



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **CROWN PROCEEDINGS ACT**

## PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## CROWN PROCEEDINGS ACT

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## CROWN PROCEEDINGS ACT

### CHAPTER C-32

#### 1. Definitions

In this Act

- (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 the Province of Prince Edward Island;
- (c) “**officer**”, in relation to the Crown, includes a minister of the Crown and any servant of the Crown;
- (d) “**order**” includes a judgment, decree, rule, award, and declaration;
- (e) “**person**” does not include the Crown;
- (f) “**proceedings against the Crown**” includes a claim by way of set-off or counterclaim raised in proceedings by the Crown, and interpleader proceedings to which the Crown is a party.
- (g) repealed by 2008,c.20,s.72. 1988, Cap. S-10. R.S.P.E.I. 1974, Cap. C-31, s.2; 1975, c.27, s.5; 2008,c.20,s.72(20).

#### 2. Statutes and proceedings to which this Act does not apply

- (1) This Act does not apply to
  - (a) proceedings authorized by or arising out of the *Workers’ Compensation Act* R.S.P.E.I. 1988, Cap. W-7;
  - (b) proceedings against the Registrar of Deeds under the *Real Property Act* R.S.P.E.I. 1988, Cap. R-3;
  - (c) proceedings against the Registrar of Deeds under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10;
  - (d) proceedings authorized by or arising out of the *Income Tax Act* R.S.P.E.I. 1988, Cap. I-1;
  - (e) proceedings to which the *Expropriation Act* R.S.P.E.I. 1988, Cap. E-13 relates.

#### Saving clauses

- (2) Except as otherwise provided in this Act, nothing in this Act
  - (a) subjects the Crown to greater liability in respect of the acts or omissions of an independent contractor employed by the Crown than that to which the Crown would be subject in respect of such acts or omissions if it were a private person;
  - (b) affects any right of the Crown to intervene in proceedings affecting its rights, property or profits;

- (c) subjects the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown; or
- (d) subjects the Crown to proceedings under this Act with respect to anything done in the due enforcement of the criminal law or the penal provisions of any Act of the Legislature.

#### **Limitations as to actions in respect of highways**

- (3) No action shall be brought against the Crown to enforce a claim for damages alleged to have been caused by an accident arising, after July 1, 1973, from the condition of a highway including a sidewalk, or from the presence of a nuisance on a highway including a sidewalk, unless
  - (a) a notice in writing of the accident, in addition to the notice required under subsection 10(2), indicating the place where it occurred as well as the nature and alleged cause thereof is served upon, or mailed by registered mail to the Deputy Minister of Transportation, Infrastructure and Energy within ninety days of the happening thereof; and
  - (b) the action is brought within two years after the date of the accident,
 and this subsection applies whether the alleged liability of the Crown arises as the result of misfeasance or of non-feasance.

#### **Limitation as to actions in respect of drainage works**

- (4) No action shall be brought against the Crown to enforce a claim for damages alleged to have been sustained in respect of drainage works unless it is brought within two years after the date on which the damages were, or are claimed to have been, sustained.

#### **Effect of want of notice**

- (5) Where death results from an accident to which subsection (3) applies, the want of the notice required under that subsection is not a bar to an action; and in respect of any other accident to which subsection (3) applies, the want or insufficiency of the notice required under that subsection is not a bar to an action, if the court before which the action is brought considers that there was reasonable excuse for the want or insufficiency. *R.S.P.E.I. 1974, Cap. C-31, s.3, 1980, c.2, s.3; 1983, c.1, s.6; 2010, c.31, s.3; 2012, c.11, s.1; 2015, c.28, s.3.*

### **3. Right to sue the Crown**

Subject to this Act, 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. *R.S.P.E.I. 1974, Cap. C-31, s.4.*

### **4. Liability of Crown**

- (1) Subject to this Act, the Crown is subject to all those 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 officers or agents;
  - (b) in respect of any breach of those 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 bylaw made or passed under the authority of any statute.

**Liability of Crown for acts of its officers or agents**

- (2) No proceedings lie against the Crown under clause (1)(a) with respect to any act or omission of an officer or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his personal representative.

**Liability for acts of officers performing duties legally required**

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

**Application of statutes limiting liability of officers of the Crown**

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

**Property vesting in the Crown**

- (5) Where property vests in the Crown by virtue of any rule of law that operates independently 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 is without prejudice to the liability of the Crown under this Act in respect of any period after the Crown, or any person acting for the Crown, has in fact taken possession or control of the property, or entered into occupation thereof.

**Limitation of liability in respect of judicial acts**

- (6) No proceedings lie against the Crown under this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge
- (a) responsibilities of a judicial nature vested in him; or
  - (b) responsibilities that he has in connection with the execution of judicial process.
- R.S.P.E.I. 1974, Cap. C-31, s.5.*

**5. Application of law as to indemnity and contribution**

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. *R.S.P.E.I. 1974, Cap. C-31, s.6.*

**6. Proceedings in the Supreme Court**

Subject to this Act, all proceedings against the Crown in the Court of Appeal or the Supreme Court shall be instituted and proceeded with in accordance with the *Judicature Act R.S.P.E.I. 1988, Cap. J-2.1. R.S.P.E.I. 1974, Cap. C-31, s.7; 2008,c.20,s.72(20).*

**7. Appeals and stay of execution of proceedings**

Subject to this Act, all enactments and rules of court relating to appeals and stay of execution of proceedings, with necessary modifications, apply to proceedings against the Crown. *R.S.P.E.I. 1974, Cap. C-31, s.9.*

**8. Application of rules as to discovery, inspection of documents etc.**

In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents, examination for discovery, and interrogatories apply in the same manner as if the Crown were a corporation, except that the Crown may refuse to produce a document or to make answer to a question on discovery or interrogatories on the ground that the production thereof or the answer would be injurious to the public interest. *R.S.P.E.I. 1974, Cap. C-31, s.10.*

**9. Designation of the Crown in proceedings**

In proceedings under this Act, the Crown shall be designated the “Government of Prince Edward Island”. *R.S.P.E.I. 1974, Cap. C-31, s.11.*

**10. Service on Crown**

- (1) A document to be served on the Crown shall be served
- (a) by delivering a copy, during office hours, to
    - (i) the office of the Deputy Attorney General at the Department of Justice and Public Safety in the City of Charlottetown, or
    - (ii) a solicitor in the Legal Services Section of the Department of Justice and Public Safety in the City of Charlottetown; or
  - (b) by mailing a copy, by registered mail, to the office of the Deputy Attorney General at the Department of Justice and Public Safety in the City of Charlottetown.

**When service made**

- (1.1) A document sent by registered mail pursuant to clause (1)(b) is deemed to be served on the Crown
- (a) when the document is received by the office of the Deputy Attorney General; or
  - (b) except when postal services are not functioning, on the expiry of ten days after the date of registration,

whichever is earlier.

**Notice of intended proceedings**

- (2) Except in the case of a claim by way of set-off or counterclaim raised in proceedings by the Crown, no proceedings shall be commenced against the Crown, unless the claimant has, at least ninety days before the commencement of the proceedings, served on the Crown a written notice containing
- (a) the name and address of the claimant;
  - (b) the court in which the proceedings are to be brought; and
  - (c) sufficient particulars to identify the occasion out of which the claim arose.





**Extension of time**

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

day period. *R.S.P.E.I. 1974, Cap. C-31, s.12; 1993, c.29, s.4; 1997, c.20,s.3; 2000,c.5,s.3; 2010,c.31,s.3; 2010,c.14,s.3; 2012,c.11,s.2; 2015,c.28,s.3.*

**10.1 Crown may require information**

The Attorney General may, after service on the Crown of a notice under subsection 10(2), require the claimant to provide the Attorney General with such additional particulars of the claim as, in the opinion of the Attorney General, are necessary to enable the claim to be investigated. *2012,c.11,s.3.*

**11. Trial without a jury**

In proceedings against the Crown the trial shall be without a jury. *R.S.P.E.I. 1974, Cap. C-31, s.13.*

**12. Interpleader**

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 under the *Judicature Act* shall, subject to this Act, have effect accordingly. *R.S.P.E.I. 1974, Cap. C-31, s.14; 1977, c.38, s.3; 2008,c.20,s.72(20).*

**13. Rights of parties and authority of court**

- (1) Subject to this Act, in proceedings against the Crown, the rights of the parties are as nearly as possible the same as in a suit between person and person; and the court may
- (a) make any order, including an order as to costs, that it may make in proceedings between persons; and
  - (b) otherwise give such appropriate relief as the case may require.

**Injunction or specific performance not to lie against the Crown**

- (2) 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 may, in lieu thereof, make an order declaratory of the rights of the parties.

**Order for recovery of land not to be made against the Crown**

- (3) In proceedings against the Crown in which the recovery of real or personal property is claimed, the court shall not make an order for the recovery of the property or the delivery of the property; but may, in lieu thereof, make an order declaring that the claimant is entitled, as against the Crown, to the real or personal property or to the possession thereof.

**Limitation on orders or injunctions against the Crown**

- (4) The court shall not in any proceedings grant an injunction or make an order against an officer 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.

**Set-off or counterclaim**

- (5) No person may avail himself
- (a) of any set-off or counterclaim in proceedings by the Crown for the recovery of taxes, duties, or penalties; or
  - (b) 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 or counterclaim etc.**

- (6) Subject to subsection (5), a person may avail himself of any set-off or counterclaim in proceedings by the Crown if the 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. *R.S.P.E.I. 1974, Cap. C-31, s.15.*

**14. Crown defence**

- (1) 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.

**No default of appearance**

- (2) 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 being first obtained on an application to the court.

**Notice of application**

- (3) Notice of an application to a court for a judgment referred to in subsection (2), shall be given to the Crown prior to the date fixed for the hearing of the application. *R.S.P.E.I. 1974, Cap. C-31, s.16; 2012, c.11, s.4.*

**15. Proceedings against the property**

Nothing in this Act authorizes proceedings against the property in respect of any claim against the Crown or the seizure, attachment, arrest, detention or sale of any property of the Crown. *R.S.P.E.I. 1974, Cap. C-31, s.1973, c.28, s.17.*

**16. Interest on judgments**

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. *R.S.P.E.I. 1974, Cap. C-31, s.18.*

**17. Certificate respecting orders against the Crown**

- (1) Subject to this Act, where in proceedings against the Crown, an order for costs or any other order is made by a court against the Crown, the proper officer of the court shall, on an application in that behalf, issue a certificate thereof.



**Certificate as to costs**

- (2) If the court so directs, a separate certificate shall be issued with respect to the costs, if any, ordered to be paid to the applicant.

**Certificate as to costs**

- (3) In proceedings against the Crown, if the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate shall state the amount so payable and the Minister of Finance or Crown corporation, as the case may be, shall pay out of the Operating Fund or out of the funds of the Corporation, as the case may be, to the person entitled, or to his order, the amount appearing by the certificate to be due together with the interest, if any, lawfully due thereon, at such time as may be provided in the order.

**Payment deferred on appeal**

- (4) Repealed by 1995, c.32, s.2.

**Order suspending payment**

- (5) Repealed by 1995, c.32, s.2.

**Execution or attachment, not against Crown**

- (6) No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of money or costs. *R.S.P.E.I. 1974, Cap. c.-31, s.19; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 1995, c.32, s.2; 1997, c.20, s.3; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

**17.1 Canadian Free Trade Agreement, defined**

- (1) For the purposes of this section, “**Canadian Free Trade Agreement**” means the Canadian Free Trade Agreement entered into by the Government of Canada and the governments of the provinces and territories of Canada in 2017, as amended from time to time.

**Enforcement of orders**

- (2) Where a presiding body under the Canadian Free Trade Agreement has made an order against the Crown for a monetary penalty or for Tariff Costs, a certified copy of the order made by the presiding body may be filed with the Supreme Court and, on being filed, the order has the same force and effect as an order for the payment of money or costs made by the court against the Crown. *2010, c.29, s.1; 2013, c.7, s.1; 2017, c.4, s.1.*

**18. Costs awarded to salaried officers of the Crown**

In any proceedings under this Act costs awarded to the Crown shall not be disallowed or reduced upon taxation merely because the solicitor or 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; but the costs recovered by or on behalf of the Crown in any such case shall be paid into the Operating Fund. *R.S.P.E.I. 1974, Cap. C-31, s.20; 1997, c.20, s.3.*

**19. Right of Crown to take advantage of certain statutory provisions**

This Act shall not prejudice the right of the Crown to take advantage of the provisions of any Act of the Legislature; and, in proceedings against the Crown, any Act of the Legislature that could, if the proceedings were between persons, be relied upon by the defendant as a defence

to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown. *R.S.P.E.I. 1974, Cap. C-31, s.21.*

**20. Application of Statutes to Crown**

Except as otherwise expressly provided in this Act, nothing in this Act affects any rule of evidence or any presumption relating to the extent to which the Crown is bound by an Act of the Legislature. *R.S.P.E.I. 1974, Cap. C-31, s.23.*

