

The Petition of Right Act

being

Chapter 50 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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CHAPTER 50

An Act respecting Suits against the Crown by Petition of Right

SHORT TITLE

Short title

- 1** This Act may be cited as *The Petition of Right Act*.

R.S.S. 1909, c.58, s.1; R.S.S. 1920, c.50, s.1.

INTERPRETATION

Interpretation

- 2** In this Act, unless the context otherwise requires, the expression:

“Court”

1. “**Court**” means the Court of King’s Bench for Saskatchewan;

“Judge”

2. “**Judge**” means a judge of the said court;

“Relief”

3. “**Relief**” includes every species of relief claimed or prayed for in any petition of right, whether a restitution of any incorporeal right or a return of lands or chattels or a payment of money or damages or otherwise.

R.S.S. 1909, c.58, s.2; R.S.S. 1920, c.50, s.2.

PETITION OF RIGHT

Contents of petition

- 3** A petition of right shall be entitled in the Court of King’s Bench for Saskatchewan and shall state the place where the suppliant proposes the petition shall be tried; and such petition shall be addressed to His Majesty in the words or to the effect of the form in the schedule to this Act and shall state the Christian name and surname and usual place of abode of the suppliant and those of his solicitor, if any, by whom the same is presented; and shall set forth with convenient certainty the facts entitling the suppliant to relief and shall be signed by the suppliant or his solicitor; the facts set forth in the petition shall be verified by affidavit of the suppliant, his solicitor or agent annexed thereto or indorsed thereon.

R.S.S. 1909, c.58, s.3; R.S.S. 1920, c.50, s.3.

Fiat for

- 4** The said petition and a copy thereof shall be left with the Clerk of the Executive Council for submission to the Lieutenant Governor in Council for his consideration, and upon such consideration a fiat may be granted that right be done.

R.S.S. 1909, c.58, s.4; R.S.S. 1920, c.50, s.4.

Service of petition

5 Upon the Lieutenant Governor's fiat being obtained to such petition a copy of such petition and fiat shall be left at the office of the Attorney General during office hours with an indorsement thereon in the words or to the effect of the forms in the schedule to this Act, praying for a defence or answer on behalf of His Majesty within twenty-eight days.

R.S.S. 1909, c.58, s.5; R.S.S. 1920, c.50, s.5.

Notice to last occupant of real estate

6 In case any such petition of right shall be presented for the recovery of any real or personal property or any right in or to the same which has been granted away or disposed of by or on behalf of His Majesty or his predecessors, a copy of such petition and fiat shall be served upon the person in the possession, occupation or enjoyment of such property or right, indorsed with a notice (form 3) requiring such person to file a statement of defence thereto within twenty-eight days after the same has been so served; service of the said petition and fiat shall be made in the manner provided for service of a writ of summons in a civil action.

R.S.S. 1909, c.58, s.6; R.S.S. 1920, c.50, s.6.

Appearance of third party and subsequent proceedings

7 It shall not be necessary to issue any *scire facias* or other process to any person so served for the purpose of requiring him to appear, plead or answer to such petition; but he shall if he intends to contest such petition file his statement of defence thereto within the time specified in such notice or such further time as the court or judge may allow.

R.S.S. 1909, c.58, s.7; R.S.S. 1920, c.50, s.7.

PLEADINGS

Time for pleading or defending

8 The time for defending or pleading to such petition on behalf of His Majesty shall be the said period of twenty-eight days after such petition with such prayer of a defence or answer as aforesaid has been left at the office of the said Attorney General or such further time as may be allowed by the court or judge.

R.S.S. 1909, c.58, s.8; R.S.S. 1920, c.50, s.8.

How petition may be answered by Attorney General

9 The petition may be answered within the time aforesaid according to the practice of the court relating to statements of defences and counterclaims by or in the name of His Majesty's Attorney General on behalf of His Majesty.

R.S.S. 1909, c.58, s.9; R.S.S. 1920, c.50, s.9.

How by another person

10 The petition may be answered by or on behalf of any other person who may in pursuance thereof be called upon to plead or answer thereto in the same manner as if such petition when prosecuted in the said court were a statement of claim filed, therein; and such and the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on behalf of His Majesty may be alleged on behalf of any such other person as aforesaid called on to plead or answer thereto.

R.S.S. 1909, c.58, s.10; R.S.S. 1920, c.50, s.10.

PRACTICE**Rules of pleading, evidence**

11 So far as the same are applicable and except in so far as is inconsistent with this Act the laws and statutes in force as to pleading, evidence, hearing and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set off, appeal and proceedings in error, in suits between subject and subject, and the rules, orders, practice and course of procedure of the said court respectively for the time being in reference to such suits and personal actions shall be applicable and apply and extend to such petition of right.

R.S.S. 1909, c.58, s.11; R.S.S. 1920, c.50, s.11.

Judgment by default

12 In case of a failure on the behalf of His Majesty or of any other person as aforesaid called upon to answer or plead to such petition to plead or answer in due time either to such petition or at any subsequent stage of the proceedings thereon the suppliant shall be at liberty to apply to the court or to a judge for an order that the petition may be taken as confessed; and the court or judge on being satisfied that there has been such failure to plead, answer or defend in due time may order that such petition may be taken as confessed as against His Majesty or such other party so making default; and in case of default on behalf of His Majesty or any other such person, if any, called upon as aforesaid to answer or plead thereto a judgment may be pronounced by the court or leave may be given by the court or judge on the application of the suppliant to sign judgment in favour of the suppliant.

R.S.S. 1909, c.58, s.12; R.S.S. 1920, c.50, s.12.

Setting aside judgment

13 The judgment in section 12 authorised may afterwards be set aside by such court or a judge in its or his discretion upon such terms as to it or him seem proper.

R.S.S. 1909, c.58, s.13; R.S.S. 1920, c.50, s.13.

TRIAL OF ISSUES**Trial**

14 Any issue of fact or assessment of damages to be tried or had under this Act shall be tried or had by a judge without a jury.

R.S.S. 1909, c.58, s.14; R.S.S. 1920, c.50, s.14.

JUDGMENT

Form of judgment

15 Upon such petition of right the judgment of the court whether pronounced or given upon the pleadings or upon a default to answer or plead in time or after hearing of verdict or otherwise shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition or such other relief as the court thinks right and such court may give a judgment that the suppliant is entitled to such relief and upon such terms and conditions, if any, as such court thinks just.

R.S.S. 1909, c.58, s.15; R.S.S. 1920, c.50, s.15.

Effect of judgment

16 In all cases in which the judgment commonly called a judgment of *amoveas manus* was formerly in England pronounced or given upon a petition of right, a judgment that the suppliant is entitled to relief as hereinbefore provided shall be of such and the same effect as such judgment of *amoveas manus*.

R.S.S. 1909, c.58, s.16; R.S.S. 1920, c.50, s.16.

COSTS

Costs upon petition as against suppliant

17 Upon any such petition of right the Attorney General or other persons appearing on behalf of His Majesty and every such other person as aforesaid who defends or pleads thereto shall be entitled respectively to recover costs against the suppliant in the same manner and subject to the same restrictions and discretion and under the same rules, regulations and provisions so far as they are applicable as are or may be usually adopted or in force touching the payment or receipt of costs in proceedings between subject and subject; and for the recovery of such costs such and the same remedies and writs of execution as are authorised for enforcing payment of costs upon judgments or orders shall and may be prosecuted, sued out and executed respectively by or on behalf of His Majesty and of such other person as aforesaid as defends and pleads to such petition; and any costs recovered on behalf of His Majesty shall be paid to the Provincial Treasurer and form part of the consolidated fund of the province.

R.S.S. 1909, c.58, s.17; R.S.S. 1920, c.50, s.17.

Recovery of costs by suppliant

18 Upon any such petition of right the suppliant shall be entitled to costs against His Majesty and also against any other person defending or pleading to any such petition of right in like manner and subject to the same rules, regulations and provisions, restrictions and discretion so far as they are applicable as are or may be usually adopted or in force touching the right to recover costs in proceedings between subject and subject; and for the recovery of any such costs from any such person other than His Majesty defending or pleading in pursuance hereof to any such petition of right, such and the same remedies and writs of execution as are authorised for enforcing payment of costs, judgments or orders in actions between subject and subject shall and may be prosecuted, sued out and executed on behalf of such suppliant.

R.S.S. 1909, c.58, s.18; R.S.S. 1920, c.50, s.18.

Judge's certificate to Provincial Treasurer when suppliant is declared entitled

19 Whenever upon such petition of right a judgment or order is given or made that the suppliant is entitled to relief and there is no appeal and whenever upon an appeal a judgment or order is affirmed, given or made that the suppliant entitled is entitled to relief and whenever any judgment or order is given or made entitling the suppliant to costs any one of the judges of the said court shall and may upon application on behalf of the suppliant after a lapse of fourteen days from the making, giving or affirming of such judgment or order certify to the Provincial Treasurer the tenor and purport of the same (form 4); and such certificate may be sent to or left at the office of the Provincial Treasurer during office hours.

R.S.S. 1909, c.58, s.19; R.S.S. 1920, c.50, s.19.

Payment of judgment and costs

20 Upon the tenor and purport of any judgment or order being certified to him as aforesaid the Provincial Treasurer shall pay out of any moneys in his hands for the time being legally applicable thereto or which may be thereafter voted by the Legislature for that purpose the amount of any moneys and costs awarded by such judgment or order to the suppliant in any such petition of right.

R.S.S. 1909, c.58, s.20; R.S.S. 1920, c.50, s.20.

SCHEDULE

FORM 1

(Section 3)

PETITION

In the Court of King's Bench for Saskatchewan

To the King's Most Excellent Majesty:

Province of Saskatchewan,

To wit:

The humble petition of *A. B.*, of _____ by his attorney, *E. F.*, of _____ sheweth that (*state with convenient certainty the facts on which the petitioner relies as entitling him to relief*).

CONCLUSION

Your suppliant therefore humbly prays that (*state the relief claimed*).

Your suppliant humbly proposes that this petition be tried at _____

Dated the _____ day of _____ A.D. 19 _____.

*A. B.**(or C. D.,**Solicitor for A. B.)*

I, *A. B.*, the within suppliant, make oath and say that the facts and matters and things in the within named petition set forth and contained are true to my personal knowledge.

Sworn before me at _____
 in the Province of _____
 this _____ day of _____
 19 _____.

}

A. B.

PETITION OF RIGHT

c. 50

FORM 2

(Section 5)

INDORSEMENT ON PETITION

Indorsement of petition

The suppliant prays for a statement of defence on behalf of His Majesty within twenty-eight days after the date hereof or otherwise that the petition may be taken as confessed.

FORM 3

(Section 6)

NOTICE TO DEFEND

Notice to defend

To A. B.:

You are hereby required to file your statement of defence to the within petition in the office of the local registrar of the Court of King's Bench for the Judicial District of _____ within twenty-eight days after the date of service hereof.

Take notice that if you fail to defend in due time the said petition may as against you be ordered to be taken as confessed.

Dated the _____ day of _____ 19 _____.

FORM 4

(Section 19)

CERTIFICATE OF JUDGMENT FOR PETITIONER

Certificate of judgment for petitioner

In the Court of King's Bench for Saskatchewan

To the Honourable the Provincial Treasurer of Saskatchewan:

Petition of Right of A. B. in His Majesty's Court of King's Bench for Saskatchewan at _____.

I hereby certify that on the _____ day of _____ 19 _____, it was by the Court of King's Bench for the Province of Saskatchewan adjudged (or ordered) that the above named suppliant was entitled to (*state the relief claimed*).

Dated the _____ day of _____ 19 _____.

.....
Judge's signature.

