

The Court Officials Act

being

Chapter 42 of *The Revised Statutes of Saskatchewan, 1920*
(assented to November 10, 1920).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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SCHEDULE

CHAPTER 42

An Act respecting Certain Officers of the Court

SHORT TITLE

Short title

1 This Act may be cited as *The Court Officials Act*.

R.S.S. 1909, c.56, s.1; R.S.S. 1920, c.42, s.1.

APPOINTMENT AND DUTIES OF OFFICIALS

Lieutenant Governor appoints officers of court

2 The Lieutenant Governor in Council may from time to time appoint any such court officials as registrar or clerk or deputy to any registrar or clerk of any court, sheriff or deputy sheriff, court reporter, process issuer or server or bailiff as may be deemed necessary to the prompt and effective administration of justice within Saskatchewan and may prescribe the area within and the place at which the duties devolving upon such officials under this or any other Act shall be performed.

R.S.S. 1909, c.56, s.2; R.S.S. 1920, c.42, s.2.

Officials hold office during pleasure

3(1) Any person appointed to any of the above offices shall hold office during pleasure and the Lieutenant Governor in Council may at any time remove any person so appointed, appoint another person in his stead or abolish such office.

(2) Unless his remuneration is otherwise fixed by law any person so appointed shall receive such remuneration for his services either by way of retention of a proportion of the fees collected by him or by way of salary or by both of such methods as may from time to time be directed or fixed by the Lieutenant Governor in Council.

R.S.S. 1909, c.56, s.3; R.S.S. 1920, c.42, s.3.

Security

4(1) Every person so appointed shall unless the Lieutenant Governor in Council otherwise directs before entering upon the duties of his office give security for the due performance of the same and for the due accounting by him of any moneys or property coming to his hands by virtue of such appointment; and the security shall be in such form and terms and for such amount as the Lieutenant Governor in Council may require.

(2) The Lieutenant Governor in Council may accept as such security the bond or policy of guarantee of any incorporated or joint stock company empowered to grant guarantee bonds, covenants or policies for the integrity and faithful accounting of public officers or other like purposes; and in case the security be that mentioned in this subsection the interim receipt of the company may be accepted in lieu of the formal security; but the formal security shall be completed within one month from the date of the receipt.

(3) In the event of the security being that authorised under the provisions of subsection (2) the premium or premiums upon the same may be paid in the first instance by the Provincial Treasurer out of any moneys appropriated for the purpose by the Legislature; and the Provincial Treasurer when authorised so to do by the Lieutenant Governor in Council may require any officer so bonded to pay the expenditure so incurred.

R.S.S. 1909, c.56, s.4; R.S.S. 1920, c.42, s.4.

Actions by the Crown upon the covenants of security

5 Every covenant entered into for or on behalf of any of the said officers in pursuance of this Act or any other Act requiring security from any of such officers shall enure for the benefit of His Majesty; and His Majesty may bring and maintain an action thereon in respect of any loss or damages suffered by His Majesty or by any person on account of any misconduct, negligence or default of the officer in either instance with the like effect as a private person suffering damages as aforesaid might and may also sue in any other mode by which His Majesty may sue upon a covenant.

R.S.S. 1909, c.56, s.5; R.S.S. 1920, c.42, s.5.

Oath of office

6(1) Every person so appointed shall upon his appointment and before entering upon the duties of his office take and subscribe the oath of allegiance and the oath set forth in form A in the schedule to *The Civil Service Act* in addition to any other oaths which he may be required to take under any other Act specially applicable to such officer.

(2) Such oaths upon being taken shall be filed with the Attorney General who shall keep a record of the same.

R.S.S. 1909, c.56, s.6; R.S.S. 1920, c.42, s.6.

Books and forms are property of the Crown

7 All necessary books and forms required for use by any of the above mentioned officers shall be approved of by the Attorney General and be provided by and be the property of His Majesty.

R.S.S. 1909, c.56, s.7; R.S.S. 1920, c.42, s.7.

Lieutenant Governor may impose additional duties

8 The Lieutenant Governor in Council shall have power to require any of the above mentioned officers to perform duties additional to any duties which may be imposed upon such officer by any Act or rule of court; and in case no duties are so imposed to specify the duties to be performed.

R.S.S. 1909, c.56, s.8; R.S.S. 1920, c.42, s.8.

One appointment to two or more offices

9 The Lieutenant Governor in Council may in his discretion appoint one person to fill two or more of the said offices.

R.S.S. 1909, c.56, s.9; R.S.S. 1920, c.42, s.9.

Disposition of books, etc., when vacancy occurs

10(1) Where a vacancy occurs in any of the above offices then until the same is filled by the proper authority the seals, books, records, money and other matters and things the property of His Majesty shall be handed over by the person in whose possession or control they may be to the person lawfully performing the duties of the office in which such vacancy occurred,

(2) Without prejudice to any other powers of the court or of a judge by way of attachment, committal or otherwise any judge of the Court of King's Bench may on summary application make an order directing the sheriff or other person named by him to take and seize such books, records, moneys and other things wheresoever found and for that purpose may authorise such sheriff or other person to break and open any doors and windows, buildings or inclosures; and such order shall be a full justification to the sheriff or other person for any action taken in pursuance thereof.

R.S.S. 1909, c.56, s.10; R.S.S. 1920, c.42, s.10.

Officers not to practise

11 No person appointed to any of the above mentioned offices shall, while holding such office, practise as a barrister, or solicitor of the province or be a member of any firm of barristers and solicitors practising in Saskatchewan.

R.S.S. 1909, c.56, s.11; R.S.S. 1920, c.42, s.11.

Lieutenant Governor regulates returns

12 The Lieutenant Governor in Council shall have power to make regulations respecting the time when, the form and manner of and the person to whom returns shall be made and fees and other moneys transmitted by any of the officers above named.

R.S.S. 1909, c.56, s.12; R.S.S. 1920, c.42, s.12.

Penalty for neglect to keep records

13 Any officer above named who fails to keep any book required under any Act, rule of court or regulation to be kept by him or who fails to enter therein any fee or fees received by him and required to be entered therein shall for each such offence in a proceeding with the consent or by the direction of the Attorney General be liable on summary conviction to a penalty not exceeding \$20.

R.S.S. 1909, c.56, s.13; R.S.S. 1920, c.42, s.13.

Penalty for nontransmission of returns

14(1) Any officer above named who fails to duly transmit any return required to be transmitted by him when and in the manner directed by any law or regulation respecting the same shall on summary conviction in a proceeding against him with the consent or by the direction of the Attorney General be liable to a penalty of \$20 for each day's default after the day fixed by the law or regulation for transmitting the same.

(2) A return either not compiled, certified or verified according to the law or regulation respecting the same shall be deemed not to have been transmitted within the meaning of this section although the same may have been transmitted within the time fixed for transmitting the same.

R.S.S. 1909, c.56, s.14; R.S.S. 1920, c.42, s.14.

Penalty for failure to transmit fees

15 Any officer above named who fails to duly transmit any fees received by him by virtue of his office and which it is his duty by law to transmit shall for every such offence be liable on summary conviction in a proceeding against him with the consent or by the direction of the Attorney General to a penalty of \$20 for every day's default after the day fixed by law for transmission of the same.

R.S.S. 1909, c.56, s.15; R.S.S. 1920, c.42, s.15.

SPECIAL PROVISIONS RESPECTING SHERIFFS, BAILIFFS, ETC.

*Office Hours***Sheriff's office hours**

16 Excepting in the judicial districts of Estevan, Cannington, Moosomin, Melville and Yorkton, it shall be the duty of every sheriff to keep his office open to the public between the hours of ten in the forenoon and four in the afternoon on all days except Sundays and holidays and except Saturdays when the same may be closed at one in the afternoon. In the judicial districts above excepted it shall be the duty of every sheriff to keep his office open to the public between the hours of nine in the forenoon and three in the afternoon on all days except Sundays and legal holidays and except Saturdays when the same may be closed at twelve o'clock noon.

1913, c.32, s.1; R.S.S. 1920, c.42, s.16.

*Books, Records and Process***Fees received are recorded**

17 Every sheriff shall keep a separate book in which he shall enter from day to day all fees and emoluments received by him by virtue of his office showing separately the fees received for each service performed and such further facts and information as the Lieutenant Governor in Council may from time to time require.

R.S.S. 1909, c.56, s.17; R.S.S. 1920, c.42, s.17.

Annual statement of fees

18 Unless otherwise provided by regulation of the Lieutenant Governor in Council made under this Act every sheriff shall on or before the fifteenth day of January in each year make up a statement in duplicate from such book and return the same to the Attorney General verified under oath; and such statement shall set forth the total amount of fees which have been received during the twelve months ended on the thirty-first day of December next preceding and such other facts or particulars as may be required by regulation of the Lieutenant Governor in Council.

R.S.S. 1909, c.56, s.18; R.S.S. 1920, c.42, s.18.

Books open to public inspection

19 The sheriff shall have a seal of office to be approved of by the Lieutenant Governor in Council and shall keep in his office open to the inspection of any person the following books, namely:

Process books

(a) process books in which shall be entered a memorandum of every process other than writs of execution or writs in the nature of writs of execution received by the sheriff, the court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the solicitor by whom issued, the date and nature of the return made thereto and what was thereunder or therewith done respectively;

Execution books

(b) an execution book for goods and lands in which shall be entered a memorandum of every writ of execution or writ in the nature of a writ of execution, the court out of which the same issued, the names of the parties thereto, the solicitor by whom issued, the date of return and the nature of the return made thereto and what was done thereunder or therewith; and

Cash book

(c) a cash book in which shall be entered all cash received or paid away by the sheriff in his official capacity or in connection with his office for any service whatever, for fees, poundage, service of process and papers, attendance at court, moneys levied under execution or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment and the cause, matter or service in which or on account of which the same was received or paid away.

R.S.S. 1909, c.56, s.19; 1917, c.34, s.12; R.S.S. 1920, c.42, s.19.

Books and records, are property of government

20 All seals, books, accounts, records, papers, writs, warrants, processes, moneys and other matters and things in the possession or under the control of any sheriff by virtue of or appertaining to his office as sheriff shall be the property of His Majesty and the same and each of them shall immediately upon the resignation, removal from office or death of any such sheriff be, by the party in whose possession or control they may come or happen to be, handed over to and taken possession of by the successor in office of such sheriff or such person as may be appointed by the Lieutenant Governor in Council to receive the same.

R.S.S. 1909, c.56, s.20; R.S.S. 1920, c.42, s.20.

Possession of books, etc., after vacancy

21 No person except the successor in office of the sheriff so resigning, being removed or dying or the person so to be appointed by the Lieutenant Governor in Council shall take, have or hold any such seals, books, accounts, records or papers and any person having or holding any of the matters or things aforesaid shall forthwith on demand deliver over the same and every of them to the said succeeding sheriff or to the person so appointed as aforesaid; and any person neglecting or refusing so to do on conviction thereof before a judge of the Court of King's Bench shall be liable to a penalty not exceeding \$100.

R.S.S. 1909, c.56, s.21; R.S.S. 1920, c.42, s.21.

Refusal to give up possession

22 The sheriff after resigning office or removal from office or in the event of his death his personal representatives shall or may at any and at all time or times thereafter have the right and be at liberty to have access to search and examine into (free of all costs, charges and expenses) any or all accounts, books, papers, warrants and process of every kind and all other matters or things which were formerly in the possession of him the said sheriff before his resignation, removal or death and which at the time of making or requiring to make such search or examination are in the possession or under the control of the succeeding sheriff.

R.S.S. 1909, c.56, s.22; R.S.S. 1920, c.42, s.22.

*Vacancy in Office Pending Execution of Writ***Sale of lands by sheriff: procedure when vacancy occurs**

23 In case of the death, resignation or removal of the sheriff after he has made a sale of lands but before he has made a transfer of the same to the purchaser such transfer shall be made to the purchaser by the person who is lawfully exercising the duties of sheriff at the time when the deed of conveyance is made.

R.S.S. 1909, c.56, s.23; R.S.S. 1920, c.42, s.23.

Sheriff vacating, successor to continue process

24 If the sheriff ceases to hold office during the currency of any writ of execution against lands and before the sale such writ shall be executed and the sale and transfer of the lands be made by the person who is lawfully exercising the duties of sheriff unless a successor in office to the sheriff has been appointed and in the latter event the said duties shall be performed by the sheriff's successor in office.

R.S.S. 1909, c.56, s.24; R.S.S. 1920, c.42, s.24.

*Misfeasance or Default of Sheriff, Liability of Sureties***Sureties of sheriff liable to indemnify persons for losses**

25 The sureties of the sheriff shall be liable to indemnify the party or parties to any legal proceedings against any omission or default of the sheriff in not paying over moneys received by him and against any damage sustained by any such party or parties in consequence of any neglect, default, omission or misconduct committed by the sheriff in his office.

R.S.S. 1909, c.56, s.25; R.S.S. 1920, c.42, s.25.

Default of sheriff

26(1) Any person sustaining any damage by reason of any such neglect, default, omission or misconduct of any sheriff may bring and maintain an action upon the security required to be given by section 4 for the loss or damage occasioned by such neglect, default, omission or misconduct in the name of his Majesty without any special leave being obtained therefor; and in any such action the sheriff shall be joined as a defendant and such person shall be entitled to any amount recovered with costs; and the defendant shall be entitled to costs if judgment is given in his favour.

Action on security

(2) Upon the commencement of any such action the sheriff shall give immediate notice thereof to the Attorney General and such action shall not be barred by reason of any prior recovery by the same party upon the covenant or security or of any judgment rendered for the defendant in any prior action upon the same covenant or security or by reason of any other action being then depending upon the same covenant or security either at the suit of the same plaintiff or of any other party or of His Majesty for any other distinct cause of action.

R.S.S. 1909, c.56, s.26; R.S.S. 1920, c.42, s.26.

Limitation of surety's liability

27 If upon the trial of an action upon any such covenant or security it is made to appear that the person on whose behalf the action is brought is entitled to recover and that the amount which such surety has paid or become liable to pay as hereinafter mentioned is not equal to the full amount for which he became surety the court after deducting from such full amount the sums which he has so paid or become liable to pay as aforesaid shall render judgment against him for any sum not exceeding the balance of the sum for which he became surety.

R.S.S. 1909, c.56, s.27; R.S.S. 1920, c.42, s.27.

When surety discharged from liability

28 Where any such surety actually and *bona fide* and of his own proper moneys and effects has paid or become liable by virtue of a judgment or judgments recovered against him upon his said covenant or security to pay an amount equal to the amount specified in the said covenant or security for which he became surety such covenant or security shall as to him be deemed to be discharged and satisfied and no other or further sum shall be recovered against him.

R.S.S. 1909, c.56, s.28; R.S.S. 1920, c.42, s.28.

Stay of proceedings against surety

29 It shall be competent for the Court of King's Bench or a judge thereof upon proof to the satisfaction of the court or judge of such payment or liability in a summary manner and at any stage of the cause by stay of proceedings or otherwise to prevent the recovery against any such surety of any further sum than the amount specified in his covenant or security and for which he may have become surety.

R.S.S. 1909, c.56, s.29; R.S.S. 1920, c.42, s.29.

When judgment recovered upon security levy is on sheriff's goods first

30 Upon every writ of execution under a judgment recovered on such covenant or security the plaintiff or his solicitor shall by an indorsement on the writ direct the coroner or other officer charged with the execution of such writ to levy the amount thereof upon the goods and chattels of the sheriff in the first place and in default of goods and chattels of the sheriff to satisfy the amount then to levy the same or the residue thereof on the goods and chattels of the other defendant or defendants in such writ and so in like manner with any writ against lands and tenements upon a judgment on any such covenant or security.

R.S.S. 1909, c.56, s.30; R.S.S. 1920, c.42, s.30.

*Officers Not to Purchase at Execution Sales***Officers, may not purchase under execution**

31 No sheriff, deputy sheriff or bailiff shall directly or indirectly purchase any goods or chattels, lands or tenements by him exposed to sale under execution.

R.S.S. 1909, c.56, s.31; R.S.S. 1920, c.42, s.31.

Liability for misconduct in execution of writ

32 If any bailiff intrusted with the execution of any writ, warrant, process, mesne or final knowingly misconducts himself in the execution of the same or knowingly makes any false return to such writ, warrant or process he shall answer in damages to any party aggrieved by such misconduct or false return.

R.S.S. 1909, c.56, s.32; R.S.S. 1920, c.42, s.32.

*Custody of Writs, Process, Etc.***Restoration of documents, etc., to sheriff**

33 Every deputy sheriff, bailiff or other sheriff's officer or clerk intrusted with the custody of any writ or process or of any book, paper or document belonging to the said sheriff or his office shall upon demand upon him by such sheriff restore and return such writ, process, book, paper or document to the custody of the said sheriff and in case of any neglect or refusal to return or restore the same as aforesaid the party so neglecting or refusing may be required by an order of the Court of King's Bench or of any judge of such court to return and restore such writ, process, book, paper or document to such sheriff and if he disobeys such order may be further proceeded against by attachment as in other cases of contumacy to orders or rules of court.

R.S.S. 1909, c.56, s.33; R.S.S. 1920, c.42, s.33.

Sheriff's officer to deliver process to sheriff when required

34 If any deputy sheriff, bailiff or sheriff's officer shall have in his possession, custody or control any writ of summons, *fieri facias* or other writ or any bench warrant or process whatsoever and shall upon demand made by the sheriff from whom the same may have been received or his successor in office or by any other party entitled to the possession of the same neglect or refuse to deliver up the same such sheriff or his successor in office or the party entitled to the possession of the same may proceed by summons and order before any judge having jurisdiction in the court out of which such writ or process issued to compel the production and delivery thereof; which order may be enforced in the same manner as like orders for the return of writs against sheriffs and with or without costs or be discharged with costs against the party applying in the discretion of the judge aforesaid.

R.S.S. 1909, c.56, s.34; R.S.S. 1920, c.42, s.34.

Indorsement of receipt of summons, nonservice delivery, etc.

35(1) Upon the delivery of a writ of summons or an originating summons at the office of a sheriff to be served by him he, his deputy or clerk shall indorse thereon the time when it was so delivered; and in case the writ is not fully and completely served within thirty days after the delivery the plaintiff, his solicitor or agent shall be entitled to receive back the same; and the sheriff or his deputy or clerk shall indorse thereon the time of its redelivery; and the same may then be served by any literate person other than the plaintiff and the costs of the mileage and the service of the writ by a literate person afterwards shall in case the person directed to be served was at any time during the said thirty days within the official territory of the sheriff be allowed at the usual rate in the taxation of costs as if the service had been by the sheriff or his officer.

(2) If the sheriff being applied to neglects or refuses after the expiration of the said thirty days to redeliver the said writ or summons upon demand the plaintiff may issue a duplicate or concurrent writ or summons on the *praecipe* (if any) already filed and the taxable costs incurred on the issue of the first or other writ or summons not redelivered may be charged against and recovered from the sheriff by the plaintiff or his solicitor.

(3) Nothing in this section shall be construed to relieve the sheriff from his duty to serve the said writ or summons upon its receipt by him.

R.S.S. 1909, c.56, s.35; R.S.S. 1920, c.42, s.35.

Provision in case of death, resignation or removal of sheriff

36 In case a sheriff dies, resigns his office (and his resignation is accepted) or is removed therefrom the deputy sheriff shall nevertheless continue the office of sheriff and execute the same and all things belonging thereto in the name of the sheriff so dying, resigning or being removed until another sheriff has been appointed and sworn into office and the said deputy sheriff shall be answerable for the execution of the said office in all respects and to all intents and purposes whatsoever during such interval as the sheriff so dying, resigning or having been removed would by law have been if he had been living or continuing in office and the security given by the deputy sheriff shall remain and be a security to His Majesty, his heirs and successors and to all persons whatsoever for the due and faithful performance of the duties of his office during such interval by the said deputy sheriff.

R.S.S. 1909, c.56, s.36; R.S.S. 1920, c.42, s.36.

Oath of office by sheriffs and bailiffs

37 Every sheriff, deputy sheriff and bailiff appointed under the provisions of this or any Act of the province in that behalf shall upon appointment and before entering upon the duties of his office take the oath of office (form A).

R.S.S. 1909, c.56, s.37; R.S.S. 1920, c.42, s.37.

ASSISTANT SHERIFFS**Lieutenant Governor appoints assistant sheriffs**

38(1) Notwithstanding anything in this or any other Act or law to the contrary it shall be lawful for the Lieutenant Governor in Council to set apart any portion of any judicial district and to define the limits so set apart, to give to the same a name and to appoint therein an officer to be styled assistant sheriff and to fix the remuneration of such officer.

(2) Upon the setting apart of such portion and the appointment of an assistant sheriff therefor the jurisdiction of the sheriff therein shall cease and all the powers, duties and obligations which at the time of such appointment might or could have been exercised or performed by the sheriff shall thereafter so far as they are to be exercised or performed within such portion or as they affect property or persons in such portion be exercised and performed by such assistant sheriff and in respect of all mesne and final process intended to affect real or personal property situated within such portion such assistant sheriff shall have and perform all the powers, duties and obligations that the sheriff could have lawfully performed therein prior to the setting apart of such portion.

(3) All the provisions of this Act applicable to sheriffs shall apply to every assistant sheriff so appointed.

(4) The Lieutenant Governor in Council may issue regulations for the copying of books, records, writs and other papers on file or in use in the office of the sheriff and their transfer to the assistant sheriff and may also make all other regulations as may be necessary or expedient for the effective carrying out of the provisions of this section.

R.S.S. 1909, c.56, s.38; R.S.S. 1920, c.42, s.38.

SPECIAL PROVISIONS RESPECTING LOCAL REGISTRARS OF THE COURT OF KING'S BENCH AND CLERKS OF THE DISTRICT COURT.

Duties of local registrar and clerks

39 It shall be the duty of every local registrar of the Court of King's Bench and every clerk of a district court:

1. Except in the judicial districts of Estevan, Cannington, Moosomin, Melville and Yorkton to attend at his office and keep the same open to the public between the hours of ten in the forenoon and four in the afternoon on all days except Sundays and holidays and except on Saturdays and during vacation when the same shall be closed at one o'clock in the afternoon. In the districts above excepted it shall be the duty of every such official to attend at his office and keep the same open to the public between the hours of nine in the forenoon and three in the afternoon on all days except Sundays and holidays and except Saturdays and during vacation when the same shall be closed at twelve o'clock noon;
2. Subject to this Act and rules of court:
 - (a) to receive all papers required to be filed in court;
 - (b) to issue all writs of summons, warrants, writs of execution and other documents and process rendered necessary or requisite for the effectual disposition of such matters and to file all papers in actions in his office;
 - (c) to tax costs, enter judgments and record all judgments and orders pronounced, given and made;
3. To keep a record of all proceedings taken in any cause or matter and to keep an account of all fines, fees and moneys payable or paid into court entering all such accounts in books approved by the Attorney General in which books shall be entered regularly under separate headings all the proceedings taken, all moneys received and paid out and the persons to whom and by whom the same have been paid which books shall be accessible at all times to suitors and the public;

- 4. To deposit in a chartered bank in the manner from time to time prescribed by the Lieutenant Governor in Council all moneys paid into court;
- 5. To attend all sittings of the judge in chambers unless his attendance is dispensed with by the judge; and
- 6. To do and perform all such other acts and duties as may be prescribed by rules of court or by order of the Lieutenant Governor in Council and as may be necessary for the due administration of civil and criminal justice by the court.

R.S.S. 1909, c.56, s.39; 1913, c.32, s.2; R.S.S.
1920, c.42, s.39.

SCHEDULE

FORM A

(section 37)

OATH OF OFFICE

I, _____, do swear that I will truly and faithfully perform the several duties of sheriff, assistant sheriff or deputy sheriff or bailiff (*as the case may be*) of the judicial district to which I have been appointed without fear, favour or malice. So help me God.

Sworn before me at _____ }
 in the Province of Saskatchewan, }
 this _____ day of _____ }
 19____.

.....

J.P. in and for Saskatchewan.

