



This Act is Current to December 11, 2013

CROWN PROCEEDING ACT

[RSBC 1996] CHAPTER 89

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Definitions

1 In this Act:

"agent", when used in relation to the government, includes an independent contractor employed by the government;

"Crown" means Her Majesty the Queen in right of British Columbia;

"officer of the government" includes a minister of the government and an employee of the government;

"order" includes a judgment, decree, rule, award and declaration;

"person" does not include the government;

"proceeding against the government" includes a claim by way of set off

or counterclaim raised in proceedings by the government, an interpleader proceeding to which the government is a party, and a proceeding in which the government is a garnishee.

Liability of government

2 Subject to this Act,

- (a) proceeding against the government by way of petition of right is abolished,
- (b) a claim against the government 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 proceeding against the government in accordance with this Act, without the grant of a fiat by the Lieutenant Governor,
- (c) the government is subject to all the liabilities to which it would be liable if it were a person, and
- (d) the law relating to indemnity and contribution is enforceable by and against the government for any liability to which it is subject, as if the government were a person.

Limitations on proceedings and liabilities

3 (1) This Act is subject to the *Workers Compensation Act* and does not apply to any of the following:

- (a) proceedings under
 - (i) the *Income Tax Act*,
 - (ii) the *Corporation Capital Tax Act*, or
 - (iii) the *Logging Tax Act*;
- (b) assurance fund proceedings under land title legislation;
- (c) proceedings to which the *Federal Courts Jurisdiction Act* applies.

(2) Nothing in section 2 does any of the following:

- (a) authorizes proceedings against the government for anything done or omitted to be done by a person acting in good faith while discharging or purporting to discharge responsibilities
 - (i) of a judicial nature vested in the person, or
 - (ii) that the person has in connection with the execution of judicial process;
- (b) subjects the government to greater liability for the acts or omissions of an independent contractor employed by the government than that to which the government would be subject for those acts or

omissions if it were a person;

(c) affects the right of the government to intervene in proceedings affecting its rights, property or profits;

(d) authorizes proceedings against the government for a cause of action that is enforceable against a corporation or other agency owned or controlled by the government;

(e) authorizes proceedings against the government for anything done in the proper enforcement of the criminal law or the penal provisions of an Act;

(f) subjects the government, in its capacity as a highway authority, to any greater liability than that to which a municipal corporation is subject in that capacity.

Institution of claims in the Supreme Court

- 4** (1) Subject to this Act, all proceedings against the government in the Supreme Court must be instituted and proceeded with under the *Supreme Court Act* and, if applicable, under the *Class Proceedings Act*.
- (2) In proceedings against the government, the trial must be without a jury.

Institution of claims in the Provincial Court

- 5** (1) Without limiting section 4 but subject to subsections (3) and (4) of this section, proceedings may be brought against the government in the Provincial Court.
- (2) Subject to this Act, all proceedings against the government in the Provincial Court must be instituted and proceeded with under the *Small Claims Act*.
- (3) Nothing in this Act extends the jurisdiction of the Provincial Court beyond the jurisdiction available to it under section 3 of the *Small Claims Act*.
- (4) In a proceeding against the government under the *Small Claims Act*, the Provincial Court does not have jurisdiction over
- (a) a matter for which notice under section 8 of the *Constitutional Question Act* is required, or
 - (b) a matter involving the *Canadian Charter of Rights and Freedoms*.

Appeals and stays of proceedings

- 6** Subject to this Act, all enactments and rules of court for appeals and stays of proceedings apply to proceedings against the government and proceedings in which the government is a party.

Designation of government

- 7** In proceedings under this Act, the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".

Service on government

- 8** A document to be served on the government
- (a) must be served on the Attorney General at the Ministry of Justice in the City of Victoria, and
 - (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or
 - (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

Discovery and inspection of documents

- 9** (1) In proceedings against the government and proceedings in which the government is a party, if there are, in the rules of the court in which the proceedings are brought, rules relating to one or more of discovery and inspection of documents, examinations for discovery and interrogatories, those rules apply as if the government were a corporation.
- (2) Subsection (1) does not affect a rule of law that authorizes or requires the withholding of a document, or the refusal to answer a question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.
- (3) If the government claims that the disclosure of the document or the answering of the question would be injurious to the public interest, the court may, after holding an inquiry it considers necessary and reasonable, and on finding that the public interest in the administration of justice should prevail over the public interest in withholding the document or answering the question, order, subject to conditions or restrictions it considers appropriate, production and discovery of the document or that the question be answered.

Interpleader

- 10** (1) Even if an application for relief is made by a sheriff or bailiff or other similar officer, the government may
- (a) obtain relief by way of interpleader proceedings in the same manner as a person may obtain relief by way of those proceedings, and
 - (b) be made a party to the proceedings in the same manner as a person may be made a party to them.

(2) Subject to this Act, the interpleader provisions in the Supreme Court Civil Rules apply to the proceedings.

Rights of parties and authority of the court

11 (1) In proceedings against the government and proceedings in which the government is a party, the rights of the parties must, subject to this Act, be as nearly as possible the same as in a proceeding between persons, and the court may

(a) make an order, including an order as to costs, that it may make in proceedings between persons, and

(b) otherwise give the appropriate relief that the case may require.

(2) If, in proceedings against the government, relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court

(a) must not grant an injunction or make an order for specific performance against the government;

(b) may make an order declaring the rights of the parties instead of an injunction or an order for specific performance.

(3) A person must not make use

(a) of a set off or counterclaim in proceedings by the government for the recovery of taxes, duties or penalties, or

(b) in proceedings of any nature by the government, of a set off or counterclaim arising out of a right or claim to repayment for taxes, duties or penalties.

(4) In a proceeding, the court

(a) must not grant an injunction or make an order against an officer of the government if the effect of granting the injunction or making the order would be to give relief against the government that could not have been obtained in proceedings against the government;

(b) may make an order declaring the rights of the parties instead of granting the injunction or making the order.

(5) Without leave of the court, a person must not make use of a set off or counterclaim in proceedings by the government, unless the subject matter of the set off or counterclaim relates to a matter under the administration of the particular government ministry for which the proceedings are brought by the government.

(6) In proceedings against the government in which the recovery of land or other property is claimed, the court

(a) must not make an order for the recovery of the land or the delivery of the property;

(b) may, instead, make an order declaring that the claimant is entitled, as against the government, to land or property or to possession of it.

Interest on judgments

- 12** A judgment debt due to or from the government bears interest in the same way as a judgment debt due from one person to another.

Certificate of judgment

- 13** (1) Subject to this Act, if in proceedings against the government and proceedings in which the government is a party, an order for costs or other order is made by a court against the government, the proper officer of the court must, on application, issue a certificate.
- (2) If the court directs, a separate certificate must be issued for the costs, if any, ordered to be paid to the applicant.
- (3) A certificate issued under this section may be served on the person named in the record as the solicitor, or as the person acting as solicitor, for the government.
- (4) If the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate must state the amount payable, and the Minister of Finance must, subject to this Act, pay out of the consolidated revenue fund to the person entitled, or to the person's order, the amount appearing by the certificate to be due, together with the interest, if any, lawfully due.
- (5) The court which makes an order or a court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of the amount payable, or any part is suspended and, if the certificate has not been issued, may order the direction to be inserted in it.
- (6) An execution or attachment or process of that nature must not be issued out of a court for enforcing payment by the government of money or costs.

Settlement

- 14** (1) If a claim is made against the government and the Attorney General certifies, either before or after proceedings authorized by this Act have been commenced, that
- (a) the Attorney General considers that the claim, if pursued, could result in an order referred to in section 13 (4) for the payment of money by the government, and

(b) it is in the public interest to settle the claim in an amount set out in the certificate,

the Minister of Finance must pay that amount to the person making the claim.

(2) If a proceeding authorized by this Act has been commenced and the Attorney General certifies that it is in the public interest to make payment into court, the Minister of Finance must pay into court the amount set out in the certificate.

(3) [Repealed 1998-42-4.]

(4) Money paid by the Minister of Finance under this section must be paid out of the consolidated revenue fund.

Statement for Legislature

15 (1) The Comptroller General must in each fiscal year prepare for the Attorney General a statement recording for the preceding fiscal year all of the following:

- (a) each certificate served under section 13;
- (b) each certificate issued under section 14;
- (c) the money paid out in respect of those certificates.

(2) On receipt of a statement under subsection (1), the Attorney General must annually, as soon as practicable, lay it before the Legislative Assembly.

Rights of government to rely on statutes

16 (1) This Act does not prejudice the right of the government to take advantage of an Act.

(2) In proceedings against the government, an Act that could, if the proceedings were between persons, be relied on by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to an express provision to the contrary, be relied on by the government.