ALBERTA LAW REFORM INSTITUTE

Transition to the New Rules of Court

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I. Introduction

[1] The *Alberta Rules of Court* are set to come into force on November 1st, 2010.[1] This paper outlines the transition provisions and how the new rules will affect existing proceedings. The general principle is that the new rules will apply to all existing proceedings from November 1st. There are limited exceptions. This paper reviews where specific new rules will not apply to certain proceedings and where specific former rules will continue in force, as well as the availability of Court assistance to resolve doubt or difficulties concerning the transition. The paper then reviews the standardised system of time periods under the new rules. Under this standardised system, most time periods are slightly longer although a few are shorter. There are specific transition provisions for dealing with these changes to time periods. Except as expressly noted, this paper does not address the family law rules contained in Part 12 of the new rules.

II. Application to Existing Proceedings

A. General principle (r. 15.2)

[2] Rules of Court are procedural provisions and will be presumed at common law to have immediate application from the time they come into force. This result is also stated expressly in new rule 15.2:

> ***New rules apply to existing proceedings***
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> 15.2(1) Except as otherwise provided in an enactment, by this Part or by an order under rule 15.6 [*Resolution of difficulty or doubt*], these rules apply to every existing proceeding.

An "existing proceeding" is defined in r. 15.1 [*Definitions*] as "a Court proceeding commenced but not concluded under the former rules". As the rules cover filing judgment, enforcement, and assessment of lawyers' charges, the new rules will have application even after final judgment. Accordingly, the simplest course to determine what rules apply to a specific proceeding is to refer to the new rules and the limited exceptions in Part 15 [*Transitional Provisions and Coming into Force*].

B. Gap between filing and hearing (r. 15.12)

[3] Where there is a gap between when an application is made and when it is heard, the application of any test, criteria or grounds is governed by the time of hearing. In other words, if an application was filed in October but will be heard on or after November 1st, r.

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[1] *Alberta Rules of Court*, AR 124/2010. Hereafter, "the new rules". Coming into force is provided for in r. 15.15 [*Coming into force*]; see also OC 256/2010, July 14, 2010. References in this paper to the "former rules" are to the *Alberta Rules of Court*, AR 390/68.

15.12 provides that the new test, criteria or grounds apply:

> ***New test or criteria***
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> 15.12 Where these rules impose a new test, provide new criteria or provide an additional ground for making an application in an existing proceeding, these rules apply in respect of the application if the application was made but has not been heard prior to the coming into force of these rules.

C. Exceptions

[4] As noted in r. 15.2 [*New rules apply to existing proceedings*], the new rules will apply to all existing proceedings except as otherwise provided in Part 15, by an order under r. 15.6 [*Resolution of difficulty or doubt*] or by another enactment. There does not appear to be any instance where an enactment excludes the new rules. To the contrary, extensive consequential amendments were made to ensure consistency between the new rules and other statutes.[2] However, Part 15 includes various provisions that set out the non-application of specific new rules or the continued application of specific former rules.

1. Non-application of specific new rules

a. Venue (rr. 3.3, 3.4 & 15.13)

[5] Rules 3.3 [*Determining the appropriate judicial centre*] and 3.4 [*Claim for possession of land*] set out venue rules that are generally similar to the former rules. However, r. 15.13 provides that an existing proceeding need not be transferred if there is a difference in the venue rules:

> ***Place of existing proceeding***
>
> 15.13 The coming into force of rules 3.3 [*Determining the appropriate judicial centre*] and 3.4 [*Claim for possession of land*] does not operate to require an existing proceeding to be carried on in a different judicial centre from the judicial centre in which it was commenced.

b. Dispute resolution processes (rr. 4.16 & 15.3)

[6] The new rules recognise that parties have the responsibility for managing their dispute and for planning its resolution in a timely and cost-effective manner. As part of that responsibility, parties must engage in a dispute resolution process or be excused from

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[2] *Rules of Court Statutes Amendment Act, 2009*, S.A. 2009, c. 53. In force November 1st except ss. 2(6), 20, 104(7)(b)(ii) & 104(8)(b): OC 255/2010, July 14, 2010.

that requirement by the Court.[3] However, as many actions will be close to trial when the new rules come into effect it would be ineffective to require all actions to engage in a dispute resolution process. Consequently, under r. 15.3, the requirement to participate in a dispute resolution process will not apply to existing proceedings if discoveries were completed under the former rules:

> ***Dispute resolution requirements***
>
> 15.3 Rule 4.16 [*Dispute resolution processes*] applies to an existing proceeding unless, before this rule comes into effect, discoveries under the former rules in the existing proceeding have been completed.

Nevertheless, if discoveries were completed under the former rules, parties may still chose to engage in a dispute resolution process as r. 15.3 does not preclude this option.

c. Confirmation of trial date (rr. 8.7 & 15.9)

[7] Rule 8.7 [*Confirmation of trial date*] requires parties to confirm a trial date at least 3 months before the scheduled hearing date. At least one party must confirm the trial date or the date will be cancelled. However, under r. 15.9, this requirement will not apply to matters that were set down for trial under the former rules:

> ***Time limit under these rules***
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> 15.9(2) Rule 8.7 [*Confirmation of trial date*] applies only to matters that are set down for trial after the coming into force of these rules.

Thus, regardless of when the trial will be heard, if it was set down for trial before November 1st, the trial date need not be confirmed 3 months in advance.

2. Continued application of specific former rules

a. Contingency fee agreements (r. 15.5)

[8] Under r. 15.5 [*Contingency fee agreements*], the validity of contingency fee agreements is governed by the rules in force at the time the agreement was made. However, there are three sets of rules in play as there were also rule changes in 2000. Accordingly, agreements made after November 1st, 2010 will be governed by the new rules. Those made from May 1st, 2000 to October 31st, 2010, will be governed by the

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[3] See rr. 1.2 [*Purpose and intention of these rules*], 4.2 [*What the responsibility includes*] & 4.16 [*Dispute resolution processes*].

former rules. Any agreements made before May 1st, 2000 will be governed by the rules that existed at that time.

b. Formal offer to settle (r. 15.11)

[9] As with contingency fee agreements, r. 15.11 [*Formal offer to settle*] provides that the time for accepting a formal offer to settle will be governed by the rules in force at the time the offer was made. Offers made under the former rules continue to be governed by the former rules. Offers made under the new rules will be governed by the new rules.

c. Former rules under the Winding-Up Act and Criminal Code s. 424 (r. 15.14)

[10] For the time being, r. 15.14 [*Repeal*] provides that Part 57 of the former rules dealing with the federal *Winding-Up Act* remains in force. Rule 15.14 also carries forward Part 60 dealing with rules under s. 424 of the federal *Criminal Code* concerning mandamus, certiorari, habeas corpus and prohibition.

d. Controverted local authorities elections (r. 15.14)

[11] Perhaps due to the timing of upcoming local elections, r. 15.14 also carries forward Part 58 regarding controverted elections under the *Local Authorities Election Act.*[4] Similarly, some rules-related consequential amendments concerning controverted elections under that Act will not be in force on November 1st.[5]

e. Appeals (Part 14 & r. 15.14)

[12] For the time being, Part 14 [*Appeals*] provides that the entirety of the former rules will continue to apply to appeals to the Court of Appeal despite their repeal by r. 15.14 [*Repeal*]. New appeal rules have been drafted with the aim of replacing the former appeal rules and the Court of Appeal practice directions with a single, unified set of procedures.[6] The draft appeal rules are currently under review.

3. Court orders to resolve difficulty or doubt (r. 15.6)

[13] Transition provisions cannot anticipate all scenarios that may arise under the new

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[4] *Local Authorities Election Act*, R.S.A. 2000, c. L-21.

[5] The *Rules of Court Statutes Amendment Act, 2009*, S.A. 2009, c. 53, ss. 104(7)(b)(ii) & 104(8)(b) amends the *Local Authorities Election Act*, ss. 127 & 128; not in force on November 1st.

[6] See background discussion for the consolidation in Alberta Law Reform Institute, *Alberta Rules of Court Project: Civil Appeals, Consultation Memorandum No. 12.21* (Edmonton: The Institute, 2007) at 7-12.

rules. There will be instances where the interaction of the new rules and the transition provisions may not be clear or where the result is clear but inappropriate. Where needed assistance is available under r. 15.6 to resolve doubt or difficulty regarding the application or impact of the rules:

> ***Resolution of difficulty or doubt***
>
> 15.6 If there is doubt about the application or operation of these rules to an existing proceeding or if any difficulty, injustice or impossibility arises as a result of this Part, a party may apply to the Court for directions or an order, or the Court may make an order, with respect to any matter it considers appropriate in the circumstances, including:
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> (a) suspending the operation of any rule and substituting one or more former rules, with or without modification, for particular purposes or proceedings or any aspect of them;
>
> (b) modifying the application or operation of these rules in particular circumstances or for particular purposes.

III. Transition to Standard Time Periods

A. Standard time periods

[14] The new rules contain important changes both as to the time periods used and how those time periods are calculated. The time periods have been simplified and standardised to replace the broad range of time periods in the former rules. As the Alberta Law Reform Institute observed, the former rules "contain over thirty different time periods. While these time periods range from 24 hours to 10 years, twenty of them are under 30 days. Many of these are roughly equivalent: eg. 2 days / 48 hours, 14 days / 15 days, 20 days / 21 days."[7] In place of this non-systematic set of time periods, the new rules adopt a small set of standard time periods. As summarised in the information note to r. 13.2 [*Application of these rules for calculating time*]:

> The convention used in these rules is that
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> - time periods of less than one month are expressed in days and in multiples of 5, 10 or 20 days
> - longer time periods are expressed in months or years.

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[7] Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 1.

[15] There is one notable exception to the use of standard time periods of 5, 10 and 20 days. Rules 11.22 [*Recorded mail service*], 11.23 [*Additional service options in foreclosure actions*] and 11.31 [*Setting aside service*] retain 7 days as the time for presuming service by recorded mail. This exception retains consistency with the presumption under the *Interpretation Act* and recorded mail service under other enactments.[8]

B. Calculating time periods

1. Days (r. 13.3)

[16] In addition, all time periods expressed in days are calculated as calendar days. The system for calculating days under the former rules was needlessly complex and switched between business and calendar days and between clear days and non-clear days.[9] As the Alberta Law Reform Institute noted, opting for calendar days over business days and abandoning clear days would greatly simplify the new rules.[10] Consequently, the new rules adopt calendar days along with a single system for calculating them. Rule 13.3 is a plain language version of the *Interpretation Act*, s. 22(7):[11]

> ***Counting days***
>
> 13.3 When counting to or from an event or activity in days, the date on which the event or activity occurs is not counted.

Under r. 13.2 [*Application of these rules for calculating time*], the system for calculating time applies both within the rules as well as to judgments and orders. The table below outlines how time periods expressed in days were converted from the former rules to the

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[8] *Interpretation Act*, R.S.A. 2000, c. I-8, s. 23 . There is a further exception in r. 13.41 [*Authority of court clerk*] which requires that an original document be filed within 15 days of electronic filing. There is no obvious policy reason to allow 15 days. Either 10 or 20 days would be a suitable replacement.

[9] For a table showing the complex permutations for calculating time under the former rules see the Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 4. Much of the complexity is due to the multiple systems of calculating time under the *Interpretation Act*, R.S.A. 2000, c. I-8, s. 22.

[10] For background on the choice of calendar days see the Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 24.

[11] Rule 1.8 [*Interpretation Act*] excludes the application of the *Interpretation Act*, s. 22(7) as well as the competing counting systems contained in s. 22(3)-(6).

new rules.[12] It should be noted that in nearly all instances the new rules provide a slightly longer time period than do the former rules.

Former rules	New rules	Former rules	New rules
2 days* 2 clear days* 3 days*	5 days	14 days 14 clear days 15 days 15 clear days 20 days 21 clear days	20 days
4 days* 5 days* 5 clear days* 7 days 7 clear days 8 days 8 clear days 10 days 10 clear days	10 days	28 days 30 days	1 month
		45 days 60 days	2 months

* These time periods would often be extended by former rule 545 which excluded holidays.

2. Months (r. 13.4)

[17] Rule 13.4 replaces the definition of "month" under the *Interpretation Act*, s. 22(8):[13]

> ***Counting months and years***
>
> 13.4(1) When counting to or from a date in months, time is calculated from the date on which the event or activity occurs in the month to the same-numbered day in a subsequent or previous month, as the case requires.
>
> (2) If the count ends on the 29th, 30th or 31st and there is no same-numbered date in the subsequent or previous month, the count ends on the last day of the subsequent or previous month, as the case requires.

[12] Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 8-14.

[13] Rule 1.8 [*Interpretation Act*] excludes the application of the *Interpretation Act*, s. 22(8).

3. Years (r. 13.4)

[18] Rule 13.4 also provides for calculating time expressed in years as the *Interpretation Act* is silent on this point:

> ***Counting months and years***
>
> 13.4(3) When counting to or from an event or activity in years, time is calculated from the date on which the activity or event occurs in a year to the same-numbered date in a subsequent or previous year, as the case requires.
>
> (4) If the count starts on February 29 and there is no February 29 in the subsequent or previous year, then the count ends on February 28 of the subsequent or previous year, as the case requires.

4. Holidays and Court vacation

[19] The *Interpretation Act* s. 22(1)-(2) still governs where time expires on a holiday or other day when the Court offices are closed. In such cases, time is extended to the next business day or the next day when the Court offices are open.

[20] It should also be noted that the new rules do not suspend the running of time for specific matters during the Court vacation. Under former rules 552-553, time for delivering and amending pleadings was suspended during July and August and for 2 weeks over Christmas and New Year's. Under the new rules, time runs continuously.[14]

C. Transition provisions

[21] There are specific transition provisions that apply where a time period is different under the new rules.

1. Longer time period (r. 15.8(1))

[22] As a result of adopting the standard time periods, almost all time periods are longer under the new rules. Where the time period is longer, r. 15.8(1) provides that the longer time period applies:[15]

> ***Increased or decreased time limits***

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[14] See background in Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 27.

[15] There are exceptions for documents that need to be served in advance of an event and these exceptions are discussed under heading **III. C.5 Exception for notice periods**.

> 15.8(1) Where under these rules a time limit is provided for doing anything, other than the serving of a notice or other document in advance of some event, that is longer than the time limit provided under the former rules, the time limit provided in these rules prevails, despite that the action or proceeding to which the time limit applies was commenced under the former rules.

[23] For example under r. 3.31 [*Statement of defence*], a defendant within Alberta will have 20 days to respond to a statement of claim. This is a longer time period compared to the 15 days allowed under former rule 85. As a result, anyone serving or served with a statement of claim in the later half of October 2010 needs to bear in mind that the time for filing a response will increase by 5 days on November 1st. A defendant served with a statement of claim on October 19th would have to respond by November 3rd under the former rules. Under the transition provision, the defendant gets the benefit of the longer time period and will have until November 8th to respond. However, the longer time period will not operate to extend time periods that expired under the former rules. For example, if a defendant was served with a statement of claim on October 14th, time under the former rules will expire on October 29th. If the defendant was out of time under the former rules, the transition provision will not operate retroactively to extend the expired time period.

2. Different triggering event (r. 15.10)

[24] While longer time periods will be the most frequent change, some time periods will run from a different triggering event under the new rules. Where the triggering event for a time period is different, r. 15.10 provides that time runs from the event specified in the new rules or from November 1st, whichever occurs last:

> ***Time runs from different event***
>
> 15.10 Where the time limit provided by these rules for doing anything runs from a different event than the equivalent time limit under the former rules, and on the coming into force of these rules the thing has not yet been done, the time limit provided by these rules applies, calculated either
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> (a) from the event specified in these rules, or
>
> (b) from the coming into force of these rules,
>
> whichever occurs last.

As with the transition provision for longer time periods, parties again get the benefit of having more time where the new rules specify a different triggering event.[16]

[25] For example, under former rule 187, the defendant's affidavit of records was due at the same time as the plaintiff's. If the defendant served the plaintiff with the statement of defence on August 12th, both plaintiff and defendant would have until November 8th (i.e. 90 days) to serve an affidavit of records. Under r. 5.5 *[When affidavit of records must be served*], the plaintiff's affidavit of records is due within 3 months after service of the statement of defence but the defendant's affidavit of records is due within one month after service of the plaintiff's affidavit of records. Accordingly, the plaintiff benefits from the longer time period and will have until November 12th to serve an affidavit of records (i.e. 3 months from service of the statement of defence). The defendant then benefits from the different triggering event (i.e. service of the plaintiff's affidavit of records) and will have one month from service of the plaintiff's affidavit of records. If the plaintiff served the affidavit of records on November 12th, the defendant will have until December 12th. Thus, the new rule and the transition will have an impact on cases where the statement of defence is served after August 1st.

3. New time period (r. 15.9)

[26] A third transition provision applies where the new rules impose a time period where there was none before. Where there is no time period for doing something under the former rules, r. 15.9 provides that the new rule time period will run from November 1st:[17]

> ***Time limit under these rules***
>
> 15.9(1) Subject to subrule (2), where these rules impose a time limit for doing anything for which no time limit was provided for under the former rules, and on the coming into force of these rules the thing has not yet been done, the time limit under these rules applies to the doing of that thing and is calculated from the date on which these rules come into force.

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[16] In some cases, both the time period and the triggering event will be different. One reason for this is that the new rules contain fewer time periods that run backwards from an event. Wherever possible, time periods are expressed to run forwards from a triggering event. See Alberta Law Reform Institute, *Alberta Rules of Court Project: Miscellaneous Issues, Consultation Memorandum No. 12.14* (Edmonton: The Institute, 2004) at 18.

[17] Subrule 15.9(2) deals with confirmation of trial dates and is discussed under heading **II.C.1.c Confirmation of trial date**.

[27] For example, the process for approving judgments and orders is a new one and is subject to a time period that does not exist in the former rules. Under r. 9.2 [*Preparation of judgments and orders*], a draft judgment or order must be prepared by the responsible party within 10 days after pronouncement and served on the other parties who attended the hearing. It is likely that there will be a number of judgments and orders made under former rules 318-320 but that will not have been drafted by November 1st. Under the transition provision, the responsible party (i.e. the successful party unless otherwise ordered) will have 10 days from November 1st to prepare and serve any draft judgments or orders. After that, it is open to any other party to prepare and serve a draft. Strictly applied, the 10 day transition may strain both party and Court resources as responsible parties work to prepare draft judgments and orders on outstanding matters. There may also be duplication of effort if other parties take on drafting immediately after the transition period expires.

4. Shorter time period (r. 15.8(2))

[28] As noted earlier, most time periods are longer under the new rules. However, there are 3 time periods that are shorter under the new rules. Where a time period is shorter, r. 15.8(2) provides that either the shorter time period applies calculated from November 1st or the balance of the time period under former rules applies whichever expires first:[18]

> ***Increased or decreased time limits***
>
> 15.8(2) Where under these rules a time limit is provided for doing anything, other than the serving of a notice or other document in advance of some event, that is shorter than the time limit that was provided under the former rules, a person who commenced the action or proceeding to which the time limit applied under the former rules must comply with
>
> (a) the time limit under the former rules, or
>
> (b) the time limit under these rules, calculated from the date on which these rules come into force,
>
> whichever occurs first.

The goal of this transition provision is to move immediately to the shorter time period but without extending any time periods that were close to expiry under the former rules.

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[18] There are exceptions for documents that need to be served in advance of an event and these exceptions are discussed under heading **III.C.5 Exception for notice periods.**

[29] For example under r. 6.37 [*Notice to admit*], time for responding to a notice to admit is reduced to 20 days compared to 30 days under former rules 230 and 230.1. Accordingly, a notice to admit served on October 20th will allow the recipient until November 19th to respond (i.e. the balance of the 30 day time period under the former rule). However, any notice to admit served on October 21st to November 1st will only allow the recipient until November 22nd to respond. The transition provision triggers the shorter 20 day time period calculated from November 1st.[19]

[30] In addition to r. 6.37 [Notice to admit], there are only two other new rules with shorter time periods. Each of these follows the same transition principle set out in r. 15.8(2). However, each is subject to a specific bridging provision.

a. Entry of judgments and orders (rr. 9.5 & 15.7)

[31] In line with the shorter time period for approving draft judgments and orders, the new rules also shorten the time for entering judgments and orders. Under former rule 326, a judgment or order might not be entered more than a year after pronouncement except by leave of the Court. Rule 9.5 [*Entry of judgments and orders*] reduces the time for entry to 3 months from pronouncement; a judgment or order may still be entered after 3 months but only with Court permission.

[32] Rule 15.7 provides a specific bridging provision for the shorter time period for entry of judgments and orders:

> ***Filing of orders or judgments***
>
> 15.7 Where on the coming into force of these rules a person has not filed an order or judgment that the person was required to file under the former rules, the person must file the order or judgment within
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> (a) one year from the date on which the order or judgment was pronounced, or
>
> (b) 3 months from the coming into force of these rules,
>
> whichever occurs first.

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[19] Twenty days calculated from November 1st runs to November 21st but is then extended to the next business day by the *Interpretation Act*, s. 22(1). In a few instances, the balance of the 30 day time period under the former rules will also expire on either November 20th or 21st and be extended to Monday, November 22nd.

The bridging provision follows the same principle expressed in r. 15.8(2) for shorter time periods. Under the bridging provision, any judgment or order that was granted under the former rules must be entered within one year of pronouncement or 3 months calculated from November 1st, whichever occurs first. In other words, any judgment or order pronounced by the Court before the new rules come into effect should be entered by February 1st, 2011. Otherwise, permission will be needed before it can be entered.

b. Dismissal for long delay (rr. 4.33 & 15.4)

[33] Where 2 years have elapsed since the last thing that significantly advanced an action, the Court, on application, has the authority under r. 4.33 [*Dismissal for long delay*] to dismiss the action as against the applicant. The time period under the so-called "drop-dead rule" is reduced to 2 years compared to 5 years under former rule 244.1. Reducing the time period to 2 years is in line with the fact that the general limitation period only allows 2 years to bring an action.[20] However, the 2 year time period for long delay cannot be extended by the parties or the Court.[21]

[34] As with entry of judgments and orders, there is a specific bridging provision for the shorter time period. Rule 15.4 provides that dismissal for long delay will be triggered either by the balance of time left under the 5 year time period or 2 years from the coming into force of the rules, whichever period whichever ends first:

> ***Dismissal for long delay: bridging provision***
>
> 15.4(1) Unless subrule (2) applies, the Court, on application, must dismiss the action as against the applicant if,
>
> (a) after the coming into force of this rule 2 years has elapsed since the last thing done to significantly advance the action, or
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> (b) 5 years has elapsed since the last thing done to significantly advance the action,
>
> whichever comes first.

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[20] *Limitations Act*, R.S.A. 2000, c. L-15, s. 3.

[21] See discussion under heading **III.D.1.a Time periods that cannot be varied.**

The bridging provision prevents the undesired result of any action being immediately dismissed for 2 years delay on November 1st.[22]

[35] For example, if the last thing done to significantly advance the action occurred in April 2006, the 5 year period under the former rules will end in April 2011 and will not be shortened by the bridging provision. However, the new rules will shorten time if the balance remaining under the former rules exceeds 2 years from November 1, 2010. For example, if the action was last significantly advanced in July 2009, the 5 year period under the former rules would extend to July 2014. Under the bridging provision, that time will be shortened to November 2012, i.e. to 2 years from November 1st. In other words, the bridging provision will start to reduce time periods where the last step that significantly advanced the action occurred after November 2007. Cases where the last step was taken between November 2007 and November 2010 will all see time run out in November 2012.

5. Exception for notice periods (r. 15.8)

[36] As noted earlier, the transition provisions for longer and shorter time periods do not apply to serving a notice or other document in advance of some event.[23] For the most part, service in advance of an event will be governed by the rules that are in force when the event is to occur. For example, if an application is scheduled for hearing on October 29th, notice should be given in accordance with the former rules. If an application is scheduled for hearing on or after November 1st notice should be given in accordance with the new rules.

[37] However, as notice periods run backwards from a future event, there is the potential for the new rules to operate retroactively and there is a transition period to govern this eventuality. For example, if an application is scheduled for hearing on November 4th, r. 6.3(3) [*Applications generally*] would require service 5 days before the application. However, that 5 day notice period would extend back into October, i.e. before the new rules came into effect. To prevent such retroactive operation of the new rules, the

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[22] This is the same type of bridging provision that applied when the *Limitations Act* came into effect: *Limitations Act*, S.A. 1996, c. L-15.1, s. 14, now repealed. The bridging provision in r. 15.4 will itself be repealed on November 1st, 2012. From that time, the shorter time period under r. 4.33 [*Dismissal for long delay*] will govern: r. 15.15(2)-(3) [*Coming into force*].

[23] Both subrules 15.8(1) and (2) contain an exception for "serving of a notice or other document in advance of some event".

transition provision clarifies that if service of a notice or other document in advance of an event was effected under the former rules before November 1st, then that service remains valid:

> ***Increased or decreased time limits***
>
> 15.8(3) Service of a document or notice that was effected under the former rules prior to the coming into force of these rules remains valid despite any change to the relevant time limit imposed as a result of the coming into force of these rules.

After November 1st, however, service of notices and documents in advance of an event must be done in accordance with the new rules.

D. Resolving problems

[38] Where problems arise in the transition to the standard time periods and those problems are not resolved – or not resolved to the parties' satisfaction – by the transition provisions, there are two routes to consider. Time may be varied or the Court can grant an order under r. 15.6 [*Resolution of difficulty or doubt*].

1. Variation of time periods (r. 13.5)

[39] For the most part, the time periods in the new rules are flexible and may be varied under r. 13.5:

> ***Variation of time periods***
>
> 13.5(1) Unless the Court otherwise orders or a rule otherwise provides, the parties may agree to extend any time period specified in these rules.
>
> (2) The Court may, unless a rule otherwise provides, stay, extend or shorten a time period that is
>
> (a) specified in these rules,
>
> (b) specified in an order or judgment, or
>
> (c) agreed to by the parties.
>
> (3) The order to extend or shorten a time period may be made whether or not the period has expired.

Rule 13.5 provides two options for varying time. Under the narrow option in r. 13.5(1), parties may agree to extend a time period specified in the rules. In keeping with the parties' responsibilities to act in a manner that furthers the resolution of the dispute in a

fair, just, timely and cost effective manner, an agreement to vary time will often be the simplest course.[24] Under the broader option in r. 13.5(2), the Court may extend, shorten or stay a time period specified in the rules, in an order or judgment, or a time period agreed to by the parties. However, both options are subject to limitations. There are some time periods that cannot be varied and others that may only be varied by the Court.

a. Time periods that cannot be varied (rr. 3.15, 3.27, 3.27, 4.33, 9.46 &12.59)

[40] There are a number of rules that expressly exclude r. 13.5 [*Variation of time periods*]. Where this occurs, time cannot be extended by party agreement or by Court order. Notably in r. 3.26 [*Time for service of statement of claim*], time cannot be extended for serving a statement of claim beyond one year from filing aside from the one-time extension for 3 months. The ability to vary time is also expressly excluded in other rules:

- 3.15 [*Originating application for judicial review*] – originating application to set aside a decision or act must be filed and served within 6 months after the date of the decision.[25]
- 3.27 [*Extension of time for service*] – the one-time extension for filing a statement of claim beyond one year cannot be extended.
- 4.33 [*Dismissal for long delay*] – an action may be subject to being dismissed for long delay after 2 years since the last thing done that significantly advanced the action.[26]
- 9.46 [*Convention judgment debtor's application to set aside*] – application to set aside judgment must be filed within 2 months after being served with the order and registered convention judgment.
- 12.59 [*Appeal from divorce judgment*] – time to appeal cannot be extended except by the Court of Appeal or an appeal judge.

b. Time periods that can only be varied by Court order

[41] In addition to the time periods that cannot be varied at all, some may only be varied by Court order. In other words, while some rules expressly exclude the time variation rule in its entirety, the wording of other rules impliedly excludes the parties' ability to extend time by agreement. For example, r. 9.5 [*Entry of judgments and orders*] provides that a

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[24] See rules 1.2 [*Purpose and intention of these rules*] & 4.2 [*What the responsibility includes*].

[25] However, there is an exception for applications for habeas corpus which can be brought at any time: r. 3.16 [*Originating application for judicial review: habeas corpus*].

[26] Dismissal for long delay is discussed further under heading **III.C.4.b Dismissal for long delay**.

"judgment or order is not to be entered more than 3 months after it is pronounced except with the Court's permission, which may only be obtained on application and after notice is served on each of the other parties." The requirement to apply for permission to enter judgment after 3 months prevents the parties agreeing to extend time on their own.[27]
Other rules where the parties cannot extend time by their own agreement include:

- 8.3 [*Deposit for a jury*] – deposit must be paid to the court clerk within 10 days after jury trial granted, unless otherwise ordered.[28]
- 9.15 [*Setting aside, varying and discharging judgments and orders*] – application to set aside judgment or order where a party did not appear due to accident, mistake or lack of notice must be made within 20 days, unless the Court orders otherwise.

There are many other instances where the rules allow for the Court to order otherwise. However, where substantive requirements are combined with time periods it may not be immediately clear whether the reference to a Court order precludes the parties' ability to extend time.

2. Court orders to resolve difficulty or doubt (r. 15.6)

[42] As with any other transition issue, Court assistance is available under r. 15.6 to resolve matters relating to time.[29]

IV. Saving provision (r. 15.2)

[43] As with the transition to any new legislation, the new rules include a saving provision to ensure that anything that was done under the former rules carries the same effect under the new rules:

> 15.2 (2) Every order or judgment made under the former rules and everything done in the course of an existing proceeding is to be considered to have been done under these rules and has the same effect under these rules as it had under the former rules.

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[27] The implications of the transition provisions on r. 9.5 [*Entry of judgments and orders*] are considered under heading **III.C.4.a Entry of judgments and orders**.

[28] If the deposit is not paid the trial will proceed by judge alone: r. 8.3(3) [*Deposit for jury*].

[29] See previous discussion under heading **II.C.3 Court orders to resolve difficulty or doubt**.