

# *The Constitutional Questions Act, 2012*

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[Chapter C-29.01](#) of *The Statutes of Saskatchewan, 2012* (effective May 16, 2012) as amended by the *Statutes of Saskatchewan*, [2016](#), [c.21](#) and [c.26](#); [2018](#), [c.43](#); [2019](#), [c L-10.2](#); and [2023](#), [c.3](#) and [c.28](#).

## **NOTE:**

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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## **CHAPTER C-29.01**

An Act respecting References, Constitutional Questions,  
Court-appointed Lawyers, and Notice to Attorneys General and  
making a consequential amendment to *The Court of Appeal Act, 2000*

### **PART I Short Title**

#### **Short title**

- 1** This Act may be cited as *The Constitutional Questions Act, 2012*.

### **PART II Reference**

#### **Reference to Court of Appeal**

- 2(1)** The Lieutenant Governor in Council may refer any matter to the Court of Appeal for hearing and consideration, and the Court of Appeal shall hear and consider the matter.
- (2)** If the Lieutenant Governor in Council includes in the terms of the reference that the opinion and reasons of the Court of Appeal shall be deemed a judgment, the opinion and reasons of the Court of Appeal shall be deemed a judgment.
- (3)** The terms of the reference shall:
- (a)** set out the subject of the reference; and
  - (b)** name the parties to the proceedings.

2012, c.C-29.01, s.2.

#### **Court of Appeal opinion and reasons**

- 3** The Court of Appeal shall certify to the Lieutenant Governor in Council its opinion and reasons on the matter referred in the same manner as in the case of a judgment, and a judge who differs from the opinion or reasons of the majority may dissent in the same manner as a judgment.

2012, c.C-29.01, s.3.

#### **Attorney General for Saskatchewan**

- 4** The Attorney General for Saskatchewan is a party to any hearing pursuant to section 2 or 10 and any appeal pursuant to section 9.

2012, c.C-29.01, s.4.

**Attorney General of Canada**

5(1) If the matter referred to the Court of Appeal relates to the constitutional validity of an enactment within the meaning of *The Legislation Act* or an enactment within the meaning of the *Interpretation Act* (Canada), the Attorney General for Saskatchewan shall notify the Attorney General of Canada of the hearing in order that the Attorney General of Canada may be heard.

(2) The Attorney General of Canada shall give written notice to the Court of Appeal and the Attorney General for Saskatchewan within 30 days after receiving notice pursuant to subsection (1) of the Attorney General of Canada's intention to intervene.

(3) If the Government of Canada is interested in a matter referred to the Court of Appeal pursuant to section 2 other than a matter mentioned in subsection (1), the Attorney General of Canada may intervene in the matter on giving not less than 30 days' written notice to the Court of Appeal and the Attorney General for Saskatchewan.

(4) If the Attorney General of Canada gives written notice of intervention pursuant to subsection (2) or (3), the Attorney General of Canada is a party to any hearing pursuant to section 2 or 10 and any appeal pursuant to section 9.

2012, c.C-29.01, s.5; 2019, c.L-10.2, s.6-1; 2023, c.3, s.4.

**Government of other provinces**

6 If the government of any other province or territory is interested in a matter referred to the Court of Appeal pursuant to section 2, the Attorney General of that province or territory may intervene in the matter on giving not less than 30 days' written notice to the Court of Appeal and the Attorney General for Saskatchewan.

2012, c.C-29.01, s.6.

**Notice to interested persons**

7 The Court of Appeal may direct that any person interested, or, if there is a class of persons interested, any one or more persons as representatives of that class, shall be notified of the hearing, and those persons may apply to be heard as intervenors on the matter.

2012, c.C-29.01, s.7.

**Appointment of counsel for unrepresented interests**

8(1) If any interest affected is not represented by counsel, the Court of Appeal may request counsel to argue the case in that interest.

(2) Counsel mentioned in subsection (1) is entitled to reasonable expenses that shall be paid out of the general revenue fund.

2012, c.C-29.01, s.8.

**Appeal**

9 A deemed judgment pursuant to subsection 2(2) or 16(3) may be appealed as in the case of a judgment of the Court of Appeal.

2012, c.C-29.01, s.9.

**Judge in chambers**

**10(1)** A single judge of the Court of Appeal sitting in chambers may hear and dispose of an application or motion that is incidental to a reference pursuant to section 2 and that does not involve the decision of the reference on the merits.

(2) An order made by a judge in chambers pursuant to subsection (1) may be discharged or varied by the Court of Appeal.

2012, c.C-29.01, s.10.

**Court of Appeal rules**

**11** The judges of the Court of Appeal, or a majority of them present at any meeting held for that purpose, may make rules for the purpose of hearing a reference.

2012, c.C-29.01, s.11.

### PART III

#### Notice to Attorneys General

**Interpretation**

**12** In this Part:

“**court**” means the Court of Appeal, the Court of King’s Bench or the Provincial Court of Saskatchewan; (« *tribunal* »)

“**law**” includes:

- (a) an enactment as defined in *The Legislation Act*;
- (b) an enactment within the meaning of the *Interpretation Act* (Canada); (« *texte* »)

“**remedy**” means a remedy provided pursuant to section 24 of the *Canadian Charter of Rights and Freedoms* but does not include a remedy of exclusion of evidence or a remedy consequential on exclusion of evidence. (« *réparation* »)

2012, c.C-29.01, s.12; 2016, c21, s.13; 2019,  
cL-10.2, s.6-1; 2023, c28, s.17-4.

**Application of Part**

**12.1** This Part does not apply to any matter for which an application is made pursuant to Part III.1.

2016, c26, s.9.

**Notice to Attorneys General required for constitutional questions**

**13** No court shall hold any law to be invalid, inapplicable or inoperable if a constitutional question is raised nor shall it grant any remedy unless notice is served on the Attorney General of Canada and on the Attorney General for Saskatchewan in accordance with this Part.

2012, c.C-29.01, s.13.

**Notice to Attorney General for Saskatchewan required for a challenge to a law pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018***

**13.1** No court shall hold any law to be inoperative pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018* unless notice is served on the Attorney General for Saskatchewan in accordance with this Part.

2023, c3, s.6.

**Notice to Attorney General for Saskatchewan required for a challenge to regulations**

**14** If, in any court, the validity of a proclamation, regulation or order in council made or purportedly made in the execution of a power given by an Act is brought into question on grounds other than those mentioned in section 13, the court shall not hold the proclamation, regulation or order in council to be invalid unless notice is served on the Attorney General for Saskatchewan in accordance with this Part.

2012, c.C-29.01, s.14.

**Notice requirements**

**15(1)** Subject to subsection (2), a notice mentioned in section 13, 13.1 or 14 must be served at least 14 days before the day of argument.

(2) The court may, on an application without notice made for the purpose, order an abridgement of the time for service of a notice mentioned in section 13, 13.1 or 14.

(3) A notice mentioned in section 13, 13.1 or 14 must include:

- (a) the name of the action, cause, matter or proceeding in which the question arises or application is made;
- (b) the law or provision in question, if any;
- (c) the basis for the challenge;
- (d) the right or freedom alleged to be infringed or denied, if any;
- (e) the day and place for the argument of the question; and
- (f) the facts that will be relied on in argument.

(4) The Attorney General for Saskatchewan is entitled as of right to be heard in any action, cause, matter or proceeding to which section 13, 13.1 or 14 applies.

(5) The Attorney General of Canada is entitled as of right to be heard in any action, cause, matter or proceeding to which section 13 applies.

(6) If the Attorney General of Canada or the Attorney General for Saskatchewan appears in an action, cause, matter or proceeding to which section 13, 13.1 or 14 applies, that Attorney General is a party for the purposes of appeal from an adjudication respecting the validity, applicability or operability of a law or respecting entitlement to a remedy.

(7) If the Attorney General of Canada or the Attorney General for Saskatchewan is not given proper notice pursuant to section 13, 13.1 or 14 as the case may be, that Attorney General has the right to appeal an adjudication and is a party for the purpose of an appeal.

(8) If any administrative tribunal considers it appropriate in any matter, the tribunal may require that notice be given to the Attorney General for Saskatchewan in accordance with this section.

2012, c.C-29.01, s.15; 2018, c.43, s.5; 2023, c.3, s.7.

### PART III.1 Court-appointed Lawyer

#### Interpretation of Part

##### 15.1 In this Part:

“**administrator**” means the administrator appointed by the minister for the purposes of this Part; (« *administrateur* »)

“**court**” means the Court of King’s Bench or the Provincial Court of Saskatchewan; (« *tribunal* »)

“**list**” means the list of lawyers established and maintained by the administrator pursuant to this Part; (« *liste* »)

“**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned; (« *ministre* »)

“**prescribed**” means prescribed in the regulations. (« *prescrit* »)

2016, c.26, s.9; 2023, c.28, s.17-4.

#### Court-appointed lawyer – notice required

15.2 Subject to section 6-8 of *The King’s Bench Act* and section 64.1 of *The Provincial Court Act, 1998*, the court shall not appoint a lawyer to represent a person in any legal matter unless the court is satisfied that the application and notice requirements of this Part have been met.

2016, c.26, s.9; 2023, c.28, s.17-4.

#### Application for legal representation

15.3(1) A person who wishes to have a lawyer appointed to represent the person in a legal matter may make an application to the court for legal representation.

(2) An application pursuant to subsection (1) must be:

- (a) made in the prescribed manner and in the prescribed form; and
- (b) accompanied by any additional information that the administrator may reasonably require.

(3) Subject to subsections (4) and (5), at least 14 days before the hearing of an application made pursuant to this section, notice of the application must be:

- (a) served on each of the following:
  - (i) the administrator;
  - (ii) the chief executive officer of The Saskatchewan Legal Aid Commission;
  - (iii) the Attorney General of Canada, in the case of a prosecution brought by the Attorney General of Canada;
  - (iv) the Attorney General for Saskatchewan;
  - (v) any other prescribed person; and
- (b) filed with the court, with proof of service.

(4) The notice requirements mentioned in subsection (3) do not apply to an application made pursuant to this section for legal representation with respect to:

- (a) sentencing for summary conviction matters;
- (b) summary bail applications; or
- (c) any other matter determined by the minister.

(5) With the consent of the administrator, the court may order an abridgement of the time for service of the notice required by this section.

2016, c 26, s.9; 2023, c 3, s.8.

#### **Appointment of lawyer**

**15.4(1)** If, on an application pursuant to section 15.3, the court orders that the applicant be represented by a lawyer:

- (a) the court shall refer the applicant to the administrator; and
- (b) the administrator shall appoint a lawyer to represent the applicant for the purposes of the matter.

(2) After the administrator has appointed a lawyer in accordance with clause (1)(b), the administrator shall file a notice with the court advising of the name of the lawyer who has been appointed.

(3) For the purpose of appointing a lawyer in accordance with clause (1)(b), the administrator may do either or both of the following:

- (a) subject to section 15.5:
  - (i) establish and maintain a list of lawyers who may be appointed in accordance with this Part; and
  - (ii) enter into contracts with lawyers and law firms respecting the provision of legal services for the purposes of this Part;



- (b) establish a flat fee for certain matters, including for matters mentioned in subsection 15.3(4), that is payable by the administrator to lawyers appointed in accordance with this Part.
- (4) No fee is payable by the administrator to any lawyer who has not been appointed in accordance with this Part.

2016, c 26, s.9.

#### **Removal of lawyer**

- 15.5(1)** The administrator shall remove a lawyer from the list if, at any time during the preceding five-year period, the lawyer has been removed from the panel of solicitors maintained by The Saskatchewan Legal Aid Commission pursuant to *The Legal Aid Act*.
- (2) The administrator may remove a lawyer from the list for just cause by giving the lawyer notice of the removal and setting out the reasons for the removal.
- (3) A lawyer may, within 30 days after receiving notice of removal from the list, apply to the Court of King's Bench to set aside the administrator's decision.
- (4) On an application made pursuant to subsection (3), the court may order the reinstatement of the lawyer on the list or dismiss the application.

2016, c 26, s.9; 2023, c 3, s.9; 2023, c 28, s.17-4.

### PART IV **Taxation Agreement Reference**

#### **Reference pursuant to taxation agreement**

- 16(1)** If pursuant to an agreement with the Government of Canada entered into pursuant to *The Income Tax Act* or *The Income Tax Act, 2000*, or an agreement of a like nature and having like purposes, a matter is to be referred to the Court of Appeal, it shall be referred to the Court of Appeal and the form and terms of the reference shall be those that may be agreed on by the parties to the agreement, or, if they cannot agree, the form and terms shall be determined by the Chief Justice of Saskatchewan on the application of either party.
- (2) The Attorney General of Canada and the Attorney General of any other province that entered or enters into an agreement with the Government of Canada of a like nature and having like purposes to an agreement mentioned in subsection (1) may be heard in the Court of Appeal as a party with respect to any matter referred pursuant to this Act under that agreement.
- (3) The opinion and reasons of the Court of Appeal pursuant to this section shall be deemed a judgment.

2012, c.C-29.01, s.16.

PART V  
**General**

**Service**

17(1) Any notice to be provided to the Attorney General for Saskatchewan pursuant to this Act shall be served by leaving a copy with the Attorney General for Saskatchewan, the Deputy Attorney General for Saskatchewan or any lawyer employed in the Ministry of Justice and Attorney General and designated by the Attorney General for Saskatchewan for the purpose of this section.

(2) Any notice to be provided to the Attorney General of Canada pursuant to this Act shall be served by leaving a copy with the Attorney General of Canada, the Deputy Attorney General of Canada or any lawyer employed by the Attorney General of Canada and designated by the Attorney General of Canada for the purpose of this section.

(3) Any notice to be provided to any other person pursuant to this Act is to be served in the manner prescribed in the regulations.

2012, c.C-29.01, s.17; 2016, c26, s.9.

**Regulations**

17.1 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of section 15.3:
  - (i) prescribing the manner and form in which an application for legal representation must be made; and
  - (ii) prescribing any other persons on whom notice of an application for legal representation must be served;
- (c) for the purposes of subsection 17(3), prescribing accepted manners of service;
- (d) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2016, c26, s.9.

R.S.S. 1978, c.C-29 repealed

**18** *The Constitutional Questions Act* is repealed.

2012, c.C-29.01, s.18.

S.S. 2000, c.C-42.1, section 22 amended

**19** Clause 22(d) of *The Court of Appeal Act, 2000* is amended by adding “other than *The Constitutional Questions Act, 2012*” after “pursuant to any Act”.

2012, c.C-29.01, s.19

Coming into force

**20** This Act comes into force on assent.

2012, c.C-29.01, s.20.

