

1980

c 398 Provincial Courts Act

Ontario

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CHAPTER 398

Provincial Courts Act

1. In this Act,

Interpre-
tation

- (a) "judge" means a provincial judge appointed under this Act;
- (b) "Judicial Council" means the Judicial Council for Provincial Judges referred to in section 7;
- (c) "Minister" means the Attorney General. R.S.O. 1970, c. 369, s. 1; 1972, c. 1, s. 9 (7).

PART I

PROVINCIAL JUDGES

2. The Lieutenant Governor in Council on the recom-^{Appointment} mendation of the Minister may appoint such provincial ^{of Judges} judges as he considers necessary. R.S.O. 1970, c. 369, s. 2.

3.—(1) Every judge shall take and subscribe the follow-^{Oath} ing oath before a chief judge or a judge designated by him:

I,.....
do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of the Provincial Courts, so help me God

and also the oath of allegiance as required by the *Public* ^{R.S.O. 1980,} *Officers Act*. _{c. 415}

(2) The oath of office and oath of allegiance shall be ^{Filing of} transmitted forthwith to the Inspector of Legal Offices ^{Oaths} and shall be filed in his office. R.S.O. 1970, c. 369, s. 3.

4.—(1) A judge may be removed from office before ^{Removal} attaining retirement age only for misbehaviour or for ^{for cause} inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the judge 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

(2) For the purpose of making an inquiry under subsection (1), 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 all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Order for removal

(3) An order removing a judge 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. R.S.O. 1970, c. 369, s. 4; 1971, c. 49, s. 18.

Retirement

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

Idem

(2) Notwithstanding subsection (1), a judge appointed as a full-time magistrate after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

Idem

(3) Notwithstanding subsection (1), a judge appointed as a full-time magistrate on or before the 1st day of July, 1941, shall retire upon attaining the age of seventy-five years.

Reappointment

(4) Upon attaining an age for retirement under subsection (1) or (2), a judge may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years. R.S.O. 1970, c. 369, s. 5.

Resignation

6. A judge may at any time resign his office in writing, signed by him and delivered to the Minister. R.S.O. 1970, c. 369, s. 6.

Judicial Council

7.—(1) The Judicial Council for Provincial Judges is continued and shall be composed of,

- (a) the Chief Justice of Ontario, who shall be chairman;
- (b) the Chief Justice of the High Court;
- (c) the Chief Judge of the Provincial Courts (Criminal Division);

- (d) the Chief Judge of the Provincial Courts (Family Division);
- (e) the Treasurer of the Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council.

(2) Such officers and employees of the Judicial Council ^{Staff} as are considered necessary shall be appointed under the *Public Service Act*.

R.S.O. 1980,
c. 418

(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council. ^{Quorum} R.S.O. 1970, c. 369, s. 7.

8.—(1) The functions of the Judicial Council are, ^{Functions}

- (a) at the request of the Minister, to consider the proposed appointments of provincial judges and make a report thereon to the Minister;
- (b) to receive complaints respecting the misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties; and
- (c) to take such action to investigate complaints as it considers advisable including the review thereof with the judge where appropriate, and to make such recommendations to the Minister with respect thereto as it sees fit.

(2) The chairman may transmit such complaints as he considers appropriate to the Chief Judge of the Provincial Courts (Criminal Division) or the Chief Judge of the Provincial Courts (Family Division). ^{Transmission to Chief Judge}

(3) The Judicial Council may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4. ^{Recommendation of inquiry}

(4) The proceedings of the Judicial Council shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed. ^{Advising Minister}

(5) The Judicial Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act. ^{Powers} R.S.O. 1980, c.411

Liability for
damages

(6) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty. R.S.O. 1970, c. 369, s. 8; 1971, c. 49, s. 18.

Jurisdiction

9.—(1) Every judge has jurisdiction throughout Ontario and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) has all the power and authority vested by or under any Act of the Legislature in a magistrate, two justices of the peace sitting together or a juvenile and family court or a judge thereof;
- (c) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;
- (d) is *ex officio* a justice of the peace and commissioner for taking affidavits. R.S.O. 1970, c. 369, s. 9 (1).

Where
procedures
not
provided

(2) Where jurisdiction is conferred on a judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice. 1979, c. 5, s. 1.

Idem

(3) A judge shall not exercise the powers or perform the duties conferred or imposed upon a magistrate under Part XVI of the *Criminal Code* (Canada) unless,

R.S.C. 1970,
c. C-34

- (a) he is or has been a member of the bar of one of the provinces of Canada;
- (b) he has acted as a provincial judge for a period of five years; or
- (c) he was acting as a full-time deputy magistrate, magistrate or judge of the juvenile and family court immediately before the 2nd day of December, 1968,

and he is so designated by the Lieutenant Governor in Council. R.S.O. 1970, c. 369, s. 9 (2).

10.—(1) The Lieutenant Governor in Council may appoint a ^{Chief Judge} judge as Chief Judge of the Provincial Courts (Criminal Division) and a judge as Chief Judge of the Provincial Courts (Family Division). R.S.O. 1970, c. 369, s. 10 (1).

(2) The Chief Judge of the Provincial Courts (Criminal ^{Chief Judge of provincial offences courts} Division) is chief judge of the provincial offences courts. 1979, c. 5, s. 2.

(3) The Lieutenant Governor in Council may appoint a ^{Associate chief judges} judge as associate chief judge of the provincial courts (criminal division) and a judge as associate chief judge of the provincial courts (family division). 1977, c. 46, s. 1.

(4) Each Chief Judge shall have general supervision and ^{Duties} direction over arranging the sittings of his courts and assigning judges for hearings in his courts, as circumstances require.

(5) In the arrangement of the courts and the assign- ^{Idem} ment of judges thereto, regard shall be had to,

(a) the desirability of rotating the judges; and

(b) the greater volume of judicial work in certain of the counties and districts. R.S.O. 1970, c. 369, s. 10 (3, 4).

11. The Minister may designate a judge to be senior ^{Senior judges} judge of such provincial courts (criminal division) or provincial courts (family division), or both, as are named in the designation. R.S.O. 1970, c. 369, s. 11.

12.—(1) Subject to subsection (2), unless authorized by ^{Other employment} the Lieutenant Governor in Council, a judge 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 judge.

(2) A judge, with the previous consent of the Minister, ^{Idem} may act as arbitrator, conciliator or member of a police commission. R.S.O. 1970, c. 369, s. 12.

13. The *Public Authorities Protection Act* applies to judges ^{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 judges under the law in respect of acts done in the execution of their duties. R.S.O. 1970, c. 369, s. 13.

PART II

PROVINCIAL COURTS (CRIMINAL DIVISION)

Provincial
courts
(criminal
division)

14. There shall be in and for every county and district a court of record to be styled,

(a) in counties, the "Provincial Court (Criminal Division) of the County (or Judicial District or United Counties) of (*naming the county, etc.*)";

(b) in districts, the "Provincial Court (Criminal Division) of the District of (*naming the district*)",

presided over by a judge. R.S.O. 1970, c. 369, s. 14.

Judges
preside

15. A judge shall exercise the powers and perform the duties vested in him as a magistrate, provincial magistrate or one or more justices of the peace under section 9 sitting in a provincial court (criminal division). R.S.O. 1970, c. 369, s. 15.

Sittings

16. The judges of the provincial court (criminal division) of each county or district may hold sittings at any place in the county or district designated by the Chief Judge of the Provincial Courts (Criminal Division). R.S.O. 1970, c. 369, s. 16.

Rules
committee

17.—(1) The rules committee of the provincial courts (criminal division) is continued and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

Quorum

(2) A majority of the members of the rules committee constitutes a quorum.

Rules

(3) The rules committee of the provincial courts (criminal division) is a provincial court (criminal division) for the purpose of making rules of court under the *Criminal Code* (Canada). 1979, c. 5, s. 3.

R.S.C. 1970,
c. C-34

PART III

PROVINCIAL OFFENCES COURTS

Provincial
offences
court

18.—(1) There shall be in every county and district a court of record to be styled,

- (a) in counties, the "Provincial Offences Court of the County (or Judicial District or United Counties) of (*naming the county, etc.*)";
- (b) in districts, the "Provincial Offences Court of the District of (*naming the district*)",

presided over by a judge or justice of the peace.

(2) Each provincial offences court has jurisdiction to hear, ^{Jurisdiction} determine and dispose of,

- (a) all matters in which jurisdiction is conferred by the *Provincial Offences Act*; and R.S.O. 1980, c. 400
- (b) any other matter assigned to it by or under any statute. 1979, c. 5, s. 4, *part*.

19—(1) The provincial offences courts may hold sittings ^{Sittings} at any place in the county or district designated by the chief judge of the provincial offences courts.

(2) Where a proceeding in which a provincial offences ^{Idem} court has jurisdiction is conducted during the course of a sitting of the provincial court (criminal division) or provincial court (family division) in the same county or district, the proceeding shall be deemed to be conducted in the provincial offences court. 1979, c. 5, s. 4, *part*.

20.—(1) Except as otherwise provided by statute, every ^{Penalty for contempt} person who commits contempt in the face of a provincial offences court is upon conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

(2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished. ^{Statement to offender}

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an ^{Show cause} opportunity to show cause why he should not be punished.

(4) Except where, in the opinion of the court, it is ^{Adjournment for adjudication of contempt} necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

Adjudication
by a judge

(5) Where a contempt proceeding is adjourned to another day under subsection (1), the contempt proceeding shall be heard and determined by the court presided over by a judge.

Arrest for
immediate
adjudication
of contempt

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

Barring of
agent in
contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable.

Appeals

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

Enforcement

(9) The *Provincial Offences Act* applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section. 1979, c. 5, s. 4, *part*.

Penalty for
disturbance
outside
courtroom

21. Any person who knowingly disturbs or interferes with the proceedings of a provincial offences court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. 1979, c. 5, s. 4, *part*.

Rules for
provincial
offences
courts

22. Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (criminal division) may make rules regulating any matters relating to the practice and procedure of the provincial offences courts including, without limiting the generality of the foregoing,

- (a) prescribing forms respecting proceedings in the court;
- (b) prescribing any matter required to be or referred to as prescribed by the rules of the court;
- (c) prescribing and regulating the proceedings under any Act that confers jurisdiction upon a provincial offences court or a judge or justice of the peace sitting therein. 1979, c. 5, s. 4, *part*.

PART IV

PROVINCIAL COURTS (FAMILY DIVISION)

23.—(1) There shall be in and for every county and district, except the Judicial District of Hamilton-Wentworth, a court of record to be styled, Provincial courts (family division)

(a) in counties, the “Provincial Court (Family Division) of the County (or Judicial District or United Counties) of (*naming the county, etc.*)”;

(b) in districts, the “Provincial Court (Family Division) of the District of (*naming the district*)”,

presided over by a judge. R.S.O. 1970, c. 369, s. 17 (1); 1976, c. 85, s. 23.

(2) Each provincial court (family division), Jurisdiction

(a) is a juvenile court for the purpose of dealing with juvenile delinquents so soon as the *Juvenile Delinquents Act* (Canada) is proclaimed in force in the county or district for which it was established, and such court has all the powers vested in a juvenile court under that Act; R.S.C. 1970, c. J-3

(b) has power to try any child charged with an offence against the laws of Ontario; and

(c) has power to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court or a judge thereof or upon a juvenile and family court or a judge thereof or upon a provincial court (family division). R.S.O. 1970, c. 369, s. 17 (2).

(3) On the 1st day of July, 1982, subsection (1) is amended by striking out “except the Judicial District of Hamilton-Wentworth” in the second line. Amendment to subs. (1) 1976, c. 85, s. 24.

24. A judge shall exercise the powers and perform the duties vested in him as a judge of the juvenile and family court under section 9 sitting in a provincial court (family division). Judge presides R.S.O. 1970, c. 369, s. 18.

25. The judges of the provincial court (family division) of each county or district may hold sittings at any place in the county or district designated by the Chief Judge of the Provincial Courts (Family Division). Sittings R.S.O. 1970, c. 369, s. 19.

Control of
officers
and staff

26. The officers and members of the staff of a provincial court (family division) shall act in accordance with the directions of the presiding judge of the court. R.S.O. 1970, c. 369, s. 20.

Interpre-
tation

27.—(1) In this section and sections 29 and 30, “Minister” means the Minister of Community and Social Services.

Observation
and
detention
homes
established

(2) The Minister may establish, operate and maintain observation and detention homes upon such terms and conditions as the Minister considers necessary.

Idem

(3) A detention and observation home in existence on the 15th day of June, 1979 shall be deemed to have been established by the Minister under this section and to continue as an observation and detention home under this Act.

Agreements

(4) The Minister may, by written agreement or otherwise with any person upon such terms and conditions as may be agreed, provide for the establishment, operation and maintenance of observation and detention homes and for the provision of services in such observation and detention homes.

Appointment
of Director

(5) The Minister may appoint one or more persons to act as a Director for the purpose of providing general supervision and direction over observation and detention homes. 1978, c. 71, s. 1.

Admission
and discharge
from
observation
and detention
homes

R.S.C. 1970,
cc. J-3, C-34
R.S.O. 1980,
cc. 66, 508

28.—(1) Subject to the provisions of the *Juvenile Delinquents Act* (Canada), the *Criminal Code* (Canada), the *Child Welfare Act* and the *Training Schools Act*, no child shall be admitted to or discharged from an observation and detention home except by order of a judge of the provincial court (family division) or a judge of the Unified Family Court. 1978, c. 71, s. 2, *part*.

Amendment
of subs. (1)

(2) On the 1st day of July, 1982, subsection (1) is amended by striking out “or a judge of the Unified Family Court” in the fifth and sixth lines. 1976, c. 85, s. 24.

Powers and
duties of
super-
intendent

29.—(1) There shall be a superintendent for each observation and detention home established under section 27 or designated under section 30 who shall perform the duties imposed and may exercise the powers conferred upon the superintendent by the Minister or a Director appointed by the Minister under subsection 27 (5).

Super-
intendent to
have care,
custody and
control

(2) The superintendent of an observation and detention home shall have the temporary care, custody and control of a child committed to or placed in the observation and

detention home, other than a child detained under Part II of the *Child Welfare Act* or who is a Crown ward under the *Training Schools Act*, during the period of time that the child remains in the observation and detention home. R.S.O. 1980,
cc. 66, 508

(3) A police officer, a superintendent of an observation and detention home or any other person designated by the superintendent who has reasonable and probable grounds to believe that a child committed to or placed in the observation and detention home has left the observation and detention home prior to the child's discharge therefrom without the consent of, Apprehen-
sion of child

(a) the superintendent;

(b) where the child has been detained under Part II of the *Child Welfare Act*, the children's aid society having care, custody and control of the child; R.S.O. 1980,
c. 66

(c) where the child is a Crown ward under the *Training Schools Act*, the area administrator having care, custody and control of the child, R.S.O. 1980,
c. 508

may apprehend the child with or without a warrant and arrange for the child to be brought back to the observation and detention home.

(4) A warrant referred to in subsection (3) may be issued by a justice of the peace on information laid before the justice on oath that the child has left the observation and detention home without the consent of the superintendent or the children's aid society or area administrator referred to in subsection (3), as the case may be. Warrant to
apprehend
child

(5) A person authorized by a warrant issued under subsection (4) may enter, if need be by force, any house, building or other place specified in the warrant and may search for and remove the child therefrom. 1978, c. 71, s. 2, *part*. Right of
entry

30. The Minister may designate any place, house, home or institution a detention home within the meaning of the *Juvenile Delinquents Act* (Canada) and such detention home shall be deemed to be an observation and detention home under this Act. 1978, c. 71, s. 3. Detention
homes
R.S.C. 1970,
c. J-3

31. Every probation officer appointed for a provincial court (family division) has, while acting in the discharge of his duties, all the powers of a police constable. R.S.O. 1970, c. 369, s. 24. Powers of
probation
officers

Rules
committee

32.—(1) The rules committee of the provincial courts (family division) is continued and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

Quorum

(2) A majority of the members of the rules committee constitutes a quorum. R.S.O. 1970, c. 369, s. 26 (1, 2).

Rules

(3) Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (family division) may make rules regulating any matters relating to the practice and procedure of the courts, including, without limiting the generality of the foregoing,

- (a) regulating the duties of officers of the courts;
- (b) regulating the costs of proceedings in the courts;
- (c) providing for the taxation of costs and prescribing tariffs therefor;
- (d) prescribing and regulating the proceedings under any Act that confers jurisdiction upon the courts or a judge sitting therein;
- (e) governing the payment, transfer or deposit into, or in, or out of, any court of any money or property, or to the dealing therewith;
- (f) allowing for service out of Ontario. R.S.O. 1970, c. 369, s. 26 (3); 1977, c. 46, s. 2 (1).

Idem

(4) Where provisions in respect of practice or procedure are contained in any Act, rules may be made adding to or modifying such provisions to any extent that is considered necessary for the equitable despatch of the business of the court unless that power is expressly excluded. R.S.O. 1970, c. 369, s. 26 (4).

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

(5) Section 80 of the *Judicature Act* applies to the provincial court (family division) and to judges presiding in the court. 1977, c. 46, s. 2 (2).

PART V

GENERAL

Clerk

33.—(1) There shall be a clerk for each provincial court (criminal division) and each provincial court (family division) who shall act under the direction and supervision of the judge. R.S.O. 1970, c. 369, s. 27 (1).

(2) The clerk of a provincial court (criminal division) is ^{Idem} the clerk of the provincial offences court of the same county or district. 1979, c. 5, s. 5.

(3) Such officers, clerks and employees as are considered ^{Officers and employees} necessary shall be appointed for provincial courts under the *Public Service Act*. R.S.O. 1970, c. 369, s. 27 (2). ^{R.S.O. 1980, c. 418}

34.—(1) The Lieutenant Governor in Council may make ^{Regulations} regulations,

- (a) specifying the returns to be made by judges and Chief Judges;
- (b) providing for the safekeeping, inspection and destruction of books, documents and papers of provincial courts and judges;
- (c) fixing the remuneration of judges;
- (d) providing for the benefits to which judges are entitled, including,
 - (i) leave of absence and vacations,
 - (ii) sick leave credits and payments in respect of such credits,
 - (iii) pension benefits for judges and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges 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}

- (e) providing for the appointment and employment of stenographic reporters to take down evidence before judges, and fixing their fees, expenses and other forms of remuneration;
- (f) prescribing the duties of Chief Judges;
- (g) prescribing the functions of and providing for the management of detention and observation homes, detention homes, and diagnostic clinics under this Act;

- (h) prescribing additional powers and duties of superintendents of observation and detention homes;
- (i) governing the procedures for admission to and discharge of children from observation and detention homes or any class thereof;
- (j) defining "services" for the purposes of section 27 and prescribing the terms and conditions upon which such services may be provided;
- (k) prescribing the classes of payments by way of provincial aid to any observation and detention home and the methods of determining the amounts of payments and providing for the manner and time of payment and the terms and conditions of the payment thereof and the suspension and withholding of payments and for the making of deductions from payments;
- (l) prescribing the duties of the officers and employees of the staffs of provincial courts or of any class of such officers or members;
- (m) providing for a system of statistical records relating to provincial courts;
- (n) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 369, s. 28 (1); 1978, c. 71, s. 5.

Idem

(2) Any regulation made under subsection (1) may be general or particular in its application. R.S.O. 1970, c. 369, s. 28 (2).