

CROWN PROCEEDINGS

In the year 1949 a resolution was adopted by the Council of the New Brunswick Barrister's Society requesting the Attorney General of New Brunswick to enact legislation similar to the Crown Proceedings Act 1947 of the Parliament of the United Kingdom. As a result the matter was referred to the Commission on Uniformity of Legislation for the drafting of a uniform statute, and a report and a draft of the uniform statute have been made. It is anticipated that legislation will be introduced in the Legislature of this Province in 1951.

The reason for the proposed change is that, apart from special statutory authority, an action can be commenced against the Crown by a subject, only in the following cases:

1. Where land or goods or money has found its way into the possession of the Crown and the object is to obtain restitution or if restitution cannot be given, compensation in money.
2. When a claim arises out of contract, as for goods supplied to the Crown or to public services.
3. Where the claim is for statutory compensation as when a statute imposes a liability on the Crown to pay for the use and occupation of property.

Since the reign of Edward the First the procedure for relief against the Crown has been by Petition of Right. In the absence of special statutory provision a Petition of Right does not lie against the Crown for a claim arising in tort.

Under the Petition of Right Act R.S.C. 1927, c. 158 a Petition of Right may be left with the Secretary of State of Canada for submission to the Governor in Council. If a fiat is granted the Petition is filed in the Exchequer Court and proceedings are carried on in that court which has exclusive original jurisdiction.

Under the Exchequer Court Act R.S.C. 1927, c.34 the Exchequer Court is given exclusive original jurisdiction in all actions against the Crown. These are enumerated in sections 18 to 20 of the Act. However, the litigant as against the Crown, does not have the benefit of all the defences which he would have if the action had been one between subject and subject.

There can be no such proceedings against the Crown in the right of the Province of New Brunswick.

The Crown Proceedings Act 1947 made revolutionary changes in the rights of the subjects to take legal proceedings against the Crown in the courts of the United Kingdom.

Part 1 of the Crown Proceedings Act enables a person, who before the Act could only proceed by Petition of Right or against a Minister, to take proceedings against the Crown as of Right and without a fiat.

Section 2 imposes on the Crown liability in respect of tort in three classes of wrongs, (1) torts committed by servants or agents, (2) breaches of the duties which a private employer owes to his servants or agents by common law by reason of being their employer, and (3) breaches of the duties attached at common law to the ownership, occupation, possession or control of property. It is also provided that the Crown shall be liable for breaches of a statutory duty to the same extent as it would be if it were a private person.

The Act also gives the Crown the benefit of any statute which negatives or limits the liability of any government department or officer of the Crown in respect of any tort and gives the Crown the same protection as is commonly given to servants of the Crown. The Crown is not liable in respect to anything done or left undone by a person discharging duties of a judicial nature or in connection with the execution of judicial process. The basis of this being that the Crown has not or should not have the right to control the performance of such duties.

Likewise the Crown is made liable for the infringement by any servant of the Crown of any patent, copyright or registered trade mark committed with the authority of the Crown.

Section 4 of the Act gives a right of indemnity to the Crown against its servants who involve the Crown in liability in tort. It also applies the law relating to contribution by joint tortfeasors and the Contributory Negligence Act..

With regard to shipping, sections 5 to 7 place the Crown in the same position as a private shipowner respecting liability for collision at sea.

Under section 8 the Crown becomes liable to pay salvage respecting services rendered to ships and other property of the Crown.

Section 9 protects the Crown and its servants from liability respecting the carrying of mails and the transmission of telegrams and telephone messages.

Section 10 relates to the armed forces. It exempts from liability both the Crown and any member of the armed forces for liability arising out of the death of or personal injury suffered by any member of the armed forces when he is on duty or when the act causing such injury happens on military premises or on a ship, aircraft or vehicle used for military purposes.

Part 2 of the Act deals with jurisdiction and procedure. Briefly, it provides that all civil proceedings for and against the Crown shall be instituted and proceeded with in accordance with the rules of court. Most of such actions can be sued in the name of a government department, otherwise they must be brought by or against the Attorney General. However, no injunction or order for specific performance can be obtained against the Crown but the Court may make any declaration of the rights of the parties.

Part 3 deals with judgements and executions. When a certificate of the amount due against the Crown is given an obligation is imposed on the appropriate government department to pay such sum.

Under Part 4 provision is made for discovery of documents in the possession of the Crown. Heretofore the Crown could not be compelled to give discovery or to answer interrogatories. Courts have held that the Crown may refuse to produce documents if the Minister is of the opinion that the production would prejudice the public interest. This Right has been altered by the Act so that the Court may now order discovery against the Crown.

Crown ships, aircraft carriers and other property are excluded from proceedings for their arrest, detention or sale.

Such legislation, if adopted in the Province of New Brunswick, would enable our courts to adjudicate upon claims arising from the many activities in which the Provincial Government is engaged. The more the state operates public utilities and industry, the greater is the need for reform. The maxim "The King can do no wrong" had little justification when it crept into our Jurisprudence centuries ago. It has none today. Lawyers and Law Students may now look forward to the time when these reforms will be achieved in this Province.

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