2) After such seizure the court may, upon the application of the prisoner or of any other person in the cause or matter, or upon any report, make such order for the discharge of the prisoner upon such terms as to costs and otherwise as the court considers proper. R.S.O. 1970, c. 228, s. 141.

Court may
compulsorily
discharge
prisoners
confined for
contempt

145. Where a person committed for a contempt is entitled to his discharge upon applying to the court but omits to make the application, the court may compulsorily discharge the person from custody and direct payment of the costs of the contempt out of any funds belonging to him over which the court has power, or may order payment of the costs by the person. R.S.O. 1970, c. 228, s. 142.

CHARGING ORDERS ON STOCKS, ETC.

Orders
charging
stocks, etc.

146.—(1) If a person against whom a judgment has been entered in any of Her Majesty's courts in Ontario has any government stock, funds or annuities, or any stock or shares of or in a public company in Ontario, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Supreme Court, on the application of any judgment creditor, may order that the stock, funds, annuities, or shares of such of them or such part thereof as he thinks fit shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and the order entitles the judgment creditor to all such remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor; but no proceedings shall be taken to have the benefit of the charge until after the expiration of six months from the date of the order.

Order to be
made in the
first instance
ex parte

(2) Every such order shall be made in the first instance *ex parte* and without any notice to the judgment debtor and is an order to show cause only, and the order, if any government stock, funds or annuities standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected, restrains any transfer thereof being made in the meantime and until the order has been made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected by the order, in like manner restrains such public company from permitting a transfer thereof.

(3) If, after notice of such order to the person to be restrained thereby, or, in the case of a corporation, to any authorized agent of the corporation, and before the order is discharged or made absolute, the corporation or person permits any such transfer to be made, the corporation or person so permitting the transfer is liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as is sufficient to satisfy his judgment, and no disposition of the judgment debtor in the meantime is valid or effectual as against the judgment creditor.

Liability
of persons
disregarding
order

(4) Unless the judgment debtor, within a time to be mentioned in such order, shows to a judge sufficient cause to the contrary, the order shall, after proof of notice thereof to the judgment debtor, his solicitor or agent, be made absolute.

When order
absolute

(5) A judge, upon the application of the judgment debtor or any person interested, may discharge or vary such order.

Varying or
discharging
orders

(6) This section extends to the interest of a judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stock, funds, annuities or shares, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares.

Property of
judgment
debtors
defined and
extended

(7) Where such a judgment debtor has an estate, right, title or interest, vested or contingent, in possession, remainder, or reversion in or to stock, funds, annuities or shares standing in the name of The Accountant of the Supreme Court or in or to the dividends, interest or annual produce thereof, the judge may make any order as to the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of the judgment debtor.

Order
affecting
funds in
court

(8) No such order as to any stock, funds, annuities or shares standing in the name of the Accountant, or as to the interest, dividends or annual produce thereof, prevents any incorporated bank or any public company from permitting a transfer of the stock, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Supreme Court directs, or has any greater effect than if the judgment debtor had charged the stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in favour of the

Effect of
order

judgment creditor with the amount of the sum mentioned in the order. R.S.O. 1970, c. 228, s. 143.

PENAL ACTIONS

Reply in
penal
actions

147.—(1) In a penal action brought in good faith in which the defendant sets up a prior judgment, the plaintiff may reply in avoidance of the prior judgment that the prior judgment was had by covin or collusion, and no release by any person before or after action for a penalty is a ground for staying the action.

Exception

(2) No plaintiff in such an action shall be permitted to set up by way of reply, or otherwise, a charge of covin or collusion, where the merits of the matter in question in the action or a like charge of covin or collusion have been once tried and found either for or against the plaintiff. R.S.O. 1970, c. 228, s. 144.

Informer
must be
sui juris

148. No person shall sue as a common informer in a penal action unless he is *sui juris*. R.S.O. 1970, c. 228, s. 145.

Compounding
penal action

149. No penal action brought by a common informer shall be compounded without the leave of the court. R.S.O. 1970, c. 228, s. 146.

QUO WARRANTO PROCEEDINGS

Quo
warranto
writ
superseded,
in certain
cases

150.—(1) Except in the cases mentioned in section 151, all proceedings against any person who unlawfully claims or usurps, or is alleged unlawfully to claim or to usurp any office, franchise or liberty, or who has forfeited or is alleged to have forfeited any franchise by reason of non-user or mis-user thereof, that were formerly instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, shall be instituted and taken, where the proceeding is by the Attorney General *ex officio*, by notice of motion calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises or usurps such office, franchise or liberty. R.S.O. 1970, c. 228, s. 147 (1); 1972, c. 1, s. 9 (7).

Where
relator
named,
proceeding,
how framed

(2) Where the proceeding is at the instance of a relator, it shall be taken in the name of Her Majesty on the relation of such person, and such person shall before serving the notice of motion give security for the due and effectual prosecution thereof in like manner as nearly as may be and in the like amount as is, according to the practice of the Supreme Court, required to be given on an appli-

cation to quash a conviction or order made by a justice of the peace, or in such manner and amount as the court may direct.

(3) The court may direct an issue for the trial of the matters in question on any such application, and may grant an injunction or a mandatory order in aid of the proceedings, or for the purpose of enforcing the judgment or order that is pronounced thereon.

Issue may be directed or injunction, etc., granted

(4) The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the Supreme Court. R.S.O. 1970, c. 228, s. 147 (2-4).

Practice and appeals

151.—(1) Where it is intended to call in question the right of any person claiming to be a municipal officer, or an officer of a school corporation, to the office that he claims to hold, exercise or occupy as such officer, or the right of a member of any school board or school corporation to have, hold or enjoy any office, either as a member of such board or corporation or otherwise under the school laws of Ontario, and subsection (2) does not apply to the trial and determination of such question, the matter shall be tried and determined by the judge of the county court of the county in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, except that such judge has the same power to award costs to either party to the proceedings as he would have if the same were a proceeding in the county court.

Municipal and school officers

(2) Nothing in subsection (1) applies to or affects the proceedings in cases for which special provision is made by the municipal or school laws of Ontario, but in all such cases the proceedings shall be instituted and taken in the manner provided by those Acts, and not otherwise. R.S.O. 1970, c. 228, s. 148.

Where other special statutory provision, subs. (1), not to apply

CERTAIN PRACTICE AND PROCEDURE NOT AFFECTED

152. Nothing in this Act affects the practice or procedure in criminal matters or matters connected with Dominion controverted elections. R.S.O. 1970, c. 228, s. 149.

Criminal matters and Dominion controverted elections not affected

