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c 365 Proceedings Against the Crown Act

Ontario

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CHAPTER 365

The Proceedings Against the Crown Act

1. In this Act,

Interpre-
tation

- (a) "agent", when used in relation to the Crown, includes an independent contractor employed by the Crown;
- (b) "Crown" means Her Majesty the Queen in right of Ontario;
- (c) "order" includes a judgment, decree, rule, award and declaration;
- (d) "proceedings against the Crown" includes a claim by way of set-off or counterclaim raised in proceedings by the Crown and includes interpleader proceedings to which the Crown is a party;
- (e) "servant", when used in relation to the Crown, includes a minister of the Crown. 1962-63, c. 109, s. 1.

2.—(1) This Act does not affect and is subject to *The Certification of Titles Act* as to claims against The Certification of Titles Assurance Fund, *The Corporations Tax Act*, *The Expropriations Act*, *The Highway Improvement Act*, *The Income Tax Act*, *The Land Titles Act* as to claims against The Land Titles Assurance Fund, *The Logging Tax Act*, *The Mining Tax Act*, *The Motor Vehicle Accident Claims Act*, *The Retail Sales Tax Act*, *The Succession Duty Act* and *The Workmen's Compensation Act*. 1962-63, c. 109, s. 2 (1), amended.

Acts not
affected

R.S.O. 1970,
cc. 59, 91,
154, 201,
217, 234,
258, 275,
281, 415,
449, 505

(2) Nothing in this Act,

Limits of
scope of
Act

- (a) subjects the Crown to greater liability in respect of the acts or omissions of a servant or agent of the Crown than that to which the Crown would be subject in respect of such acts or omissions if it were a person of full age and capacity; or
- (b) subjects the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency of the Crown; or
- (c) subjects the Crown to proceedings under this Act in respect of any act or omission of a servant of the Crown unless that servant has been appointed by or is employed by the Crown; or
- (d) subjects the Crown to proceedings under this Act in respect of anything done in the due enforcement of the

criminal law or of the penal provisions of any Act of the Legislature; or

R.S.O. 1970,
c. 263

- (e) authorizes proceedings against the Crown under *The Master and Servant Act*. 1962-63, c. 109, s. 2 (2); 1970, c. 2, s. 1.

Right to
sue Crown
without
fiat

3. Except as provided in section 29, a claim against the Crown that, if this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the Lieutenant Governor, may be enforced as of right by proceedings against the Crown in accordance with this Act without the grant of a fiat by the Lieutenant Governor. 1962-63, c. 109, s. 3.

Right to
sue Crown
corporation
without
consent

4. A claim against a corporation of the Crown that, if this Act had not been passed, might be enforced, subject to the consent of a servant of the Crown, may be enforced as of right without such consent. 1962-63, c. 109, s. 4.

Liability
in tort
R.S.O. 1970,
c. 225

5.—(1) Except as otherwise provided in this Act, and notwithstanding section 11 of *The Interpretation Act*, the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

(a) in respect of a tort committed by any of its servants or agents;

(b) in respect of a breach of the duties that a person owes to his servants or agents by reason of being their employer;

(c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and

(d) under any statute, or under any regulation or by-law made or passed under the authority of any statute.

Where
proceedings
in tort lie

(2) No proceedings shall be brought against the Crown under clause *a* of subsection 1 in respect of an act or omission of a servant or agent of the Crown unless proceedings in tort in respect of such act or omission may be brought against that servant or agent or his personal representative.

Liability
for acts
of servants
performing
duties
legally
required

(3) Where a function is conferred or imposed upon a servant of the Crown as such, either by a rule of the common law or by or under a statute, and that servant commits a tort in the course of performing or purporting to perform that function, the liability of the Crown in respect of the tort shall be such as it would have been if that function had been conferred or imposed by instructions lawfully given by the Crown.

(4) In proceedings against the Crown under this section, an enactment that negatives or limits the liability of a servant of the Crown in respect of a tort committed by that servant applies in relation to the Crown as it would have applied in relation to that servant if the proceedings against the Crown had been proceedings against that servant.

Application of enactments limiting liability of servants of the Crown

(5) Where property vests in the Crown independent of the acts or the intentions of the Crown, the Crown is not, by virtue of this Act, subject to liability in tort by reason only of the property being so vested; but this subsection does not affect the liability of the Crown under this Act in respect of any period after the Crown, or any servant of the Crown, has in fact taken possession or control of the property.

Property vesting in the Crown

(6) No proceedings lie against the Crown under this section in respect of anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in him or responsibilities that he has in connection with the execution of judicial process. 1962-63, c. 109, s. 5.

Limitation of liability in respect of judicial acts

6. The law relating to indemnity and contribution is enforceable by and against the Crown in respect of any liability to which it is subject, as if the Crown were a person of full age and capacity. 1962-63, c. 109, s. 6.

Application of law as to indemnity and contribution

7.—(1) Subject to subsection 3, except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Minister of Justice and Attorney General may require such additional particulars as in his opinion are necessary to enable the claim to be investigated.

Notice of claim

(2) Where a notice of a claim is served under subsection 1 before the expiration of the limitation period applying to the commencement of an action for the claim and the sixty-day period referred to in subsection 1 expires after the expiration of the limitation period, the limitation period is extended to the end of seven days after the expiration of the sixty-day period.

Limitation period extended

(3) No proceedings shall be brought against the Crown under clause *c* of subsection 1 of section 5 unless the notice required by subsection 1 is served on the Crown within ten days after the claim arose. 1965, c. 104, s. 1, *part*.

Notice of claim for breach of duty respecting property

Proceedings
in Supreme
Court
R.S.O. 1970,
c. 228

8. Except as otherwise provided in this Act, proceedings against the Crown in the Supreme Court shall be instituted and proceeded with in accordance with *The Judicature Act* and the rules of court. 1962-63, c. 109, s. 7.

Proceedings
in county
and district
courts

R.S.O. 1970,
c. 94

9. Except as otherwise provided in this Act and subject to any enactment limiting the jurisdiction of county and district courts, proceedings against the Crown may be instituted in a county or district court and proceeded with in accordance with *The County Courts Act* and the rules of court. 1962-63, c. 109, s. 8.

Proceedings
in small
claims
courts

R.S.O. 1970,
c. 439

10. Except as otherwise provided in this Act and subject to any enactment limiting the jurisdiction of small claims courts, proceedings against the Crown may be instituted in a small claims court and proceeded with in accordance with *The Small Claims Courts Act* and the rules thereunder. 1970, c. 2, s. 2, *amended*.

Appeals,
stay of
execution,
etc.

11. Except as otherwise provided in this Act, all enactments and rules of court relating to appeals and stay of execution or proceedings, with necessary modifications, apply to proceedings against the Crown. 1962-63, c. 109, s. 9.

Discovery

12. In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that,

- (a) the Crown may refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest;
- (b) the person who shall attend to be examined for discovery shall be an official designated by the Deputy Minister of Justice and Deputy Attorney General; and
- (c) the Crown is not required to deliver an affidavit on production of documents for discovery and inspection, but a list of the documents that the Crown may be required to produce, signed by the Deputy Minister of Justice and Deputy Attorney General, shall be delivered. 1965, c. 104, s. 2, *amended*.

Designation
of Crown in
proceedings

13. In proceedings under this Act, the Crown shall be designated "Her Majesty the Queen in right of Ontario". 1962-63, c. 109, s. 11.

Service on
the Crown

14. In proceedings under this Act, a document to be served on the Crown shall be served by leaving a copy with the Minister of Justice and Attorney General or the Deputy Minister of Justice and Deputy Attorney General or any barrister or solicitor in the office of the Minister of Justice and Attorney General. 1962-63, c. 109, s. 12.

15. In proceedings against the Crown, trial shall be without a jury. 1962-63, c.109, s. 13.

Trial without jury

16. The Crown may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner as a person may obtain relief by way of such proceedings, or be made a party thereto, notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer, and the provisions relating to interpleader proceedings in the rules of court, subject to this Act, shall have effect accordingly. 1962-63, c. 109, s. 14.

Interpleader

17. Except as otherwise provided in this Act, in proceedings against the Crown, the rights of the parties are as nearly as possible the same as in a suit between persons, and the court may make any order that it may make in proceedings between persons, and may otherwise give such appropriate relief as the case may require. 1962-63, c. 109, s. 15.

Rights of parties and authority of court

18.—(1) Where in proceedings against the Crown any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

No injunction or specific performance against Crown

(2) The court shall not in any proceedings grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. 1962-63, c. 109, s. 16.

Limitation on injunctions and orders against Crown servants

19. In proceedings against the Crown in which the recovery of real or personal property is claimed, the court shall not make an order for its recovery or delivery, but in lieu thereof may make an order declaring that the claimant is entitled, as against the Crown, to the property claimed or to the possession thereof. 1962-63, c. 109, s. 17.

Order for recovery of property not to be made against Crown

20.—(1) No person may avail himself of any set-off or counterclaim in proceedings by the Crown for the recovery of taxes, duties, or penalties, or avail himself, in proceedings of any other nature by the Crown, of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

Restriction on set-off and counterclaim

(2) Subject to subsection 1, a person may avail himself of any set-off or counterclaim in proceedings by the Crown if the

Idem

subject-matter of the set-off or the counterclaim relates to a matter under the administration of the particular government department with respect to which the proceedings are brought by the Crown. 1962-63, c. 109, s. 18.

Crown
defences

21. In proceedings against the Crown, any defence that, if the proceedings were between persons, could be relied upon by the defendant as a defence to the proceedings or otherwise may be relied upon by the Crown. 1962-63, c. 109, s. 20.

No judgment by
default
against
Crown
without
leave

22. In proceedings against the Crown, judgment shall not be entered against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown. 1962-63, c. 109, s. 21.

Proceedings
in rem

23. Nothing in this Act authorizes proceedings *in rem* in respect of any claim against the Crown, or the seizure, attachment, arrest, detention or sale of any property of the Crown. 1962-63, c. 109, s. 22.

Interest
on judgment
debt

24. A judgment debt due to or from the Crown bears interest in the same way as a judgment debt due from one person to another. 1962-63, c. 109, s. 23.

Prohibition
of execution,
etc.,
against
Crown

25. No execution or attachment or process in the nature thereof shall be issued out of any court against the Crown. 1962-63, c. 109, s. 24.

Payment
by Crown

26. Where an order of a court provides for the payment of money by the Crown by way of damages or costs or otherwise and such order is final and not subject to appeal, the Treasurer of Ontario shall pay out of the Consolidated Revenue Fund to the person entitled, or to his order, the amount due, together with the interest, if any, lawfully due thereon. 1962-63, c. 109, s. 25.

Conflict

27. Where this Act conflicts with any other Act, this Act governs. 1962-63, c. 109, s. 26.

No retro-
active
effect

28. No proceedings shall be brought against the Crown under this Act in respect of any act or omission, transaction, matter or thing occurring or existing before the 1st day of September, 1963. 1962-63, c. 109, s. 27, *amended*.

Pending
claims

29.—(1) A claim against the Crown existing on the 1st day of September, 1963 that, if this Act had not been passed, might have been enforced by petition of right may be proceeded with by petition of right, subject to the grant of a fiat by the Lieutenant Governor as if this Act had not been passed.

(2) A claim arising under a contract with the Crown that was entered into before the 1st day of September, 1963 may be proceeded with under subsection 1, but not otherwise. Existing contracts

(3) This Act does not affect proceedings against the Crown by petition of right that have been instituted before the 1st day of September, 1963, and, for the purposes of this section, proceedings against the Crown by petition of right shall be deemed to have been instituted if a petition of right with respect to the matter in question has been left with the Provincial Secretary before that date. Pending proceedings

(4) Subject to subsections 1, 2 and 3, proceedings against the Crown by petition of right are abolished, and, except for the purposes of subsections 1, 2 and 3, the rules of court respecting petitions of right are revoked. 1962-63, c. 109, s. 28, *amended*. Petitions of right abolished

