

APPENDIX H

ALBERTA RULES OF COURT

ALBERTA RULES OF COURT

PART 1: FOUNDATIONAL RULES

PART 2: THE PARTIES TO LITIGATION

PART 3: COURT ACTIONS

PART 4: MANAGING LITIGATION

PART 5: DISCLOSURE OF INFORMATION

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

PART 8: TRIAL

PART 9: JUDGMENTS AND ORDERS

PART 10: LAWYER'S CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

PART 11: SERVICE OF DOCUMENTS

PART 12: TECHNICAL RULES

PART 13: APPEALS

PART 14: TRANSITIONAL PROVISIONS AND COMING INTO FORCE

SCHEDULE A: FORMS

SCHEDULE B: COURT FEES AND WITNESS AND OTHER ALLOWANCES

SCHEDULE C: TARIFF OF RECOVERABLE FEES

APPENDIX: DEFINITIONS

Information note

About the Rules

Definitions

Words and phrases that have defined meanings in these rules are collected in the Appendix [*Definitions*] to these rules.

Organization

There are 14 Parts, 3 Schedules, and one Appendix to the Alberta Rules of Court. These rules govern the practice and procedure in civil proceedings in the Court of Queen's Bench and the Court of Appeal. Surrogate Rules can be found in *Surrogate Rules* (AR 130/95).

Generally speaking, the Parts are organized in the same sequence as a legal action in court proceedings, although rules for service of documents are in Part 11 [*Service of Documents*], and some of the more technical rules are collected in Part 12 [*Technical Rules*].

Here is an overview of each Part of the rules, the Schedules, and the Appendix:

Part 1 [*Foundational Rules*] contains the philosophy underlying the rules through purpose and intention statements. This is followed by rules about the general authority of the court over practice and procedure and the remedies the court may provide. The Part also describes how the rules are to be interpreted.

The foundational rules are critical to the interpretation of everything else in the rules.

Part 2 [*The Parties to Litigation*] includes rules related to court action involving personal representatives, trustees, partnerships and other entities. There are also rules for when a litigation representative must be appointed and the responsibilities of lawyers of record.

Part 3 [*Court Actions*] – Division 1 describes the process for starting court actions and where to start them. Court actions are typically started either by filing in court a statement of claim or by filing an originating application. Division 2 describes the process for actions started by originating application, including originating applications for judicial review.

Division 3 describes the process for actions started by statement of claim, defending them, making counterclaims and 3rd party claims. Division 4 deals with obtaining more particulars about a claim, amendments to and close of pleadings and Division 5 deals with significant deficiencies in claims and pleadings. Division 6 includes rules for joining or separating claims and parties and changes to parties.

Part 4 [*Managing Litigation*] puts the responsibility for managing litigation started by statement of claim on the parties to a legal action and creates a framework to do that. Court assistance is available to move the case along, including management of an action by a case management judge.

For most actions started by statement of claim, the parties must attempt to resolve the dispute through a dispute resolution process before obtaining a trial date. The rules recognize judicial dispute resolution as one means of resolving litigation without a full trial.

Part 4 also includes processes to obtain an order to secure payment of a costs award and a formal process to settle legal actions designed to ensure careful consideration of offers of settlement. Divisions 6 and 7 deal respectively with delay in court proceedings, and transfer and transmission of interests.

Part 5 [*Disclosure of Information*] describes the information that must be disclosed by the parties to a court action to each other and when and how the parties may question each other about the case. Early disclosure of facts and admissions helps to evaluate the case and can facilitate early resolution of the dispute. This Part also deals with expert reports and medical examinations by health care professionals.

Part 6 [*Resolving Issues and Preserving Rights*] includes rules for making applications to the court (also known as interlocutory applications) to obtain court directions or to resolve issues arising during the course of a court action. The Part also includes

- rules for obtaining evidence outside Alberta,
- orders for the protection and inspection of property, and
- rules respecting replevin orders and interpleader proceedings.

Part 7 [*Resolving Claims Without a Full Trial*] includes rules for applying for summary judgment and applying for judgment by way of a summary trial proceeding. The Part also includes a mechanism for the court to resolve particular issues or questions that can help expedite or resolve a claim, for example, deciding a question of law.

Part 8 [*Trial*] contains rules for scheduling a trial date and the conduct of a trial.

Part 9 [*Judgments and Orders*] includes rules for preparing, entering and enforcing the court's judgments and orders, and for registration of judgments and orders from reciprocating jurisdictions.

Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation and Sanctions*]. This Part includes rules for the review of retainer agreements between a lawyer and client, a lawyer's charges, and contingency fee agreements by a review officer. The Part then deals with how the costs of litigation are assessed by the court or by an assessment officer. Processes are included to appeal the decisions of review officers and assessment officers to a judge.

The Part also deals with sanctions for contravention of these rules and the circumstances that could cause the court to declare a person in civil contempt of court.

Part 11 [*Service of Documents*] sets out the rules for how documents starting an action, called commencement documents, and other documents must be served inside and outside Alberta, together with rules for validating service, substitutional service, setting aside service and proof of service.

Part 12 [*Technical Rules*] contains rules about calculating time, pleadings and amendments to them, affidavits, exhibits, payments into and out of court, certifying copies of documents, payment of fees and allowances and various administrative matters related to the court clerk and other court officers.

Part 13 [*Appeals*]

Part 14 [*Transitional Provisions and Coming into Force*] deals with issues to provide for a smooth transition to the new rules.

There are 3 Schedules to the rules:

- Schedule A [*Forms*] includes forms prescribed by the rules for use under the rules,
- Schedule B [*Court Fees and Witness and Other Allowances*] prescribes court fees payable and allowances payable to witnesses, jurors and experts, and
- Schedule C [*Tariff of Recoverable Fees*] sets out a series of fees for services performed in a legal action to which reference may or will be made by the court or an assessment officer.

The Appendix [*Definitions*] to the rules contains words and phrases that have defined meanings in the rules.

Overview summaries and information notes

The rules contain two unique features. The first is a series of boxed notes titled ***What this Part is about*** on the title page of each Part of the rules. These notes give a summary explanation of what the Part is about.

The second unique feature is the highlighted **Information notes**. You are reading one now. Information notes are simply signposts to indicate other information or rules that the reader may find helpful.

Neither the overviews nor the information notes have any legal effect.

Numbering system

The rules are divided, numbered and named in the following way:

- rules that relate to a particular subject area are grouped into Parts with a number assigned to each Part, for example
 - ▶ Part 3 [*Court Actions*]
 - ▶ Part 4 [*Managing Litigation*]
 - ▶ Part 8 [*Trial*];
- each Part consists of a series of rules numbered first with the Part number and then consecutively, for example, in Part 5 the rules are numbered 5.1; 5.2; 5.3 and so on;
- if a particular rule is divided into 2 or more identifiable sentences, subrules are created with numbers in brackets, for example: 5.1(1), (2), (3);
- if a rule or subrule is divided,
 - ▶ the rule is split into clauses, using lowercase letters in brackets, for example: 3.25(a), (b), (c) and in the case of a subrule, 5.1(1)(a), (b), (c), and
 - ▶ the rule can be further divided into subclauses, using roman numerals in brackets, for example, 3.24(a)(i), (ii), (iii); and in the case of a subrule, 5.1(1)(a)(i), (ii), (iii).

Contents

ALBERTA RULES OF COURT

Rule #

PART 1: FOUNDATIONAL RULES

Division 1

Purpose and Intention of the Rules

What these rules do.	1.1
Purpose and intention of the rules.	1.2

Division 2

Authority of the Court

General authority of the court to provide remedies.	1.3
Procedural orders.	1.4
Rule contravention, non-compliance and irregularities.	1.5
Changes to the rules, information notes and overview summaries.	1.6

Division 3

Interpreting the Rules

Interpreting the rules.	1.7
<i>Interpretation Act</i>	1.8
Conflicts and inconsistencies with enactments.	1.9
Where definitions are located.	1.10

PART 2: THE PARTIES TO LITIGATION

Division 1

Facilitating Legal Actions

Actions by or against personal representatives and trustees.	2.1
--	-----

Partnerships

Actions by or against partners and partnerships.	2.2
Suing individual partners.	2.3
Disclosure of partners.	2.4

Sole Proprietors and Other Entities

Actions by and against sole proprietors.	2.5
Representative actions.	2.6

Class Proceedings Rules

Amendments to pleadings in class proceedings.	2.7
Questioning of class and subclass members.	2.8
Class proceedings practice and procedure.	2.9

Intervenors

Intervenor status.	2.10
----------------------------	------

Rule #

Division 2
Litigation Representatives

Persons who must have a litigation representative.	2.11
Types of litigation representatives and service of documents.	2.12
Automatic litigation representatives.	2.13
Self-appointed litigation representatives.	2.14
Court appointment in absence of self-appointment.	2.15
Court-appointed litigation representatives in limited cases.	2.16
Lawyers appointed as litigation representatives.	2.17
Approval of compromises.	2.18
Court approval of settlement, discontinuance, and abandonment of actions.	2.19
Money received by a litigation representative.	2.20
Litigation representative: termination, replacement, terms and conditions.	2.21

Division 3
Representation or Assistance before the Court

Self-represented litigants.	2.22
Assistance before the court.	2.23

Division 4
Lawyer of Record

Lawyer of record.	2.24
Duties of lawyer of record.	2.25
Verifying lawyer of record.	2.26
Retaining a lawyer for limited purposes.	2.27
Change in lawyer of record or self-representation.	2.28
Withdrawal of lawyer of record.	2.29
Service after lawyer ceases to be lawyer of record.	2.30
Withdrawal after trial date scheduled.	2.31
Automatic termination of lawyer of record and resolving difficulties.	2.32

PART 3: COURT ACTIONS

Division 1
Court Actions and their Venue

Rules govern court actions.	3.1
How to start an action.	3.2
Determining the appropriate judicial centre.	3.3
Claim for possession of land.	3.4
Transfer of an action.	3.5
Where an action is carried on.	3.6
Enforcement proceedings in another judicial centre.	3.7

Division 2
Actions Started by Originating Application

Subdivision 1
General Rules

Originating applications and associated evidence.	3.8
Service of originating application and evidence.	3.9
Application of Part 4 and Part 5 to originating applications.	3.10
Service and filing of affidavits and other evidence in reply and response.	3.11

	Rule #
Application of statement of claim rules to originating applications.	3.12
Questioning on an affidavit and questioning witnesses.	3.13
Originating application evidence (other than judicial review).	3.14

Subdivision 2
Additional Rules Specific to Originating Applications
for Judicial Review

Originating application for judicial review.	3.15
Originating application for judicial review: habeas corpus.	3.16
Attorney General's right to be heard.	3.17
Notice to obtain record of proceedings.	3.18
Sending in record of proceedings.	3.19
Other circumstances when a record of proceedings may be required.	3.20
Limit on questioning.	3.21
Decisions on judicial review.	3.22
Stay of decision.	3.23
Additional remedies on judicial review.	3.24

Division 3
Actions Started by Statement of Claim

Contents of statement of claim.	3.25
---	------

Subdivision 1
Time Limit for Service of Statement of Claim

Time for service of statement of claim.	3.26
Extension of time for service.	3.27
Effect of not serving a statement of claim in time.	3.28
Notice of extension of time to be served.	3.29

Subdivision 2
Defence to a Statement of Claim,
Reply to Defence and Demand for Notice

Defendant's options.	3.30
Statement of defence.	3.31
Additional options for defendant who files a defence.	3.32
Reply to a defence.	3.33
Demand for notice by defendant.	3.34
Judgment or order by agreement.	3.35

Subdivision 3
Failure to Defend

Judgment in default of defence and noting in default.	3.36
Application for judgment against defendant noted in default.	3.37
Judgment for recovery of property.	3.38
Judgment for debt or liquidated demand.	3.39
Continuation of action following judgment.	3.40
When no defence is filed in a foreclosure action.	3.41
Limitation on when judgment or noting in default can occur.	3.42

Rule #

***Subdivision 4
Claims Against Co-defendants***

How to make a claim against co-defendants.....	3.43
--	------

***Subdivision 5
3rd Party Claims***

When a 3 rd party claim can be filed.	3.44
Form of 3 rd party claim.	3.45
3 rd party defendant becomes a party.	3.46
3 rd party defendant's options..	3.47
Plaintiff's options.	3.48
3 rd party statement of defence.	3.49
Demand for notice by 3 rd party defendant..	3.50
Effect of a demand for notice.	3.51
Consequences of not filing 3 rd party statement of defence.	3.52
Judgment against 3 rd party defendant.	3.53
Plaintiff's reply to 3 rd party defence	3.54
Application of rules to 3 rd party claims.....	3.55

***Subdivision 6
Counterclaims***

Right to counterclaim.	3.56
Contents of counterclaim.	3.57
Status of counterclaim.	3.58
Claiming a set-off.	3.59
Application of rules to counterclaims.....	3.60

***Division 4
Request for Particulars,
Amendments to Pleadings and Close of Pleadings***

Request for particulars	3.61
Amending a pleading.	3.62
Identifying amendments to pleadings.....	3.63
Time limit for application to disallow amendment to a pleading.	3.64
Permission of court to amendment after close of pleadings.	3.65
Costs.....	3.66
Close of pleadings.	3.67

***Division 5
Significant Deficiencies in Claims***

Court options to deal with significant deficiencies.....	3.68
--	------

Rule #

Division 6
Refining Claims and Changing Parties

Subdivision 1
Joining and Separating Claims and Parties

Joining claims.	3.69
Parties joining to bring an action.	3.70
Separating claims.	3.71
Consolidation or separation of claims and actions.	3.72
Incorrect parties are not fatal to actions.	3.73

Subdivision 2
Changes to Parties

Adding, removing or substituting parties after pleadings close.	3.74
Adding, removing or substituting parties to an originating application.	3.75
Action to be taken when defendant or respondent added.	3.76
Subsequent encumbrancers not parties in a foreclosure action.	3.77

PART 4: MANAGING LITIGATION

Division 1
Responsibilities of the Parties

Responsibilities of the parties to manage litigation.	4.1
What the responsibility includes.	4.2
Categories of court action.	4.3
Target dates for completing key stages in simple and standard cases.	4.4
Complex cases.	4.5
Settling disputes about complex case litigation plans.	4.6
Monitoring and adjusting dates.	4.7
Court may categorize actions.	4.8

Division 2
Court Assistance in Managing Litigation

Orders to facilitate proceedings.	4.9
Assistance by the court.	4.10
Ways the court may manage an action.	4.11
Request for case management.	4.12
Appointment of case management judge.	4.13
Authority of the case management judge.	4.14
Case management judge presiding at summary trial and trial.	4.15

Division 3
Dispute Resolution by Agreement

Subdivision 1
Dispute Resolution Processes

Dispute resolution processes.	4.16
---------------------------------------	------

Rule #

Subdivision 2
Judicial Dispute Resolution

Purpose of judicial dispute resolution.	4.17
Judicial dispute resolution arrangement.	4.18
Documents resulting from judicial dispute resolution.	4.19
Confidentiality and use of information.	4.20
Involvement of jdr judge after process concludes.	4.21

Division 4
Security for Payment of a Costs Award

Considerations for a security for costs order.	4.22
Contents of security for costs order.	4.23

Division 5
Settlement Using Court Process

Formal offers to settle.	4.24
Acceptance of formal offer to settle.	4.25
If costs are not dealt with in formal offer.	4.26
Status of formal offers and acceptance.	4.27
Confidentiality of formal offers.	4.28
Costs consequences of formal offer to settle.	4.29
When this Division does not apply.	4.30

Division 6
Delay in an Action

Application to deal with delay.	4.31
Agreement about delay.	4.32
Dismissal for long delay.	4.33

Division 7
Transfer and Transmission of Interest

Stay of proceedings on transfer or transmission of interest.	4.34
Death has no effect on an action after evidence heard.	4.35

Division 8
Discontinuance

Discontinuance of claim.	4.36
Discontinuance of defence.	4.37

PART 5: DISCLOSURE OF INFORMATION

Purpose of this Part.	5.1
-------------------------------	-----

Division 1
How Information is Disclosed

Subdivision 1
Introductory Matters

When is something <i>relevant and material</i> ?	5.2
Modification or waiver of this Part.	5.3
Appointment of corporate representatives.	5.4

Subdivision 2
Disclosing and Identifying Relevant and
Material Records

When an affidavit of records must be served.	5.5
Form and content of affidavit of records.	5.6
Records for which no privilege is claimed.	5.7
Records for which privilege is claimed.	5.8
Who makes an affidavit of records.	5.9
Subsequent disclosure of records.	5.10
Order for a record to be produced	5.11
Penalty for not serving affidavit of records.	5.12
Obtaining records from others.	5.13
Inspection and copying records.	5.14
Admissions of authenticity of records.	5.15
Undisclosed records not to be used without permission.	5.16

Subdivision 3
Questions to Discover Relevant and Material
Records and Relevant and Material Information

People who can be questioned.	5.17
Persons providing services to a corporation.	5.18
Limit or cancellation of questioning.	5.19
When questioning is to take place.	5.20
Appointment for questioning.	5.21
Questioning options.	5.22
Preparation for questioning.	5.23
Oral and written questioning limitations.	5.24
Appropriate questions and objections.	5.25
Transcript of oral questioning.	5.26
Continuing duty to disclose.	5.27
Written questions.	5.28
Acknowledgement of corporate witness' evidence.	5.29
Undertakings.	5.30
Use of transcript and answers to written questions.	5.31
When information can be used.	5.32
Confidentiality and use of information.	5.33

Rule #

Division 2
Experts and Expert Reports

Service of expert report.	5.34
Sequence of exchange of expert reports.	5.35
Objection to expert's report.	5.36
Questioning experts before trial.	5.37
Continuing obligation on expert.	5.38
Use of expert's report at trial without expert.	5.39
Expert's attendance at trial.	5.40

Division 3
Medical Examinations by
Health Care Professionals

Medical examinations.	5.41
Options during medical examination.	5.42
Payment of costs of medical examinations.	5.43
Conduct of examination.	5.44

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

Division 1
Applications to the Court

What this Division applies to.	6.1
Application to the court to exercise its authority.	6.2

Subdivision 1
Application Process Generally

Applications generally.	6.3
Applications without notice.	6.4

Subdivision 2
Specific Kinds of Application

Restraining order application: interpersonal matter.	6.5
Notice of an application in foreclosure actions.	6.6

Subdivision 3
Responses, Replies and Decisions
on Applications

Response and reply to applications.	6.7
Questioning on affidavits in support, response and reply to applications.	6.8
Questioning a witness before a hearing.	6.9
How the court considers applications.	6.10
Electronic hearings.	6.11
Evidence at application hearings.	6.12
If a person does not get notice of an application.	6.13
Recording hearings when only one party present.	6.14

Rule #

*Subdivision 4
Appeal from Master's Order*

Appeal from a master's order.	6.15
Decision of the judge.	6.16

*Subdivision 5
Procedure for Questioning*

Appointment for questioning under this Part.	6.17
Contents of appointment notice.	6.18
Payment of allowance.	6.19
Lawyer's responsibilities.	6.20
Interpreters.	6.21
Form of questioning and transcript.	6.22

**Division 2
Preserving Evidence and Obtaining Evidence Outside Alberta**

Preserving evidence for future use.	6.23
Obtaining evidence outside Alberta.	6.24
Duties of person authorized to take evidence and court clerk.	6.25
Assistance to judicial authorities outside Alberta.	6.26

**Division 3
Preserving and Protecting Property or its Value
and Inspection of Property**

Preserving or protecting property or its value.	6.27
Inspection or examination of property.	6.28
Notice before disposing of anything held by the court.	6.29

**Division 4
Restriction on Media Reporting
and Public Access to Court Proceedings**

Application of this Division.	6.30
Restricted access applications and orders.	6.31
When a restricted access application can be filed.	6.32
Timing of application and service.	6.33
Notice to the media.	6.34
Judge assigned to the application.	6.35
Application to seal or unseal court files.	6.36
Persons having standing at the application.	6.37
Confidentiality of information.	6.38

**Division 5
Facilitating Proceedings**

Notice to admit.	6.39
Requiring attendance for questioning.	6.40
Order to produce prisoner.	6.41

Rule #

Division 6
Resources to Assist the Court

Experts

Appointment of court experts.	6.42
Instructions or questions to the court expert.	6.43
Application to question court expert.	6.44
Costs of court experts.	6.45

Referees

Persons who are referees.	6.46
References to a referee.	6.47
Referee's report.	6.48

Division 7
Court-appointed Receiver

Court-appointed receiver.	6.49
-----------------------------------	------

Division 8
Replevin

Application of this Division.	6.50
Application for replevin order.	6.51
Replevin order.	6.52
Enforcement of replevin orders.	6.53
Respondent may apply for remedy.	6.54
Expiry of replevin order.	6.55

Division 9
Interpleader

Definitions.	6.56
Nature of application for interpleader order.	6.57
Application for interpleader order.	6.58
Interpleader applicant not disentitled.	6.59
Interpleader order.	6.60
Civil enforcement agency applications.	6.61
Several claims combined.	6.62
Enforcement from different courts.	6.63
Claims by a 3 rd person.	6.64
Notice by civil enforcement agency.	6.65
Security interest.	6.66
Expeditious sale.	6.67

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

Division 1
Trial of Particular Questions or Issues

Application to resolve particular questions or issues.	7.1
--	-----

Rule #

Division 2
Summary Judgment

Application for judgment.	7.2
Application and decision.	7.3
Proceedings after summary judgment against a party.	7.4

Division 3
Summary Trials

Application for judgment by way of a summary trial.	7.5
Response to the application.	7.6
Application of other rules.	7.7
Objection to application for judgment by way of a summary trial.	7.8
Decision after summary trial.	7.9
Judge remains seized of action.	7.10
Order for trial.	7.11

PART 8: TRIAL

Division 1
Mode of Trial

Trial without a jury.	8.1
Request for jury trial.	8.2
Deposit for a jury.	8.3

Division 2
Scheduling of Trial Dates

Trial date: scheduled by court clerk.	8.4
Trial date: scheduled by the court.	8.5
Notice of trial date.	8.6
Confirmation of trial date.	8.7

Division 3
Attendance of Witnesses at Trial

Notice to attend as witness at trial.	8.8
Requiring attendance of witnesses.	8.9

Division 4
Procedure at Trial

Order of presentation.	8.10
Absence of witnesses at trial.	8.11
Exclusion of witnesses.	8.12
No communication with excluded witnesses.	8.13
Unavailable or unwilling witness.	8.14
Notice of persons not intended to be called as witnesses.	8.15
Number of experts.	8.16
Proving facts.	8.17
Trial conducted by electronic hearings.	8.18

	Rule #
Use of trial evidence in subsequent proceedings.	8.19
Application for dismissal at close of plaintiff's case.	8.20
Retrials.	8.21
Continuing trial without jury.	8.22
Judgment after jury trial.	8.23
Accidents and mistakes.	8.24

PART 9: JUDGMENTS AND ORDERS

Division 1 Preparation and Entry of Judgments and Orders

Form of judgments and orders.	9.1
Preparation of judgments and orders.	9.2
Dispute over content of judgment or order.	9.3
Signing judgments and orders.	9.4
Entry of judgments and orders.	9.5
Effective date of judgments and orders.	9.6
Certified copies.	9.7
Service of judgments and orders.	9.8

Division 2 Determination of Damages, Judgment in Counterclaims and Judgment Against Beneficiaries

Determining damages.	9.9
Judgment for balance on counterclaim.	9.10
Judgment against beneficiaries.	9.11

Division 3 Corrections, Further Orders, Setting Aside, Varying and Discharging Judgments and Orders

Correcting mistakes or errors.	9.12
Re-opening a case.	9.13
Further or other order after judgment or order entered.	9.14
Setting aside, varying and discharging judgments and orders.	9.15
By whom applications are to be decided.	9.16

Division 4 Enforcement of Judgments and Orders

Enforcement: orders for payment, and judgments for payment into court.	9.17
Judgments and orders subject to conditions.	9.18
Persons who are not parties.	9.19
Time a writ remains in force.	9.20
Application for new judgment or order.	9.21
Application that judgment or order has been satisfied.	9.22
Enforcement against partners' and partnership property.	9.23
Fraudulent preferences and fraudulent conveyances.	9.24
Order of possession of land.	9.25
Authority to evict occupants.	9.26
Removal, storage and sale of personal property.	9.27
Abandoned goods.	9.28
Questioning a person to assist in enforcement.	9.29

Rule #

Division 5
Foreclosure Actions

When an affidavit of value must be filed.	9.30
Other material to be filed.	9.31
Offer for sale of secured property.	9.32
Sale to the plaintiff.	9.33
Order confirming sale.	9.34
Checking calculations: assessment of costs and corrections.	9.35
Service of certified bill of costs.	9.36

Division 6
Sale and Disposition
of Land Other than by a Foreclosure Action

Application of this Division.	9.37
Sale and disposition of land.	9.38
Terms, conditions and limitations on orders.	9.39

Division 7
Reciprocal Enforcement of United Kingdom Judgments

Definitions.	9.40
Scope.	9.41
Application to court.	9.42
Affidavit in support of application for an order to register a convention judgment.	9.43
When application can be filed without notice.	9.44
Order to register convention judgment.	9.45
Convention judgment debtor's application to set aside.	9.46
Convention judgment creditor's appeal.	9.47
Appeal when order is made on notice.	9.48
Factors to be considered.	9.49

Division 8
Registration of Judgments under
the Reciprocal Enforcement of Judgments Act

Originating application to register a judgment from a reciprocating jurisdiction.	9.50
Notice of registration.	9.51
Originating application to set aside registration.	9.52

PART 10: LAWYER'S CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

Division 1 Lawyer's Charges, Retainer Agreements, and Right of Review

Subdivision 1 Lawyer's Charges

Payment for lawyer's services.	10.1
Contents of lawyers' accounts.	10.2
Lawyer acting in representative capacity.	10.3
Charging order for payment of lawyer's charges.	10.4

Subdivision 2 Retainer Agreements

Retainer agreements.	10.5
Void provisions.	10.6

Subdivision 3 Contingency Fee Agreements

Contingency fee agreement requirements.	10.7
Lawyer's non-compliance with contingency fee agreement.	10.8

Subdivision 4 Right of Review

Reasonableness of retainer agreements and charges subject to review.	10.9
Time limitation on reviewing retainer agreements and accounts.	10.10
Appointment for review.	10.11
Client obtained appointment: lawyer's responsibility.	10.12
Retainer agreement confidentiality.	10.13
Absence of person at appointment for review.	10.14
Review officer's authority.	10.15
Reference to court.	10.16
Review officer's decision.	10.17
Enforcement of review officer's decision.	10.18
Repayment of charges and action for payment of charges.	10.19
Action for payment of a lawyer's charges.	10.20
Costs of a review.	10.21
Reviewing lawyer's charges: incomplete services and particular events.	10.22
Order to return records.	10.23

Subdivision 5 Appeal from Review Officer's Decision

Appeal to judge.	10.24
Decision of the judge.	10.25

Rule #

Division 2
Recoverable Costs of Litigation

Subdivision 1
General Rule, Considerations and Court Authority

Definition of “party”	10.26
General rule for payment of litigation costs	10.27
When a costs award may be made	10.28
Court-ordered costs award	10.29
Costs in a class action	10.30
Court considerations in making a costs award	10.31
Court-ordered assessment of costs	10.32

Subdivision 2
Assessment of Costs
by Assessment Officer

Preparation of bill of costs	10.33
Assessment of bill of costs	10.34
Appointment for assessment	10.35
Assessment officer’s authority	10.36
Reference to court	10.37
Absence of person served with notice of appointment for assessment	10.38
Assessment officer’s decision	10.39
Actions within Provincial Court jurisdiction	10.40
Certification of costs payable	10.41

Subdivision 3
Appeal from Assessment Officer’s Decision

Appeal to judge	10.42
Decision of the judge	10.43

Division 3
Other Matters Related to
Lawyer’s Charges and Litigation Costs

Review and assessment under enactments	10.44
Liability of litigation representative for costs	10.45
Recovery of goods and services tax	10.46

Division 4
Sanctions

Subdivision 1
Penalty

Penalty for contravening the rules	10.47
Costs imposed on lawyer	10.48

Rule #

Subdivision 2
Civil Contempt of Court

Order to appear.....	10.49
Declaration of civil contempt.....	10.50
Punishment for civil contempt of court.....	10.51

Division 5
Medical Examination

Mental disorder.....	10.52
----------------------	-------

Division 6
Inherent Jurisdiction

Inherent jurisdiction.....	10.53
----------------------------	-------

PART 11: SERVICE OF DOCUMENTS

Division 1
Originals and Copies of Documents

Service of original documents and copies.....	11.1
---	------

Division 2
Service of Commencement Documents
in Alberta

Methods of service in Alberta.....	11.2
Service on individuals.....	11.3
Service on trustees and personal representatives.....	11.4
Service on litigation representatives.....	11.5
Missing persons.....	11.6
Service on corporations.....	11.7
Service on limited partnerships.....	11.8
Service on partnerships other than limited partnerships.....	11.9
Service on individuals using another name.....	11.10
Service on a corporation using another name.....	11.11
Service on statutory and other entities.....	11.12
Service on a person providing an address for service.....	11.13
Service on a lawyer.....	11.14
Service on lawyer of record.....	11.15
Service on self-represented litigants.....	11.16
Service on business representatives of absent parties.....	11.17

Division 3
Service of Documents, other
than Commencement Documents, in Alberta

Service of documents, other than commencement documents, in Alberta.....	11.18
Service by an electronic method.....	11.19
Recorded mail service.....	11.20
Agreement between parties.....	11.21

Rule #

Division 4
Service of Documents, other than Commencement
Documents, in Foreclosure Actions

Additional service options in foreclosure actions.	11.22
Notice of address for service in foreclosure actions.	11.23

Division 5
Service of Documents Outside Alberta

Real and substantial connection.	11.24
Methods of service outside Alberta.	11.25

Division 6
Validating, Substituting, Dispensing with and
Setting Aside Service

Validating service.	11.26
Substitutional service.	11.27
Dispensing with service.	11.28
Proving service of documents.	11.29
Setting aside service.	11.30

Division 7
Service of Foreign Process

Procedure for service.	11.31
--------------------------------	-------

PART 12: TECHNICAL RULES

Division 1
Judge Unable to Continue

When one judge may act in place of or replace another.	12.1
--	------

Division 2
Calculating Time

Application of the rules for calculating time.	12.2
Counting days.	12.3
Counting months and years.	12.4
Variation of time periods.	12.5

Division 3
Pleadings

Pleadings: general requirements.	12.6
Pleadings: other requirements.	12.7
Pleadings: other contents.	12.8
Defence of tender.	12.9
Pleadings: specific requirements for replies.	12.10
Pleadings: specific requirements for class proceedings.	12.11
Pleadings: denial of facts.	12.12

Rule #

Division 4
Filed Documents

Subdivision 1
Content and Filing

Requirements for all filed documents.	12.13
Endorsements on documents.	12.14
When a document is filed.	12.15
Deviations and changes to prescribed forms.	12.16
When a commencement document is issued	12.17
Amendments to records other than pleadings or affidavits.	12.18

Subdivision 2
Form and Content of Affidavits and Exhibits

Types of affidavit.	12.19
Requirements for affidavits.	12.20
Changes in affidavits.	12.21
Requirements for exhibits to an affidavit.	12.22
Affidavits by the visually impaired or those unable to read.	12.23
Understanding an affidavit.	12.24
More than one individual swearing an affidavit.	12.25
Use of filed affidavits.	12.26
Exhibits: filing and return.	12.27

Subdivision 3
Lost and Concurrent Documents, Certified Copies,
Authenticated Photographs and Video Recordings

Lost documents.	12.28
Concurrent document.	12.29
Certified copies of original records.	12.30
Authenticated photographs of personal property.	12.31
Video recordings in place of transcripts.	12.32

Division 5
Payment of Fees and Allowances,
and Waivers of Fees

Fees and allowances.	12.33
Uncertainty of amount of fees and allowances.	12.34
Fee accounts.	12.35
Fee exemption.	12.36
Fee waiver: legal aid.	12.37
Fee waiver: restraining orders.	12.38

Division 6
Judge's Fiat, Court Officers and
Court Reporters

Judge's fiat.	12.39
Court officers.	12.40
Court officers may delegate authority.	12.41
Authority of court clerk.	12.42
Absence of court clerk.	12.43
Seal.	12.44

	Rule #
Duties of court clerk.	12.45
Notice to be given to court officers.	12.46
Court reporters.	12.47
Proof of court reporter's signature not required.	12.48

Division 7
Payment Into Court and Payment Out of Court

When money can be paid into court.	12.49
How money is paid into court.	12.50
Tender on a judicial sale.	12.51
Litigant's accounts.	12.52
Payments into court under the <i>Trustee Act</i>	12.53
Payments out of court.	12.54
Investments and payment earnings.	12.55
Disposition of money in accounts.	12.56

PART 13: APPEALS

PART 14: TRANSITIONAL PROVISIONS AND COMING INTO FORCE

Definitions.	14.1
New rules apply to existing proceedings.	14.2
Dispute resolution requirements.	14.3
Complex cases.	14.4
Dismissal for long delay: bridging provision.	14.5
Contingency fee agreements.	14.6
Resolution of difficulty or doubt.	14.7
Repeal.	14.8
Coming into force.	14.9

SCHEDULE A: FORMS

SCHEDULE B: COURT FEES AND WITNESS AND OTHER ALLOWANCES

Division 1: Court Clerk Fees

Division 2: Sheriff's Fees

Division 3: Allowances Payable to Witnesses and Jurors in Civil Proceedings

Division 4: Fees for Receiver Functions

SCHEDULE C: TARIFF OF RECOVERABLE FEES

Division 1: Introduction

Division 2: The Tariff

APPENDIX
DEFINITIONS

List of defined words and phrases

PART 1: FOUNDATIONAL RULES

What this Part is about: Part 1 of the *Alberta Rules of Court* sets the stage for all the other rules. It describes the philosophy underlying the rules through purpose and intention statements, and then sets out

- the general authority of the court to provide remedies,
- the general authority of the court to make procedural orders,
- a means to correct contraventions and non-compliance with the rules and irregularities in proceedings that are not fatal to a claim,
- the authority of judges to amend the rules, and
- how the rules are to be interpreted.

PART 1: FOUNDATIONAL RULES

	Starts at rule #
Division 1: Purpose and Intention of the Rules.	1.1
Division 2: Authority of the Court.	1.3
Division 3: Interpreting the Rules.....	1.7

Information note

Words and phrases used in this Part that have defined meanings in the Appendix *[Definitions]* include

- | | | |
|-------------------------|------------|--------------------|
| • claim | • judge | • prescribed form |
| • commencement document | • judgment | • procedural order |
| • court | • lawyer | • remedy |
| • court clerk | • order | • rules |
| • enactment | • party | |
| • file | • pleading | |

PART 1: FOUNDATIONAL RULES

Division 1 Purpose and Intention of the Rules

What these rules do

1.1(1) These rules govern the practice and procedure in

- (a) the Court of Queen's Bench of Alberta, and
- (b) the Court of Appeal of Alberta.

(2) These rules also govern all persons who come to the court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer.

Purpose and intention of the rules

1.2(1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, the rules are intended

- (a) to identify the real issues in dispute,
- (b) to facilitate the quickest means of resolving a claim at the least expense,
- (c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as practicable,
- (d) to oblige the parties to communicate honestly, openly and in a timely way, and
- (e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of the rules the parties must, jointly and individually during an action,

- (a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense,

Alberta Rules of Court

Part 1: Foundational Rules

- (b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the court,
 - (c) refrain from filing applications or taking proceedings that do not further the purpose and intention of the rules, and
 - (d) when using publicly funded court resources, use them effectively.
- (4) The intention of the rules is that the court, when exercising a discretion to give a remedy or impose a sanction, will create or impose a remedy or sanction proportional to the reason for giving or imposing it.

Division 2 **Authority of the Court**

General authority of the court to provide remedies

1.3(1) The court may do either or both of the following:

- (a) give any relief or remedy described or referred to under the *Judicature Act*;
 - (b) give any relief or remedy described or referred to under these rules or any enactment.
- (2) A remedy may be granted by the court whether or not it is claimed or sought in an action.

Procedural orders

1.4(1) To implement and advance the purpose and intention of the rules described in rule 1.2 [*Purpose and intention of the rules*] the court may, subject to any specific provision of the rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the court.

Alberta Rules of Court

Part 1: Foundational Rules

(2) Without limiting subrule (1), and in addition to any specific authority the court has under the rules, the court may, unless specifically limited by the rules, do one or more of the following:

- (a) grant, refuse or dismiss an application or proceeding;
- (b) set aside any process exercised or purportedly exercised under the rules that is
 - (i) contrary to law,
 - (ii) an abuse of process, or
 - (iii) for an improper purpose;
- (c) give orders, directions or make a ruling with respect to an action, application or proceeding, or matter related;
- (d) make a ruling with respect to how or if the rules apply to particular circumstances or to the operation, practice or procedure under the rules;
- (e) impose terms, conditions and time limits;
- (f) give consent, permission or approval;
- (g) give advice, including making proposals, providing guidance, making suggestions and making recommendations;
- (h) adjourn or stay all or any part of an action, application or proceeding, extend the time for taking the next step, or stay the effect of a judgment or order;
- (i) determine whether a judge is or is not seized with an action, application or proceeding;
- (j) include any information in a judgment or order that the court considers necessary.

(3) A decision of the court affecting practice or procedure in an action, application or proceeding that is not a written order, direction or ruling must be

- (a) recorded in the court file of the action by the court clerk, or
- (b) endorsed by the court clerk on a commencement document, filed pleading or filed

document, or on a document to be filed.

Rule contravention, non-compliance and irregularities

1.5(1) If a person contravenes or does not comply with these rules, or if there is an irregularity in a commencement document, pleading, document, affidavit or prescribed form, a party may apply to the court

- (a) to cure the contravention, non-compliance or irregularity, or
- (b) to set aside an act, application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

(2) An application under this rule must be filed within a reasonable time after the applicant becomes aware of the contravention, non-compliance or irregularity.

(3) An application under this rule may not be filed by a party who alleges prejudice as a result of the contravention, non-compliance or irregularity if that party has taken a further step in the action knowing of the prejudice.

(4) The court may cure the contravention, non-compliance or irregularity unless the interests of justice require the act, application, proceeding or other thing to be set aside because to cure the contravention, non-compliance or irregularity would be likely to significantly prejudice another party.

(5) This rule does not apply to permit a remedy if the contravention, non-compliance or irregularity relates to a time period that the court is prohibited from extending.

(6) If an order is made under this rule, the court may also impose a penalty under rule 10.47 [*Penalty for contravening the rules*].

Alberta Rules of Court

Part 1: Foundational Rules

Information note

Other rules may contain specific methods to resolve some contraventions, non-compliance or irregularities, for example

- rule 3.68 [*Court options to deal with significant deficiencies*]
- rule 3.73 [*Incorrect parties are not fatal to actions*]
- rule 10.51(1)(d) [*Punishment for civil contempt of court*]
- rule 11.26 [*Validating service*].

In addition, rule 9.15 [*Setting aside, varying and discharging judgments and orders*] is available.

Most time periods in the rules can be varied under rule 12.5 [*Variation of time periods*].

The court may also consider a contravention of the rules, non-compliance or irregularity in making a costs award under see rule 10.31(2) [*Court considerations in making a costs award*].

Changes to the rules, information notes and overview summaries

1.6(1) In accordance with the *Judicature Act* the judges of the Court of Queen's Bench and the Court of Appeal may amend these rules or make additional rules.

(2) The Rules of Court Committee under the *Judicature Act* is, for the assistance of readers of these rules, authorized to delete, amend or create new information notes or overview summaries, or both.

Information note

For an explanation of the status of information notes and overview summaries referred to in subrule (2), see rule 1.7(4) [*Interpreting the rules*].

Division 3 Interpreting the Rules

Interpreting the rules

- 1.7(1)** The meaning of these rules is to be ascertained from their text, in light of the purpose and intention of the rules, and in the context in which the rule appears.
- (2)** These rules may be applied by analogy to any matter arising that is not dealt with by the rules.
- (3)** Headings in the rules may be considered in ascertaining the meaning of these rules.
- (4)** The boxed summary overviews titled ***What this Part is about*** on the title page of each Part, and the highlighted ***Information notes***, are inserted only as a reader's aid, do not form part of these rules or the text to be interpreted, and have no legal effect.

Information note

Subsection (1) refers to the purpose and intention of the rules. The purpose of the rules is set out in rule 1.2(1) [*Purpose and intention of the rules*] and the intention of the rules is set out in rule 1.2(2).

You are now reading an information note referred to in subrule (4) above. If you go to the title page for *Part 1: Foundational Rules* you will see an example of a boxed summary overview also referred to in subrule (4) above.

Interpretation Act

1.8 The *Interpretation Act* applies to these rules except for

- (a) section 10 [*Enactments remedial*] and section 12 [*Preambles and reference aids*] of the *Interpretation Act*, which do not apply to these rules,
- (b) section 22 subsections (1) to (8) [*Computation of time*] of the *Interpretation Act*, which do not apply to these rules,

Alberta Rules of Court

Part 1: Foundational Rules

- (c) section 23 [*Presumption of service*] of the *Interpretation Act*, which does not apply to service of documents under these rules, and
- (d) section 26(1) [*Use of forms and words*] of the *Interpretation Act*, which does not apply to these rules.

Information note

The *Interpretation Act* provisions that do not apply to the rules are replaced by

- rule 1.7 [*Interpreting the rules*]
- the rules for calculating time starting at rule 12.2 [*Application of the rules for calculating time*],
- Part 11 [*Service of Documents*], and
- rule 12.16 [*Deviations and changes to prescribed forms*].

Conflicts and inconsistencies with enactments

1.9 If there is a conflict or inconsistency between these rules and an enactment, the enactment prevails to the extent of the conflict or inconsistency.

Where definitions are located

1.10 The Appendix [*Definitions*] defines terms for the purposes of these rules.

PART 2: THE PARTIES TO LITIGATION

What this Part is about: Rules in this Part facilitate court action by and against personal representatives, trustees, partnerships, sole proprietors, and other entities.

The rules in this Part also specify those individuals who must be represented in court by a litigation representative.

This Part describes when a lawyer becomes and ceases to be a lawyer of record and the responsibilities associated with that designation.

PART 2: THE PARTIES TO LITIGATION

	Starts at rule #
Division 1: Facilitating Legal Actions.....	2.1
Division 2: Litigation Representatives.	2.11
Division 3: Representation or Assistance before the Court.	2.22
Division 4: Lawyer of Record.	2.24

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include

- | | |
|-------------------------|---------------------------|
| • claim | • partnership |
| • client | • party |
| • commencement document | • personal representative |
| • costs award | • pleading |
| • court | • prescribed form |
| • enactment | • property |
| • file | • record |
| • judgment | • rules |
| • lawyer | • trustee |
| • order | |

PART 2: THE PARTIES TO LITIGATION

Division 1 Facilitating Legal Actions

Actions by or against personal representatives and trustees

2.1 An action may be brought by or against a personal representative or trustee without naming any of the persons beneficially interested in the estate or trust.

Information note

Rules for service of commencement documents on trustees and personal representatives are contained in rule 11.4 [*Service on trustees and personal representatives*]. For judgments against personal representatives and trustees see rule 9.11 [*Judgment against beneficiaries*].

Partnerships

Actions by or against partners and partnerships

2.2(1) An action by or against 2 or more persons as partners may be brought using the name of the partnership.

(2) Subrule (1) also applies to an action between partnerships having one or more partners in common.

Information note

Rules for service of commencement documents on partners are contained in rule 11.8 [*Service on limited partnerships*] and 11.9 [*Service on partnerships other than limited partnerships*].

Alberta Rules of Court

Part 2: The Parties to Litigation

Suing individual partners

2.3(1) In an action against a partnership using the partnership name, if a party intends to enforce a judgment or order personally against a partner, the party must serve the partner with

- (a) the commencement document, and
- (b) a notice alleging that the person was a partner at a time specified in the notice.

(2) The person served is presumed to have been a partner at the time specified in the notice unless the person defends the claim separately, denying that the person was a partner at the specified time.

(3) An individual partner served with a notice under this rule may defend the action separately from the partnership.

Information note

Under rule 9.23(2) [*Enforcement against partners' and partnership property*] an order against a partnership using the partnership name may also be enforced against a person served with notice under this rule, if the order so provides. If notice is not served under this rule, an order against a partnership using the partnership name may still be enforced against a partner but only with the court's permission and only if the conditions listed in 9.23(3) are met.

Disclosure of partners

2.4(1) If an action is brought by or against a partnership using its partnership name, any other party may serve a notice to disclose requiring the partnership to disclose in writing the names and addresses of all the partners constituting the partnership at a time specified in the notice.

(2) The partnership must comply with or dispute the notice to disclose within 10 days after service of the notice on the partnership.

(3) If the partnership disputes the relevance of the time specified in the notice to disclose, the partnership may apply to the court to determine the matter, in which case the onus is on the partnership to show why the information should not be disclosed.

(4) If the present address of a partner is unknown, the partnership must disclose the last known

address of the partner.

Sole Proprietors and Other Entities

Actions by and against sole proprietors

2.5(1) If a single person carries on business or operates in a name other than their own, the person may bring or be the subject of an action in that name.

(2) If an action is brought by or against a single person in their business or operating name, a party may serve a notice requiring the person to disclose, in writing, the legal name of the person carrying on the business or operation.

(3) The person on whom the notice to disclose is served must comply with it within 10 days after the date the notice is served.

Information note

Rules for service of commencement documents on individuals and corporations operating under trade names are contained in rule 11.10 [*Service on individuals using another name*] and rule 11.11 [*Service on a corporation using another name*].

Representative actions

2.6(1) If numerous persons have a common interest in the subject of an intended claim, one or more of those persons may make or be the subject of a claim or may be authorized by the court to defend on behalf of or for the benefit of all.

(2) If a certification order is obtained under the *Class Proceedings Act*, an action referred to in subrule (1) may be continued under that Act.

Class Proceedings Rules

Amendments to pleadings in class proceedings

2.7 After a certification order is made under the *Class Proceedings Act*, a party may amend a pleading only with the court's permission.

Information note

Rule 12.11 [*Pleadings: specific requirements for class proceedings*] describes how class proceedings must be titled.

Questioning of class and subclass members

2.8(1) If under section 18(2) of the *Class Proceedings Act* the court requires a class member or subclass member to file and serve an affidavit of records, the court may do either or both of the following:

- (a) limit the purpose and scope of the records to be produced and of questioning;
- (b) determine how the evidence obtained may be used.

(2) If a class member or subclass member is questioned under section 18(2) of the *Class Proceedings Act*, the court may do either or both of the following:

- (a) limit the purpose and scope of the questioning;
- (b) determine how the evidence obtained may be used.

Information note

Section 18(2) of the *Class Proceedings Act* reads:

(2) After discovery of the representative plaintiff or, in a proceeding referred to in section 7, one or more of the representative plaintiffs, a defendant may, with leave of the Court, discover other class members or subclass members.

Alberta Rules of Court

Part 2: The Parties to Litigation

Class proceedings practice and procedure

2.9 Despite any other provision of these rules, the court may order any practice and procedure it considers appropriate for a class proceeding under the *Class Proceedings Act* to achieve the objects of that Act.

Intervenors

Intervenor status

2.10 On application, a court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the court.

Information note

The rules about making applications to the court are in Part 6 [*Resolving Issues and Preserving Rights*] – see rule 6.3 [*Applications generally*].

Division 2 Litigation Representatives

Persons who must have a litigation representative

2.11 The following persons must have a litigation representative to bring or defend an action or to continue or to participate in an action, or for an action to be brought or to be continued against them:

- (a) an individual under 18 years old;
- (b) an individual declared to be a missing person under section 7 of the *Public Trustee Act*;
- (c) an adult who is unable to make reasonable judgments in respect of matters relating to a claim in an action;
- (d) an individual who is a dependent adult under the *Dependent Adults Act* in respect of whom no person is appointed to make a decision about a claim;

Alberta Rules of Court

Part 2: The Parties to Litigation

- (e) an estate for which no personal representative has obtained a grant under the *Surrogate Rules* (AR 130/95) and that has an interest in a claim or intended claim.

Information note

The rules for the appointment of a litigation representative would *not* apply if a personal representative of an estate had obtained a grant under the *Surrogate Rules*.

Types of litigation representatives and service of documents

2.12(1) There are 3 types of litigation representatives under these rules:

- (a) an automatic litigation representative described in rule 2.13 [*Automatic litigation representatives*];
- (b) a self-appointed litigation representative under rule 2.14 [*Self-appointed litigation representatives*];
- (c) a court-appointed litigation representative under rule 2.15 [*Court appointment in absence of self-appointment*], rule 2.16 [*Court-appointed litigation representatives in limited cases*] or rule 2.21 [*Litigation representative: termination, replacement, terms and conditions*].

(2) Despite any other provision of these rules, if an individual has a litigation representative in an action

- (a) service of a document that would otherwise be required on the individual must be effected on the litigation representative, and
- (b) service of a document on the individual for whom the litigation representative is appointed is ineffective.

Alberta Rules of Court

Part 2: The Parties to Litigation

Information note

Litigation representatives are served with commencement documents in accordance with rule 11.5 [*Service on litigation representatives*].

The court may terminate, replace or impose terms and conditions on litigation representatives under rule 2.21 [*Litigation representative: termination, replacement, terms and conditions*].

Automatic litigation representatives

2.13 A person is a litigation representative under these rules if the person has authority to commence, compromise, settle or defend a claim on behalf of an individual under any of the following:

- (a) an enactment;
- (b) an instrument authorized by an enactment;
- (c) an order authorized under an enactment;
- (d) a grant or an order under the *Surrogate Rules* (AR 130/95);
- (e) an instrument, other than a will, made by a person, including, without limitation, a power of attorney or a trust.

Self-appointed litigation representatives

2.14(1) If a party who must have a litigation representative under rule 2.11 [*Persons who must have a litigation representative*] does not have one, an interested person

- (a) may file an affidavit in the prescribed form containing the information described in subrule (2), and by doing so becomes the litigation representative for that party, and
- (b) in the case of an estate, must serve notice of the appointment in the prescribed form on the beneficiaries and heirs at law of the deceased.

Alberta Rules of Court

Part 2: The Parties to Litigation

(2) The affidavit must include

- (a) the interested person's agreement in writing to be litigation representative,
- (b) the reason for the self-appointment,
- (c) the relationship between the litigation representative and the party the litigation representative will represent,
- (d) a statement that the litigation representative has no interest in the action adverse in interest to the party the litigation representative will represent,
- (e) a statement that the litigation representative is a resident of Alberta if the litigation representative is an individual, or if the litigation representative is a corporation, the place of business or activity of the corporation in Alberta, and
- (f) an acknowledgement of potential liability for payment of a costs award attributable to or liable to be paid by the litigation representative.

(3) If a person wishes to self-appoint as litigation representative for the estate of a deceased person, the affidavit in subrule (2) must, in addition to the matters in subrule (2), disclose any of the following matters that apply:

- (a) whether the estate has a substantial interest in the matter;
- (b) whether the litigation representative has or may have duties to perform in the administration of the estate of the deceased;
- (c) whether an application has been or will be made for administration of the deceased's estate;
- (d) whether the litigation representative does or may represent interests adverse to any other party in the action or proposed action;
- (e) that the beneficiaries and heirs at law have been served with notice of the appointment, as required under subrule (1)(b).

(4) A person proposing to self-appoint as a litigation representative has no authority to make or defend a claim or, without the court's permission, to make an application or take any proceeding in an action, until the affidavit referred to in subrule (2) is filed.

Information note

For the liability of a litigation representative to pay a costs award, see rule 10.45
[Liability of litigation representative for costs].

Court appointment in absence of self-appointment

2.15(1) If it appears that a party who is required to have a litigation representative under rule 2.11 *[Persons who must have a litigation representative]* does not have one, an interested person may, or if there is no interested person, a party adverse in interest must, apply to the court for directions about the appointment of a litigation representative for that party.

(2) The court may appoint a person as litigation representative.

Court-appointed litigation representatives in limited cases

2.16(1) This rule applies to an action concerning any of the following:

- (a) the administration of the estate of a deceased person;
- (b) property subject to a trust;
- (c) the interpretation of a written instrument;
- (d) the interpretation of an enactment.

(2) In an action described in subrule (1), the following persons or classes of persons must have a court-appointed litigation representative to make a claim in or defend an action or to continue or to participate in an action, or for a claim in an action to be made or an action to be continued against them, namely, a person or class of person who is or may be interested in or affected by a claim, whether presently or for a future, contingent or unascertained interest and that meet one or more of the following conditions:

- (a) the person, the class or a member of the class, cannot be readily ascertained, or is not yet born;

Alberta Rules of Court**Part 2: The Parties to Litigation**

- (b) the person, the class or a member of the class, though ascertained, cannot be found;
- (c) the person, the class and a member of the class can be ascertained and found, but the court considers it expedient to make an appointment to save expense, having regard to all the circumstances, including the amount at stake and the degree of difficulty of the issue to be determined.

(3) On application by an interested person, the court may appoint a person as litigation representative for a person or class of persons to whom this rule applies on being satisfied that both the proposed appointee and the appointment is appropriate.

Lawyers appointed as litigation representatives

2.17(1) If the court appoints a lawyer as the litigation representative of an individual under 18 years old, an adult unable to make reasonable judgments in respect of matters relating to a claim in an action, or an individual who is a dependent adult under the *Dependent Adults Act*, the court may direct that the costs incurred in performing the duties of the litigation representative be borne by

- (a) the parties or by one or more of them, or
- (b) any fund in court in which the person for whom the litigation representative is appointed has an interest.

(2) The court may give any other direction for repayment of costs or for an advance payment of costs as the circumstances require.

Approval of compromises

2.18(1) If in an action or claim described in rule 2.16 [*Court-appointed litigation representatives in limited cases*] a settlement is proposed and some of the persons interested in the settlement are not parties to the action but are persons having the same interest as those who are parties to the action and assent to the settlement, the court may approve the settlement and order that it binds the persons who are not parties if the court is satisfied that

- (a) the settlement will be for the benefit of the absent persons, and

Alberta Rules of Court

Part 2: The Parties to Litigation

(b) to require service on those persons would cause unreasonable expense or delay.

(2) The absent persons are bound by the court's order unless the order is obtained by fraud or by non-disclosure of important facts.

Court approval of settlement, discontinuance, and abandonment of actions

2.19 Unless a litigation representative has express authority to do so by an instrument, order or enactment, a litigation representative may only settle, discontinue or abandon an action with the court's approval.

Information note

Under rule 3.36(2) [*Judgment in default of defence and noting in default*], a judgment in default of filing a statement of defence may only be entered against a defendant represented by a litigation representative with the court's permission.

Money received by a litigation representative

2.20(1) If as a result of an action a litigation representative receives money, other than under a costs award, that money must be paid into court, unless the court otherwise orders or an enactment or instrument otherwise provides.

(2) A payment made to a litigation representative on account of money due to a party represented by the litigation representative, otherwise than under a costs award, is not a valid discharge as against that party, unless otherwise provided by an instrument, order or enactment.

Information note

Money paid into court is subject to rules in Part 12 [*Technical Rules*] Division 7 [*Payment Into Court and Payment Out of Court*].

Alberta Rules of Court

Part 2: The Parties to Litigation

Litigation representative: termination, replacement, terms and conditions

2.21 The court may do one or more of the following:

- (a) terminate the authority or appointment of a litigation representative;
- (b) appoint a person as or replace a litigation representative;
- (c) impose terms and conditions on, or on the appointment of, a litigation representative or cancel or vary the terms or conditions.

Division 3**Representation or Assistance before the Court****Self-represented litigants**

2.22 Individuals may represent themselves in an action unless these rules otherwise provide.

Information note

Rules for service of commencement documents on individuals are contained in rule 11.3 [*Service on individuals*]. See also the information note following rule 11.3.

Assistance before the court

2.23(1) The court may permit a person to assist a party before the court in any manner and on any terms and conditions the court considers appropriate.

(2) For example, without limiting subrule (1), assistance may take the form of

- (a) quiet suggestions;
- (b) note-taking;
- (c) support;

Alberta Rules of Court

Part 2: The Parties to Litigation

- (d) addressing the particular needs of a party.
- (3) However, no assistance may be permitted
- (a) that would contravene section 106(1) of the *Legal Profession Act*;
 - (b) if the assistance would or may be disruptive;
 - (c) if the assistance would not meet the purpose and intention of these rules.

Information note

Under section 106(1) of the *Legal Profession Act* assistance permitted by this rule must fall short of “acting as a barrister or solicitor” or “commencing, carrying on or defending an action or proceeding before a court or judge on behalf of another person”.

Division 4
Lawyer of Record

Lawyer of record

- 2.24(1)** The lawyer or firm of lawyers whose name appears on a commencement document, pleading, affidavit or other document filed or served in an action as acting for a party is a lawyer of record for that party.
- (2)** When there is a lawyer of record, the party for whom the lawyer of record acts may not self-represent, unless the court permits.
- (3)** A lawyer of record remains as a lawyer of record until ceasing to be a lawyer of record under these rules.

Alberta Rules of Court

Part 2: The Parties to Litigation

Duties of lawyer of record

2.25(1) The duties of a lawyer of record include:

- (a) to conduct the action in a manner that furthers the purpose and intention of the rules described in rule 1.2 [*Purpose and intention of the rules*], and
- (b) to continue to act as lawyer of record while the lawyer is recorded in that capacity.

(2) On application, the court may direct a lawyer of record to disclose the address of the party for whom the lawyer acts.

Verifying lawyer of record

2.26(1) If a person who is served with a commencement document, pleading or other document asks a lawyer if the lawyer is the lawyer of record in an action, application or proceeding, the lawyer must respond to the question in writing as soon as practicable.

(2) If a lawyer or firm of lawyers whose name appears as the lawyer of record in an action denies being the lawyer of record

- (a) every application and proceeding in the action is stayed, and
- (b) no further application, proceeding or step may be taken in the action without the court's permission.

Retaining a lawyer for limited purposes

2.27(1) If a self-represented litigant or a lawyer of record retains a lawyer to appear before the court for a particular purpose, the lawyer appearing must inform the court of the nature of the appearance, either

- (a) orally, or
- (b) before the appearance, by filing the terms of the retainer.

(2) If a self-represented litigant retains a lawyer for a particular purpose, the litigant must attend the application or proceeding for which the lawyer is retained unless the court otherwise permits.

Change in lawyer of record or self-representation

2.28(1) A party may change their lawyer of record or may self-represent by

- (a) serving a notice of the change in the prescribed form on every other party and on the lawyer or former lawyer of record, and
- (b) filing an affidavit of service of the notice.

(2) A self-represented litigant who retains a lawyer to act on their behalf must serve on every other party a notice to that effect naming the lawyer of record.

(3) The notice must include an address for service.

(4) The notice does not have to be served on

- (a) a party noted in default, or
- (b) a party against whom default judgment has been entered.

Withdrawal of lawyer of record

2.29(1) Subject to rule 2.31 [*Withdrawal after trial date scheduled*], a lawyer or firm of lawyers may withdraw as lawyer of record by

- (a) serving on every party a notice of withdrawal and stating their client's last known address,
- (b) filing an affidavit of service of the notice, and
- (c) serving on the client or former client a notice in the prescribed form to the effect that on the expiry of 10 days after the date the affidavit of service of the notice is filed, the withdrawing lawyer will no longer be the lawyer of record.

(2) The withdrawal of the lawyer of record takes effect 10 days after the affidavit of service is filed.

Alberta Rules of Court

Part 2: The Parties to Litigation

(3) The address of the party stated in the notice of withdrawal is the party's address for service after the lawyer of record withdraws unless another address for service is provided or the court otherwise orders.

Service after lawyer ceases to be lawyer of record

2.30 After a lawyer or firm of lawyers ceases to be a lawyer of record, no pleading, affidavit, notice or document relating to the action is to be served on the former lawyer of record or at any address for service previously provided by the former lawyer of record.

Withdrawal after trial date scheduled

2.31 After a trial date is scheduled, a lawyer of record may not, without the court's permission, serve a notice of withdrawal as lawyer of record and any notice of withdrawal that is served without the court's permission has no effect.

Information note

A trial date is scheduled by the court clerk under rule 8.4 [*Trial date: scheduled by court clerk*] or by the court under rule 8.5 [*Trial date: scheduled by the court*].

Automatic termination of lawyer of record and resolving difficulties

2.32(1) A lawyer or firm of lawyers ceases to be the lawyer of record if:

- (a) in the case of an individual lawyer,
 - (i) the lawyer dies,
 - (ii) the lawyer is suspended or disbarred from practice as a lawyer, or
 - (iii) the lawyer ceases to practice as a lawyer;
- (b) in the case of a firm of lawyers, the firm dissolves.

Alberta Rules of Court

Part 2: The Parties to Litigation

(2) If any of the circumstances described in subrule (1) occurs, any other party may apply to the court, without notice to any other party, for directions about service of documents.

(3) The court may

- (a) direct the manner in which service is to be effected,
- (b) dispense with service in accordance with rule 11.28 [*Dispensing with service*], or
- (c) make any other order respecting service that the circumstances require.

(4) An order under this rule applies until a notice is given under rule 2.28 [*Change in lawyer of record or self-representation*] or rule 2.29 [*Withdrawal of lawyer of record*] or the court otherwise orders.

(5) Nothing in this rule prevents a party from serving a notice of change of lawyer of record or notice that the party intends to self-represent.

PART 3: COURT ACTIONS

What this Part is about: This Part describes the documents to be used to start and defend court actions and the options that parties have during court proceedings.

The Part begins by describing how court actions are started (either by a statement of claim or by an originating application) and in which court office the commencement document must be filed to start the court action.

The rules then describe the requirements for originating applications and the specific rules for originating application for judicial review, which is the process used to challenge a decision, act or omission of a person or body.

The Part then deals with actions started by statement of claim, time limits for serving the commencement document and the options that the defendant has.

The Part describes how a defence to a statement of claim is filed and served and the reply to the defence, and what happens if no defence is filed.

The Part also describes how to make a claim against a co-defendant, a 3rd party claim, and a counterclaim, request for more particulars about a claim and how documents filed in court (called pleadings) can be amended.

The Part then deals with what happens if there are significant deficiencies in a claim or pleading and ends by describing how parties to a court action can be joined, separated or changed.

PART 3: COURT ACTIONS

Starts at rule #

Division 1: Court Actions and their Venue.	3.1
Division 2: Actions Started by Originating Application.....	3.8
<i>Subdivision 1: General Rules.</i>	3.8
<i>Subdivision 2: Additional Rules Specific to Originating Applications for Judicial Review.</i>	3.15
Division 3: Actions Started by Statement of Claim.....	3.25
<i>Subdivision 1: Time Limit for Service of Statement of Claim.....</i>	3.26
<i>Subdivision 2: Defence to a Statement of Claim, Reply to Defence and Demand for Notice.....</i>	3.30
<i>Subdivision 3: Failure to Defend.....</i>	3.36
<i>Subdivision 4: Claims Against Co-defendants.</i>	3.43
<i>Subdivision 5: 3rd Party Claims.....</i>	3.44
<i>Subdivision 6: Counterclaims.</i>	3.56
Division 4: Request for Particulars, Amendments to Pleadings and Close of Pleadings.....	3.61
Division 5: Significant Deficiencies in Claims.	3.68
Division 6: Refining Claims and Changing Parties.....	3.69
<i>Subdivision 1: Joining and Separating Claims and Parties.....</i>	3.69
<i>Subdivision 2: Changes to Parties.</i>	3.74

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include

- | | | |
|--------------------------------|----------------------|-----------------------------------|
| • Attorney General for Alberta | • foreclosure action | • pleading |
| • claim | • judgment | • prescribed form |
| • commencement document | • judgment creditor | • procedural order |
| • costs award | • judicial centre | • property |
| • court | • land | • record |
| • court clerk | • lawyer | • remedy |
| • defendant | • liquidated demand | • rules |
| • enactment | • order | • 3 rd party defendant |
| • expert | • party | • 3 rd party plaintiff |
| • file | • plaintiff | |

PART 3: COURT ACTIONS

Division 1 Court Actions and their Venue

Rules govern court actions

3.1 A court action for a claim may only be brought and carried on, applications may only be filed and proceedings may only be taken, in accordance with these rules.

How to start an action

3.2(1) An action may only be started by filing in the appropriate judicial centre described in rule 3.3 [*Determining the appropriate judicial centre*]

- (a) a statement of claim by a plaintiff against a defendant, or
 - (b) an originating application by an originating applicant against a respondent.
- (2)** A statement of claim must be used to start an action unless
- (a) there is no substantial factual dispute,
 - (b) there is no person to serve as defendant,
 - (c) a decision, act or omission of a person or body is to be the subject of judicial review,
 - (d) an enactment authorizes or requires an originating application, an originating notice, a notice of motion, or a petition to be used,
 - (e) an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the court without describing the procedure to obtain it, or

Alberta Rules of Court

Part 3: Court Actions

- (f) an enactment provides an appeal to the court, or authorizes or permits a reference to the court, or provides for a matter to be put before the court, without describing the procedure to be used,

in which case an originating application in the prescribed form may be used to start the action.

- (3) If an enactment authorizes, requires or permits an application to be made to the court,
 - (a) if the application is made in the course of an action in respect of which a commencement document has been filed, the application must be made under Part 6 [*Resolving Issues and Preserving Rights*], unless the court otherwise orders;
 - (b) if the application is not made in the course of an action in respect of which a commencement document has been filed, an originating application must be used, unless the court otherwise orders or these rules otherwise provide.
- (4) If an action that is started in one form should have been started or should continue in another, the court may make any procedural order to correct and continue the proceeding and deal with any related matter.

Information note

The rules about the contents of statements of claim, defence and other related documents (called *pleadings*), and rules for affidavits, are contained in Part 12 [*Technical Rules*]. Rules for contents of originating applications are in rule 3.8 [*Originating applications and associated evidence*] and rule 3.15 [*Originating application for judicial review*].

Rule 3.12 [*Application of statement of claim rules to originating applications*] may be applicable for issues under subrule (3).

There are a number of matters that come before the court in ways not described in this rule. For example, some enactments permit an appeal to the court by filing a notice of appeal. If the Act describes the method of appeal, then the requirements of the Act and regulations under the Act must be followed. An appeal to the Court of Queen's Bench from a decision of the Provincial Court is an example of this. If there are difficulties or procedural gaps, rule 1.7(2) [*Interpreting the rules*] may be of assistance.

Alberta Rules of Court

Part 3: Court Actions

Determining the appropriate judicial centre

3.3(1) The appropriate judicial centre for the purpose of these rules is

- (a) the closest judicial centre, by road, to the Alberta residences or Alberta places of business of all the parties, or
- (b) if a single judicial centre cannot be determined under clause (a), the appropriate judicial centre is the judicial centre that is, by road, the closest to the Alberta residence or Alberta place of business of one of the parties, that party being selected by the party starting the action.

(2) If a party carries on business in more than one Alberta location, the place of business in Alberta of that party for the purpose of this rule is the place of business that is nearest to the location at which the matters in issue in the action arose or were transacted.

(3) Despite subrules (1) and (2), the parties may agree on a judicial centre in which to start and carry on the action, in which case the judicial centre agreed by the parties is the appropriate judicial centre, unless the court otherwise orders.

Claim for possession of land

3.4(1) Despite rule 3.3 [*Determining the appropriate judicial centre*], if possession of land is claimed in a statement of claim that was not filed in

- (a) the judicial centre that is nearest, by road, to the land, or
- (b) the judicial centre that is nearest, by road, to the Alberta residence of a defendant,

a defendant may, by making a request in the prescribed form, require the court clerk in the judicial centre in which the action is located to transfer the action to the judicial centre that is nearest, by road, to the land or the Alberta residence of that defendant.

(2) The request must

- (a) name the judicial centre to which the action is to be transferred, and
- (b) give the reason for the transfer.

Alberta Rules of Court

Part 3: Court Actions

(3) The request must

- (a) be filed before close of pleadings in the judicial centre in which the action is located, and
- (b) be served on every other party.

(4) This rule does not apply if

- (a) the court has issued an order directing the action be started in or transferred to a particular judicial centre,
- (b) the parties agree that an action start in or be transferred to a particular judicial centre, or
- (c) the action has already been transferred to a judicial centre by a request under this rule.

Information note

Close of pleadings is a time determined under rule 3.67 [*Close of pleadings*].

Transfer of an action

3.5 The court may order that an action be transferred from one judicial centre to another

- (a) if the court is satisfied that it would be unreasonable for the action to be carried on in the judicial centre in which it is located, or
- (b) at the request of the parties.

Where an action is carried on

3.6(1) An action must be carried on in the judicial centre

- (a) in which the statement of claim or originating application was filed, or
- (b) if the action is transferred in accordance with rule 3.4 [*Claim for possession of*

Alberta Rules of Court

Part 3: Court Actions

land] or rule 3.5 [*Transfer of an action*], the action must be continued in that judicial centre and all subsequent documents in the action must be titled accordingly.

(2) Despite subrule (1), an application and an originating application may be heard or a trial may be held in any place specified by the court other than the judicial centre.

Enforcement proceedings in another judicial centre

3.7 After judgment or an order has been entered in a judicial centre, a judgment creditor may file a certified copy of the judgment or order in any other judicial centre and, after that, proceedings to enforce the judgment or order may be taken

- (a) in the other judicial centre, or
- (b) in any judicial centre in which the judgment or order or a certified copy of the judgment or order is filed.

Information note

For enforcement of judgments and orders see Part 9 [*Judgments and Orders*].

Division 2

Actions Started by Originating Application

Subdivision 1

General Rules

Originating applications and associated evidence

3.8(1) An originating application must

- (a) be in the prescribed form,
- (b) state the claim and the basis for it,
- (c) state the remedy sought, and

Alberta Rules of Court**Part 3: Court Actions**

- (d) identify the affidavit or other evidence to be used in support of the originating application.
- (2) If an affidavit is filed to support an originating application, the affidavit must be confined to
- (a) a statement of facts within the personal knowledge of the person swearing the affidavit, and
 - (b) any other evidence that the person swearing the affidavit could give at trial.

Information note

Rules for affidavits are contained in Part 12 [*Technical Rules*]. See rule 12.19 [*Types of affidavit*] and the rules that follow that rule.

Service of originating application and evidence

3.9 Except as otherwise provided in rule 3.15(5) [*Originating application for judicial review*], an originating application and any affidavit and other evidence filed with the originating application must be served on every other party 10 days or more before the date scheduled for hearing the application.

Information note

Service of documents is dealt with in Part 11 [*Service of Documents*].

Application of Part 4 and Part 5 to originating applications

3.10 Part 4 [*Managing Litigation*] and Part 5 [*Disclosure of Information*] do not apply to an action started by an originating application, unless the parties otherwise agree or the court otherwise orders.

Alberta Rules of Court

Part 3: Court Actions

Information note

See also rule 3.12 [*Application of statement of claim rules to originating applications*]. Typically, an action started by originating application will not require the same kind of management, either by the parties or the court, nor require the same kind of disclosure of records or questioning, as actions started by statement of claim. However, if management, document disclosure and questioning is required, the parties can agree or the court can order it.

Service and filing of affidavits and other evidence in reply and response

3.11(1) If the respondent to an originating application intends to rely on an affidavit or other evidence when the originating application is heard or considered, the respondent must reply by serving on the applicant a reasonable time before the originating application is to be heard or considered a copy of the affidavit and other evidence on which the respondent intends to rely.

(2) The originating applicant may respond by affidavit or other evidence to the respondent's affidavit or other evidence and must

- (a) serve the response affidavit or other evidence on the respondent a reasonable time before the originating application is to be heard or considered, and
- (b) limit the response to replying to the respondent's affidavit or other evidence.

(3) If either the respondent or originating applicant does not give the other reasonable notice under this rule, and an adjournment is not granted,

- (a) the party who did not give reasonable notice may not rely on the affidavit or other evidence, unless the court otherwise permits, and
- (b) the court may make a costs award against the party responsible.

Application of statement of claim rules to originating applications

3.12 At any time in an action started by originating application the court may, on application, direct that all or any rules applying to an action started by statement of claim apply to the action started by originating application.

Alberta Rules of Court

Part 3: Court Actions

Information note

See also rule 3.10 [*Application of Part 4 and Part 5 to originating applications*].

Questioning on an affidavit and questioning witnesses

3.13(1) The following persons may be questioned by a party adverse in interest:

- (a) a person who makes an affidavit in support of an originating application;
- (b) a person who makes an affidavit in response;
- (c) a person who makes an affidavit in reply to a response.

(2) Subject to rule 3.21 [*Limit on questioning*], a person may be questioned under oath as a witness for the purpose of obtaining a transcript of their evidence available for use at the hearing of an originating application.

(3) A party may question a person they are entitled to question under this rule by serving on them an appointment for questioning.

(4) Rules 6.18 [*Contents of appointment notice*] to 6.22 [*Form of questioning and transcript*], and rule 6.40 [*Requiring attendance for questioning*], apply for the purposes of this rule.

(5) The questioning party must file the transcript of the questioning.

Originating application evidence (other than judicial review)

3.14(1) When making a decision about an originating application, other than an originating application for judicial review, the court may consider the following evidence only:

- (a) affidavit evidence, including an affidavit by an expert;
- (b) a transcript referred to in rule 3.13 [*Questioning on an affidavit and questioning witnesses*];

Alberta Rules of Court

Part 3: Court Actions

- (c) if Part 5 [*Disclosure of Information*] is ordered to apply to the originating application, the written or oral answers to questions, or both, under that Part that may be used under rule 5.31 [*Use of transcript and answers to written questions*];
- (d) an admissible record disclosed in an affidavit;
- (e) anything permitted by any other rule or by an enactment;
- (f) evidence taken in any other action, but only if the party proposing to submit the evidence gives every other party 5 days or more notice of their intention and obtains the court's permission to submit the evidence;
- (g) with the court's permission, oral evidence, which if permitted must be given in the same manner as at trial.

(2) An affidavit or other evidence that is used or referred to at a hearing by the respondent, or by the originating applicant in response to the respondent and that has not previously been filed in the action must be filed as soon as practicable after the hearing.

Subdivision 2
Additional Rules Specific to Originating Applications
for Judicial Review

Originating application for judicial review

3.15(1) An originating application must be filed in the form of an originating application for judicial review if the originating applicant seeks from the court any one or more of the following remedies against a person or body whose decision, act or omission is subject to judicial review:

- (a) an order in the nature of mandamus, prohibition, certiorari, quo warranto or habeas corpus;
- (b) a declaration or injunction.

(2) Subject to rule 3.16 [*Originating application for judicial review: habeas corpus*], an originating application for judicial review to set aside a decision or act of a person or body must be filed and served within 6 months after the date of the decision or act, and rule 12.5 [*Variation of time periods*] does not apply to this time period.

Alberta Rules of Court**Part 3: Court Actions**

- (3) An originating application for judicial review must be served on
- (a) the person or body in respect of whose act or omission a remedy is sought,
 - (b) the Attorney General for Alberta and where the circumstances so require the Minister of Justice and Attorney General for Canada, and
 - (c) every person or body directly affected by the application.
- (4) The court may require an originating application for judicial review to be served on any person or body not otherwise required to be served.
- (5) An affidavit or other evidence to be used to support the originating application for judicial review, other than an originating application for an order in the nature of habeas corpus, must be filed and served on every other party one month or more before the date scheduled for hearing the application.

Originating application for judicial review: habeas corpus

3.16(1) An originating application for an order in the nature of habeas corpus may be filed at any time and served under 3.15(3) [*Originating application for judicial review*] as soon as practicable after filing.

(2) An affidavit or other evidence to be used to support the originating application must be filed and served on every other party 10 days or more before the date scheduled for hearing the application.

Attorney General's right to be heard

3.17 The Attorney General for Alberta and where the circumstances so require the Minister of Justice and the Attorney General for Canada is entitled as of right to be heard on an originating application for judicial review.

Information note

The court may grant intervenor status to other persons under rule 2.10 [*Intervenor status*]. References to the Attorney General for Alberta are to the Alberta Minister of Justice and Attorney General.

Notice to obtain record of proceedings

3.18(1) An originating applicant for judicial review who seeks an order to set aside a decision or act must include with the originating application a notice in the prescribed form, addressed to the person or body who made or possesses the record of proceedings on which the act or decision sought to be set aside is based, to send the record of proceedings to the court clerk named in the notice.

(2) The notice must require the following to be sent or require an explanation of why an item cannot be sent:

- (a) the decision or act that is the subject of the originating application for judicial review,
- (b) the reasons given for the decision or act, if any,
- (c) the document which started the proceeding,
- (d) the evidence and exhibits filed with the person or body, if any, and
- (e) anything else relevant to the decision or act in the possession of the person or body.

(3) The court may add to, dispense with, or vary anything required to be sent to the court clerk under this rule.

Alberta Rules of Court

Part 3: Court Actions

Sending in record of proceedings

3.19(1) On receipt of an originating application and a notice in accordance with rule 3.18 [*Notice to obtain record of proceedings*], the person or body named in the notice must, as soon as practicable,

- (a) comply with the notice and send in the record of proceedings with the prescribed form, or
- (b) provide a written explanation why the notice cannot be complied with or fully complied with and amend the prescribed form accordingly.

(2) The record of proceedings sent to the court clerk under this rule constitutes part of the court file of the originating application.

(3) If the court is not satisfied with the explanation for not sending all or part of the record of proceedings, the court may order any or all of the following:

- (a) a better explanation;
- (b) a record to be sent to the court clerk;
- (c) the person or body to take any other action the court considers appropriate.

Other circumstances when a record of proceedings may be required

3.20(1) The court may make an order for the production of the record of proceedings of a person or body if the conditions described in subrule (2) are met.

(2) The conditions are:

- (a) the originating application for judicial review is for an order other than an order to set aside a decision or act;
- (b) the record of proceedings is required to establish the claim;
- (c) the person or body that is the subject of the originating application has not sent to the court clerk the record of proceedings within a reasonable time after the originating applicant's written request to do so.

Alberta Rules of Court**Part 3: Court Actions**

(3) If the court orders the record of proceedings to be sent to the court, rule 3.18 [*Notice to obtain record of proceedings*] and rule 3.19 [*Sending in record of proceedings*] apply, unless the court otherwise orders.

Limit on questioning

3.21 On an originating application for judicial review, no person may be questioned as a witness for the purpose of obtaining a transcript for use at the hearing without the court's permission.

Decisions on judicial review

3.22 When making a decision about an originating application for judicial review, the court may consider the following evidence only:

- (a) the record of proceedings of the person or body that is the subject of the application, if any;
- (b) if questioning was permitted under rule 3.21 [*Limit on questioning*], a transcript of that questioning;
- (c) anything permitted by any other rule or by an enactment;
- (d) any other evidence permitted by the court.

Stay of decision

3.23(1) The court may stay the operation of a decision or act sought to be set aside under an originating application for judicial review pending final determination of the originating application.

(2) However, no order to stay is to be made if, in the court's opinion, the stay would be detrimental either to the public interest or to public safety.

Alberta Rules of Court

Part 3: Court Actions

Additional remedies on judicial review

3.24(1) If an originating applicant is entitled to a declaration that a decision or act of a person or body is unauthorized or invalid, the court may, instead of making a declaration, set aside the decision or act.

(2) The court may

- (a) direct a person or body to reconsider the whole or any part of a matter, but in respect of a decision, the court may only direct reconsideration if the decision has been set aside, and
- (b) give any other directions it considers necessary.

(3) If the sole ground for a remedy is a defect in form or a technical irregularity, the court may, if the court finds that no substantial wrong or miscarriage of justice has occurred, despite the defect,

- (a) refuse a remedy;
- (b) validate the decision made to have effect from a date and subject to any terms and conditions that the court considers appropriate.

Division 3
Actions Started by Statement of Claim

Contents of statement of claim

3.25 A statement of claim must

- (a) be in the prescribed form,
- (b) state the claim and the basis for it,
- (c) state any specific remedy sought, and
- (d) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*].

Alberta Rules of Court

Part 3: Court Actions

Subdivision 1
Time Limit for Service of Statement of Claim

Time for service of statement of claim

3.26(1) A statement of claim must be served on the defendant within 1 year after the date that the statement of claim is filed unless the court, on application filed before the 1 year expires, grants an extension of time for service.

(2) The extension of time for service under this rule must not exceed 3 months.

(3) Rule 12.5 [*Variation of time periods*] does not apply to this rule or to an extension of time ordered under this rule.

Information note

Throughout this Part there are references to service of pleadings and documents. Part 11 [*Service of Documents*] describes how commencement documents and other documents are to be served.

Rule 12.4 [*Counting months and years*] describes how to count months and a year or years.

If a litigation representative represents a party, service must be effected on the litigation representative. See rule 2.12(2) [*Types of litigation representatives and service of documents*] and rule 11.5 [*Service on litigation representatives*].

Extension of time for service

3.27(1) The court may, at any time, grant an extension of time for service of a statement of claim in any of the following circumstances:

- (a) if a defendant, anyone purporting to be a defendant, or a lawyer or other person purporting to negotiate on behalf of a defendant, caused the plaintiff or the plaintiff's lawyer to reasonably believe and to rely on the belief, that
 - (i) the defendant had been served,
 - (ii) liability was not or would not be contested, or

Alberta Rules of Court**Part 3: Court Actions**

- (iii) a time limit or any time period relating to the action would not be relied on or would be waived;
- (b) if an order for substitutional service, an order dispensing with service or an order validating service is set aside;
- (c) special or extraordinary circumstances exist resulting solely from the defendant's conduct or from the conduct of a person who is not a party to the action.

(2) If an extension of time is granted under subrule (1), no further extension of time may be granted under this rule and rule 12.5 [*Variation of time periods*] does not apply, unless different or new circumstances described in subrule (1) are established to the court's satisfaction.

Effect of not serving a statement of claim in time

3.28 If a statement of claim is not served on a defendant within the time or extended time for service,

- (a) no further proceeding may be taken in the action against a defendant who is not served in time, and
- (b) a statement of claim served on any defendant in time is unaffected by the failure to serve any other defendant in time.

Notice of extension of time to be served

3.29 If a statement of claim is served within an extension of time for service permitted by the court under rule 3.26 [*Time for service of statement of claim*] or rule 3.27 [*Extension of time for service*], when it is served the statement of claim must be accompanied by

- (a) a copy of the order granting the extension, or
- (b) written notice of the order.

Alberta Rules of Court

Part 3: Court Actions

Subdivision 2
*Defence to a Statement of Claim,
Reply to Defence and Demand for Notice*

Defendant's options

3.30 A defendant who is served with a statement of claim may do one or more of the following:

- (a) apply to the court to set aside service in accordance with rule 11.30 [*Setting aside service*];
- (b) apply to the court for an order under rule 3.68 [*Court options to deal with significant deficiencies*];
- (c) file and serve a statement of defence or demand for notice.

Information note

The rule relating to a demand for notice is rule 3.34 [*Demand for notice by defendant*]. In foreclosure actions a notice of address for service may be filed and served under rule 11.23 [*Notice of address for service in foreclosure actions*].

Statement of defence

3.31(1) If a defendant files a statement of defence, the statement of defence must

- (a) be in the prescribed form, and
- (b) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*].

(2) The defendant must file the statement of defence and the statement of defence must be served on the plaintiff within the applicable time after service of the statement of claim.

(3) The applicable time is

- (a) 20 days if service is effected in Alberta;

Alberta Rules of Court**Part 3: Court Actions**

- (b) 1 month if service is effected outside Alberta but in Canada;
- (c) 2 months if service is effected outside Canada.

Information note

The words “the date service . . . is effected” on the defendant link to the rules about service of documents in Part 11 [*Service of Documents*]. In those rules, various methods of service are described, each one describing the date service is effected. See rule 11.7(2) [*Service on corporations*] for an example of this, and note the lead-in words to rule 11.7(2) “Service is effected under this rule . . .”.

For how time is counted, see rule 12.3 [*Counting days*] and rule 12.4 [*Counting months and years*].

Additional options for defendant who files a defence

3.32 If a defendant files a statement of defence, the defendant may also do one or more of the following:

- (a) file a claim against a co-defendant in accordance with rule 3.43 [*How to make a claim against co-defendants*];
- (b) file a 3rd party claim in accordance with rule 3.44 [*When a 3rd party claim can be filed*];
- (c) file a counterclaim in accordance with rule 3.56 [*Right to counterclaim*].

Reply to a defence

3.33(1) A plaintiff may file a reply to a statement of defence.

(2) If the plaintiff files a reply, the reply must

- (a) be in the prescribed form, and
- (b) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*].

Alberta Rules of Court**Part 3: Court Actions**

(3) The plaintiff must file the reply and the reply must be served on the defendant within 10 days after service of the statement of defence on the plaintiff.

Demand for notice by defendant

3.34(1) If the defendant files a demand for notice the demand must be in the prescribed form.

(2) The defendant must file the demand for notice and the demand for notice must be served on the plaintiff within the applicable time after service of the statement of claim on the defendant.

(3) The applicable time is

- (a) 20 days if service is effected in Alberta;
- (b) 1 month if service is effected outside Alberta but in Canada;
- (c) 2 months if service is effected outside Canada.

(4) If the defendant files a demand for notice and a demand for notice is served on the plaintiff, the defendant must be served with notice of any application or proceeding in which the defendant is named as respondent, but filing and service of the notice does not give the defendant a right to contest liability.

(5) If a defendant files a demand for notice and a demand for notice is served on the plaintiff, the defendant may only subsequently file a statement of defence with the court's permission.

(6) Judgment or an order may only be given against a defendant who has filed and served a demand for notice if

- (a) the plaintiff applies to the court for judgment or an order, and
- (b) notice of the application is served on the defendant.

Judgment or order by agreement

3.35(1) If a lawyer files a statement of defence or demand for notice on behalf of a defendant, no judgment or order may be obtained by agreement of the parties unless the defendant's lawyer of record is a party to the agreement or consents to the agreement.

Alberta Rules of Court

Part 3: Court Actions

(2) If a defendant

- (a) does not file a statement of defence or a demand for notice,
- (b) files a statement of defence or demand for notice in person, or by a lawyer who has ceased to be the defendant's lawyer of record, or
- (c) is not represented by a lawyer of record,

no judgment or order may be obtained by agreement of the parties unless the defendant's agreement, with an affidavit of execution, is filed with the application for the judgment or order.

Information note

Rules about lawyers of record are contained in Part 2 [*The Parties to Litigation*], Division 4 [*Lawyer of Record*].

***Subdivision 3
Failure to Defend***

Judgment in default of defence and noting in default

3.36(1) Subject to subrule (2), if a defendant does not file a statement of defence, demand for notice, or if the defendant's statement of defence is struck out, the plaintiff may, on filing an affidavit of service of the statement of claim,

- (a) enter judgment against the defendant under rule 3.38 [*Judgment for recovery of property*] or rule 3.39 [*Judgment for debt or liquidated demand*], or
- (b) require the court clerk, in the prescribed form, to enter in the court file of the action a note to the effect that the defendant has not filed a statement of defence and consequently is noted in default.

(2) A judgment in default of filing a statement of defence must not be entered against a person who is represented by a litigation representative without the court's permission.

Alberta Rules of Court

Part 3: Court Actions

(3) If the defendant has filed but has not served a statement of defence or demand for notice, the plaintiff may apply to the court for a costs award against the defendant for anything arising from the defendant's failure.

Information note

This rule is subject to rule 3.42 [*Limitation on when judgment or noting in default can occur*] and rule 10.20 [*Action for payment of a lawyer's charges*].

Application for judgment against defendant noted in default

3.37(1) The plaintiff may, without notice to any other party, and on proof of the plaintiff's claim, apply to the court for judgment in respect of a claim for which default judgment has not been entered if

- (a) one or more defendants are noted in default, or
- (b) the defendant's statement of defence is struck out.

(2) In the circumstances described in subrule (1) the plaintiff is entitled to a costs award.

(3) The court may do one or more of the following:

- (a) pronounce judgment;
- (b) make any necessary order;
- (c) direct a determination of damages;
- (d) adjourn the application and order additional evidence to be provided;
- (e) dismiss the claim or a part of it;
- (f) direct that the claim proceed to trial and that notice be served on every other defendant;
- (g) make a costs award in favour of the plaintiff.

Alberta Rules of Court

Part 3: Court Actions

Information note

Note that rule 3.42 [*Limitation on when judgment or noting in default can occur*] may be relevant.

See also rule 7.2 [*Application for judgment*]. Costs awards are dealt with in Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions*]. See in particular Division 2 [*Recoverable Costs of Litigation*], and rule 10.34 [*Assessment of bill of costs*].

Judgment for recovery of property

3.38 Subject to rule 3.41 [*When no defence is filed in a foreclosure action*], if a statement of claim includes a claim for the recovery of property, and one or more defendants do not file a statement of defence or demand for notice, the plaintiff may enter judgment against that or those defendants for the recovery of that property and the plaintiff is entitled to a costs award.

Judgment for debt or liquidated demand

3.39(1) If a statement of claim includes a claim for a debt or a liquidated demand, with or without interest, whether as debt or damages, and one or more defendants do not file a statement of defence or demand for notice in response to that claim or any part of it, the plaintiff

- (a) may enter judgment for a sum not exceeding the amount in respect of which no defence is filed and the interest payable, if the interest calculation is based on a set rate, either under an agreement or an enactment, and
- (b) is entitled to a costs award.

(2) In this rule, *liquidated demand* means

- (a) a claim for a specific sum payable under an express or implied contract for the payment of money, including interest, not being in the nature of a penalty or unliquidated damages, and the amount of money claimed can be determined by
 - (i) the terms of the contract,
 - (ii) calculation only, or

Alberta Rules of Court

Part 3: Court Actions

- (iii) taking an account between the plaintiff and the defendant, or
- (b) a claim for a specific sum of money, whether or not in the nature of a penalty or damages, recoverable under an enactment which contains an express provision that the sum that is the subject of the claim may be recovered as a liquidated demand or as liquidated damages.

Continuation of action following judgment

3.40 If judgment is entered against some but not all defendants under

- (a) rule 3.36 [*Judgment in default of defence and noting in default*],
- (b) rule 3.37 [*Application for judgment against defendant noted in default*],
- (c) rule 3.38 [*Judgment for recovery of property*], or
- (d) rule 3.39 [*Judgment for debt or liquidated demand*],

the plaintiff may continue the action in respect of any defendant against whom judgment is not entered.

When no defence is filed in a foreclosure action

3.41(1) If a defendant in a foreclosure action does not file a statement of defence or demand for notice, the plaintiff must note the defendant in default before filing an application for

- (a) personal judgment, or
- (b) a remedy referred to in rule 6.6(2)(a) to (e) [*Notice of an application in foreclosure actions*].

(2) A defendant may be noted in default even if the defendant has filed and served a notice of address for service.

Alberta Rules of Court

Part 3: Court Actions

Information note

In foreclosure actions a notice of address for service may be filed and served under rule 11.23 [*Notice of address for service in foreclosure actions*].

Limitation on when judgment or noting in default can occur

3.42 Despite anything in this Division, judgment may not be entered against a defendant and a defendant may not be noted in default if the defendant has filed an application that has not been decided

- (a) to set aside service of a statement of claim, or
- (b) under rule 3.68 [*Court options to deal with significant deficiencies*], to set aside or amend a statement of claim, to strike out a claim, or to stay an action, application or proceeding.

Subdivision 4
Claims Against Co-defendants

How to make a claim against co-defendants

3.43(1) If a defendant claims a contribution or indemnity, or both, against a co-defendant under the *Tort-feasors Act* or the *Contributory Negligence Act*,

- (a) the defendant may file and serve on a co-defendant a notice in the prescribed form claiming a remedy under either or both of those Acts,
- (b) neither the defendant nor the co-defendant need file a pleading in respect of their claim or defence under those Acts, unless the court otherwise orders, and
- (c) a 3rd party claim need not be filed and served on the co-defendant.

(2) The notice claiming contribution must be filed and served on the co-defendant within 20 days after the date that the defendant files the statement of defence or demand for notice.

Alberta Rules of Court

Part 3: Court Actions

(3) A claim under subrule (1) must be determined at the trial of the plaintiff's claim against the defendant, or if there is no trial, as directed by the court.

Subdivision 5
3rd Party Claims

When a 3rd party claim can be filed

3.44 A defendant or 3rd party defendant may file a 3rd party claim against another person who

- (a) is or may be liable to the party filing the 3rd party claim for all or part of the claim against that party,
- (b) is or may be liable to the party filing the 3rd party claim for an independent claim arising out of
 - (i) a transaction or occurrence or series of transactions or occurrences involved in the action between the plaintiff and the defendant, or
 - (ii) a related transaction or occurrence or series of related transactions or occurrences, or
- (c) should be bound by a decision about an issue between the plaintiff and the defendant.

Form of 3rd party claim

3.45 A 3rd party claim must

- (a) be in the prescribed form;
- (b) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*];

Alberta Rules of Court**Part 3: Court Actions**

- (c) be filed and served on the plaintiff and the 3rd party defendant, whether or not the 3rd party defendant is already a party to the action,
 - (i) within 6 months after the date the defendant filed a statement of defence or demand for notice, and
 - (ii) before judgment is entered against the defendant or the defendant is noted in default;
- (d) be accompanied, when it is served on the 3rd party defendant, with a copy of the statement of claim served on the defendant.

3rd party defendant becomes a party

3.46(1) On service of a 3rd party claim,

- (a) the 3rd party defendant becomes a party to the action between the plaintiff and defendant, and
- (b) all subsequent proceedings in the action must name the 3rd party as a party in the action between the plaintiff and defendant.

(2) The pleadings between

- (a) the defendant and the 3rd party defendant, and
- (b) a 3rd party plaintiff and a 3rd party defendant,

form part of the court file between the plaintiff and defendant.

(3) A 3rd party claim must be tried with the other claims in the action, unless the court otherwise orders under rule 3.71 [*Separating claims*].

Alberta Rules of Court

Part 3: Court Actions

3rd party defendant's options

3.47 A 3rd party defendant may do one or more of the following:

- (a) apply to the court to set aside service in accordance with rule 11.30 [*Setting aside service*];
- (b) apply to the court for an order under rule 3.68 [*Court options to deal with significant deficiencies*] with respect to the 3rd party claim;
- (c) apply to the court for an order under rule 3.68 [*Court options to deal with significant deficiencies*] with respect to the plaintiff's statement of claim;
- (d) file a statement of defence or demand for notice.

Plaintiff's options

3.48 A plaintiff in an action in which a 3rd party claim is filed may apply to the court for an order under rule 3.68 [*Court options to deal with significant deficiencies*] with respect to the 3rd party claim.

3rd party statement of defence

3.49(1) A statement of defence by a 3rd party defendant

- (a) must be in the prescribed form,
- (b) must comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*], and
- (c) may dispute either or both of the following:
 - (i) the defendant's liability to the plaintiff, or
 - (ii) the 3rd party defendant's liability described in the 3rd party claim.

Alberta Rules of Court**Part 3: Court Actions**

(2) If a 3rd party defendant files a statement of defence, the 3rd party defendant must file and serve it on every other party within the applicable time after service of the 3rd party claim on the 3rd party defendant.

(3) The applicable time is

- (a) 20 days if service is effected in Alberta;
- (b) 1 month if service is effected outside Alberta but in Canada;
- (c) 2 months if service is effected outside Canada.

(4) If a 3rd party defendant files a statement of defence, the 3rd party defendant may do either or both of the following:

- (a) make a claim against a 3rd party co-defendant in accordance with rule 3.43 [*How to make a claim against co-defendants*];
- (b) make a counterclaim in accordance with rule 3.56(2) [*Right to counterclaim*].

Demand for notice by 3rd party defendant

3.50(1) A demand for notice by a 3rd party defendant must be in the prescribed form.

(2) If a 3rd party defendant files a demand for notice, the demand must be filed and served on every other party within the applicable time after service of the 3rd party claim on the 3rd party defendant.

(3) The applicable time is

- (a) 20 days if service is effected in Alberta;
- (b) 1 month if service is effected outside Alberta but in Canada;
- (c) 2 months if service is effected outside Canada.

Alberta Rules of Court**Part 3: Court Actions**

Effect of a demand for notice

3.51(1) If a 3rd party defendant files and serves a demand for notice, the 3rd party defendant must be served with notice of any application in which the 3rd party defendant is named as respondent.

(2) Judgment may only be entered against a 3rd party defendant who has filed and served a demand for notice if the 3rd party plaintiff

(a) applies to the court for judgment, and

(b) notice of the application is served on the 3rd party defendant.

(3) If a 3rd party defendant files and serves a demand for notice, the 3rd party defendant may only subsequently file a statement of defence with the court's permission.

Consequences of not filing 3rd party statement of defence

3.52(1) If a 3rd party defendant does not file a statement of defence disputing the liability of the defendant to the plaintiff, the 3rd party defendant admits the validity of any judgment that the plaintiff obtains against the defendant, whether obtained by agreement or otherwise.

(2) If a 3rd party defendant does not file a statement of defence disputing their own liability to the 3rd party plaintiff under the 3rd party claim, the 3rd party defendant admits liability to the extent claimed in the 3rd party claim.

Judgment against 3rd party defendant

3.53(1) The court may give judgment against a 3rd party defendant if the 3rd party defendant does not file a statement of defence.

(2) Judgment against a defendant must be satisfied before judgment is enforced against a 3rd party defendant, unless the court otherwise orders.

(3) An application by a defendant to enforce a judgment against a 3rd party under subrule (2) must

(a) be in the prescribed form, and

Alberta Rules of Court

Part 3: Court Actions

- (b) be served on the plaintiff and the 3rd party defendant.

Plaintiff's reply to 3rd party defence

3.54(1) A plaintiff or 3rd party plaintiff may file a reply to a statement of defence filed by a 3rd party defendant.

(2) If a plaintiff or 3rd party plaintiff files a reply, the reply must

- (a) be in the prescribed form,
- (b) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*], and
- (c) be filed and served on the 3rd party defendant and every other party within 10 days after service of the statement of defence by the 3rd party defendant on the plaintiff.

Application of rules to 3rd party claims

3.55 Except when the context or these rules otherwise provide, a rule that applies to or in respect of

- (a) a plaintiff applies equally to or in respect of a 3rd party plaintiff;
- (b) a defendant applies equally to or in respect of a 3rd party defendant;
- (c) a pleading related to a claim made by a statement of claim applies equally to or in respect of pleading related to a 3rd party claim.

Subdivision 6 *Counterclaims*

Right to counterclaim

3.56(1) A defendant may, by counterclaim, file a claim against

- (a) a plaintiff, or

Alberta Rules of Court

Part 3: Court Actions

- (b) the plaintiff and another person whether the other person is a party to the action by the plaintiff or not.

(2) A 3rd party defendant may, by counterclaim, file a claim against the plaintiff, defendant or 3rd party plaintiff, or any combination of them, with or without any other person, whether the other person is a party to the action or not.

Contents of counterclaim

3.57 A counterclaim must

- (a) be in the prescribed form,
- (b) comply with the rules about pleadings in Part 12 [*Technical Rules*] Division 3 [*Pleadings*], and
- (c) be filed and served on the defendant-by-counterclaim within the same time period that the plaintiff-by-counterclaim must file a statement of defence under rule 3.31(2) [*Statement of defence*].

Status of counterclaim

3.58 A counterclaim is an independent action.

Claiming a set-off

3.59 A matter which might be claimed by set-off may be claimed by counterclaim or by pleading set-off as a defence.

Application of rules to counterclaims

3.60(1) Except when the context or these rules otherwise provide, a rule that applies to or in respect of

- (a) a plaintiff applies equally to or in respect of a plaintiff-by-counterclaim and a 3rd party plaintiff-by-counterclaim;

Alberta Rules of Court

Part 3: Court Actions

- (b) a defendant applies equally to or in respect of a defendant-by-counterclaim and to a 3rd party defendant-by-counterclaim;
- (c) a pleading related to a claim made by statement of claim applies equally to or in respect of a pleading related to a counterclaim.

(2) If the defendant-by-counterclaim does not file a statement of defence or demand for notice to a counterclaim, a judgment on the counterclaim may only be obtained with the court's permission after notice of the application has been served on the defendant-by-counterclaim.

Division 4
Request for Particulars,
Amendments to Pleadings and
Close of Pleadings

Request for particulars

3.61(1) A party on whom a pleading is served may serve on the party serving the pleading a request for particulars about anything in the pleading.

(2) If the requesting party does not receive a sufficient response within 10 days after the date the request is served, the requesting party may apply to the court for an order to provide the particulars.

(3) If the court orders particulars to be provided it must specify a time within which the order is to be complied with.

(4) Subject to any order, despite a request for particulars, the obligation under these rules to file and serve pleadings continues even though a request for particulars has been made and whether or not it has been complied with.

Alberta Rules of Court

Part 3: Court Actions

Amending a pleading

3.62(1) A party (the first party) may amend their own pleading, including an amendment to add, remove, substitute or correct the name of a party, as against another party (the second party) as follows:

- (a) before pleadings close between the first party and the second party, any number of times without the court's permission;
- (b) after pleadings close between the first party and the second party, only by agreement of those parties filed with the court or, with the court's prior permission,
 - (i) for the addition, removal, substitution or correction of the name of a party, permission being given in accordance with rule 3.74 [*Adding, removing or substituting parties after pleadings close*], or
 - (ii) for any other amendment, permission being given in accordance with rule 3.65 [*Permission of court to amendment after close of pleadings*].

(2) An amended pleading must be

- (a) filed, and
- (b) served on every party within 10 days after the date that the amended pleading is filed.

(3) A party may, without the court's permission, amend their own pleading before or after pleadings close if that amended pleading (the response pleading) is

- (a) a statement of defence in response to an amended statement of claim, an amended counterclaim or an amended 3rd party claim (an amended pleading), or
- (b) a reply to an amended statement of defence, amended statement of defence to a counterclaim, or amended statement of defence to an amended 3rd party claim (an amended pleading).

Alberta Rules of Court

Part 3: Court Actions

- (4) A response pleading referred to in subrule (3) must be
- (a) filed, and
 - (b) served on every other party within 10 days after the date that the amended pleading referred to in subrule (3) is served.
- (5) If a party (the responding party) has pleaded to a pleading that is subsequently amended and served on the responding party then, if the responding party does not file and serve a response pleading, the responding party is taken to rely on their unamended pleading in response to the amended pleading referred to in subrule (3).
- (6) This rule does not apply to amendments to a class proceeding under the *Class Proceedings Act*.

Information note

Rule 2.7 [*Amendments to pleadings in class proceedings*] says that after a certification order is made in a class proceeding, pleadings in a class proceeding may only be amended with the court's permission.

Identifying amendments to pleadings

3.63(1) Unless the court otherwise orders, if a party amends a pleading, a new pleading must be filed, being a copy of the original pleading but amended and bearing the date of the original.

- (2) The amendment must
- (a) be dated, identified and each amended version identified, and
 - (b) be endorsed by the court clerk in the following form

Amended on [date] by [order] [party consent]
Dated . . .

Alberta Rules of Court

Part 3: Court Actions

Time limit for application to disallow amendment to a pleading

3.64(1) On application, the court may disallow an amendment to a pleading or a part of it.

(2) The application must be filed within 10 days after service on the applicant of the amended pleading.

Permission of court to amendment after close of pleadings

3.65(1) Subject to subrule (5), after pleadings close, the court may give permission to amend a pleading only if the amendment will identify the real question in issue between the parties.

(2) If the court gives permission for a pleading to be amended, the court must specify the time period within which the amended pleading must be filed and served.

(3) An order giving permission to amend a pleading under this rule ceases to have effect unless the amended pleading is filed and served within the time specified by the court.

(4) If the court directs or allows a pleading to be amended at trial,

- (a) the amendment must be recorded in writing by the court clerk, and
- (b) no order need be made.

(5) This rule does not apply to an amendment to a pleading to add, remove, substitute or correct the name of a party to which rule 3.74 [*Adding, removing or substituting parties after pleadings close*] applies.

Costs

3.66 The costs, if any, as a result of an amendment to a pleading are to be borne by the party filing the amendment, unless

- (a) the amendment is a response to an amended pleading, or
- (b) the court otherwise orders.

Alberta Rules of Court

Part 3: Court Actions

Close of pleadings

3.67(1) This rule applies to pleadings between the following:

- (a) a plaintiff and a defendant;
- (b) a plaintiff-by-counterclaim and a defendant by counterclaim;
- (c) a 3rd party plaintiff and a 3rd party defendant;
- (d) a plaintiff and a 3rd party defendant.

(2) Pleadings close when

- (a) a reply is filed and served by a plaintiff, plaintiff-by-counterclaim or 3rd party plaintiff, as the case may be, or
- (b) the time for filing and serving a reply expires.

Information note

The time for filing and service of a reply is covered in earlier rules in this Part. For example rule 3.33 [*Reply to a defence*] requires the plaintiff's reply to be filed and served on the defendant within 10 days after service of the statement of defence on the plaintiff. See also rule 3.54(2) [*Plaintiff's reply to 3rd party defence*].

Division 5 Significant Deficiencies in Claims

Court options to deal with significant deficiencies

3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the court may order one or more of the following:

- (a) all or any part of a claim or defence be struck out;

Alberta Rules of Court

Part 3: Court Actions

- (b) a commencement document or pleading to be amended or set aside;
- (c) judgment or an order be entered;
- (d) an action, application or a proceeding be stayed.

(2) The conditions for the order are one or more of the following:

- (a) the court has no jurisdiction;
- (b) a commencement document discloses no reasonable claim or defence to a claim, and no evidence may be submitted on an application made on the basis of this condition;
- (c) a commencement document or pleading is frivolous, irrelevant or improper;
- (d) a commencement document or pleading constitutes an abuse of process;
- (e) an irregularity in a commencement document or pleading is so prejudicial to the claim that it is sufficient to defeat the claim.

(3) The court may

- (a) strike out all or part of an affidavit that contains frivolous, irrelevant or improper information;
- (b) strike out all or any pleadings if a party without sufficient cause, does not
 - (i) serve an affidavit of records in accordance with rule 5.5 [*When an affidavit of records must be served*];
 - (ii) comply with rule 5.10 [*Subsequent disclosure of records*];
 - (iii) comply with an order under rule 5.11 [*Order for a record to be produced*].

Division 6
Refining Claims and Changing Parties

Subdivision 1
Joining and Separating Claims and Parties

Joining claims

- 3.69(1)** A party may join 2 or more claims in an action unless the court otherwise orders.
- (2)** A party may sue or be sued in different capacities in the same action.
- (3)** If there is more than one defendant or respondent, it is not necessary for each to have an interest
- (a) in all the remedies claimed or sought, or
 - (b) in each claim included in the action.

Information note

This and the following rules of this Division apply to all actions, whether started by statement of claim or by originating application.

Parties joining to bring an action

- 3.70(1)** Two or more parties may join to bring an action, and a plaintiff or originating applicant may make a claim against 2 or more persons as defendants or respondents in an action, if
- (a) the claim arises out of the same transaction or occurrence or series of transactions or occurrences,
 - (b) a question of law or fact common to the parties is likely to arise, or
 - (c) the court permits.

Alberta Rules of Court**Part 3: Court Actions**

(2) This rule applies irrespective of the remedy claimed by the plaintiff or originating applicant and whether or not 2 or more plaintiffs or originating applicants seek the same remedy.

Separating claims

3.71(1) When 2 or more claims are made in an action or when 2 or more parties join or are joined in an action, the court may make an order under this rule if the court is satisfied that the joined claims or parties, or both,

- (a) unduly complicate or may delay the action, or
- (b) cause undue prejudice to a party.

(2) The court may make one or more of the following orders:

- (a) order separate trials, hearings, applications or other proceedings;
- (b) order one or more of the claims to be asserted in another action;
- (c) order a party to be compensated by a costs award for having to attend part of a trial, hearing, application or proceeding in which the party has no interest;
- (d) excuse a party from having to attend all or part of a trial, hearing, application or proceeding in which the party has no interest.

Information note

Rule 3.46(3) [*3rd party defendant becomes a party*] says that 3rd party claims are to be tried with the main action unless the court otherwise orders under this rule.

Consolidation or separation of claims and actions

3.72(1) The court may order one or more of the following:

- (a) two or more claims or actions be consolidated;
- (b) two or more claims or actions be tried at the same time or one after the other;

Alberta Rules of Court**Part 3: Court Actions**

- (c) one or more claims or actions be stayed until another claim or action is determined;
- (d) a claim be asserted as a counterclaim in another action.

(2) The order may be made for any reason the court considers appropriate including, without limitation, that 2 or more claims or actions

- (a) have a common question of law or fact, or
- (b) arise out of the same transaction or occurrence or series of transactions or occurrences.

Incorrect parties are not fatal to actions

3.73(1) No claim or action fails solely because

- (a) 2 or more parties join in an action that they should not have joined,
- (b) 2 or more parties do not join an action that they could or should have joined, or
- (c) a party was incorrectly named as a party or was incorrectly omitted from being named as a party.

(2) If subrule (1) applies, a judgment entered in respect of the action is without prejudice to the rights of persons who were not parties to the action.

Subdivision 2
Changes to Parties

Adding, removing or substituting parties after pleadings close

3.74(1) After pleadings close, no person may be added or substituted as a party to an action started by statement of claim except in accordance with this rule.

(2) On application, the court may order that a person be added or substituted as a party to an action if

- (a)** in the case of a person to be added or substituted as plaintiff, plaintiff-by-counterclaim or 3rd party plaintiff, the application is made by a person or party and the consent of the person proposed to be added or substituted as a party is filed with the application;
- (b)** in the case of an application to remove, or to correct the name of a party, the application is made by a party and the court is satisfied the order should be made.

(3) The court may not make an order under this rule if prejudice would result for a party that could not be compensated by a costs award or an adjournment.

Information note

An order under this rule is likely to include terms, conditions and time limits. See rule 1.4(2)(e).

Adding, removing or substituting parties to an originating application

3.75(1) In an action started by originating application no party or person may be added or substituted as a party to the action except in accordance with this rule.

(2) On application of a party or person, the court may order that a person be added or substituted as a party to the action

- (a)** in the case of a person to be added or substituted as an originating applicant, if consent of the person proposed to be added or substituted is filed with the application;

Alberta Rules of Court

Part 3: Court Actions

- (b) in the case of a person to be added as a defendant, if the court is satisfied the order should be made.

(3) The court may not make an order under this rule if prejudice would result for a party that could not be compensated by a costs award or an adjournment.

Action to be taken when defendant or respondent added

3.76(1) If a defendant or respondent is added to or substituted in an action, the plaintiff, originating applicant, plaintiff-by-counterclaim or 3rd party plaintiff must, unless the court otherwise orders,

- (a) amend the commencement document, as required, to name the new party, and
- (b) serve the amended commencement document on every party.

(2) Unless the court otherwise orders,

- (a) in the case of a new defendant, the new defendant has the same time period to serve a statement of defence as the defendant had under rule 3.31 [*Statement of defence*], and
- (b) the action against the new defendant or new respondent, as the case may be, starts on the date that the new party is added to or substituted in the action.

Subsequent encumbrancers not parties in a foreclosure action

3.77 A plaintiff in a foreclosure action must not make any subsequent encumbrancer a party to the claim unless possession is claimed from the subsequent encumbrancer.

Information note

In foreclosure actions, a notice of address for service may be filed and served under rule 11.23 [*Notice of address for service in foreclosure actions*].

PART 4: MANAGING LITIGATION

What this Part is about: This Part sets out the responsibility of the parties to manage their litigation.

Once a statement of claim, defence, reply, and in more complicated actions a counterclaim or 3rd party claim and related pleadings have been filed and served, each party knows what claims and defences are being made in an action. The rules then

- require the parties to manage the litigation so that the parties know when important stages in the action should be complete,
- require the parties to consider and participate in a dispute resolution process, unless the court waives this requirement,
- provide a means for the parties to obtain court assistance for managing the litigation, including the appointment of a case management judge, and
- establish a structure for the parties to ask a judge to actively facilitate resolution of a claim through judicial dispute resolution.

This Part also includes

- rules describing how an award for security for payment of costs can be obtained, and
- rules for a formal offer to settle the litigation and a description of the potential costs consequences when settlement is not pursued, to ensure that formal offers are given careful consideration.

Lastly, this Part deals with litigation delay, the effects of the death of a party, and discontinuing an action.

PART 4: MANAGING LITIGATION

	Starts at rule #
Division 1: Responsibilities of the Parties..	4.1
Division 2: Court Assistance in Managing Litigation .	4.9
Division 3: Dispute Resolution by Agreement ..	4.16
<i>Subdivision 1: Dispute Resolution Processes..</i>	<i>4.16</i>
<i>Subdivision 2: Judicial Dispute Resolution .</i>	<i>4.17</i>
Division 4: Security for Payment of a Costs Award ..	4.22
Division 5: Settlement Using Court Process.....	4.24
Division 6: Delay in an Action.....	4.31
Division 7: Transfer and Transmission of Interest.....	4.34
Division 8: Discontinuance.....	4.36

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include

- | | |
|----------------------------|-----------------------|
| • Chief Justice | • medical examination |
| • claim | • order |
| • costs award | • party |
| • court | • plaintiff |
| • court clerk | • pleading |
| • defendant | • prescribed form |
| • expert | • procedural order |
| • file | • record |
| • health care professional | • remedy |
| • judge | • rules |
| • judgment | • target date |

PART 4: MANAGING LITIGATION

Division 1 Responsibilities of the Parties

Responsibilities of the parties to manage litigation

4.1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost effective way.

What the responsibility includes

4.2 The responsibility of the parties to manage their dispute and to plan its resolution requires the parties:

- (a) to act in a manner that furthers the purpose and intention of the rules described in rule 1.2 [*Purpose and intention of the rules*];
- (b) to meet or adjust the target dates described in rule 4.4 [*Target dates for completing key stages in simple and standard cases*] and, in a complex case, to meet or adjust dates in a complex case litigation plan on or before which a stage or step in an action is expected to be completed;
- (c) to consider and engage in one or more dispute resolution processes described in rule 4.16(1) [*Dispute resolution processes*] unless the court waives that requirement.

Information note

This Part does not apply to an action brought by originating application unless the parties otherwise agree or the court otherwise orders. See rule 3.10 [*Application of Part 4 and Part 5 to originating applications*] and rule 3.12 [*Application of statement of claim rules to originating applications*].

Under rule 8.4 [*Trial date: scheduled by court clerk*] no trial date can be scheduled by the court clerk until the parties have engaged in a dispute resolution process unless the court waives this requirement. The waiver can be granted under rule 4.16(2) [*Dispute resolution processes*]. A waiver under rule 4.16(2) can also be given in the course of an application under rule 8.5(1) [*Trial date: scheduled by the court*], see rule 8.5(1)(a)(iii).

Categories of court action

4.3(1) For the purpose of these rules, actions are categorized as:

- (a) simple cases,
- (b) standard cases, or
- (c) complex cases.

(2) In deciding whether an action should be categorized as a simple, standard or complex case, the parties or the court, as the case requires, must consider the following factors:

- (a) the amount of the claim, the number and nature of the claims, and the complexity of the action;
- (b) the number of parties;
- (c) the number of documents involved;
- (d) the number and complexity of issues and how important they are;
- (e) how long questioning under Part 5 [*Disclosure of Information*] is likely to take;
- (f) whether expert reports will be required and if so the time it will take to exchange reports and to question experts under Part 5 [*Disclosure of Information*];
- (g) whether medical examinations and reports under Part 5 [*Disclosure of Information*], Division 3 [*Medical Examinations by Health Care Professionals*] will be required;
- (h) any other matter that should be considered to meet the purpose and intention of the rules described in rule 1.2 [*Purpose and intention of the rules*].

(3) An action is categorized as a simple case when

- (a) the action is likely to be resolved in a relatively short period of time,

Alberta Rules of Court

Part 4: Managing Litigation

- (b) there are comparatively few issues,
 - (c) there are few parties,
 - (d) there are comparatively few documents and witnesses, and
 - (e) the trial would be relatively short and straightforward.
- (4) An action is categorized as a standard case when
- (a) the action does not comfortably fit the factors of a simple case,
 - (b) any one or more of the factors named under subrule (2) ceases to make the action a simple case, and
 - (c) the action is not a complex case.
- (5) An action is categorized as a complex case when
- (a) the action is neither a simple case nor a standard case, or
 - (b) a 3rd party claim is made in the action.
- (6) If, within 4 months after the date a statement of defence is filed, the parties do not agree on whether an action is a simple, standard or complex case, and the court does not otherwise order, an action is to be considered as a standard case.

Alberta Rules of Court

Part 4: Managing Litigation

Target dates for completing key stages in simple and standard cases

4.4(1) In this rule, *target date* means the date on or before which a stage in an action is expected to be complete.

(2) Unless the parties otherwise agree, for an action categorized as a simple or standard case, the target dates described in Column 2 of the following table are set for the stages in an action described in Column 1:

Column 1 Description of stage	Column 2 Target date for completion	
	Simple Case	Standard Case
<u>Stage 1</u> Filing of both plaintiff's affidavit of records and defendant's affidavit of records	4 months after statement of defence filed	4 months after statement of defence filed
<u>Stage 2</u> Completion of all required steps and processes under Part 5 [<i>Discovery of Information</i>]	Within 5 months after completion of Stage 1	Within 10 months after completion of Stage 1
<u>Stage 3</u> Application for a trial date	Within 1 month after completion of Stage 2	Within 7 months after completion of Stage 2

Complex cases

4.5(1) The parties to an action categorized as a complex case must, within 4 months after the date that service of the last statement of defence is effected,

- (a) agree on a complex case litigation plan, and
- (b) unless reasons are given in the plan not to do so,
 - (i) establish a date by which the real issues in dispute will be identified,
 - (ii) agree on a protocol for the organization and production of records,
 - (iii) set a date by which disclosure of records will be complete under rule 5.5

Alberta Rules of Court

Part 4: Managing Litigation

[When an affidavit of records must be served],

- (iv) set a date by which questioning under Part 5 *[Disclosure of Information]* will be complete,
- (v) set a date by which all experts' reports, and rebuttal and surrebuttal expert reports, will be served,
- (vi) set a date by which reports of any health care professionals will be obtained, and
- (vii) agree on an estimated date to apply for a trial date.

(2) When a complex case litigation plan or an amendment to the plan is agreed to, the plaintiff must file it.

Settling disputes about complex case litigation plans

4.6 If no agreement is reached on a complex case litigation plan within one month after close of pleadings, or if the parties cannot agree on an adjustment to a date in the plan, the court may

- (a) establish a complex case litigation plan for the action;
- (b) substitute one complex case litigation plan for another;
- (c) amend a complex case litigation plan;
- (d) set or adjust dates on or before which a step or stage of an action is expected to be complete;
- (e) make a procedural order with respect to the action generally or to deal with particular issues or issues that may arise.

Information note

Close of pleadings is a time determined in accordance with rule 3.67 *[Close of pleadings]*.

Monitoring and adjusting dates

4.7(1) The parties must monitor progress in an action and adjust the dates by which a stage or step in the action is expected to be complete if a party is added to an action or as circumstances require.

(2) On application, the court may adjust or set dates by which a stage or a step in the action is expected to be complete.

Court may categorize actions

4.8 On application, the court may direct whether an action is to be categorized as a simple, standard or complex case.

Division 2 Court Assistance in Managing Litigation

Orders to facilitate proceedings

4.9 If a party or the court is not satisfied that an action is being managed in accordance with rule 1.2 [*Purpose and intention of the rules*],

- (a) the party may apply for a procedural order, an order under rule 4.10 [*Assistance by the court*] or for any other appropriate order, or
- (b) the court may make a procedural order, an order under rule 4.10 [*Assistance by the court*] or make any other appropriate order.

Assistance by the court

4.10(1) The court may, at any time, direct the parties and any other person to attend a conference with the court.

Alberta Rules of Court

Part 4: Managing Litigation

- (2) The participants in the conference may consider
- (a) dispute resolution possibilities, the process for them, and how they can be facilitated;
 - (b) simplification or clarification of a claim, a pleading, a question, an issue, an application or a proceeding;
 - (c) a complex action litigation plan or a modification to the plan;
 - (d) case management by a judge;
 - (e) practice, procedural or other issues or questions and how to resolve them;
 - (f) any other matter that may aid in the resolution or facilitate the resolution of a claim, application or proceeding or otherwise meet the purpose and intention of the rules described in rule 1.2 [*Purpose and intention of the rules*].
- (3) If a party files an application for a conference under this rule, that party must
- (a) give a reason for the conference, and
 - (b) file and serve on every other party notice of the application and any material to be relied on in support of the application a reasonable time before the date the conference is scheduled to take place.
- (4) The court may make a procedural order before, at or following the conference.

Ways the court may manage an action

4.11 The court may manage an action in one or more of the following ways, in which case the responsibility of the parties to manage their dispute is modified accordingly:

- (a) the court may make a procedural order;
- (b) the court may direct a conference under rule 4.10 [*Assistance by the court*];
- (c) on request under rule 4.12 [*Request for case management*], or on the initiative of

Alberta Rules of Court**Part 4: Managing Litigation**

the Chief Justice under rule 4.13 [*Appointment of case management judge*], the Chief Justice may appoint a case management judge for the action;

- (d) the court may make an order under a rule providing for specific direction or a remedy.

Request for case management

4.12(1) A request for a case management order must be made in writing to the Chief Justice and a copy of the request must be served on every other party.

(2) The request must state

- (a) the reason for the request,
- (b) whether any other party agrees with the request, and
- (c) whether the action requires a complex case litigation plan.

(3) An action commenced or continued under the *Class Proceedings Act* must have a case management judge appointed for the action unless the Chief Justice decides otherwise, and the request for a case management judge must be made no later than the date on which the first application in respect of the class proceeding is filed under section 2(2) of the *Class Proceedings Act*.

Appointment of case management judge

4.13 The Chief Justice may order that an action be subject to case management and appoint a judge as the case management judge for the action for one or more of the following reasons:

- (a) to encourage the parties to participate in a dispute resolution process;
- (b) to promote and ensure the fair and efficient conduct and resolution of the action;
- (c) to keep the parties on schedule;
- (d) to facilitate preparation for trial and the scheduling of a trial date.

Authority of the case management judge

4.14(1) A case management judge or if the circumstances require any other judge, may

- (a) order steps be taken by the parties to identify, simplify or clarify the real issues in dispute;
- (b) establish, substitute or amend a complex case litigation plan and order the parties to comply with it;
- (c) make an order to facilitate an application, proceeding, questioning, or pre-trial proceeding;
- (d) make an order to promote the fair and efficient resolution of the action by trial;
- (e) facilitate efforts the parties may be willing to take towards the efficient resolution of the action or any issue in the action through negotiation or a dispute resolution process other than trial;
- (f) make any procedural order that the judge considers necessary.

(2) Unless the Chief Justice or the case management judge otherwise directs, or the rules otherwise provide, the case management judge must hear every application filed with respect to the action for which the case management judge is appointed.

Case management judge presiding at summary trial and trial

4.15 Unless every party and the judge agree, a case management judge must not hear an application for judgment by way of a summary trial or preside at the trial of the action for which the case management judge is appointed.

Division 3
Dispute Resolution by Agreement

Subdivision 1
Dispute Resolution Processes

Dispute resolution processes

4.16(1) The responsibility of the parties to manage their dispute includes good faith participation in one or more of the following dispute resolution processes with respect to all or any part of the action:

- (a) a dispute resolution process in the private or government sectors involving an impartial 3rd person;
- (b) a court annexed dispute resolution process;
- (c) a judicial dispute resolution process described in rules 4.17 to 4.21 [*Judicial Dispute Resolution*];
- (d) any program or process designated by the court for the purpose of this rule.

(2) On application, the court may waive the responsibility of the parties under this rule, but only if

- (a) before the action started the parties engaged in a dispute resolution process and the parties and the court believe that a further dispute resolution process would not be beneficial;
- (b) the nature of the claim is not one, in all the circumstances, that will or is likely to result in an agreement between the parties;
- (c) there is a compelling reason why a dispute resolution process should not be attempted by the parties;
- (d) the court is satisfied that engaging in a dispute resolution process would be futile;
- (e) the claim is of a nature that a decision by the court is necessary or desirable.

(3) The parties must attend the hearing of an application under subrule (2) unless the court otherwise orders.

Information note

Note that under rule 8.4(3) [*Trial date: scheduled by court clerk*], the court clerk cannot schedule a trial date unless satisfactory evidence is produced that the parties have participated in a dispute resolution process or the court, by order, waives this requirement under rule 4.16(2). If the court sets a trial date under rule 8.5 [*Trial date: scheduled by the court*] the court could, if the conditions of rule 4.16(2) are met, give a waiver of this rule at that time.

Subdivision 2
Judicial Dispute Resolution

Purpose of judicial dispute resolution

4.17 The purpose of this Subdivision [*Judicial Dispute Resolution*] is to provide a party-initiated framework for a judge to actively facilitate a process in which the parties resolve all or part of a claim by agreement.

Judicial dispute resolution arrangement

4.18(1) An arrangement for a judicial dispute resolution process may only be made with the agreement of the parties in dispute and, before engaging in a judicial dispute resolution process, the parties must agree to at least the following ground rules:

- (a) that every party necessary to participate in the process has agreed to do so, unless there is sufficient reason not to have complete agreement;
- (b) the following matters that relate to the proposed process:
 - (i) the nature of the process;
 - (ii) the matters to be the subject of the process;
 - (iii) the manner in which the process will be conducted;

Alberta Rules of Court

Part 4: Managing Litigation

- (iv) the date on which and the location and time at which the process will occur;
- (v) the role of the judge and any outcome expected of that role;
- (vi) any practice or procedure related to the process, including exchange of materials, before, at or after the process;
- (vii) who will participate in the process, which must include persons who have authority to agree on a resolution of the dispute, unless otherwise agreed;
- (viii) any other matter appropriate to the process, the parties or to the dispute.

(2) The parties who agree to the dispute resolution process are entitled to participate in the process.

(3) The parties to a proposed dispute resolution process may request that a judge named by the parties participate in the process.

Information note

The parties to a jdr process cannot, of course, bind a judge to participate in the process. The parties should find out in advance whether their proposed process gives a judge any difficulty. If the judge is not willing to participate in the process agreed by the parties, the parties are free to seek the assistance of another judge.

If the parties agree and a judge is willing, the judge may assist the parties in working out a jdr process.

Documents resulting from judicial dispute resolution

4.19 The only documents, if any, resulting from a judicial dispute resolution process are to be

- (a) an agreement prepared by the parties, and any other document necessary to implement the agreement, and
- (b) a consent order or consent judgment resulting from the agreement.

Confidentiality and use of information

4.20(1) A judicial dispute resolution process is a confidential process intended to facilitate the resolution of a claim.

(2) Consequently, unless the parties otherwise agree in writing, statements made or documents generated for or in the judicial dispute resolution process with a view to resolving the dispute

- (a) are privileged and are made without prejudice,
- (b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of that dispute resolution process, and
- (c) may not be referred to, presented as evidence, or relied on, and are not admissible in a subsequent application or proceeding in the same action or in any other action, or in proceedings of a judicial or quasi-judicial nature.

(3) Subrule (2) does not apply to the documents referred to in rule 4.19 [*Documents resulting from judicial dispute resolution*].

Involvement of jdr judge after process concludes

4.21(1) The judge facilitating a judicial dispute resolution process in an action cannot hear or decide any subsequent application, proceeding or trial in the action without the written agreement of every party and the agreement of the judge.

(2) The judge facilitating a judicial dispute resolution process must treat the judicial resolution process as confidential and all the records relating to the dispute resolution process in the possession of the judge or in the possession of the court clerk must be returned to the parties or destroyed except

- (a) the agreement of the parties and any document necessary to implement the agreement, and
- (b) a consent order or consent judgment resulting from the process.

(3) The judge facilitating a judicial dispute resolution process is not competent to give evidence nor compellable to give evidence in any application or proceeding relating to the judicial dispute resolution process in the same action, in any other action, or in any proceeding of a judicial or quasi-judicial nature.

Division 4 Security for Payment of a Costs Award

Considerations for a security for costs order

4.22 The court may order a party to provide security for payment of a costs award if the court considers it just and reasonable to do so, taking into account all of the following:

- (a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Alberta;
- (b) the ability of the respondent to the application to pay the costs award;
- (c) the merits of the action in which the application is filed;
- (d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action;
- (e) any other matter the court considers appropriate to consider.

Contents of security for costs order

4.23(1) An order to provide security for payment of a costs award must, unless the court otherwise orders,

- (a) specify the nature of the security to be provided which may include payment into court,
- (b) require a party to whom the order is directed to provide the security no later than 2 months after the date of the order or any other time specified in the order,
- (c) stay some or all applications and other proceedings in the action until the security

Alberta Rules of Court

Part 4: Managing Litigation

is provided, and

- (d) state that if the security is not provided in accordance with the order, as the case requires,
 - (i) all or part of an action is dismissed without further order, or
 - (ii) a claim or defence is struck out.

(2) If the security is given by bond, the bond must be given to the party requiring security, unless the court otherwise orders.

(3) If the security is given by money paid into court, the money may, by agreement of the parties, be paid out and substituted by a bond.

(4) As circumstances require, the court may

- (a) increase or reduce the security required to be provided, and
- (b) vary the nature of the security to be provided.

(5) An order under this rule may amend

- (a) a complex case litigation plan adopted or agreed to by the parties,
- (b) a complex case litigation plan determined by the court for the parties, or
- (c) the date for completion of a stage in the action.

Division 5 **Settlement Using Court Process**

Formal offers to settle

4.24(1) At any time after a statement of claim is filed, but 10 days or more before,

- (a) an application for judgment by way of a summary trial is scheduled to be heard, or

Alberta Rules of Court

Part 4: Managing Litigation

- (b) a trial is scheduled to start,

one party may serve on the party to whom the offer is made a formal offer to settle the action or a claim in the action.

(2) To be a valid formal offer, the offer to settle must be made within the period described in subrule (1), in the prescribed form and include the following information:

- (a) the name of the party making the offer;
- (b) the name of the party or parties to whom the offer is made;
- (c) what the offer is and any conditions attached to it;
- (d) whether or not interest is included in the offer and, if it is, to what date and at what rate it is payable;
- (e) whether or not costs and the nature of them are included in the offer and if they are, to what date;
- (f) the requirements that must be complied with to accept the offer;
- (g) a form of acceptance of the offer;
- (h) the costs consequences specified in rule 4.29 [*Costs consequences of formal offer to settle*].

(3) Unless a valid formal offer is withdrawn under subrule (4), the valid formal offer remains open for acceptance until whichever of the following occurs first

- (a) the expiry of 2 months after the date of the offer or any longer period specified in the offer, or
- (b) the start of the hearing of an application for judgment by way of summary trial or the date a trial starts, as the case may be.

Alberta Rules of Court

Part 4: Managing Litigation

- (4) A valid formal offer may not be withdrawn unless
- (a) the court first gives permission for the withdrawal, which may only be given if the court is satisfied that there are special circumstances that justify withdrawal, and
 - (b) the party who made the offer serves written notice of withdrawal on every party who received the offer.

Acceptance of formal offer to settle

4.25(1) For the purpose of this Division, a valid formal offer to settle an action or a claim in an action may only be accepted in accordance with this rule.

(2) At any time a valid formal offer remains open for acceptance or before a valid formal offer is withdrawn, a party to whom a valid formal offer to settle has been made may accept the offer by

- (a) filing the offer to settle and the acceptance of it, and
- (b) serving on the party who made the offer notice that
 - (i) the offer has been accepted, and
 - (ii) any judgment or order in the terms of the offer has been agreed to.

(3) After the filing and service, a party may

- (a) apply to the court for judgment or an order in accordance with the agreement,
- (b) continue with the action in respect of any matter not covered by the judgment or order, and
- (c) continue the action against any party who is not a party to the settlement.

Alberta Rules of Court

Part 4: Managing Litigation

If costs are not dealt with in formal offer

4.26 If a valid formal offer and acceptance filed under rule 4.25 [*Acceptance of formal offer to settle*] does not deal with costs, either party may apply to the court for an order under rule 10.29 [*Court-ordered costs award*].

Status of formal offers and acceptance

4.27 Unless otherwise agreed by the parties, a valid formal offer under this Division

- (a) is to be considered as an offer to settle that is made without prejudice, and
- (b) is not an admission of anything.

Confidentiality of formal offers

4.28(1) Subject to section 4.24(4) [*Formal offers to settle*] and subrule (2), a valid formal offer is to be kept confidential and not disclosed to the court until

- (a) it is accepted, or
- (b) the remedy for the claim has been decided.

(2) Subrule (1) does not apply to an action to which a defence under section 5 of the *Defamation Act* is pleaded.

Costs consequences of formal offer to settle

4.29(1) Subject to subrule (4), if a plaintiff makes a valid formal offer that is not accepted and subsequently obtains a judgment or order in the action that is equal to or more favourable to the plaintiff than the formal offer, the plaintiff is entitled to double the costs to which they would otherwise have been entitled under rule 10.29(1)(a) [*Court-ordered costs award*] or rule 10.30 [*Costs in a class action*] for all steps taken in relation to the action or claim after service of the formal offer, excluding disbursements.

(2) Subject to subrule (4), if a defendant makes a valid formal offer that is not accepted and a

Alberta Rules of Court

Part 4: Managing Litigation

judgment or order in the action is made that is equal to or more favourable to the defendant than the formal offer, the defendant is entitled to costs for all steps taken in the action in relation to the action or the claim after service of the formal offer.

(3) A defendant is entitled to double the costs provided for in subrule (2), excluding disbursements, if

- (a) subrule (2) applies, and
- (b) the action or claim which is the subject of the valid formal offer is dismissed.

(4) This rule does not apply

- (a) if costs are awarded under rule 10.29(1)(b) [*Court-ordered costs award*],
- (b) in the case of an offer made with respect to an application for judgment after a summary trial, if the offer is made less than 10 days before the date scheduled to hear the application for judgment,
- (c) in the case of an offer made with respect to any other matter, if the offer is made less than 10 days before the date scheduled for the trial to start,
- (d) if an offer is withdrawn in accordance with rule 4.24(4) [*Formal offers to settle*], or
- (e) if, in special circumstances, the court orders that this rule is not to apply.

When this Division does not apply

4.30 This Division does not apply to an action or a claim in an action in respect of which a defence of tender before the action started is pleaded unless that defence is first withdrawn.

Information note

Rule 12.9 [*Defence of tender*] sets out the conditions for a defence of tender before action.

Division 6
Delay in an Action

Application to deal with delay

4.31 If delay occurs in an action, on application the court may

- (a) dismiss all or any part of a claim if the court is satisfied that the delay has resulted in significant prejudice to a party, or
- (b) make a procedural order or any other order provided for by these rules.

Agreement about delay

4.32 If 2 or more parties agree to delay an application or proceeding in an action, every other party must be served with notice of the agreement to delay and of the nature and extent of the delay.

Dismissal for long delay

4.33(1) If 2 or more years have passed after the last thing done that significantly advanced an action, the court, on application, must dismiss the action as against the applicant, unless

- (a) the parties to the application expressly agreed to the delay,
- (b) the action has been stayed or adjourned by order or an order has extended the time for doing the next thing in the action,
- (c) one party has knowingly acquiesced in the delay of the other, or both parties have knowingly acquiesced in the delay, and the court considers the acquiescence sufficient reason not to dismiss the action, or
- (d) an application has been filed or proceedings have been taken since the delay and the applicant has participated in them for a purpose and to the extent that, in the opinion of the court, warrants the action continuing.

(2) If the court refuses an application to dismiss an action for delay, the court may still make

whatever procedural order it considers appropriate.

(3) Rule 12.5 [*Variation of time periods*] does not apply to this rule.

Division 7 Transfer and Transmission of Interest

Stay of proceedings on transfer or transmission of interest

4.34(1) If at any time in an action the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the action is stayed until an order to continue the action by or against the other person has been obtained.

(2) If a transfer or transmission of the interest or liability of a party takes place while an application or proceeding in an action is pending, an interested person may, on filing an affidavit verifying the transfer or transmission of interest or liability and, without notice to any other party, request the court to order that the action continue.

(3) An order to continue the action must be served on every other party as soon as it is received by the party requesting the order.

(4) If an order to continue an action is not made within a reasonable time after the date the action is stayed, the defendant or respondent may apply to the court to have the action dismissed for delay under rule 4.31 [*Application to deal with delay*].

Death has no effect on an action after evidence heard

4.35 If a party dies before judgment but after all the evidence has been heard,

- (a) the death does not terminate the action, whether or not the claim survives death, and
- (b) judgment may be pronounced and entered despite the death.

Division 8
Discontinuance

Discontinuance of claim

4.36(1) Before a date is set for trial, a plaintiff may discontinue all or any part of an action against one or more defendants.

(2) After a trial date has been set but before a trial starts, a plaintiff may only discontinue all or part of an action against one or more defendants

- (a) with the written agreement of every party, or
- (b) with the court's permission.

(3) After the trial starts, the plaintiff may discontinue all or part of an action only with the court's permission.

(4) A discontinuance under this rule must be filed in the prescribed form and served on every other party and, after the plaintiff serves notice of discontinuance, the defendant is entitled to a costs award against the plaintiff for having defended against the discontinued claim.

(5) The discontinuance of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim.

Discontinuance of defence

4.37(1) A defendant may discontinue the whole of a statement of defence by filing a notice of discontinuance in the prescribed form and serving it on the plaintiff.

(2) On filing notice of discontinuance,

- (a) the defendant is in default of defence, and
- (b) the plaintiff is entitled to a costs award against the defendant for having responded to the discontinued defence.

PART 5: DISCLOSURE OF INFORMATION

What this Part is about: This Part describes what information and records the parties must disclose to each other and when and how the parties may question each other about the dispute. The Part requires the parties to share relevant and material information about the action in order to clearly identify

- what is in dispute,
- what evidence is available about the dispute.

This information helps minimize surprises during court proceedings and avoids delay later in the litigation, assists the parties in evaluating their own and the other party's case, and facilitates resolution of the dispute or elements of it.

This Part also contains rules for the evidence of experts and rules for medical examinations by health care professionals.

PART 5: DISCLOSURE OF INFORMATION

	Starts at rule #
Division 1: How Information is Disclosed.	5.2
<i>Subdivision 1: Introductory Matters.</i>	<i>5.2</i>
<i>Subdivision 2: Disclosing and Identifying Relevant and Material Records.</i>	<i>5.5</i>
<i>Subdivision 3: Questions to Discover Relevant and Material Records and Relevant and Material Information.</i>	<i>5.17</i>
Division 2: Experts and Expert Reports.....	5.34
Division 3: Medical Examinations by Health Care Professionals.	5.41

Information note

Words and phrases used in this Part that have defined meanings in the Appendix
[\[Definitions\]](#) include

- | | |
|----------------------------|-----------------------------------|
| • claim | • medical examination |
| • corporate representative | • order |
| • corporate witness | • partnership |
| • costs award | • party |
| • court | • plaintiff |
| • defendant | • pleading |
| • expert | • prescribed form |
| • file | • procedural order |
| • health care professional | • record |
| • judge | • relevant and material |
| • lawyer | • rules |
| • master | • 3 rd party defendant |

PART 5: DISCLOSURE OF INFORMATION

Purpose of this Part

5.1(1) Within the context of rule 1.2 [*Purpose and intention of the rules*], the purpose of this Part is:

- (a) to obtain evidence that will be relied on in the action,
- (b) to narrow and define the issues between parties,
- (c) to encourage early disclosure of facts and records,
- (d) to facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute, and
- (e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.

(2) The court may give directions or make any order necessary to achieve the purpose of this Part.

Information note

This Part does not apply to actions started by originating application unless the parties otherwise agree or the court otherwise orders. See rule 3.10 [*Application of Part 4 and Part 5 to originating applications*].

Division 1 How Information is Disclosed

Subdivision 1 Introductory Matters

When is something *relevant and material*?

5.2(1) For the purposes of this Part, a question, record or information is *relevant and material* only if the answer to the question, or if the record or information, could reasonably be expected

- (a) to significantly help determine one or more of the issues raised in the pleadings, or

Alberta Rules of Court

Part 5: Disclosure of Information

- (b) to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings.

(2) The disclosure or production of a record under this Division alone is not to be considered as an agreement or acknowledgement that the record is admissible or relevant and material.

Modification or waiver of this Part

5.3(1) The court may modify or waive any right or power under a rule in this Part or make any order warranted in the circumstances if

- (a) a person acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or tediously lengthy, or
- (b) the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit.

(2) In addition to making a procedural order, the court may do any one or more of the following:

- (a) make a costs award under Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions*] or require an advance payment against costs payable, or both;
- (b) increase or decrease the amount of interest to which a person is entitled;
- (c) order future questioning to be conducted before a judge, master or person designated by the court;
- (d) make any other order respecting the action or an application or proceeding the court considers necessary in the circumstances.

Information note

A procedural order can include any order described in rule 1.4 [*Procedural orders*] or an order under any other rule respecting practice or procedure.

Alberta Rules of Court

Part 5: Disclosure of Information

Appointment of corporate representatives

5.4(1) Unless the court otherwise orders, every corporation that is a party must appoint a corporate representative.

(2) Corporate representatives must

- (a) inform themselves of relevant and material records and relevant and material information before questioning under this Division,
- (b) if questioned under this Division, bring to the questioning any records likely to be required in respect of which there is no claim of privilege, and
- (c) give appropriate evidence of the relevant and material records and relevant and material information.

(3) The corporate representative's evidence is evidence given by the corporation.

(4) On application, the court may order corporate representatives to inform themselves of relevant and material records or relevant and material information, or both.

(5) The court may appoint a corporate representative, an additional corporate representative, or substitute a corporate representative, if

- (a) an appointed corporate representative is not suitable,
- (b) a party has not appointed a corporate representative, or
- (c) a corporate representative did not inform themselves of relevant and material records and relevant and material information before questioning.

Subdivision 2
Disclosing and Identifying Relevant and
Material Records

When an affidavit of records must be served

5.5(1) Every party must serve an affidavit of records on every other party in accordance with the time period specified in subrule (2), (3) or (4).

Alberta Rules of Court**Part 5: Disclosure of Information**

- (2) The plaintiff must serve an affidavit of records on every other party within 3 months after the date the plaintiff is served with a statement of defence or the first statement of defence if more than one is served.
- (3) The defendant must serve an affidavit of records on every other party within one month after the date the defendant is served with the plaintiff's affidavit of records.
- (4) A 3rd party defendant who has filed a statement of defence must, within 3 months after that filing, serve on every other party an affidavit of records.

Information note

An affidavit of records must not be filed unless it is needed for the purpose of an application or at trial. See rule 5.32 [*When information can be used*].

Form and content of affidavit of records

5.6(1) An affidavit of records must

- (a) be in the prescribed form, and
- (b) disclose all records relevant and material to the issues in the action.

(2) The affidavit of records must also specify

- (a) which of the records are under the control of the party on whose behalf the affidavit is made,
- (b) which of those records, if any, the party objects to produce and the grounds for the objection,
- (c) for those records for which there is no objection to produce, a notice stating
 - (i) the time when the record may be inspected, being within 10 days after the affidavit is served, and

Alberta Rules of Court

Part 5: Disclosure of Information

- (ii) the place where the record may be inspected which is to be the address for service of the party serving the affidavit or a place agreed by the parties or ordered by the court, however if the record is in constant use the record may be produced for inspection at the place where it is usually kept,
 - (d) which relevant and material records the party previously had under their control, and
 - (i) the time when, and the manner in which, those records ceased to be under their control, and
 - (ii) the present location of the records, if known, and
 - (e) that the party does not have and has never had any other relevant and material record under their control.
- (3)** If a party does not have and has never had any relevant and material records under their control, the affidavit must say so.

Information note

The court may give directions to facilitate disclosure and examination of documents that may be costly or lengthy. See rule 5.1(2) [*Purpose of this Part*] and rule 1.4 [*Procedural orders*].

Records for which no privilege is claimed

- 5.7(1)** Each record in an affidavit of records that is not the subject of a claim of privilege must
- (a) be numbered in a convenient order, and
 - (b) be briefly described.
- (2)** A group of records may be bundled and treated as a single record if
- (a) the records are all of the same nature, and

Alberta Rules of Court

Part 5: Disclosure of Information

- (b) the bundle is described in sufficient detail to enable another party to understand what it contains.

Records for which privilege is claimed

5.8 Each record in an affidavit of documents to which there is an objection to produce must be numbered in a convenient order, and the affidavit must identify the privilege claimed for each record and the grounds for the claim of privilege.

Who makes an affidavit of records

5.9(1) Subject to subrule (2), an affidavit of records must be sworn by

- (a) the party,
- (b) if the party is a corporation, by the corporation's corporate representative, or
- (c) if a litigation representative is appointed for a party, by the party's litigation representative.

(2) A suitable person, other than the lawyer of record of the party, may swear the affidavit of records if

- (a) it is inconvenient for the party, the corporate representative or the litigation representative to do so, and
- (b) the parties agree or the court so orders.

Subsequent disclosure of records

5.10 If, after a party (the first party) has served an affidavit of records on another party, the first party finds or creates, or obtains control of a relevant and material record not previously disclosed, the first party must

- (a) immediately serve a supplementary affidavit of records on every other party, and
- (b) on written request and on payment of reasonable copying expenses, supply every

Alberta Rules of Court

Part 5: Disclosure of Information

other party with a copy of it.

Order for a record to be produced

5.11(1) On application, the court may order a record to be produced if the court is satisfied that

- (a) a relevant and material record under the control of a party has been omitted from an affidavit of records, or
- (b) a claim of privilege has been incorrectly or improperly made in respect of a record.

(2) For the purpose of making a decision on the application, the court may

- (a) inspect a record;
- (b) permit cross-examination on the original and on any subsequent affidavit of records.

Penalty for not serving affidavit of records

5.12(1) In addition to any other order or sanction that may be imposed, the court may impose a penalty of 2 times item 3(1) of the tariff in Schedule C [*Tariff of Recoverable Fees*], or any larger or smaller amount the court may determine, on a party who, without sufficient cause,

- (a) does not serve an affidavit of records in accordance with rule 5.5 [*When an affidavit of records must be served*] or any modified period agreed by the parties or set by the court,
- (b) does not comply with rule 5.10 [*Subsequent disclosure of records*], or
- (c) does not comply with an order under rule 5.11 [*Order for a record to be produced*].

(2) If there is more than one party adverse in interest to the party ordered to pay the penalty, the penalty must be paid to the parties in the proportions determined by the court.

(3) A penalty imposed under this rule applies irrespective of the final outcome of the action.

Alberta Rules of Court

Part 5: Disclosure of Information

Information note

One of the additional sanctions that may be imposed is the striking out of pleadings. See rule 3.68(3) [*Court options to deal with significant deficiencies*].

Obtaining records from others

5.13(1) On application, and after notice of the application is served on the person affected by it, the court may order the production of a record from that person at a date, time and specified place if

- (a) the record is under the control of a person who is not a party,
- (b) there is reason to believe that the record is relevant and material, and
- (c) the person who has control of the record might be required to produce it at trial.

(2) The person requesting the record must pay the person producing the record an amount determined by the court.

Inspection and copying records

5.14(1) Every party is entitled, with respect to a record that is relevant and material and that is under the control of another party, to all of the following:

- (a) to inspect the record on one or more occasions by making a written request to do so;
- (b) to receive a copy of the record by making a written request for the copy and paying reasonable copying expenses;
- (c) to make copies of the record when it is produced.

(2) This rule does not apply to a record for which a claim of privilege is made, unless the court orders the record to be produced for inspection.

Alberta Rules of Court

Part 5: Disclosure of Information

Admissions of authenticity of records

5.15(1) Subject to subrules (2), (3) and (4), a party who makes or on whose behalf an affidavit of records is filed, and a party on whom an affidavit of records is served, are both presumed to admit that

- (a) a record specified or referred to in the affidavit is authentic, and
- (b) if a record purports or appears to have been transmitted, the original was sent by the sender and was received by the addressee.

(2) Subrule (1)

- (a) does not apply if the maker or the recipient of the affidavit objects in accordance with subrule (3);
- (b) does not prejudice the right of a party to object to the admission of a record in evidence.

(3) The maker or recipient of an affidavit of records is not presumed to make the admission referred to in subrule (1) if, within one month after the date the records are produced, the maker or recipient serves notice on the other party that the authenticity or transmittal of a record, as the case may be, is disputed and that it must be proved at trial.

(4) This rule does not apply to a record whose authenticity, receipt or transmission a party has denied in their pleadings.

Information note

A party who invokes subrule (3) unreasonably may be ordered to pay costs under rule 10.31(2) [*Court considerations in making a costs award*].

Alberta Rules of Court

Part 5: Disclosure of Information

Undisclosed records not to be used without permission

5.16 A party who

- (a) does not disclose a relevant and material record in an affidavit of records referred to in rule 5.6 [*Form and content of affidavit of records*],
- (b) does not disclose a relevant and material record that is found, created or obtained as required by rule 5.10 [*Subsequent disclosure of records*], or
- (c) does not produce a relevant and material record in accordance with a valid request to do so under rule 5.14 [*Inspection and copying records*]

may not afterwards use the record in evidence in the action, unless the parties otherwise agree or the court otherwise orders on the basis that there was a sufficient reason for the failure to disclose.

Subdivision 3

***Questions to Discover Relevant and Material
Records and Relevant and Material Information***

People who can be questioned

5.17(1) A party is entitled to ask the following persons questions under oath about relevant and material records and relevant and material information:

- (a) every other party who is adverse in interest;
- (b) if the party adverse in interest is a corporation,
 - (i) one or more officers or former officers of the corporation who have or appear to have relevant and material information that was acquired because they are or were officers of the corporation, and
 - (ii) the corporate representative;
- (c) if a litigation representative is appointed for a party, either or both of
 - (i) the litigation representative, or

Alberta Rules of Court**Part 5: Disclosure of Information**

- (ii) with the court's permission, a person on whose behalf a litigation representative is appointed if that person is competent to give evidence;
- (d) one or more other persons who are or were employees of the party adverse in interest who have or appear to have relevant and material information that was acquired because of the employment;
- (e) an auditor or former auditor engaged by a party adverse in interest, but not an auditor or former auditor engaged solely for the purpose of the action;
- (f) if a partnership is a party, a member or former member of the partnership;
- (g) in an action with respect to a negotiable instrument or chose in action,
 - (i) an assignor of the chose in action,
 - (ii) a prior endorser, drawer, holder or maker of the negotiable instrument, and
 - (iii) an employee or former employee of an assignor of the negotiable instrument or chose in action, and if the assignor is a corporation, an officer or former officer of the corporation.

(2) If a questioning party questions more than one person of a party adverse in interest under subrule (1) and the person questioned is

- (a) an officer or former officer of a corporation described in subrule (1)(b)(i),
- (b) an employee or former employee of the party adverse in interest described in subrule (1)(d),
- (c) an auditor or former auditor described in subrule (1)(e),
- (d) a member or former member of a partnership referred to in subrule (1)(f), or
- (e) an employee, former employee, officer or former officer described in subrule (1)(g)(iii), other than a corporate representative,

the costs of questioning the second and subsequent persons are to be paid by the questioning party unless

Alberta Rules of Court

Part 5: Disclosure of Information

- (f) the parties otherwise agree, or
- (g) the court otherwise orders.

(3) This rule applies whether the person sought to be questioned is within or outside the court's jurisdiction.

Information note

The *Class Proceedings Act* contains limitations on who can be questioned when the action is a proceeding under that Act.

Persons providing services to a corporation

5.18(1) Subject to subrules (2) and (3), if

- (a) a party cannot obtain relevant and material information from an officer or employee or a former officer or employee of a corporation that is a party adverse in interest,
- (b) it would be unfair to require the party seeking the information to proceed to trial without having the opportunity to ask questions about the information sought, and
- (c) the questioning will not cause undue hardship, expense or delay to, or unfairness to, any other party or to the person sought to be questioned,

the party may question, under oath, a person who has provided services for the corporation and who can provide the best evidence on the issue.

(2) A person described in subrule (1) may only be questioned

- (a) by written agreement of the parties, or
- (b) with the court's permission.

(3) An expert engaged by a party for the purposes of the action may not be questioned under this rule.

Alberta Rules of Court**Part 5: Disclosure of Information**

(4) Evidence from a person questioned under this rule is to be treated as if it were evidence of an employee of the corporation.

(5) The costs related to questioning a person under this rule are to be borne by the questioning party unless

- (a) the parties otherwise agree, or
- (b) the court otherwise orders.

Limit or cancellation of questioning

5.19 On application, the court may do either or both of the following:

- (a) limit the number of persons subject to questioning by a party;
- (b) cancel an appointment for questioning that the court considers unnecessary, improper or vexatious.

When questioning is to take place

5.20(1) Unless the parties otherwise agree, or the court in exceptional circumstances otherwise orders, a party may not question a party or person under this Division unless the questioning party has served an affidavit of records on the party adverse in interest.

(2) Subject to subrule (1), the questioning of a person is to take place as follows:

- (a) questioning by the plaintiff, at any time after
 - (i) a statement of defence has been served on the plaintiff, or
 - (ii) the time for serving the statement of defence has expired;
- (b) questioning by the defendant and every other party, at any time after a statement of defence has been served.

Alberta Rules of Court

Part 5: Disclosure of Information

Appointment for questioning

5.21(1) A party may question those persons whom they are entitled to question under this Part by serving on them an appointment for questioning.

(2) Rules 6.18 [*Contents of appointment notice*] to 6.21 [*Interpreters*], and rule 6.40 [*Requiring attendance for questioning*], apply for the purposes of subrule (1) with one modification, namely, unless the parties otherwise agree, the appointment for questioning must be served 20 days or more before the appointment date.

Questioning options

5.22 Subject to rule 5.24 [*Oral and written questioning limitations*], questioning may be conducted

- (a) orally, under oath, or
- (b) by written questions, answered under oath, subject to the limitations of rule 5.28 [*Written questions*].

Preparation for questioning

5.23 A person to be questioned under this Division, other than a corporate representative, must

- (a) reasonably prepare for questioning, and
- (b) bring to the questioning any records likely to be required in respect of which there is no claim of privilege.

Information note

Note that a person to be questioned under this rule must reasonably prepare themselves while a corporate representative must inform themselves of relevant and material records and relevant and material information under rule 5.4(2) [*Appointment of corporate representatives*].

Oral and written questioning limitations

5.24 Unless the parties otherwise agree or the court otherwise orders,

- (a) if more than one party is entitled to question a person, the questioning must be oral, and
- (b) a party may not question a person both orally and by written questioning.

Appropriate questions and objections

5.25(1) During questioning, a person is required to answer only

- (a) relevant and material questions, and
- (b) questions in respect of which an objection is not upheld under subrule (2).

(2) A party or a witness being questioned may object to an oral or written question during questioning but only for one or more of the following reasons:

- (a) privilege;
- (b) the question is not relevant and material;
- (c) the question is unreasonable or unnecessary;
- (d) any other ground recognized at law.

(3) A corporate representative may object to an oral or written question during questioning on the basis that it would be unduly onerous for the corporate representative to inform themselves in the circumstances.

(4) If an objection to a question cannot be resolved the court must decide its validity.

(5) After the questioning party has finished questioning a person, that person may be questioned by the party for whom they are or may be a witness to explain, elaborate or provide context for an answer initially given.

(6) Following answers to the explanatory, elaborative or contextual questions, the witness may

Alberta Rules of Court

Part 5: Disclosure of Information

be questioned again about their answers.

Information note

The court has a broad range of powers to deal with situations in which the expense or difficulty of complying with a rule would be disproportional to its benefit. For example, rule 5.3 [*Modification or waiver of this Part*] and the court's power under rule 1.4 [*Procedural orders*].

If there is non-compliance with a rule a costs award may be made and rule 10.47 [*Penalty for contravening the rules*] would apply.

Transcript of oral questioning

5.26(1) Oral questioning under this Part must be recorded word for word by a person qualified to do so

- (a) by a method that is capable of providing a written transcript, and
- (b) in a manner agreed by the parties or directed by the court.

(2) The questioning party must make necessary arrangements to record the questioning.

(3) Exhibits produced at the questioning must, unless otherwise agreed by the parties or ordered by the court,

- (a) be incorporated in or attached to the transcript, and
- (b) be produced at the trial of the action without a notice to produce.

(4) The person recording the oral questioning must

- (a) keep in safe custody the recorded questioning,
- (b) if required to do so, honestly and accurately transcribe the recorded questioning and deliver a copy of the transcript, as required, and

Alberta Rules of Court**Part 5: Disclosure of Information**

- (c) on or attached to any transcript
 - (i) state their name,
 - (ii) specify the date and place where the questioning occurred, and
 - (iii) certify the transcript or the portion of the questioning transcribed, as complete and accurate.

Continuing duty to disclose

5.27(1) A person who is or has been the subject of questioning must, by affidavit, correct an answer if

- (a) the answer was incorrect or misleading, or
- (b) an answer becomes incorrect or misleading as a result of new information.

(2) The correcting affidavit must be made and served on every other party as soon as practicable after the person realizes that the answer was or has become incorrect or misleading.

Written questions

5.28(1) Unless the court otherwise orders or the parties otherwise agree, the following rules apply with respect to written questions and the answers to them:

- (a) the written questions must be numbered and succinct;
- (b) the answers provided to the questions must be given by affidavit and state the question being answered;
- (c) the answers to the questions must be served by the questioning party on every other party within a time agreed by the parties or ordered by the court.

Alberta Rules of Court

Part 5: Disclosure of Information

(2) A party is entitled to ask

- (a) one set of follow-up written questions as a result of the answers to the initial written questions, or
- (b) follow-up oral questions if agreed by the parties.

(3) If the answers to the written questions or the answers to the follow-up written or follow-up oral questions are unsatisfactory, the questioning party may apply to the court for an order for either or both of the following:

- (a) oral or further oral questioning;
- (b) further written questions to be answered.

Acknowledgement of corporate witness' evidence

5.29(1) The evidence given by a corporate witness during questioning may not be read in as evidence at trial unless a corporate representative of the corporation, under oath, acknowledges that the evidence forms some of the information of the corporation.

(2) Subject to subrule (3), the corporate representative may refuse to acknowledge some or all of the evidence of the corporate witness and, if so, must state why, but is not entitled to refuse to acknowledge the corporate witness' information just because the corporate representative disbelieves or disagrees with it.

(3) If the corporate representative disbelieves or disagrees with some or all of the evidence of a corporate witness, the corporate representative,

- (a) must acknowledge the evidence as information of the corporation, unless it is inadmissible under the laws of evidence, and
- (b) may then qualify the acknowledgement with further evidence that is contrary to or inconsistent with the corporate witness' evidence if the further evidence is based on either or both of the following:
 - (i) the corporate representative's personal knowledge;
 - (ii) a record prepared by the corporate representative or provided to the

Alberta Rules of Court

Part 5: Disclosure of Information

corporate representative by a person having personal knowledge of the issue in question.

Undertakings

5.30(1) If, during questioning, a person answering questions

- (a) does not know the answer to a question, but would have known the answer if the person had reasonably prepared for questioning, or as a corporate representative, the person had reasonably informed themselves, or
- (b) has under their control a relevant and material record that is not privileged,

the person must undertake to inform themselves and provide an answer, or produce the record, within a reasonable time.

(2) After the undertaking has been discharged, the person who gave the undertaking may be questioned on the answer given or record provided.

Use of transcript and answers to written questions

5.31(1) Subject to rule 5.29 [*Acknowledgement of corporate witness' evidence*], a party may use in support of an application or proceeding or at trial, any of the evidence in a transcript of questioning under rule 5.17 [*People who can be questioned*] and rule 5.18 [*Persons providing services to a corporation*], and any of the evidence in the answers to written questions of another party under rule 5.28 [*Written questions*].

(2) Evidence referred to in subrule (1) is evidence only of the questioning party who uses the transcript evidence or the answers to the written questions.

(3) If only a portion of a transcript or a portion of the answers to written questions is used, the court may, on application, direct that all or every other portion of the transcript or answers also be used if all or any other portion is so connected with the portion used that it would or may be misleading not to use all or any other portion of the transcript or other answers.

Alberta Rules of Court

Part 5: Disclosure of Information

Information note

Rule 8.14 [*Unavailable or unwilling witness*], in the limited circumstances described in that rule, permits transcript evidence under this Part to be admitted as evidence.

When information can be used

5.32 The transcript of questioning, including exhibits, made under this Division, an affidavit of records, affidavits and answers to written questions, and correcting affidavits under this Division, must not be filed and must not be put before the court

- (a) except during an application, proceeding or at trial, and
- (b) only as permitted by these rules,

in which case the person relying on the documents filed must provide the material in writing or in any other form permitted by the court.

Confidentiality and use of information

5.33(1) The information and records described in subrule (2) must be treated as confidential and may only be used by the recipient of the information or record for the purpose of carrying on the action in which the information or record was provided or disclosed, unless

- (a) the court otherwise orders,
- (b) the parties otherwise agree, or
- (c) otherwise required or permitted by law.

(2) The information and records are:

- (a) information provided or disclosed by one party to another in an affidavit served under this Division;
- (b) information provided or disclosed by one party to another in a record referred to in

an affidavit served under this Division;

- (c) information recorded in a transcript of questioning made or in answers to written questions given under this Division.

Division 2 Experts and Expert Reports

Service of expert report

5.34 An expert's report must

- (a) be in the prescribed form and contain the information required by the prescribed form, or any modification agreed to by the parties, and
- (b) be served in the sequence required by rule 5.35 [*Sequence of exchange of expert reports*].

Information note

The court clerk cannot schedule a trial date under rule 8.4 [*Trial date: scheduled by court clerk*] unless expert reports, if needed, have been exchanged. See also rule 8.5 [*Trial date: scheduled by the court*] which provides for a trial date to be scheduled by the court.

Sequence of exchange of expert reports

5.35(1) If a party intends to use the evidence of an expert at trial, the expert's report must be served in the sequence described in subrule (2).

(2) Unless the parties otherwise agree or the court otherwise orders, expert reports on which a party intends to rely must be served in the following sequence:

- (a) the party who bears the primary onus of proof must serve on every other party their expert's report;
- (b) the other party or parties must serve their expert's rebuttal report, if any, and may

Alberta Rules of Court**Part 5: Disclosure of Information**

include in the report issues not raised in the initial expert's report;

- (c) the party who served the initial expert's report may serve a surrebuttal expert's report that responds only to the new issues raised in the rebuttal report.

Objection to expert's report

5.36(1) A party who receives an expert's report must notify the party serving the report of

- (a) any objection to the admissibility of the expert's report that the party receiving the report intends to raise at trial, and
- (b) the reasons for the objection.

(2) No objection to the admissibility of an expert's report is permitted at trial unless

- (a) reasonable notice of the objection was given to the other party, or
- (b) the court permits the objection to be made.

Questioning experts before trial

5.37(1) The parties may agree, or in exceptional circumstances the court may direct, that an expert be questioned by any party adverse in interest to the party proposing to call the expert witness at trial.

(2) The questioning must be limited to the expert report.

(3) The court may impose conditions about questioning with respect to all or any of the following:

- (a) limiting the length of questioning;
- (b) specifying the place where the questioning is to take place;
- (c) directing payment of costs incurred;
- (d) any other matter concerning the questioning.

Alberta Rules of Court

Part 5: Disclosure of Information

(4) Evidence of an expert under this Division is to be treated as if it were evidence of an employee of the party who intends to rely on the expert's report.

Continuing obligation on expert

5.38 If, after an expert's report has been provided by one party to another, the expert changes their opinion on a matter in the report, the change of opinion must be

- (a) disclosed by the expert in writing, and
- (b) immediately served on every other party.

Use of expert's report at trial without expert

5.39(1) A party serving an expert's report may, at the same time, also serve notice of intention to have the report entered as evidence without calling the expert as a witness.

(2) If a party serves a notice of intention under subrule (1), no objection may be made at trial to entering the expert's report as evidence unless, within 2 months after service of the notice under subrule (1), any other party serves a statement on the party serving the notice of intention

- (a) setting out all or parts of the report to which that other party objects to being entered as evidence under this rule, and giving reasons for the objection, or
- (b) serving on the party a request that the expert attend the trial for cross-examination.

(3) Agreeing to have the expert's report entered as evidence without calling the expert as a witness, either explicitly or by allowing subrule (2) to operate without objection, is not an admission of the truth or correctness of the expert's report.

Expert's attendance at trial

5.40(1) A party who agrees to have all of an expert's report entered in evidence at trial, either explicitly or by allowing rule 5.39(2) [*Use of expert's report at trial without expert*] to operate without objection, may, at the same time as responding to the notice of intention, serve a request that the expert be in attendance at trial for cross-examination.

Alberta Rules of Court

Part 5: Disclosure of Information

(2) The expert whose entire report is to be entered at trial must not give oral evidence at trial unless

- (a) a request that the expert attend for cross-examination has been served, or
- (b) the court permits.

(3) The party who requests an expert's attendance for cross-examination must pay the costs of the expert's attendance, determined under Schedule B [*Court Fees and Witness and Other Allowances*] unless the court is satisfied that the cross-examination is of sufficient assistance to warrant a different order about who is to pay those costs.

(4) If the party proposing to enter the expert's report receives a request to produce the expert for cross-examination, the party proposing to enter the report may question the expert at trial.

Division 3
Medical Examinations by
Health Care Professionals

Medical examinations

5.41(1) The parties may agree that the mental or physical condition of a person is at issue in an action and agree on a health care professional to conduct a medical examination.

(2) On application, the court may in an action in which the mental or physical condition of a person is at issue do either or both of the following:

- (a) order that a person submit to a mental or physical medical examination;
- (b) appoint a health care professional to conduct a medical examination.

(3) The court may order a second or further medical examination by a health care professional.

Alberta Rules of Court**Part 5: Disclosure of Information**

Options during medical examination

5.42 A person who is to be the subject of a medical examination by a health care professional may elect to do one or more of the following:

- (a) nominate a health care professional to be present during the examination;
- (b) videotape the examination;
- (c) make a word for word recording of the examination.

Payment of costs of medical examinations

5.43(1) Unless the court otherwise orders, the party who applies for the order for a medical examination must pay the cost of the examination.

(2) Unless the court otherwise orders, the cost of

- (a) the attendance of a nominee at a medical examination, or
- (b) videotaping or recording the medical examination,

is to be paid by the party appointing the nominee or electing to have the examination videotaped or recorded.

(3) The party arranging for the videotaping or recording must provide a copy of the videotape or recording to the other party as soon as practicable after the medical examination is complete.

(4) The videotape or recording

- (a) may only be shown or played at trial with the court's permission, and
- (b) may only be used to verify events at the medical examination.

Conduct of examination

5.44(1) A health care professional conducting a medical examination may ask the person being examined questions relating to their mental and physical condition and medical history and the person being examined must answer the questions.

(2) If the person to be examined agrees in writing, or if the court so orders, the examining health care professional may

- (a) take or obtain samples from the person being examined, and make an analysis of the samples, and
- (b) perform any test recognized by medical science.

(3) The party causing the medical examination to be conducted

- (a) must, on request, deliver promptly to every other party, a copy of a detailed written report of the health care professional's findings and conclusions, and
- (b) is, on request, entitled to receive promptly from the person examined a like report of every medical examination previously or subsequently made of the physical or mental condition of the person resulting from the injuries sustained or the mental or physical condition that is in issue.

(4) If a party refuses to provide a report in the manner described in subrule (3), the court may order the report to be provided, and if the health care professional refuses to make the report in writing, the court may make any order it considers proper, one of the provisions of which may be the exclusion of the health care professional's evidence if that person's evidence is offered at trial.

(5) On application, the court may make any order it considers necessary to limit or curtail a medical examination.

(6) If the plaintiff has been the subject of a medical examination by a health care professional of the plaintiff's choice who will or may be proffered as an expert, the court may order that the plaintiff be the subject of a medical examination by one or more health care professionals of the defendant's choice.

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

What this Part is about: This Part is designed to resolve issues and questions arising in the course of a court action. It includes rules describing how applications are made to the court and responded to by others, rules for questioning on affidavits and questioning witnesses before a hearing, and rules for preserving, protecting and obtaining evidence inside and outside Alberta.

The Part also

- describes resources and rules available to assist the court (experts and referees), and
- includes special rules for replevin and interpleader proceedings.

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

Starts at rule #

Division 1: Applications to the Court.	6.1
<i>Subdivision 1: Application Process Generally.</i>	6.3
<i>Subdivision 2: Specific Kinds of Application.</i>	6.5
<i>Subdivision 3: Responses, Replies and Decisions on Applications.</i>	6.7
<i>Subdivision 4: Appeal from Master's Order.</i>	6.15
<i>Subdivision 5: Procedure for Questioning.</i>	6.17
Division 2: Preserving Evidence and Obtaining Evidence Outside Alberta.	6.23
Division 3: Preserving and Protecting Property or its Value and Inspection of Property.	6.27
Division 4: Restriction on Media Reporting and Public Access to Court Proceedings.	6.30
Division 5: Facilitating Proceedings.	6.39
Division 6: Resources to Assist the Court.	6.42
Division 7: Court-appointed Receiver.	6.49
Division 8: Replevin.	6.50
Division 9: Interpleader.	6.56

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include:

- | | |
|----------------------------|--------------------|
| • Chief Justice | • land |
| • civil enforcement agency | • lawyer |
| • claim | • master |
| • court | • order |
| • court clerk | • party |
| • defendant | • plaintiff |
| • enactment | • pleading |
| • expert | • prescribed form |
| • file | • procedural order |

- foreclosure action
- foreclosure order
- health care professional
- judge
- judgment
- judgment creditor
- judgment debtor
- judicial centre
- property
- record
- redemption order
- referee
- remedy
- rules
- secured property

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

Division 1 **Applications to the Court**

What this Division applies to

6.1 This Division

- (a) applies to every application filed in the court unless a rule or an enactment otherwise provides or the court otherwise orders or permits;
- (b) does not apply to originating applications, unless the court otherwise orders.

Application to the court to exercise its authority

6.2 When the court has authority under these rules, a person may make an application to the court that the court exercise its authority.

Subdivision 1 ***Application Process Generally***

Applications generally

6.3(1) Unless these rules or an enactment otherwise provide or the court otherwise permits, an application may only be filed during an action or after judgment is entered.

(2) Unless the court otherwise permits, an application to the court must

- (a) be in the prescribed form,
- (b) state briefly the grounds for filing the application,
- (c) identify the material or evidence intended to be relied on,
- (d) refer to any provision of an enactment or rule relied on,

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

- (e) specify any irregularity complained of or objection relied on,
- (f) state the remedy claimed or sought, and
- (g) state how the application is proposed to be heard or considered under these rules.

(3) Unless an enactment, the court or these rules otherwise provide, the applicant must file and serve on every person affected by the application, 5 days or more before the application is scheduled to be heard or considered,

- (a) notice of the application, and
- (b) any affidavit or other evidence in support of the application.

Information note

An application may be made both during an action and if court assistance is still required, after judgment. See rule 9.14 [*Further or other order after judgment or order entered*].

Rules related to the preparation and content of affidavits are contained in rules starting at rule 12.19 [*Types of affidavit*].

Applications without notice

6.4 Despite any other rule to the contrary, notice of an application is not required to be served on a party if an enactment so provides or permits or the court is satisfied that

- (a) no notice is necessary, or
- (b) serving notice of the application might cause undue prejudice to the applicant.

Subdivision 2 *Specific Kinds of Application*

Restraining order application: interpersonal matter

6.5 If an application is made for a restraining order in respect of an interpersonal matter between

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

individuals, the applicant may, instead of filing an affidavit, file a prescribed form.

Notice of an application in foreclosure actions

6.6(1) In a foreclosure action, notice of every application made by the plaintiff must be served on each person who filed and served on the plaintiff a statement of defence, a demand for notice or a notice of address for service.

(2) A defendant or subsequent encumbrancer who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action if the application is for one or more of the following:

- (a) a redemption order;
- (b) an order that secured property be offered for sale;
- (c) an order confirming sale to the plaintiff or other person;
- (d) an order for possession, but not a preservation order;
- (e) an order appointing a receiver and manager;
- (f) a foreclosure order.

(3) A defendant who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action if the application is for personal judgment against that defendant.

(4) A person who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action for an order for possession if the plaintiff seeks possession of secured property from that person.

(5) An offeror or tenderer who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action if one or more offers or tenders have been made on secured property and the application is for one or more of the following:

- (a) an order confirming sale to the plaintiff or other person;
- (b) an order for possession, but not a preservation order;

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

- (c) an order appointing a receiver and manager;
- (d) a foreclosure order.

Information note

Rule 11.23 [*Notice of address for service in foreclosure actions*] specifies the persons who may file and serve on the plaintiff in a foreclosure action a notice of address for service in Alberta.

Subdivision 3
Responses, Replies and Decisions on Applications

Response and reply to applications

6.7(1) If the respondent to an application intends to rely on an affidavit or other evidence when the application is heard or considered, the respondent must reply by serving on the applicant a copy of the affidavit and any other evidence a reasonable time before the application is to be heard or considered.

(2) The applicant may respond by affidavit or other evidence to the respondent's affidavit or other evidence but must

- (a) serve the affidavit or other evidence on the respondent a reasonable time before the application is to be heard, and
- (b) limit the response to replying to the respondent's affidavit or other evidence.

(3) If either the respondent or applicant does not give the other reasonable notice the court may impose costs on the party responsible and the party who did not give reasonable notice is not entitled to rely on their affidavit or other evidence unless the court otherwise permits.

Questioning on affidavits in support, response and reply to applications

6.8 A person who makes an affidavit in support of an application or in response or reply to an application may be questioned, under oath, on the affidavit by a person adverse in interest on the application and

- (a) rules 6.18 [*Contents of appointment notice*] to 6.22 [*Form of questioning and transcript*] apply for the purposes of this subrule, and
- (b) the transcript of the questioning must be filed by the questioning party.

Questioning a witness before a hearing

6.9 A person may be questioned, under oath, as a witness, for the purpose of obtaining a transcript of their evidence available for use at the hearing of the application and

- (a) rules 6.18 [*Contents of appointment notice*] to 6.22 [*Form of questioning and transcript*] apply for the purposes of this rule, and
- (b) the transcript of the questioning must be filed by the questioning party.

How the court considers applications

6.10(1) The court may consider a filed application in one or more of the following ways:

- (a) in person, with one, some or all the parties present;
- (b) by means of an electronic hearing if an electronic hearing is permitted under rule 6.11 [*Electronic hearings*];
- (c) by a process involving documents only.

(2) Applications may be decided by a judge or master.

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

Electronic hearings

6.11(1) In this rule, *electronic hearing* means an application, proceeding, summary trial or trial conducted, in whole or part, by electronic means in which all the participants in a hearing, and the court, can hear each other, whether or not all or some of the participants and the court can see each other or are in each other's presence.

(2) An electronic hearing may be held if

- (a) the parties agree and the court so permits, or
- (b) on application, the court orders an electronic hearing.

(3) The court may

- (a) direct that an application for an electronic hearing be heard by electronic hearing;
- (b) direct an application, a summary trial or a trial be heard in whole or in part by electronic hearing;
- (c) give directions about arrangements for the electronic hearing or delegate that responsibility to another person;
- (d) give directions about the distribution of documents and the practice and procedure at the electronic hearing;
- (e) order that an electronic hearing be completed in person.

(4) The court clerk must participate in an electronic hearing unless the court otherwise directs.

Evidence at application hearings

6.12(1) The court may only consider the following evidence when making a decision about an application:

- (a) affidavit evidence, including an affidavit by an expert;
- (b) a transcript of questioning under this Part;

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

- (c) the written or oral answers to questions, or both, under Part 5 [*Disclosure of Information*] that may be used under rule 5.31 [*Use of transcript and answers to written questions*];
- (d) an admissible record disclosed in an affidavit of records under rule 5.6 [*Form and content of affidavit of records*];
- (e) anything permitted by any other rule or by an enactment;
- (f) evidence taken in any other action, but only if the party proposing to submit the evidence gives every other party written notice of their intention 5 or more days before the application is scheduled to be heard or considered and obtains the court's permission to submit the evidence;
- (g) with the court's permission, oral evidence which if permitted must be given in the same manner as at trial.

(2) An affidavit or other evidence that is used or referred to at a hearing and that has not previously been filed in the action must be filed as soon as practicable after the hearing.

If a person does not get notice of an application

6.13 If it appears to the court at the time an application is heard that a person who should have been served with notice of the application was not served, the court may

- (a) dismiss the application,
- (b) adjourn the hearing for notice to be served, or
- (c) if the court considers it appropriate to do so, hear and decide the application.

Recording hearings when only one party present

6.14 Unless the court otherwise orders, a hearing of an application in which only one party makes a personal appearance must be recorded word for word by a method that is capable of providing a written transcript.

Subdivision 4
Appeal from Master's Order

Appeal from a master's order

6.15(1) If a master makes an order the applicant or respondent to the application may appeal the order to a judge.

(2) An appeal from a master's order is an appeal on the record of proceedings before the master and, if the judge permits, may also be based on new evidence that could not, with due diligence, have been presented to the master and that is significant enough that it could have affected the master's decision.

(3) The record of proceedings is

- (a) the application before the master,
- (b) affidavits and other evidence filed by the parties respecting the application before the master,
- (c) any transcript of proceedings before the master, unless the court dispenses with this requirement, and
- (d) the master's order and any written reasons given for the decision.

(4) The appellant must file and serve on the respondent to the appeal, within one month after the date of the master's decision,

- (a) notice of appeal in the prescribed form,
- (b) the record of proceedings described in subrule (3),
- (c) any new evidence sought to be relied on, subject to the limitations described in subrule (2), and
- (d) any further written argument.

(5) The respondent to the appeal must file and within 10 days after service of the notice of appeal and serve on the appellant any further written argument the respondent wishes to make.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(6) A party may rely on its original written argument, if any, that was before the master or the further argument filed under subrule (4)(d), or both.

Information note

Section 12 of the *Court of Queen's Bench Act* provides for an appeal of a master's order. It reads:

Appeal

12 An appeal lies to a judge in chambers from a decision of a master in chambers.

Decision of the judge

6.16 After hearing an appeal from a master's order the judge may make any one or more of the following orders:

- (a) confirm, vary or revoke the decision;
- (b) revoke the decision and substitute a decision;
- (c) revoke all or part of the decision and refer the matter back to the master who made the decision or another master, with directions;
- (d) make any other order the judge considers appropriate.

Subdivision 5 Procedure for Questioning

Appointment for questioning under this Part

6.17 If a party is entitled to question a person under this Part, they may do so by serving on the person an appointment for questioning and rules 6.18 [*Contents of appointment notice*] to 6.22 [*Form of questioning and transcript*] apply.

Contents of appointment notice

6.18(1) An appointment for questioning in the prescribed form must

- (a) specify a reasonable date, place and time for the questioning,
- (b) describe any records the person is required to bring to the questioning, and
- (c) request the person to be questioned to specify any arrangements necessary to accommodate their particular needs which, to the extent reasonably possible, must be accommodated.

(2) The appointment for questioning must be served 5 or more days before the appointment date on

- (a) the person to be questioned, or if a lawyer acts for them, on their lawyer, and
- (b) every other party.

(3) On application, the court may resolve a dispute over the date, time, place and person to be questioned, and any related matters, and the records to be produced at questioning.

(4) The attendance of a person for questioning and the records to be produced at questioning may be required by an order under rule 6.40 [*Requiring attendance for questioning*].

Information note

If the person to be questioned on an affidavit in support of an application or originating application is outside Alberta and a party to the application seeks to question that person in Alberta, an application for a certificate to attach to a subpoena must be made under the *Interprovincial Subpoena Act*.

Payment of allowance

6.19(1) When an appointment for questioning is served, an allowance must be paid by the questioning party to or on behalf of the person required to attend the appointment, unless the court dispenses with an allowance.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(2) If an allowance is not paid, the person who is the subject of the notice need not attend the appointment unless ordered to do so by the court.

(3) The allowance to be paid is

- (a) the amount determined under Schedule B [*Court Fees and Witness and Other Allowances*], or
- (b) if there is a dispute over the amount to be paid, the amount ordered by the court.

Lawyer's responsibilities

6.20(1) If a lawyer is served with an appointment for questioning and an allowance is also paid, the lawyer must,

- (a) as soon as practicable, inform the person affected about the appointment, and
- (b) use the allowance only for the purpose for which it is paid.

(2) If a person does not attend the appointment for questioning, the allowance must, unless the parties otherwise agree or the court otherwise orders, be repaid to the person who paid it by

- (a) the lawyer, or
- (b) if the lawyer paid the allowance to another person, that other person.

Interpreters

6.21(1) If a person to be questioned will not be able to understand the questions or be able to answer the questions without the aid of an interpreter, the person to be questioned must give reasonable notice of that fact to the party who served the appointment for questioning and the questioning party must then notify every other party that an interpreter will be present.

(2) The questioning party must provide an interpreter

- (a) who is impartial and competent, and
- (b) who takes an oath to interpret the questions and answers correctly and honestly.

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

- (3) The cost of the interpreter must initially be borne by the questioning party.

Form of questioning and transcript

6.22(1) The person questioned on an affidavit under this Part, or a person questioned as a witness for the purpose of obtaining a transcript under this Part for use at a hearing, may also be questioned by any other party, and the person questioned may then be questioned again by the questioning party on that person's answers to the questions of other parties.

(2) Questioning and questioning again under this rule by parties adverse in interest may take the form of cross-examination.

(3) The questions and answers must be recorded word for word by a person qualified to do so

- (a) by a method that is capable of providing a written transcript, and
- (b) in a manner agreed by the parties or directed by the court.

(4) The person recording the oral questioning must

- (a) keep in safe custody the recorded questioning,
- (b) if required to do so, honestly and accurately transcribe the recorded questioning and deliver a copy of the transcript, as required, and
- (c) on or attached to any transcript
 - (i) state their name,
 - (ii) specify the date and place where the questioning occurred, and
 - (iii) certify the transcript or the portion of the questioning transcribed, as complete and accurate.

(5) The questioning party must

- (a) make necessary arrangements for the questioning to be recorded, and
- (b) file the transcript unless the court otherwise orders.

Division 2
Preserving Evidence and Obtaining Evidence Outside Alberta

Preserving evidence for future use

6.23(1) The court may order that a person be questioned, under oath,

- (a) for the purpose of preserving evidence, or
- (b) for any other purpose satisfactory to the court.

(2) An order may be made under subrule (1)(a)

- (a) if the person to be questioned is or may be unable to give evidence before the court because of accident, ill health, disability, or the likelihood that they may die before they are required to give evidence,
- (b) if the person to be questioned is within the court's jurisdiction when the application is filed, but will be or may be beyond the court's jurisdiction when they are required to give evidence,
- (c) if, considering the evidence to be given, the expense and inconvenience of bringing a person to give evidence is not warranted, or
- (d) for any other purpose the court considers appropriate.

Information note

This rule and the following rule provide for obtaining what was formerly described as commission evidence in Alberta (rule 6.23) and outside Alberta (rule 6.24).

Obtaining evidence outside Alberta

6.24(1) On application, the court may order the evidence of a person be taken outside Alberta for the purpose of one or more of the following:

- (a) questioning under rule 5.17 [*People who can be questioned*];
- (b) an application;
- (c) an originating application;
- (d) trial;
- (e) any other purpose that the court considers appropriate.

(2) In making its decision on the application, the court must consider

- (a) the convenience of the person sought to be questioned,
- (b) whether the person is or may be unable to give evidence before the court because of accident, ill health, disability, or the likelihood that they may die before giving evidence,
- (c) whether the person may be beyond the jurisdiction of the court when the person is required to give evidence,
- (d) the expense and inconvenience of bringing a person to give evidence considering the evidence to be given,
- (e) whether the witness should give evidence in person, and
- (f) any other sufficient reason for granting or refusing the application.

(3) The court may determine

- (a) the time, date and place of the questioning,
- (b) the minimum notice to be given to the person to be questioned of the date, time and place of questioning,

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

- (c) the person before whom the questioning is to be conducted,
 - (d) the amount of the allowance to be paid to the person to be questioned, and
 - (e) any other matter that needs to be resolved about the questioning.
- (4) An order under this rule must be in the prescribed form, filed and served, and may:
- (a) authorize the taking of evidence before a named person;
 - (b) give instructions to the person named to take evidence and to have a transcript of the evidence prepared;
 - (c) order the production of records applicable to the questioning;
 - (d) authorize a letter of request in the prescribed form to be sent to the judicial authority of the jurisdiction in which the person to be questioned is located, requesting the necessary order or document to be issued to require the person to be questioned to attend before the person authorized to take evidence and, if necessary, to produce records.

Duties of person authorized to take evidence and court clerk

6.25(1) A person authorized to take evidence under rule 6.24 [*Obtaining evidence outside Alberta*] must, to the extent that it is possible to do so, conduct the questioning in accordance with these rules, the law of evidence of Alberta, and the terms of the authorization, unless

- (a) another form of questioning is required by the court, or
 - (b) the law of the place where the questioning is conducted otherwise requires.
- (2) On or attached to the transcript, the person making the transcript must
- (a) state their name,
 - (b) specify the date and place where the transcript was taken, and
 - (c) certify the transcript as complete and accurate.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(3) As soon as the transcript of the questioning is prepared and certified as complete and accurate, the person authorized to take evidence must,

- (a) return the authorization, together with the original transcript and exhibits, to the court clerk of the judicial centre in which the action is located, and that transcript is to be treated as the original transcript,
- (b) keep a copy of the transcript and, where practicable, the exhibits, and
- (c) notify the parties who appeared at the questioning that the transcript is complete and has been sent to the court clerk.

(4) The court clerk must send a copy of the transcript to the questioning party and that party must, as soon as practicable, serve every other party with the transcript, free of charge.

Assistance to judicial authorities outside Alberta

6.26 If a judicial authority in another jurisdiction requests or authorizes a request to be made to the court for the court's assistance in obtaining evidence from a person in Alberta for use in a court or other proceeding outside Alberta, the court may make any order that it considers appropriate, including any one or more of the following:

- (a) requiring a person to attend for questioning, under oath, which may take the form of cross-examination;
- (b) requiring a person to produce records;
- (c) requiring a transcript of the questioning to be taken;
- (d) specifying the manner in which questioning is to be conducted.

Division 3
Preserving and Protecting Property or its Value
and Inspection of Property

Preserving or protecting property or its value

6.27(1) On application, the court may make one or more of the following orders:

- (a) an order for the preservation or custody of property that is in dispute or that may be evidence in an action;
- (b) an order that the amount in dispute or other amount be paid into court or that security be given to the court or to a person named by the court, in the form and manner satisfactory to the court, including an amount for interest, costs and other expenses;
- (c) an order for the sale of property and payment of the proceeds into court if the property is perishable, likely to deteriorate, likely to lose its value, or for any other reason should be sold;
- (d) if property is sought to be retained or attached under a lien or otherwise as security for money, an order
 - (i) that the person otherwise entitled to possession of the property be given possession,
 - (ii) that possession of the property be given to a party pending the outcome of the action on payment of an amount into court or on security being given to the court, or
 - (iii) that possession be given to a person named by the court in a form and manner satisfactory to the court;
- (e) an order to enter land or premises for the purpose of carrying out an order under this rule.

(2) If the right of a party to a specific fund is in question, the court may order that the fund be paid into court or that security be provided for it to the court or to a person named by the court in a form and manner and in an amount satisfactory to the court.

Information note

See also the *Civil Enforcement Act*.

Inspection or examination of property

6.28 On application, the court may make one or more of the following orders:

- (a) an order to inspect property, including an inspection by a judge or jury, or both, at trial, if the inspection is necessary to decide a question in dispute in an action, application or proceeding;
- (b) an order to take samples, make observations or undertake experiments for the purpose of obtaining information or evidence, or both;
- (c) an order to enter land or premises for the purpose of carrying out an order under this rule.

Notice before disposing of anything held by the court

6.29(1) On application, the court may direct that money or other personal property held by the court not be paid out or disposed of without notice being served on the applicant.

(2) The applicant must be interested in the money or other personal property held by the court or seek to have the money or personal property applied to satisfy a judgment or order or a writ of enforcement against the person on whose behalf the money or personal property is held.

(3) The applicant

- (a) must file an affidavit verifying the facts relied on in the application, and
- (b) may make the application without serving notice of the application on any other person.

Information note

An application can be made before or after judgment (see rule 6.3(1) *[Applications generally]*). For applications after judgment, see rule 9.14 *[Further or other order after judgment or order entered]*.

Division 4
Restriction on Media Reporting
and Public Access to Court Proceedings

Application of this Division

6.30 Unless an enactment otherwise provides or the court otherwise orders, this Division applies to an application for an order

- (a) to ban publication of court proceedings;
- (b) to seal or partially seal a court file;
- (c) permitting a person to give evidence in a way that prevents them or another person being identified;
- (d) for a hearing from which the public is excluded.

Restricted access applications and orders

6.31 An application under this Division is to be known as a restricted access application and an order made under this Division is to be known as a restricted access order.

When a restricted access application can be filed

6.32 A person may file a restricted access application only if a judge has authority to make a restricted access order under an enactment or at common law.

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

Timing of application and service

6.33 An applicant for a restricted access order must, 5 or more days before the date scheduled for the hearing, trial or proceeding in respect of which the order is sought,

- (a) file the application in the prescribed form, and
- (b) unless the court otherwise orders, serve every party and any other person named or described by the court.

Notice to the media

6.34 As soon as an application for a restricted access order is filed, the court clerk must, in accordance with the direction of the Chief Justice, give notice of the application to

- (a) the electronic and print media identified or described by the Chief Justice, and
- (b) any other person named by the court.

Judge assigned to the application

6.35 An application for a restricted access order must be heard and decided by

- (a) the judge assigned to hear the application, trial or other proceeding in respect of which the restricted access order is sought,
- (b) if the assigned judge is not available or no judge has been assigned, the case management judge for the action, or
- (c) if there is no judge available or assigned under clause (a) or (b), the Chief Justice or a judge designated for the purpose by the Chief Justice.

Application to seal or unseal court files

6.36(1) An application to seal an entire court file or an application to set aside all or any part of an order to seal a court file must be filed.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(2) The application must be made to

- (a) the Chief Justice, or
- (b) a judge designated to hear applications under subrule (1) by the Chief Justice.

(3) The court may direct

- (a) on whom notice of the application must be served and when,
- (b) how the application is to be served, and
- (c) any other matter that the circumstances require.

Persons having standing at the application

6.37 The following persons have standing to be heard at an application for a restricted access order:

- (a) a person served or who is given notice of the application;
- (b) any other person recognized by the court who claims to have an interest in the application, trial or proceeding and whom the court permits to be heard.

Confidentiality of information

6.38 Information that is the subject of the initial application for a restricted access order must not be published without the court's permission.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

Information note

If a rule in this Division is not complied with, the person who does not comply may be liable to a penalty under rule 10.47 [*Penalty for contravening the rules*] and to have the matter taken into consideration when a costs award is made (see rule 10.31(2)(f) [*Court considerations in making a costs award*]). The person may also be liable to be declared in civil contempt of court under rule 10.50 [*Declaration of civil contempt*] if a court order is not complied with and to have a pleading, claim, defence or an action struck out under rule 10.51(1)(d) [*Punishment for civil contempt of court*].

Division 5
Facilitating Proceedings**Notice to admit**

6.39(1) A party may, by notice in the prescribed form, call on any other party to admit for the purposes of an application, originating application, summary trial or trial, either or both of the following:

- (a) any fact stated in the notice, including any fact in respect of a record;
- (b) any written opinion included in or attached to the notice, which must state the facts on which the opinion is based.

(2) A copy of the notice must be served on every other party.

(3) Each of the matters for which an admission is requested is presumed to be admitted unless, within 20 days after the date of service of the notice to admit, the party to whom the notice is addressed serves on the party requesting the admission a statement that

- (a) denies the fact or the opinion, or both, for which an admission is requested and sets out in detail the reasons why the fact cannot be admitted or the opinion cannot be admitted, as the case requires, or

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

- (b) sets out an objection on the ground that some or all of the requested admissions are, in whole or in part,
 - (i) privileged, or
 - (ii) irrelevant, improper or unnecessary.
- (4) A copy of the statement must be served on every other party.
- (5) A denial by a party must fairly meet the substance of the requested admission and when only some of the facts or opinions for which an admission is requested are denied, the denial must specify the facts or opinions that are admitted and deny only the remainder.
- (6) A party may only amend or withdraw an admission or denial made under this rule
 - (a) with the court's permission, or
 - (b) by agreement of the parties.
- (7) An admission under this rule is made only for the specific purpose for which it is made and may not be used as an admission against the party making it on any other occasion or in favour of a person other than the person giving the notice, without the agreement of the party making the admission.
- (8) On application, the court may set aside a notice to admit.

Information note

A failure to admit anything that should have been admitted is a specific matter that the court can consider under rule 10.31(2)(b) [*Court considerations in making a costs award*] when making a costs award.

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

Requiring attendance for questioning

6.40(1) On application, the court may order a person to attend for questioning, at a date, place and time specified by the court, if the person

- (a) is required to be questioned under these rules,
- (b) was served with an appointment for questioning under these rules,
- (c) was provided with an allowance, determined in accordance with Schedule B [*Court Fees and Witness and Other Allowances*], if so required by these rules, and
- (d) did not attend the appointment, attended the appointment but refused to answer or fully answer proper questions or did not bring a document required to be brought to the questioning.

(2) The court may order the person to be questioned to bring records to the questioning that the person could be required to produce at trial.

Order to produce prisoner

6.41 On application, the court may order the person having custody of a prisoner to produce that person, at a time and place specified by the court, for a trial, a hearing, or for questioning authorized by these rules.

Division 6
Resources to Assist the Court

Experts

Appointment of court experts

6.42(1) The court may appoint a person as a court expert to give evidence on a matter.

(2) The court expert must give independent evidence to the court.

(3) If possible, the parties must agree to the court expert.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(4) The appointment of a court expert does not affect the right of a party to call their own expert as a witness.

(5) If the court expert is a health care professional, the expert has all the authority and responsibility conferred on a health care professional by these rules.

Information note

See rules starting at rule 5.41 [*Medical examinations*] for the conduct of medical examinations by health care professionals.

Instructions or questions to the court expert

6.43(1) If the parties do not agree on the instructions to be given or questions to be put to a court expert, the court may settle them.

(2) The court may give any direction or instruction or pose any question to the court expert that the court considers necessary, whether the parties agree or not.

(3) The court expert's report

- (a) must be in writing, verified by affidavit,
- (b) must be served on the parties by the court clerk, and
- (c) is admissible in evidence.

Application to question court expert

6.44(1) Within 20 days after receipt of a copy of the court expert's report, a party may apply to the court to question the court expert on the report.

(2) The court may order the questioning of the court expert before or at a hearing of an application or originating application or before or at trial.

(3) The questioning may take the form of cross-examination.

Costs of court experts

6.45 The costs of a court expert are to be paid by the parties in equal proportions, unless the court otherwise orders.

Referees

Persons who are referees

6.46 The following are referees for the purposes of these rules:

- (a) a master;
- (b) a court clerk;
- (c) a person appointed as a referee by the Lieutenant Governor in Council;
- (d) a person appointed as a referee by the court with the agreement of all parties.

References to a referee

6.47(1) The court may refer a question or matter to a referee, or order an inquiry to be conducted or an account to be taken by a referee.

(2) Subject to an order, the referee may, do all or any of the following:

- (a) hold an inquiry at, or adjourn the inquiry to, any convenient time and place;
- (b) inspect and verify records;
- (c) inspect, examine or take a view of property;
- (d) conduct an accounting or verify accounts;
- (e) make any determination required;
- (f) do anything else required to answer a question or respond to a matter in accordance with the reference or order.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

(3) The court may

- (a) give any directions for the conduct of the matter it considers necessary, and
- (b) prescribe the fees and expenses to be paid to the referee, if any, and who is to pay them.

(4) Proceedings before a referee, as nearly as circumstances allow, are to be conducted in the same way proceedings are conducted before a court.

Referee's report

6.48(1) The referee must make a report to the court on the question or matter referred to the referee and a copy of the report must be filed and served on the parties concerned.

(2) After the referee's report has been served, a party may apply to the court for an order

- (a) adopting the referee's report in whole or in part;
- (b) varying the report;
- (c) requiring an explanation from the referee;
- (d) remitting the whole or part of the question or matter referred to the referee for further consideration by the referee or by any other referee;
- (e) deciding the question or matter referred to the referee on the evidence taken before the referee either with or without additional evidence.

(3) Notice of the application must be served on every party to the reference 10 days or more before the application is scheduled to be heard.

Division 7
Court-appointed Receiver

Court-appointed receiver

6.49 If a court appoints a receiver other than under an enactment, the court may, in addition to a procedural order,

- (a) prescribe the compensation payable to the receiver and who is to pay it;
- (b) require the receiver to provide security;
- (c) require the receiver to file financial accounts and reports with the court clerk at the times and subject to the scrutiny ordered by the court;
- (d) order payment to or disallow all or part of a payment to the receiver;
- (e) order a hearing to be held with respect to any matter for which the receiver was appointed or is responsible;
- (f) make any other order or direction that the circumstances require.

Division 8
Replevin

Application of this Division

6.50 This Division applies to an application in an action

- (a) for the recovery of personal property in which the applicant claims that the property was unlawfully taken or is unlawfully detained, and
- (b) in which the applicant desires to repossess the personal property in issue immediately, pending determination of the action described in clause (a).

Application for replevin order

6.51(1) A party may apply to the court for a replevin order without serving notice of the application on any other party unless the court otherwise orders.

- (2) The application for a replevin order must include in the application an undertaking
- (a) to conclude the action for recovery of the personal property without delay,
 - (b) to return the personal property to the respondent if ordered to do so, and
 - (c) to pay damages, costs and expenses sustained by the respondent as a result of the replevin order if the applicant is not successful in the action to recover the personal property and the court so orders.
- (3) The application for a replevin order must be supported by an affidavit which
- (a) sets out the facts respecting the wrongful taking or detention of the personal property,
 - (b) contains a clear and specific description of the personal property and its value, and
 - (c) describes the applicant's ownership or entitlement to lawful possession of the personal property.

Replevin order

6.52(1) A replevin order must

- (a) include a clear and specific description of the personal property to be repossessed,
- (b) impose on the applicant the following duties:
 - (i) to conclude the action for recovery of the personal property without delay, and
 - (ii) to return the personal property to the respondent if ordered to do so,
- (c) include an order to pay damages, costs and expenses sustained by the respondent

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

as a result of the replevin order if the applicant is not successful in the action for recovery of the personal property, and

- (d) require the applicant to provide, to the person from whom the personal property is to be repossessed, security in a form satisfactory to the court including, without limitation, a bond, a letter of undertaking or payment into court.

(2) A replevin order may also include either or both of the following:

- (a) an order to a civil enforcement agency to make a report on its enforcement or attempted enforcement of the replevin order;
- (b) the value of the personal property.

(3) If the replevin order is made without notice to the respondent, the court must specify a date, not more than 20 days after the date the order is granted, on which the order will expire.

(4) The applicant must file an affidavit or other evidence that the order requiring security has been complied with.

(5) The replevin order is not effective until the affidavit or evidence of the security has been filed and the affidavit or evidence has been served on

- (a) the respondent, and
- (b) a civil enforcement agency.

Enforcement of replevin orders

6.53(1) Only a civil enforcement agency has authority to enforce a replevin order.

(2) A civil enforcement agency must take possession of personal property that is the subject of the replevin order in accordance with the order and, as soon as practicable, must serve notice on the applicant.

(3) The civil enforcement agency must not give the personal property to the applicant without a further court order.

(4) Unless the court otherwise orders, if an order for possession of the personal property to be

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

given to the applicant is not made within one month after the civil enforcement agency serving notice of taking possession of it, the civil enforcement agency must return the personal property to the respondent.

Respondent may apply for remedy

6.54 If the respondent did not receive notice of the application for a replevin order, or in any other circumstance with the court's prior permission, the respondent may apply to the court for an order

- (a) to discharge or amend the replevin order;
- (b) to stay the application for a replevin order;
- (c) to return, keep safe or sell the personal property or any part of it;
- (d) for any other remedy relating to the personal property.

Expiry of replevin order

6.55 A replevin order

- (a) obtained without notice to the respondent, expires in accordance with its terms unless it is extended by the court under rule 6.52(3) [*Replevin order*], or
- (b) obtained after notice of the application for the replevin order was served on the respondent, expires on the earlier of
 - (i) the dismissal of the action, or
 - (ii) 2 months after the date judgment in favour of the applicant is entered.

Division 9
Interpleader

Definitions

6.56 In this Division,

an application for an interpleader order means an application filed under rule 6.57 [*Nature of application for interpleader order*] whether an originating application or an application;

applicant means an applicant for an interpleader order, whether an originating applicant or applicant, as the context requires;

claimant means a person who files or is expected to file an adverse claim against personal property;

instructing creditor has the same meaning as it has in the *Civil Enforcement Act*;

personal property includes a debt;

related writ has the same meaning as it has in the *Civil Enforcement Act*;

writ proceedings has the same meaning as it has in the *Civil Enforcement Act*.

Nature of application for interpleader order

6.57(1) An application for an interpleader order must be filed

- (a) as an originating application, if the originating applicant is not a party to an action respecting the personal property that is the subject of the originating application, or
- (b) as an application if the applicant is a party to an action respecting the personal property.

(2) An application for an interpleader order or an application to determine the rights of the various claimants may be filed under rule 6.60 [*Interpleader order*] and an order may be made even though the respondent to the application has provided security or an indemnity to the

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

applicant.

Application for interpleader order

6.58(1) A person may apply to the court for an interpleader order in respect of personal property if

- (a) 2 or more claimants have filed or are expected to file adverse claims in respect of the personal property, and
- (b) the applicant
 - (i) claims no beneficial interest in the personal property, other than a lien for costs, fees or expenses, and
 - (ii) is willing to deposit the personal property with the court or dispose of it as the court orders.

(2) The applicant must file an affidavit in support of the application.

(3) An application for an interpleader order must be in the prescribed form and be served on all the claimants and direct those claimants to

- (a) appear before the court, and
- (b) state the nature and particulars of their claim.

Interpleader applicant not disentitled

6.59 An applicant for an interpleader order is not disentitled to a remedy solely because the titles of the claimants to personal property do not have a common origin but are adverse to and independent of one another.

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

Interpleader order

6.60(1) On hearing an application for an interpleader order the court may do any one or more of the following:

- (a) determine, summarily or otherwise, any issue;
- (b) direct a trial of an issue specifying
 - (i) which party will be plaintiff or applicant and which defendant or respondent;
 - (ii) the pleadings, affidavits or documents to be filed;
- (c) declare any party to be owner of the personal property;
- (d) direct or otherwise provide for the satisfaction or payment of a lien or charges of the applicant;
- (e) make a procedural order or any other order that the court considers appropriate in the circumstances, including
 - (i) giving directions to the applicant;
 - (ii) a declaration as to the liability of a person;
 - (iii) a release or extinguishment of liability of a person.

(2) If a claimant

- (a) does not appear at the hearing of the application after having been served with a notice to attend, or
- (b) having appeared, does not comply with an order,

the court may make an order declaring the claimant and all persons claiming under the claimant to be barred from taking further interpleader proceedings as against the plaintiff or applicant and as against all persons claiming under the plaintiff or applicant.

(3) An order under subrule (2) does not affect the rights of claimants as between themselves.

Civil enforcement agency applications

6.61(1) If a civil enforcement agency or other person charged with carrying out writ proceedings or acting under the court's authority receives from one or more persons a claim, other than an objection under the *Civil Enforcement Act*, with respect to personal property under seizure pursuant to the *Civil Enforcement Act*, the civil enforcement agency or that other interested person may apply to the court for an interpleader order.

(2) If a civil enforcement agency receives a claim for which the civil enforcement agency may apply for an interpleader order, the civil enforcement agency may, instead of initially proceeding under subrule (1), do the following:

- (a) the civil enforcement agency may by written notice in the prescribed form served on the instructing creditor direct the instructing creditor to apply to the court to determine the rights of the various claimants;
- (b) if an instructing creditor on whom a written notice is served under clause (a) fails to apply to the court in accordance with the notice, the civil enforcement agency may by written notice served on the holders of related writs direct the holders of the related writs to apply to the court for an order determining the rights of the various claimants;
- (c) if neither the instructing creditor nor the holder of a related writ on whom a notice is served under this subrule obtains an order determining the rights of the various claimants, the civil enforcement agency may
 - (i) apply under subrule (1) for an interpleader order, or
 - (ii) release the personal property from seizure.

(3) If the civil enforcement agency gives a direction under subrule (2), an instructing creditor or a holder of a related writ, as the case may be, may apply to the court for an interpleader order.

Alberta Rules of Court

Part 6: Resolving Issues and Preserving Rights

Several claims combined

6.62 If a civil enforcement agency or other person charged with carrying out writ proceedings or acting under the court's authority intends to make an application for an interpleader order in respect of personal property against which there is more than one claim, the civil enforcement agency or that other person must, unless the court otherwise orders,

- (a) make only one application for an interpleader order in respect of all the claims, and
- (b) join all the judgment creditors as parties to the application for an interpleader order.

Enforcement from different courts

6.63 If there are writs arising out of judgments or orders from more than one court against the same personal property, whether on behalf of the same or different plaintiffs or applicants,

- (a) any application for an interpleader order must be filed, and
- (b) the court, after the applications are made, must dispose of the whole matter as if all of the writs against the personal property had been issued from the court.

Claims by a 3rd person

6.64 If a 3rd person, who is neither a judgment debtor nor a judgment creditor of a judgment debtor, makes a claim to personal property that is seized by a civil enforcement agency under civil enforcement proceedings, the 3rd person must serve on the civil enforcement agency a written notice setting out

- (a) the claim made by the 3rd person, and
- (b) an address for service of the 3rd person.

Notice by civil enforcement agency

6.65(1) On being served with notice of a claim under rule 6.64 [*Claims by a 3rd person*], a civil

Alberta Rules of Court**Part 6: Resolving Issues and Preserving Rights**

enforcement agency must immediately serve written notice of the claim on the person who instructed that enforcement proceedings be taken and on all other holders of related writs.

(2) If a person who has been served with notice of a claim wishes to

- (a) dispute the claim, or
- (b) assert priority over the claim,

that person must, within 20 days after service of the notice of the claim, serve on the civil enforcement agency a written notice disputing the claim or asserting priority over it.

(3) A person on whom notice of a claim is served under subrule (1) may serve on the civil enforcement agency a written notice stating that the person admits or does not dispute the claim.

(4) Despite subrule (3), a person on whom notice of a claim is served under subrule (1) is presumed to admit the claim if that person does not, within 20 days after service of the notice, serve on the civil enforcement agency a written notice disputing the claim.

(5) If a civil enforcement agency has served notice of a claim under subrule (1) and is satisfied that none of the persons on whom the notice was served is disputing the claim, the civil enforcement agency may release from seizure the personal property in respect of which the claim was made.

(6) If the person who instructed that the proceedings be taken does not dispute the claim but another person on whom notice of a claim was served under subrule (1) does dispute the claim, that other person may instruct the civil enforcement agency to continue seizure of the personal property.

(7) On receiving instructions from another person under subrule (6) to continue a seizure, the civil enforcement agency must continue the seizure if that other person pays the appropriate fees, if any, and meets any other conditions that a civil enforcement agency may impose on a person who is an instructing creditor.

Security interest

6.66 If a person claims to have a security interest in personal property that has been seized under civil enforcement proceedings, the court may

- (a) order that the personal property be sold and the proceeds of the sale be applied to discharge the amount due to the claimant if the sale and application of the proceeds of the sale are not disputed;
- (b) order that sufficient money to answer the claim be paid into court pending disposition of the claim;
- (c) make any other order that the court considers appropriate.

Expeditious sale

6.67 At any time during an application for an interpleader order the court, on application, may order that

- (a) a civil enforcement agency expeditiously sell or dispose of personal property if the court considers it appropriate to do so, and
- (b) the proceeds of the sale or disposal of the personal property, less any reasonable costs of the sale or disposal, take the place of the personal property that was sold or disposed of.

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

What this Part is about: This Part allows a claim to be resolved through processes to expedite proceedings or avoid a full trial. These processes include applications

- to resolve a particular issue or question, including a question of law
- to apply for summary judgment
- to apply for judgment after an abbreviated hearing, called a summary trial.

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

Starts at rule #

Division 1: Trial of Particular Questions or Issues.....	7.1
Division 2: Summary Judgment.	7.2
Division 3: Summary Trials.....	7.5

Information note

Words and phrases used in this Part that have defined meanings in the Appendix
[Definitions] include

- | | |
|-------------------------|--------------------|
| • claim | • party |
| • commencement document | • plaintiff |
| • court | • pleading |
| • court clerk | • prescribed form |
| • defendant | • procedural order |
| • file | • record |
| • judge | • referee |
| • judgment | • remedy |
| • order | |

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

Division 1 Trial of Particular Questions or Issues

Application to resolve particular questions or issues

7.1(1) On application, the court may

- (a) order a question or an issue to be heard or tried before, at or after a trial for the purpose of
 - (i) disposing of all or part of a claim,
 - (ii) substantially shortening a trial, or
 - (iii) saving expense;
- (b) include in the order or make a subsequent order
 - (i) defining the question or issue, or
 - (ii) in the case of a question of law, approving or modifying the issue agreed by the parties;
- (c) stay any other application or proceeding until the question or issue has been decided;
- (d) direct that different questions of fact in an action be tried by different modes.

Alberta Rules of Court**Part 7: Resolving Claims Without a Full Trial**

- (2) If the question is a question of law, the parties may agree on
- (a) the question of law for the court to decide;
 - (b) the remedy resulting from the court's opinion on the question of law;
 - (c) the facts or agree that the facts are not in issue.
- (3) If the court is satisfied that its determination of a question or issue substantially disposes of a claim or makes the trial of an issue unnecessary, it may
- (a) strike out a claim or order a commencement document or pleading to be amended;
 - (b) give judgment on all or part of a claim and make any order it considers necessary;
 - (c) make a determination on a question of law;
 - (d) make a finding of fact.
- (4) Part 5 [*Disclosure of Information*] Division 2 [*Experts and Expert Reports*] applies to an application under this rule unless the parties otherwise agree or the court otherwise orders.

Information note

Rule 8.1 [*Trial without a jury*] requires the mode of trial of an action to be by judge alone unless otherwise ordered.

Division 2
Summary Judgment

Application for judgment

7.2 On application, the court may at any time in an action give judgment or an order to which an applicant is entitled when

- (a) admissions of fact are made in a pleading or otherwise, or
- (b) the only evidence consists of records and an affidavit is sufficient to prove the authenticity of the records in which the evidence is contained.

Application and decision

7.3(1) A party may apply to the court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

- (a) there is no defence to a claim or part of it;
- (b) there is no merit to a claim or part of it;
- (c) the only real issue is the amount to be awarded.

(2) The application must be supported by an affidavit swearing positively that one or more of the grounds described in subrule (1) have been met or by other evidence to the effect that the grounds have been met.

(3) If the application is successful the court may, with respect to all or part of a claim, and whether or not the claim is for a single and undivided debt, do one or more of the following:

- (a) dismiss one or more claims in the action, or give judgment for or in respect of all or part of the claim or for a lesser amount;
- (b) if the only real issue to be tried is the amount of the award, determine the amount or refer the amount for determination by a referee;
- (c) if judgment is given for part of a claim, refer the balance of the claim to trial or for determination by a referee, as the circumstances require.

Alberta Rules of Court**Part 7: Resolving Claims Without a Full Trial**

Information note

A respondent to an application under this rule may file a response to the application under rule 6.7 [*Response and reply to applications*].

If the amount of an award is referred for determination by a referee, rules 6.46 to 6.48 [*Referees*] apply.

Proceedings after summary judgment against a party

7.4 If summary judgment is given against one or more defendants or plaintiffs, the action may be continued by or with respect to any plaintiff or defendant not bound by the judgment.

**Division 3
Summary Trials****Application for judgment by way of a summary trial**

7.5(1) A party may apply to a judge for judgment by way of a summary trial, on an issue, a question, or generally.

(2) The application must

- (a) be in the prescribed form,
- (b) specify the issue or question to be determined, or that the claim as a whole is to be determined,
- (c) include reasons why the matter is suitable for determination by way of summary trial,
- (d) be accompanied by an affidavit or any other evidence to be relied on, and
- (e) specify a date for the hearing of the summary trial scheduled by the court clerk, which must be one month or longer after service of notice of the application on the respondent.

Alberta Rules of Court**Part 7: Resolving Claims Without a Full Trial**

- (3) The applicant may not file anything else for the purposes of the application except:
- (a) to adduce evidence that would, at trial, be admitted as rebuttal evidence, or
 - (b) with the court's permission.

Information note

The rules anticipate that the parties will agree on how to manage applications for judgment by way of a summary trial. If the parties need assistance, they may seek a procedural order or court assistance under Part 4 [*Managing Litigation*].

Response to the application

7.6 The respondent to an application for judgment by way of a summary trial must, 10 days or more before the date scheduled to hear the application, file and serve on the applicant any affidavit or other evidence on which the respondent intends to rely at the hearing of the application.

Application of other rules

7.7(1) Part 5 [*Disclosure of Information*] Division 2 [*Experts and Expert Reports*] applies to an application under this Division unless the parties otherwise agree or the court otherwise orders.

(2) Part 6 [*Resolving Issues and Preserving Rights*] applies to an application under this Division except to the extent that it is modified by this Division.

Objection to application for judgment by way of a summary trial

7.8(1) The respondent to an application for judgment by way of a summary trial may object to the application at or before the hearing of the application on either or both of the following grounds:

- (a) the issue or question raised in the claim, or the claim generally, is not suitable for a summary trial;

Alberta Rules of Court**Part 7: Resolving Claims Without a Full Trial**

- (b) a summary trial will not facilitate resolution of the claim or any part of it.
- (2) Notice of the objection and anything on which the objector intends to rely must be filed and served on the applicant 5 days or more before the objection is scheduled to be heard.
- (3) The court must dismiss the objection if, in the court's opinion,
- (a) the issue or question raised, or the claim generally, is suitable for a summary trial, and
 - (b) the summary trial will facilitate resolution of the claim or a part of it.

Information note

At a hearing before or at the start of a summary trial, the judge may make a procedural order or an order under Part 4 [*Managing Litigation*]. Typical orders include those which state

- the evidence a party intends to adduce at the summary trial
- that a deponent must attend questioning
- that no further evidence be adduced
- that a party must file a brief
- time frames within which items must be concluded.

A summary trial may be conducted by an electronic hearing (see rule 6.11 [*Electronic hearings*]).

Decision after summary trial

7.9(1) After a summary trial, the judge may

- (a) dismiss the application for judgment, or
- (b) grant the application and give judgment in favour of a party, either on an issue or generally.

Alberta Rules of Court**Part 7: Resolving Claims Without a Full Trial**

(2) Judgment must be granted after a summary trial unless

- (a) the application is dismissed,
- (b) on the evidence before the judge, the judge is unable to find the facts necessary to decide the issues of fact or law, or
- (c) the judge is of the opinion that it would be unjust to decide the issues on the basis of the summary trial.

Judge remains seized of action

7.10 A judge who has heard an application for judgment by way of a summary trial remains seized of the action.

Order for trial

7.11 If a judge does not give judgment after a summary trial, the judge may

- (a) order the trial of the action generally or on a question or issue and give directions with respect to preparation for trial and a trial date;
- (b) give any procedural order that the circumstances require.

PART 8: TRIAL

What this Part is about: This Part includes rules for obtaining a trial date, confirming the date 3 months or more before the scheduled date, and rules for the conduct of a trial.

PART 8: TRIAL

	Starts at rule #
Division 1: Mode of Trial.....	8.1
Division 2: Scheduling of Trial Dates.....	8.4
Division 3: Attendance of Witnesses at Trial.....	8.8
Division 4: Procedure at Trial.....	8.10

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include

- | | |
|-------------------------|-----------------------|
| • Chief Justice | • judgment |
| • claim | • lawyer |
| • commencement document | • medical examination |
| • costs award | • order |
| • court | • party |
| • court clerk | • plaintiff |
| • defendant | • pleading |
| • enactment | • prescribed form |
| • expert | • procedural order |
| • file | • record |
| • judge | • rules |

PART 8: TRIAL

Division 1 Mode of Trial

Trial without a jury

8.1 Unless the Chief Justice directs that the mode of trial be by jury, or in part by jury and part by judge alone, the trial must be by judge alone.

Request for jury trial

8.2(1) An application for a jury trial under section 16 of the *Jury Act* must be made

- (a) by written request to the Chief Justice, and
- (b) before an application is made to the court clerk or a judge to set a trial date.

(2) The request for a jury trial must be accompanied by an affidavit which addresses the following issues, if they are applicable:

- (a) whether expert evidence will be called, and if so, how many experts are expected to be called;
- (b) the areas of knowledge or experience on which the experts will give evidence;
- (c) whether interpreters will be required;
- (d) the number of court days required for the trial if a jury trial is ordered.

(3) The Chief Justice may grant the request for a jury trial with or without conditions and set the number of days to be initially reserved for the jury trial, or refuse the request.

Information note

Section 17 of the *Jury Act* sets out the right to a jury trial. It reads:

Right to jury in civil proceeding

17(1) Subject to subsections (1.1) and (2), on application by a party to the proceeding, the following shall be tried by a jury:

- (a) an action for defamation, false imprisonment, malicious prosecution, seduction or breach of promise for marriage,
- (b) an action founded on any tort or contract in which the amount claimed exceeds an amount prescribed by regulation, or
- (c) an action for the recovery of property the value of which exceeds an amount prescribed by regulation.

(1.1) If, on an application made under subsection (1) or on a subsequent application, a judge considers it appropriate, the judge may direct that the proceeding be tried pursuant to the summary trial procedure set out in the *Alberta Rules of Court*.

(2) If, on a motion for directions or on a subsequent application, it appears that the trial might involve

- (a) a prolonged examination of documents or accounts, or
 - (b) a scientific or long investigation,
- that in the opinion of a judge cannot conveniently be made by a jury, the judge may, notwithstanding that the proceeding has been directed to be tried by a jury, direct that the proceeding be tried without a jury.

(3) In this section, “proceeding” includes a counterclaim.

Deposit for a jury

8.3(1) When the Chief Justice grants a request for a jury trial, the party who made the request must, unless otherwise ordered, within 10 days after the date the request was granted, deposit with the court clerk a sum of money that the court clerk considers sufficient to pay the jury’s expenses, and if that sum is insufficient, on notice from the court clerk, pay any further sum that the court clerk determines in accordance with Schedule B [*Court Fees and Witness and Other Allowances*].

(2) Any money remaining after the court clerk pays the jury’s expenses must be returned to the person who paid it.

(3) If the deposit for jury expenses is not paid, the trial must proceed without a jury, unless the Chief Justice otherwise orders.

Division 2
Scheduling of Trial Dates

Trial date: scheduled by court clerk

8.4(1) The parties may, in the prescribed form, request the court clerk to schedule a date for trial.

(2) The request must contain at least the following information, unless otherwise directed by the court:

- (a) the anticipated number of witnesses, including the number of expert witnesses,
- (b) the anticipated length of trial,
- (c) a copy of the pleadings, and particulars if any, for the judge's use at trial,
- (d) if applicable, a direction for trial by jury,
- (e) the certifications required by subrule (3),
- (f) any administrative requirements for the trial, and
- (g) any potential conflict of interest a judge may have and the reasons for it.

(3) The court clerk must schedule a trial date if the parties requesting a trial date comply with subrule (2) and all of the following matters, that is to say the parties must:

- (a) provide
 - (i) a certificate that the parties have participated in at least one of the dispute resolution processes described in rule 4.16(1) [*Dispute resolution processes*], or
 - (ii) a copy of an order made under 4.16(2) [*Dispute resolution processes*] waiving the dispute resolution process requirement,
- (b) certify that questioning under Part 5 [*Disclosure of Information*] is complete,
- (c) certify that any expert reports have been exchanged and the process described in Part 5 [*Disclosure of Information*] Division 2 [*Experts and Expert Reports*]

Alberta Rules of Court

Part 8: Trial

including questioning of experts, is complete,

- (d) certify that any medical examination and report under Part 5 [*Disclosure of Information*] Division 3 [*Medical Examinations by Health Care Professionals*] is complete,
- (e) certify that any undertaking given by a person questioned under Part 5 [*Disclosure of Information*] has been discharged,
- (f) certify that they will be ready for trial by a specified date,
- (g) in the case of a jury trial, certify that the deposit required under rule 8.3 [*Deposit for a jury*] has been paid,
- (h) certify that all amendments to pleadings have been filed and served, and
- (i) certify that all applications related to the action have been disposed of and no other pre-trial steps are required.

(4) If the court clerk is satisfied that subrules (2) and (3) have been complied with the court clerk must schedule a trial date.

(5) If the parties cannot certify as to the matters referred to in subrule (3), but are satisfied that the matter will be completed or undertaking discharged in a timely way, the parties must so disclose and may request the court clerk to schedule a trial date.

(6) If the court clerk is satisfied that the parties will or should be ready by the proposed trial date, the court clerk may schedule a trial date, but if the court clerk is in doubt about any matter the court clerk must refer the matter to a judge for directions or decision.

Trial date: scheduled by the court

8.5(1) On application, the court may set a trial date or direct the court clerk to do so if

- (a) the court
 - (i) is satisfied that the parties have participated in at least one of the dispute resolution processes described in rule 4.16(1) [*Dispute resolution processes*];

Alberta Rules of Court

Part 8: Trial

- (ii) has granted an order under rule 4.16(2) [*Dispute resolution processes*] waiving the dispute resolution process requirement;
 - (iii) grants an order under rule 4.16(2) in the course of an application under this rule,
- (b) the court has all the information described in rule 8.4(2) [*Trial date: scheduled by court clerk*] except for the certifications referred to in rule 8.4 (2)(e),
- (c) with respect to the certification of matters referred to in rule 8.4(3), the court
 - (i) receives the necessary certifications,
 - (ii) has sufficient information to schedule a trial date without one or more certifications, or
 - (iii) gives directions as required and is satisfied that a trial date should be set, and
- (d) the court is satisfied that the parties will or should be ready for trial by the proposed trial date.

(2) The court may make any procedural order to expedite or facilitate the activities necessary to meet or to obtain a trial date.

Notice of trial date

8.6(1) When the court clerk or the court sets a trial date, the court clerk must give notice to every party, in the prescribed form, of the date, place and duration set for the trial.

(2) A trial for which a trial date has been scheduled may not be adjourned or abandoned unless

- (a) a notice of discontinuance of the action has been filed,
- (b) a memorandum of settlement of the action, signed by the parties, has been filed, or
- (c) the court permits.

Alberta Rules of Court

Part 8: Trial

(3) A trial date and the period of time scheduled for the trial may only be changed with the court's permission.

(4) Subrules (2) and (3) apply whether or not the parties consent to an adjournment or to a change in the duration of a trial.

Confirmation of trial date

8.7(1) Three months or more before the scheduled trial date, each party must

- (a) confirm to the court, in the prescribed form, that they will be ready to proceed with the trial on the scheduled trial date, and
- (b) verify or modify the estimated number of witnesses and the estimated length of trial.

(2) If a party proposes an increase in the period of time for the trial the court clerk may confirm the original trial dates or schedule a new date to accommodate the increased period of time required.

(3) If only one party confirms trial readiness, the scheduled date for the trial remains, unless the court otherwise orders.

(4) If no party confirms trial readiness, the trial date is cancelled.

Division 3

Attendance of Witnesses at Trial

Notice to attend as witness at trial

8.8(1) A party may serve notice in the prescribed form on any person, including a party, to give evidence at trial.

(2) If a person served with notice to attend is represented by a lawyer, the notice must also be served on the lawyer.

(3) The notice must be served 20 days or more before the trial date and

Alberta Rules of Court

Part 8: Trial

- (a) must state the date, time and place and the period during which the person must attend, and
 - (b) may require the person to bring with them any records that the person could be required to produce at trial.
- (4) The notice to attend must be served in accordance with a method of service for commencement documents described in Part 11 [*Service of Documents*].
- (5) Unless these rules otherwise require or the court otherwise orders, the notice must be accompanied by an allowance determined in accordance with Schedule B [*Court Fees and Witness and Other Allowances*] or the allowance must be delivered to the person required to attend, or to a representative of the person, 10 days or more before the trial date.

Requiring attendance of witnesses

8.9(1) The court may order a person to attend trial as a witness, or direct a peace officer to apprehend a person anywhere in Alberta, if the court is satisfied that

- (a) rule 8.8 [*Notice to attend as witness at trial*] was complied with by proper service of the notice to attend and payment of an allowance, both of which may be proved by an affidavit,
 - (b) the person did not attend or remain in attendance at the trial in accordance with the notice, and
 - (c) the presence of the person is necessary.
- (2) The court may order one or more of the following:
- (a) that the person be brought immediately, or at a time specified, before the court or before a person named by the court;
 - (b) that the person bring records described in the order that the person could be required to produce at trial;
 - (c) that the person be detained in custody in accordance with the order until the presence of the person is no longer required;

- (d) that the person be released on a recognizance, with or without sureties, on condition that the person appear as ordered, for a specified purpose;
- (e) anything else necessary to ensure the attendance of the person and production of the records ordered to be produced.

Information note

Note that under rule 10.50 [*Declaration of civil contempt*] the court may only impose a sanction under that rule if the court order is served in the same way that a commencement document is to be served.

Division 4
Procedure at Trial

Order of presentation

8.10(1) Unless the court directs otherwise, the order of presentation at a trial is as follows:

- (a) the plaintiff may make one opening statement and, subject to clause (b), must then adduce evidence;
- (b) a defendant may make one opening statement immediately after the plaintiff's opening statement and before the plaintiff adduces evidence or at the conclusion of the plaintiff's evidence;
- (c) when the plaintiff's evidence is concluded, the defendant may make an opening statement if the defendant has not already done so following the plaintiff's opening statement, and the defendant must then adduce evidence, if any;
- (d) when the defendant's evidence is concluded, the plaintiff may make a closing statement, followed by the defendant's closing statement, after which the plaintiff may reply;
- (e) if a defendant adduces no evidence after the conclusion of the plaintiff's evidence, the plaintiff may make a closing statement, followed by the defendant's closing statement, following which the plaintiff may reply.

Alberta Rules of Court

Part 8: Trial

(2) If the burden of proof for all matters in issue in the action is on the defendant, the judge may direct a different order of presentation.

(3) If there are 2 or more plaintiff's or 2 or more defendants separately represented, the judge must determine the order of presentation.

Absence of witnesses at trial

8.11(1) If a person is served with notice to attend at trial as a witness, with or without records, does not do so, the court may

- (a) give judgment or make an order against the party whose witness does not attend, or
- (b) adjourn the trial.

(2) If a person who is served with notice to attend at trial, with or without records, does not do so, the court may

- (a) continue the trial in the absence of the witness, or
- (b) adjourn the trial.

Exclusion of witnesses

8.12(1) Subject to subrule (2), the court may exclude a witness from the courtroom, other than a party who may be called as a witness, until called to give evidence.

(2) A witness whose presence is essential to instruct a lawyer in a trial may not be excluded from the courtroom, but the judge may require that witness to give evidence before any other witnesses are called.

(3) Nothing in this rule prevents the judge from excluding from the courtroom any person who interferes with the trial.

No communication with excluded witnesses

8.13(1) If a witness is excluded from the courtroom, no person may communicate with the witness about evidence given at trial during the time that the witness is excluded, except with permission of the judge.

(2) If there is communication with a witness contrary to subrule (1), the court may strike out or disregard all or part of the evidence of the witness or prohibit the witness from giving evidence.

Unavailable or unwilling witness

8.14(1) Subject to subrules (2) and (3), a party may, with the judge's permission, read into evidence all or part of the evidence given at questioning conducted under Part 5 [*Disclosure of Information*] as the evidence of the person questioned, to the extent that it would be admissible if the person were giving evidence in court, and if the person questioned

- (a) is dead,
- (b) is unable to give evidence before the court because of accident, ill health or disability,
- (c) refuses to take an oath or to answer proper questions, or
- (d) for any other sufficient reason cannot be required to attend at the trial.

(2) Before deciding whether to give permission, the judge must consider

- (a) the general principle that evidence should be presented orally in court,
- (b) how thoroughly the person was questioned under Part 5 [*Disclosure of Information*], and
- (c) any other appropriate factor.

(3) The trial judge may grant permission under this rule only if

- (a) the fact or facts sought to be proved through the questioning under Part 5 [*Disclosure of Information*] are important aspects of the party's case,

- (b) the fact or facts cannot be proved in any other manner, and
- (c) the permission is restricted to the portion or portions of the questioning which relate to the fact or facts.

Information note

See rule 5.31 [*Use of transcript and answers to written questions*] for when transcript evidence may be used.

Notice of persons not intended to be called as witnesses

8.15(1) When an adverse inference might be drawn from the failure of a party to call a witness, that party may serve on every other party a notice of the names of those persons that the party does not intend to call as witnesses.

(2) The notice must be served one month or more before the date the trial is scheduled to start.

(3) The party on whom the notice is served may serve on the other party, within 10 days after service of the notice, a statement setting out any objection to the intention not to call a witness.

(4) If the party on whom the notice is served does not respond to the notice of intention not to call a person, the failure to call that person as a witness is not to be considered to be adverse to the case of the party who served the notice.

(5) When a party objects to the notice of intention not to call a person, the cost of calling that person must be paid by the party who objects, regardless of the result of the claim, issue or question, unless the court decides that the objection is reasonable.

Number of experts

8.16(1) Unless the court otherwise permits, no more than one expert is permitted to give opinion evidence on any one subject on behalf of a party.

Alberta Rules of Court

Part 8: Trial

(2) If 2 or more corporate parties are affiliates within the meaning of the term *affiliate* in the *Business Corporations Act*, and the corporate parties cannot agree, the court may direct which of the corporate parties may call an expert witness.

Proving facts

8.17(1) A fact to be proved at trial by the evidence of a witness must be proved by questioning the witness in court, unless

- (a) these rules or an enactment otherwise requires or permits,
- (b) the parties agree to that fact, or
- (c) the court otherwise orders.

(2) The court may not order that a fact be proved by affidavit evidence of a witness if

- (a) a party, for good reason, wishes to cross-examine the witness, and
- (b) the witness can be required to attend the trial.

(3) Evidence taken in any other action may be presented at trial but only if the party proposing to submit the evidence gives every other party written notice of their intention 5 days or more before the trial is scheduled to start, and obtains the court's permission to submit the evidence.

Information note

Rule 5.31 [*Use of transcript and answers to written questions*] is an example of when a rule permits transcript evidence to be used.

Trial conducted by electronic hearings

8.18 On application under rule 6.11 [*Electronic hearings*], the court may permit an electronic hearing.

Use of trial evidence in subsequent proceedings

8.19 Evidence at trial may be used in a subsequent application or subsequent proceedings in that action.

Application for dismissal at close of plaintiff's case

8.20 At the close of the plaintiff's case, the defendant may request the court to dismiss the action on the ground that no case has been made, without being asked to elect whether evidence will be called.

Retrials

8.21(1) The court may order that a claim be retried if the jury

- (a) is unable to reach a verdict,
- (b) does not answer any question put to it or only some of them, or
- (c) gives conflicting answers to questions so that judgment cannot be pronounced.

(2) If answers given by a jury entitle a party to judgment on some but not all claims, the court may order judgment to be entered in respect of those claims for which answers are given.

Continuing trial without jury

8.22(1) If for any reason other than the misconduct of a party or the party's lawyer a jury trial would be retried, the court, with the agreement of all parties, may continue the trial without a jury.

(2) If the misconduct of a party or the party's lawyer during a jury trial could cause a retrial, the court with the agreement of every party adverse in interest to the party whose conduct or whose lawyer's conduct is complained of, may continue the trial without a jury.

Judgment after jury trial

8.23(1) When considering an application for judgment following a jury trial, the court may

- (a) pronounce judgment, or
- (b) make any order it considers necessary to obtain the information to pronounce judgment.

(2) In pronouncing judgment, the court may draw inferences of fact that are not inconsistent with the jury's findings.

Accidents and mistakes

8.24(1) If by an accident, mistake or other cause a party does not prove a fact or record important to their case the court may

- (a) proceed with the trial subject to the fact or record being proved as ordered by the court;
- (b) if the action is being tried by a jury, make an order under subrule (2).

(2) The court may

- (a) adjourn the jury sittings, or
- (b) if the fact or record is one formal proof of which could not seriously be challenged,
 - (i) the court may direct the jury to find a verdict as if the fact or record had been proved, and
 - (ii) the jury's verdict then takes effect when the fact or record is proved before the court.

(3) If a fact or record is not proved under subrule (2)(b)(ii), judgment must be entered for the opposite party, unless the court otherwise orders.

(4) The court may make a costs award with respect to any issue arising or as a result of the

operation of this rule.

PART 9: JUDGMENTS AND ORDERS

What this Part is about: This Part describes how judgments and court orders are prepared, how they can be corrected, varied or set aside, and rules applying to civil enforcement agencies. This Part also includes rules for how abandoned goods are to be dealt with and deals with how judgments and orders from jurisdictions outside Alberta may be registered in the court.

PART 9: JUDGMENTS AND ORDERS

	Starts at rule #
Division 1: Preparation and Entry of Judgments and Orders.....	9.1
Division 2: Determination of Damages, Judgment in Counterclaims and Judgment Against Beneficiaries.....	9.9
Division 3: Corrections, Further Orders, Setting Aside, Varying and Discharging Judgments and Orders.....	9.12
Division 4: Enforcement of Judgments and Orders.	9.17
Division 5: Foreclosure Actions.....	9.30
Division 6: Sale and Disposition of Land Other than by a Foreclosure Action.	9.37
Division 7: Reciprocal Enforcement of United Kingdom Judgments.	9.40
Division 8: Registration of Judgments under the <i>Reciprocal Enforcement of Judgments Act</i>.....	9.50

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include:

- | | |
|----------------------------|---------------------------|
| • assessment officer | • lawyer |
| • civil enforcement agency | • master |
| • claim | • order |
| • commencement document | • partnership |
| • court | • party |
| • court clerk | • personal representative |
| • defendant | • plaintiff |
| • enactment | • prescribed form |
| • encumbrance | • procedural order |
| • file | • property |
| • foreclosure action | • record |
| • foreclosure order | • redemption order |
| • judge | • remedy |
| • judgment | • rules |
| • judgment creditor | • secured land |
| • judgment debtor | • secured property |
| • land | • trustee |

PART 9: JUDGMENTS AND ORDERS

Division 1 Preparation and Entry of Judgments and Orders

Form of judgments and orders

9.1(1) Judgments and orders must be divided into paragraphs, consecutively numbered.

(2) Every judgment and order must include

- (a) the date on which it was pronounced,
- (b) the name of the master or judge who made it, and
- (c) the date of entry.

Preparation of judgments and orders

9.2(1) The court may direct which party is to prepare a draft of the judgment or order pronounced by the court, but if the court does not do so, the successful party is responsible for preparing the draft.

(2) The following rules apply, unless the court otherwise orders:

- (a) within 10 days after the judgment or order being pronounced, the responsible party must prepare a draft of the judgment or order in accordance with the court's pronouncement and serve it on every party in attendance at the hearing, but if the responsible party does not prepare the draft then any other party may do so;
- (b) within 10 days after the draft order or judgment being served, each party served may
 - (i) approve the draft, or
 - (ii) object to the draft and apply to the court to settle the judgment or order;

Alberta Rules of Court

Part 9: Judgments and Orders

- (c) if a party does not approve or object to the draft judgment or order within the 10 days described in clause (b), but all other requirements are met, and service of the draft judgment or order is proved, the judgment or order may be signed and entered.

Information note

Rule 9.5(2) [*Entry of judgments and orders*] requires judgments and orders to be entered within 3 months after pronouncement, unless the court otherwise permits.

Dispute over content of judgment or order

9.3 If there is a dispute about the content of a judgment or order, the disputants may apply to the court to resolve the dispute.

Signing judgments and orders

9.4(1) A judge or master may sign a judgment or order when it is pronounced.

(2) If a judge or master does not sign a judgment or order when it is pronounced, the court clerk may sign the judgment or order in any of the following circumstances:

- (a) in a proceeding in which a party adverse in interest did not attend;
- (b) if the party adverse in interest has approved the form of the judgment or order or waives approval of its form;
- (c) if the court directs that approval of the form of the judgment or order by a party is not required;
- (d) if the court directs the court clerk to sign the judgment or order.

(3) In any circumstance other than those described in subrule (2), the judge or master must sign a judgment or order.

Alberta Rules of Court

Part 9: Judgments and Orders

Entry of judgments and orders

9.5(1) Subject to subrule (2), every judgment and every order is entered by filing it with the court clerk who must make a note in the court file of the entry and the date of entry.

(2) A judgment or order is not to be entered more than 3 months after it is pronounced without the court's permission, which may only be obtained on application and after notice is served on every other party.

Information note

Rule 3.7 [*Enforcement proceedings in another judicial centre*] provides for filing a certified copy of a judgment or order in another judicial centre and then enforcement proceeding may be taken in that other judicial centre.

Effective date of judgments and orders

9.6 Every judgment and every order, whether or not it has been entered, comes into effect on

- (a) the date of pronouncement, or
- (b) if the court orders the judgment or order to come into effect before or after the date of pronouncement, the judgment or order comes into effect on the date so ordered.

Certified copies

9.7(1) On entry of a judgment or order, the court clerk must, without additional charge, certify a copy of it for the party who enters the judgment or order.

(2) A certified copy of a judgment or order under the seal of the court has the same effect as the original.

Alberta Rules of Court

Part 9: Judgments and Orders

Service of judgments and orders

9.8 Unless otherwise provided in the rules or the court otherwise orders, the party who enters the judgment or order must serve a copy of the entered judgment or order on every other party.

Division 2
Determination of Damages, Judgment in Counterclaims
and Judgment Against Beneficiaries

Determining damages

9.9 The court must determine damages for a continuing claim to the time the court makes its determination of the amount.

Judgment for balance on counterclaim

9.10 The court may give judgment for the balance of money to be paid by one party to the other when determining a counterclaim.

Judgment against beneficiaries

9.11 A personal representative or trustee entitled to a judgment or order for the administration of an estate or the execution of a trust may have the judgment or order made against any person beneficially interested in the estate or trust.

Information note

If a party dies before judgment but after all evidence is heard, rule 4.35 [*Death has no effect on an action after evidence heard*] applies.

Division 3
Corrections, Further Orders, Setting Aside,
Varying and Discharging Judgments and Orders

Correcting mistakes or errors

9.12 On application, the court may correct a mistake or error in a judgment or order arising from an accident, slip or omission.

Re-opening a case

9.13 At any time before an order or judgment is entered, the court may

- (a) vary the order or judgment, or
- (b) on application, and if the court is satisfied there is good reason to do so, hear more evidence and change or modify its order or judgment or reasons for it.

Further or other order after judgment or order entered

9.14 On application, the court may, after an order or judgment has been entered, make any further or other order that is required, if

- (a) doing so does not require the original judgment or order to be varied, and
- (b) the further or other order is needed to provide a remedy to which a party is entitled.

Information note

If an application is made under this rule, note that rule 6.3(1)(a) [*Applications generally*] provides for an application to be made after judgment.

Alberta Rules of Court

Part 9: Judgments and Orders

Setting aside, varying and discharging judgments and orders

9.15(1) On application, the court may set aside, vary or discharge an order, whether final or interlocutory, or a judgment, that was made

- (a) without notice to one or more parties, or
- (b) following a trial or hearing at which a party did not appear because of an accident, mistake or because of insufficient notice of the trial or hearing.

(2) Unless the court otherwise orders, the application must be made within 20 days after the earlier of

- (a) the service of the order or judgment on the applicant, or
- (b) the date the order or judgment first came to the applicant's attention.

(3) The court may vary, discharge or set aside a judgment in default of defence on any terms the court considers just.

(4) The court may set aside, vary or discharge an interlocutory order

- (a) because information arose or was discovered after the order was made,
- (b) with the agreement of every party, or
- (c) on other grounds that the court considers just.

By whom applications are to be decided

9.16(1) An application under rule 9.12 [*Correcting mistakes or errors*], rule 9.13 [*Re-opening a case*], rule 9.14 [*Further or other order after judgment or order entered*] or rule 9.15 [*Setting aside, varying and discharging judgments and orders*] must be decided by the judge or master who granted the original judgment or order, unless the court otherwise orders.

(2) An application for judgment against a party noted in default may be made to any judge.

(3) An application to set aside, vary or discharge a default judgment may be made to any judge.

Alberta Rules of Court**Part 9: Judgments and Orders**

Information note

For judgments against parties noted in default, see Part 3 [*Court Actions*].

Division 4
Enforcement of Judgments and Orders**Enforcement: orders for payment, and judgments for payment into court**

9.17(1) An order may be enforced in any manner in which a judgment may be enforced.

(2) A judgment for the payment of money into court may be enforced in any manner in which a judgment for the payment of money to a person may be enforced.

Information note

After a judgment or order has been entered in a judicial centre, a judgment creditor may file a certified copy in another judicial centre and then enforce the judgment or order in that centre (see rule 3.7 [*Enforcement proceedings in another judicial centre*]).

Judgments and orders subject to conditions

9.18(1) If a judgment or an order is made subject to conditions, a party may not do anything further in the action until

- (a) the conditions have been met, or
- (b) the court so permits.

(2) An application to do anything further may be filed without notice to any other party unless the court otherwise orders.

Alberta Rules of Court

Part 9: Judgments and Orders

Persons who are not parties

9.19 If a person is not a party to an action but

- (a) the person obtains an order or an order is obtained in the person's favour, the person may enforce the order in the same manner as if the person were a party to the action, or
- (b) the person is subject to a judgment or order granted in respect of that action, the judgment or order may be enforced against the person in the same manner as if the person were a party to the action.

Time a writ remains in force

9.20 Unless an enactment otherwise provides, and except for the purpose of the enactment, a writ remains in force as long as the judgment or order under which the writ was issued is in force.

Application for new judgment or order

9.21(1) On application, the court may grant a judgment creditor a new judgment or order on a former judgment or any part of it that has not been paid.

(2) The application must require the judgment debtor to show cause why a new judgment or order should not be granted.

(3) Notice of the application must

- (a) be filed before the expiry of the limitation period under the *Limitations Act* for an action on the judgment, and
- (b) be served on the judgment debtor by the same method by which a commencement document must be served.

(4) An application under this rule is an application in the original action.

Alberta Rules of Court**Part 9: Judgments and Orders**

(5) If the judgment debtor does not appear at the hearing of the application the court may grant the judgment creditor a new judgment or order for the amount due and costs, if the court is satisfied that

- (a) notice of the application was served on the judgment debtor, and
- (b) the amount has not been paid under the original judgment or order.

(6) If the judgment debtor opposes the judgment creditor's application in whole or in part, the court may

- (a) give directions for the trial of an issue, and
- (b) make any procedural order considered necessary.

Information note

The method of service for commencement documents (see rule 9.21(3)(b) above) is set out in Part 11 [*Service of Documents*] Division 2 [*Service of Commencement Documents in Alberta*].

Application that judgment or order has been satisfied

9.22(1) On application, the court may make an order that a judgment or order has been satisfied.

(2) The application must be

- (a) in the prescribed form,
- (b) filed, and
- (c) served on the parties affected by the same method of service as for a commencement document.

Alberta Rules of Court**Part 9: Judgments and Orders**

(3) The court clerk must include in the court file a memorandum that a judgment or order has been satisfied if

- (a) the court so orders, or
- (b) the judgment creditor or their lawyer acknowledges in writing that the judgment or order has been satisfied.

Enforcement against partners' and partnership property

9.23(1) A judgment or order against a partnership using the partnership name may be enforced against the partnership's property.

(2) A judgment or order against a partnership using the partnership name may also be enforced, if the judgment or order or a subsequent judgment or order so provides, against a person who was served with a notice under rule 2.3 [*Suing individual partners*] and who, at the time specified in the notice,

- (a) is presumed to be a partner under rule 2.3 [*Suing individual partners*],
- (b) admits to being a partner, or
- (c) is adjudged to be a partner.

(3) If after a judgment or order has been made against a partnership using the partnership name the party obtaining it claims to be entitled to enforce it against a person alleged to be a partner who was not served in accordance with rule 2.3(1) [*Suing individual partners*], the party may apply to the court to enforce the order or judgment against the alleged partner, and even though no notice was served under rule 2.3(1), the court may permit the party to enforce the judgment or order

- (a) if liability of the person as a partner is not disputed, or
- (b) if liability is disputed, after the liability has been determined in the manner directed by the court.

Alberta Rules of Court

Part 9: Judgments and Orders

Fraudulent preferences and fraudulent conveyances

9.24(1) If a judgment creditor claims to be entitled to relief under the *Fraudulent Preferences Act* or under the *Fraudulent Conveyances Statute*, 13 Eliz. I, Chapter 5 (U.K.), on application by the judgment creditor, the court may order property or part of property to be sold to pay the amount to be collected under a writ of enforcement.

(2) Notice of the application must be served on

- (a) the judgment debtor, and
- (b) the person to whom it is alleged the property was conveyed.

(3) If a transfer or conveyance is made to defeat, defraud or hinder the rights of a judgment creditor, the judgment creditor, for the purpose of obtaining an order under subrule (1), need not have obtained judgment at the time of the impugned transfer or conveyance.

Information note

The application in this rule must be made in an action started by statement of claim.

Order of possession of land

9.25(1) This rule applies when a judgment or order of possession orders a person to give up possession of land to another person.

(2) A judgment or order of possession must include a statement to the effect that a civil enforcement agency has authority, after service of the order has been effected, to evict any occupant of the land.

(3) Unless the court otherwise orders, the judgment or order of possession must be served by a civil enforcement agency on every person in possession of the land.

Alberta Rules of Court

Part 9: Judgments and Orders

Information note

The court may impose terms and conditions on its orders under rule 1.4 [*Procedural orders*].

Authority to evict occupants

9.26(1) A civil enforcement agency has authority to evict a person from land the person occupies

- (a) only in accordance with a judgment or order of possession, and
- (b) unless the court otherwise orders, only after
 - (i) the judgment or order has been served on every person in occupation of the land, and
 - (ii) an affidavit of service has been filed by the person who has the judgment or order of possession.

(2) If a judgment or order of possession is stayed while payments are being made in accordance with the judgment or order granting the stay, the judgment or order may not, unless the court otherwise orders, subsequently be enforced until notice of default is served on every person in possession of the land.

Removal, storage and sale of personal property

9.27(1) For the purpose of enforcing a judgment or order of possession in respect of any premises, it is not necessary to remove personal property from the premises.

(2) If a civil enforcement agency removes and stores any personal property in connection with the enforcement of a judgment or order of possession, the owner of the personal property may, on the written authorization of the civil enforcement agency, obtain the personal property from storage by

- (a) paying to the civil enforcement agency the costs, including transportation and storage costs, that were paid by the civil enforcement agency or by the person on whose behalf the judgment or order of possession was enforced, and

Alberta Rules of Court**Part 9: Judgments and Orders**

- (b) paying to the person storing the personal property any further outstanding storage charges.

(3) If personal property is sold in accordance with an order made under an enactment, the proceeds of sale must be applied as follows:

- (a) first, to pay the costs of the sale;
- (b) second, to pay storage, transportation and other costs incurred in removing and storing the personal property and filing the application for the order for sale;
- (c) third, unless the court otherwise orders or an enactment otherwise provides, to pay the balance to the owner of the personal property.

Abandoned goods

9.28(1) In this rule,

abandoned goods means personal property left on land or at premises by a person who has

- (a) been evicted from the land or premises by a civil enforcement agency, or
- (b) vacated the land or premises as a result of a judgment or order of possession;

judgment holder means a person who has a judgment or order of possession.

(2) A judgment holder may dispose of abandoned goods if the judgment holder believes on reasonable grounds that the abandoned goods have a market value of less than \$ 2000.

(3) Even though abandoned goods have a market value of \$ 2000 or more, a judgment holder may sell the goods by a means and for a price that the judgment holder believes is reasonable, if the judgment holder believes on reasonable grounds that

- (a) storing the abandoned goods would be unsanitary or unsafe or would rapidly result in total or substantial depreciation of the market value of the goods, or
- (b) the cost of removing, storing and selling the goods would exceed the proceeds of their sale.

Alberta Rules of Court**Part 9: Judgments and Orders**

- (4)** If subrules (2) and (3) do not apply, the judgment holder
- (a) must store or arrange for storage of the abandoned goods on behalf of the owner or person entitled to possession for one month after the date of their abandonment, and
 - (b) after the one month has expired, may dispose of the goods by public auction or, with the approval of the court, by private sale.
- (5)** If no bid is received for the abandoned goods at a public auction held under subrule (4)(b), the judgment holder may dispose of the goods.
- (6)** No liability attaches to a person for
- (a) selling abandoned goods under subrule (3) or (4)(b), or
 - (b) disposing of abandoned goods under subrule (2) or (5).
- (7)** If abandoned goods are disposed of or sold under this rule, the person acquiring the goods on the disposal or sale acquires the interest of the owner or person entitled to possess those goods and the interest of any other person in those goods is extinguished.
- (8)** A judgment holder must give up possession of abandoned goods to the person entitled to them on payment of the cost of removing and storing them.
- (9)** A judgment holder
- (a) may apply the proceeds of any sale of abandoned goods to
 - (i) the judgment holder's cost of removing, storing and selling the goods, and
 - (ii) satisfy the judgment debtor's liability to the judgment holder, and
 - (b) must pay the surplus of the proceeds of sale after payment under clause (a), if any, to the Crown in right of Alberta.
- (10)** The Minister of Finance must retain the surplus on behalf of the judgment debtor for one year and if the judgment debtor has not claimed it within the one year period, pay the surplus into the General Revenue Fund.

Alberta Rules of Court**Part 9: Judgments and Orders**

(11) On payment of the surplus into the General Revenue Fund the judgment debtor's claim to the surplus is extinguished.

(12) A judgment holder must keep a record of the storage and disposition or sale of abandoned goods under this rule including

- (a) a description of the goods,
- (b) the period for which the goods were stored and the location,
- (c) when subrule (8) applies, the costs claimed by the judgment holder and the date on which the goods were returned to the person entitled to them,
- (d) if the goods are sold, the particulars of the sale, the amount claimed by the judgment holder under subrule (9) and the amount, if any, paid to the Crown under this rule, and
- (e) if the goods are neither returned to the person entitled to them nor sold, the manner in which they were disposed of.

(13) A judgment holder must keep a record referred to in subrule (12) as it relates to abandoned goods for at least 3 years after the goods were returned, sold or disposed of, as the case may be.

(14) The court may make an order contrary to or varying any provision of this rule.

Questioning a person to assist in enforcement

9.29(1) To enforce or assist in the enforcement of a judgment or order, the court, on application, may order a person to attend before a person named by the court, to be questioned under oath about a matter in the judgment or order.

(2) The rules related to questioning under Part 5 [*Disclosure of Information*] apply to questioning conducted in accordance with an order made under this rule.

Division 5
Foreclosure Actions

When an affidavit of value must be filed

9.30 Unless the court otherwise orders, an affidavit of value must be filed before an application is filed for

- (a) a redemption order,
- (b) an order that secured property be offered for sale,
- (c) a foreclosure order,
- (d) an order confirming sale to the plaintiff or other person, or
- (e) an order for possession, but not a preservation order.

Other material to be filed

9.31 Before an application is filed for a redemption order, an order that secured property be offered for sale, a foreclosure order, an order confirming sale, an order for sale to the plaintiff or an order appointing a receiver, the plaintiff must file

- (a) a certified copy of all the current titles to the secured land, and
- (b) if the secured property includes chattels, the result of a current Personal Property Registry search of each of the names of the registered owners of the secured land, or the purchasers of the secured land in the case of an agreement for sale.

Offer for sale of secured property

9.32(1) The court may offer secured property for sale at a time and place, in a manner, and at a price, that the court considers appropriate.

(2) If the court orders that secured property be listed with a realtor, a listing agreement approved by the court must, unless the court otherwise orders, be appended to and forms part of the order granted.

Alberta Rules of Court

Part 9: Judgments and Orders

Sale to the plaintiff

9.33(1) If a plaintiff seeks an order selling secured property to the plaintiff and section 40(2) of the *Law of Property Act* does not apply, the court must consider whether a public sale should be attempted before the plaintiff's application is heard.

(2) The court must consider at least the following factors:

- (a) the nature of the secured property;
- (b) the value of the secured property;
- (c) the existing market for the secured property;
- (d) the amount owed on the plaintiff's security against the secured property;
- (e) the amount owed for prior charges against the secured property, including prior encumbrances, municipal taxes and condominium assessments.

(3) In granting an order selling the secured property to a plaintiff who has made an offer or tender on the secured property, the court must consider, in addition to the factors in subrule (2), all offers or tenders made with respect to the secured property.

(4) In granting an order selling the secured property to a plaintiff who has not made an offer or tender on the secured property or whose tender has been rejected, the court must determine the fair value at which the plaintiff may purchase the secured property.

Order confirming sale

9.34(1) If the court orders that secured property be offered for sale by tenders filed in court and a tender is filed, the plaintiff must apply for either or both of the following:

- (a) an order confirming sale;
- (b) an order rejecting tenders and directing the return of the deposits paid in respect of the rejected tenders.

(2) The application must be scheduled for hearing not more than one month after the date set for the receipt of tenders.

Alberta Rules of Court**Part 9: Judgments and Orders**

(3) On granting an order confirming sale, the court may provide any direction that the court considers appropriate to facilitate closing the sale.

(4) Unless the order states that this subrule does not apply, an order confirming sale must state that the Registrar of Land Titles must not register the order without accompanying evidence of payment of the amount, if any, which the court orders to be paid, and that evidence may be

- (a) a certificate of the court clerk that the payment ordered has been paid into court, or
- (b) written confirmation by the plaintiff's lawyer that the plaintiff has received the payment ordered.

Checking calculations: assessment of costs and corrections

9.35(1) When in a foreclosure action the court grants an order declaring the balance owing to the plaintiff, an order for sale to the plaintiff, an order confirming sale, or grants judgment against any party, then, before entry of the order,

- (a) the plaintiff must, unless otherwise ordered by the court, file and serve on every defendant and subsequent encumbrancer any of the following documents that are applicable
 - (i) a statement of the secured indebtedness;
 - (ii) a statement of money received and disbursed in the sale;
 - (iii) a calculation of any deficiency, if a deficiency judgment or declaration of a deficiency is ordered;
 - (iv) a bill of costs under rule 10.33(2) [*Preparation of bill of costs*];
 - (v) the proposed form of order,

together with a notice to every defendant and subsequent encumbrancer that if they consider any of the applicable documents to contain an error they may file and serve on the plaintiff a written submission in the prescribed form before a date specified in the notice;

- (b) the assessment officer must assess the reasonable and proper costs under rule

Alberta Rules of Court

Part 9: Judgments and Orders

10.39 [*Assessment officer's decision*], unless otherwise ordered by the court, and

- (c) the assessment officer must
 - (i) check the plaintiff's calculations,
 - (ii) review any submission by a defendant or subsequent encumbrancer,
 - (iii) correct the amounts in the order, if necessary,
 - (iv) sign the order as court clerk, and
 - (v) return to the plaintiff or the plaintiff's lawyer the order and a certificate under rule 10.41 [*Certification of costs payable*].

(2) When the order and the certificate have been returned to the plaintiff or the plaintiff's lawyer, the plaintiff may enter the order and file the certified bill of costs.

(3) If the defendant did not appear at the application for the order and the plaintiff disagrees with

- (a) the assessment of the reasonable and proper costs, if done without appearance, or
- (b) the corrections made by the assessment officer under subrule (1)(c)(iii),

the plaintiff may, before entry of the order under subrule (2), appear before or speak to the assessment officer to explain the plaintiff's figures or costs, and the assessment officer may amend or refuse to amend the assessment or corrections.

(4) If the plaintiff is not satisfied with the assessment officer's assessment, whether amended or not, the plaintiff may, before the order is entered re-attend before the master or judge who granted the order for the purpose of settling the costs or for further directions, at which time the plaintiff must provide to the court any corrections, bill of costs, notes or other materials from the assessment officer.

(5) To the extent of any inconsistency with Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions*], this rule prevails.

Alberta Rules of Court

Part 9: Judgments and Orders

Service of certified bill of costs

9.36 The plaintiff must serve the certified bill of costs under rule 10.41 [*Certification of costs payable*] on every defendant and subsequent encumbrancer when the order referred to in rule 9.35(1) [*Checking calculations: assessment of costs and corrections*] is served.

Division 6
Sale and Disposition
of Land Other than by a Foreclosure Action

Application of this Division

9.37 This Division

- (a) is subject to the *Civil Enforcement Act*, and
- (b) does not apply to foreclosure actions.

Sale and disposition of land

9.38(1) If land is to be sold, mortgaged, partitioned or exchanged as a result of an action, the court may make that order and specify the time and place, the manner, and the price or sum associated with the transaction that the court considers appropriate.

(2) If the court is satisfied that all interested parties are before the court or bound by the order, the court may order

- (a) the sale, mortgage, partition or exchange of land, and
- (b) the procedure to be carried out to give effect to the order.

(3) Any money produced as a result of carrying out an order under this rule must

- (a) be paid into court,
- (b) be paid to persons specified in the order, or
- (c) otherwise be dealt with in accordance with the order.

Alberta Rules of Court

Part 9: Judgments and Orders

- (4) If a judgment or order states that land is to be sold,
- (a) the sale must be approved by the court before the sale is completed, and
 - (b) the persons necessary to complete the sale must join the sale and conveyance in accordance with the court's order.

Information note

Rules about payment into court and out of court are contained in Part 12
[*Technical Rules*] Division 7 [*Payment Into Court and Payment Out of Court*].

Terms, conditions and limitations on orders

9.39 In an order under this Division the court may include one or more of the following terms, conditions or directions:

- (a) that a person pay or account for rent or profit, or both, to another person;
- (b) the manner in which the transaction is to be carried out;
- (c) the person or persons who are to carry out or facilitate compliance with the order;
- (d) that any proceeds of the transaction be paid into court or otherwise paid to or disposed of by the court.

Alberta Rules of Court

Part 9: Judgments and Orders

Division 7

Reciprocal Enforcement of United Kingdom Judgments

*(under the Convention Between Canada and the United Kingdom
of Great Britain and Northern Ireland Providing for the
Reciprocal Recognition and Enforcement of Judgments in
Civil and Commercial Matters)*

Definitions

9.40 In this Division,

Act means Part 3 of the *International Conventions Implementation Act* and includes the Convention;

certified copy means the original document or a copy of the document certified as being a true copy by the original or facsimile signature of a proper officer of the foreign court;

Convention means the Convention in Schedule 3 to the Act;

convention judgment, convention judgment creditor, convention judgment debtor and *original court* have the same meaning respectively as *judgment, judgment creditor, judgment debtor*, and *original court* have in the Convention.

Scope

9.41(1) This Division is subject to the Act.

(2) Nothing in this Division affects any other rights, remedies or proceedings provided by law.

(3) The *Alberta Rules of Court* apply to proceedings under this Division, but if this Division does not provide for a matter, the practice, as far as possible, is to be regulated by analogy to other rules in the *Alberta Rules of Court*.

Application to court

9.42(1) A convention judgment creditor may apply to the court by originating application for an order to register a convention judgment.

(2) The application must be brought within the time specified in the Act.

Alberta Rules of Court

Part 9: Judgments and Orders

(3) The originating application and affidavit in support, and notices and documents related to the originating application under this Division must be titled as follows:

In the matter of the International Conventions Implementation Act,

And in the matter of a convention judgment of (describe court) dated . . .

Affidavit in support of application for an order to register a convention judgment

9.43(1) An originating application to register a convention judgment must be supported by an affidavit

- (a) attaching a certified copy of the convention judgment and, where applicable, a translation into English authenticated by affidavit or any other method acceptable to the court,
- (b) stating that the applicant is entitled to enforce the convention judgment and, where applicable, providing full particulars of the entitlement, whether by assignment or otherwise,
- (c) stating in the original currency of the convention judgment
 - (i) the unpaid balance and interest as of a fixed date that is within the 2 months before the date of the originating application, and
 - (ii) the daily interest payable after that fixed date,
- (d) if applicable, stating the provisions of the convention judgment which are sought to be registered,
- (e) attaching proof that the initiating documents were served on the convention judgment debtor in the original application, if the convention judgment debtor was served personally with the originating document in the original action, unless this information appears in the convention judgment,
- (f) stating the manner in which the convention judgment debtor submitted to the jurisdiction of the original court, if the convention judgment debtor appeared, defended, attorned or otherwise submitted to the jurisdiction of the original court,
- (g) listing the reasonable costs of and incidental to registration and certifying that the

Alberta Rules of Court**Part 9: Judgments and Orders**

applicant has incurred, is liable to pay or is otherwise entitled to collect them, as the case may be, and

- (h) containing or attaching any other information or document that the court may require.

(2) An affidavit may contain statements made on the information and belief of the person swearing the affidavit, but must state the source and grounds for the information and belief.

When application can be filed without notice

9.44(1) An application for an order to register a convention judgment debt may be filed without notice to any other party if the convention judgment debtor

- (a) was personally served with the initiating documents in the original action, or
- (b) appeared, defended, attorned or otherwise submitted to the jurisdiction of the original court.

(2) If subrule (1) does not apply, the originating application and affidavit must be served on the convention judgment debtor personally or as the court may otherwise direct.

Order to register convention judgment

9.45(1) On hearing an originating application for an order to register a convention judgment, the court, after considering the Act, may order that the convention judgment be registered for an amount to be calculated under subrule (2).

(2) On presentation of an order referred to in subrule (1) and a copy of the convention judgment, the court clerk must register the convention judgment by

- (a) writing on the copy of the convention judgment
 - (i) the unpaid balance and interest to the date the court clerk registers the convention judgment,
 - (ii) the reasonable costs of and incidental to registration, and

Alberta Rules of Court

Part 9: Judgments and Orders

(iii) the following notation:

*Registered in the Court of Queen's Bench of Alberta on [date]
pursuant to the Order of _____ dated . . .*

and

(b) filing the order made under subrule (1), and the copy of the convention judgment marked in accordance with clause (a).

(3) If necessary the court clerk must convert the amounts referred to in subrule (2) to Canadian currency at the exchange rate prevailing at any branch of any bank.

Information note

Bank is defined in the *Interpretation Act* as “a bank named in Schedule I or II of the *Bank Act* (Canada)”.

Convention judgment debtor's application to set aside

9.46(1) If the court hears an originating application without notice under rule 9.44 [*When application can be filed without notice*] and makes an order granting part or all of the relief claimed, the convention judgment debtor may, within 2 months after being served with the order and registered convention judgment, apply to the court to set aside that order and the registration of the convention judgment.

(2) The time period set out in subrule (1) may not be extended under rule 12.5 [*Variation of time periods*].

(3) After hearing an originating application under this rule, the court may make any order it thinks fit that is consistent with this Division.

(4) An order under this rule may be appealed to the Court of Appeal.

Alberta Rules of Court

Part 9: Judgments and Orders

Convention judgment creditor's appeal

9.47(1) If the court hears an originating application without notice under rule 9.44 [*When application can be filed without notice*] and makes an order refusing to grant part or all of the relief claimed, the convention judgment creditor may appeal the order to the Court of Appeal.

(2) The convention judgment debtor must be a party to an appeal under this rule.

Appeal when order is made on notice

9.48 When the court hears an originating application made on notice the application for which was served on the convention judgment debtor, the convention judgment creditor or the convention judgment debtor may appeal to the Court of Appeal from any order made.

Factors to be considered

9.49 In any proceeding under this Division, the court or the Court of Appeal, as the case may be, must apply all of the factors listed in Article IV of the Convention and may consider any other proper grounds.

Division 8
Registration of Judgments under
the Reciprocal Enforcement of
Judgments Act

Originating application to register a judgment from a reciprocating jurisdiction

9.50(1) An application for registration of a judgment under the *Reciprocal Enforcement of Judgments Act* must be made by originating application.

(2) The originating application must be supported by an affidavit which includes, as an exhibit, an exemplification or certified copy of the judgment to be registered.

Notice of registration

9.51 The notice of registration of a judgment under section 6 of the *Reciprocal Enforcement of Judgments Act* must

- (a) contain particulars of the judgment registered and the order for registration,
- (b) state the name and address of the judgment creditor or the lawyer or agent for the judgment creditor on whom service of any notice given by the judgment debtor may be served, and
- (c) state that the judgment debtor, within one month after receipt of notice of the registration, may apply to the registering court by originating application to set aside the registration on any ground set out in section 2(6) of the *Reciprocal Enforcement of Judgments Act*.

Originating application to set aside registration

9.52 An application to set aside the registration of a judgment must be made by originating application.

PART 10: LAWYER'S CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

What this Part is about: This Part deals with 3 matters:

- lawyer's retainer agreements (including contingency fee agreements), and lawyer's charges – how each can be reviewed for reasonableness by a review officer at the request of a client or lawyer
- how the court and assessment officers assess the costs of litigation that are payable by one party to another
- the sanctions the court may impose for contravention of the rules and the court's authority to declare a person in civil contempt of court, including the penalties that may be imposed as a result of the declaration.

PART 10: LAWYER'S CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

	Starts at rule #
Division 1: Lawyer's Charges, Retainer Agreements, and Right of Review.....	10.1
<i>Subdivision 1: Lawyer's Charges.....</i>	<i>10.1</i>
<i>Subdivision 2: Retainer Agreements.</i>	<i>10.5</i>
<i>Subdivision 3: Contingency Fee Agreements.</i>	<i>10.7</i>
<i>Subdivision 4: Right of Review.</i>	<i>10.9</i>
<i>Subdivision 5: Appeal from Review Officer's Decision.</i>	<i>10.24</i>
Division 2: Recoverable Costs of Litigation.....	10.26
<i>Subdivision 1: General Rule, Considerations and Court Authority.....</i>	<i>10.26</i>
<i>Subdivision 2: Assessment of Costs by Assessment Officer.</i>	<i>10.33</i>
<i>Subdivision 3: Appeal from Assessment Officer's Decision.....</i>	<i>10.42</i>
Division 3: Other Matters Related to Lawyer's Charges and Litigation Costs.	10.44
Division 4: Sanctions.....	10.47
<i>Subdivision 1: Penalty.</i>	<i>10.47</i>
<i>Subdivision 2: Civil Contempt of Court.....</i>	<i>10.49</i>
Division 5: Medical Examination.	10.52
Division 6: Inherent Jurisdiction.....	10.53

Information note

Words and phrases in this Part that have defined meanings in the Appendix *[Definitions]* include:

- assessment officer
- claim
- client
- commencement document
- contingency fee agreement
- costs award
- court
- court clerk
- defendant
- enactment
- expert
- file
- judge
- judgment
- lawyer
- lawyer's charges
- medical examination
- order
- party
- personal representative
- plaintiff
- pleading
- prescribed form
- property
- record
- retainer agreement
- review officer
- rules
- trustee

PART 10: LAWYER'S CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

Division 1 Lawyer's Charges, Retainer Agreements, and Right of Review

Subdivision 1 Lawyer's Charges

Payment for lawyer's services

10.1(1) Except to the extent that a retainer agreement otherwise provides, lawyers are entitled to be paid a reasonable amount for the services they perform for a client considering

- (a) the nature, importance and urgency of the matter,
- (b) the client's circumstances,
- (c) the trust, estate or fund, if any, out of which the lawyer's charges are to be paid,
- (d) the manner in which the services are performed,
- (e) the skill, work and responsibility involved, and
- (f) any other factor that is appropriate to consider in the circumstances.

(2) A lawyer may be paid in advance or take security for future lawyer's charges.

Contents of lawyers' accounts

10.2 Every lawyer's account must

- (a) contain a reasonable statement or description of the services provided,

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (b) show the fee for the service, and
- (c) set out separately the details of any disbursements paid or to be paid by the lawyer or any other charges of the lawyer in providing the lawyer's services.

Lawyer acting in representative capacity

10.3(1) A lawyer may charge lawyer's fees for services provided as a lawyer whether or not the lawyer is also acting in the capacity of a guardian, mortgagee, personal representative or trustee.

(2) However, a lawyer acting as a guardian, mortgagee, personal representative or trustee is not entitled to be paid out of or to charge to a trust, an estate, a fund, mortgaged property or a mortgage loan for which the lawyer provides lawyer's services unless

- (a) the court orders the amount paid or charged,
- (b) every person interested in the trust, estate, fund, mortgaged property, or mortgage loan is legally competent and agrees to the payment or the charge, or
- (c) the lawyer's charges have been reviewed and certified by a review officer.

(3) This rule does not apply to client funds held by a lawyer in the lawyer's trust account.

Charging order for payment of lawyer's charges

10.4(1) On application by a lawyer, the court may declare property specified in its order, including property that may be subsequently recovered in an action, to be subject to a charge as security for payment of the lawyer's charges.

(2) The order may only be made if

- (a) the lawyer establishes to the court's satisfaction that the lawyer's charges will not be or are unlikely to be paid unless the order is made, and

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (b) the property to be the subject of the charge is associated with
 - (i) the action conducted by the lawyer on the client's behalf, and
 - (ii) the lawyer's services result in the recovery or preservation of the client's property.
- (3) An order may also be made under this rule if
 - (a) a lawyer who provided services to a client in the recovery or preservation of property under a contingency fee agreement ceases to be the client's lawyer before the event or contingency occurs and those services are likely to, or may, result in the recovery or preservation of the client's property, and
 - (b) the requirements of subrule (2) clauses (a) and (b) are met.
- (4) On application, the court may make any other order necessary to obtain from the property subject to the charge the amount required to pay the lawyer's charges.
- (5) An order must not be made under this rule if in all the circumstances the court considers that to do so would be unfair.
- (6) Nothing defeats or affects a charge on property imposed under this rule unless the property is disposed of to a bona fide purchaser for value without notice of the charge.

Subdivision 2
Retainer Agreements

Retainer agreements

- 10.5(1)** A lawyer may make an agreement with a client about the amount and manner of payment of the whole or any part of past or future fees, disbursements or other charges for services performed by the lawyer.
- (2) The amount a lawyer is to be paid may be determined in any appropriate way including by
 - (a) a gross sum,
 - (b) commission,

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (c) percentage,
- (d) salary, or
- (e) an hourly rate.

(3) The amount payable may be at the same or at a greater or lesser rate than the rate to which the lawyer would be entitled under rule 10.1 [*Payment for lawyer's services*] if no retainer agreement were entered into.

Void provisions

10.6(1) In a retainer agreement or otherwise, a provision is void if the provision

- (a) purports to relieve a lawyer from liability for negligence or any other liability to which the lawyer might be subject as a lawyer, or
- (b) purports to provide that an action, application or proceeding cannot be abandoned, discontinued or settled without a lawyer's consent.

(2) Despite any agreement to the contrary, a client may change their lawyer or act on their own behalf before a retainer agreement ends.

Information note

The rules about self representing are in rule 2.28 [*Change in lawyer of record or self-representation*].

***Subdivision 3
Contingency Fee Agreements***

Contingency fee agreement requirements

10.7(1) A contingency fee agreement must

- (a) be in writing, and

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (b) be signed by the lawyer and the lawyer's client or their authorized agents.

(2) To be enforceable, a contingency fee agreement must contain the following particulars in precise and understandable terms:

- (a) the name and address of each client;
- (b) the name and address of the lawyer;
- (c) a statement of the nature of the claim;
- (d) a statement of the event or contingency on which the lawyer's fees are to be paid to the lawyer;
- (e) a statement about
 - (i) the manner in which the contingency fee is to be calculated,
 - (ii) the maximum fee payable, or the maximum rate calculated, after deducting disbursements and other charges, and
 - (iii) whether the client is responsible to pay disbursements and other charges, and if so, a general description of the types of disbursements and other charges likely to be incurred, other than relatively minor disbursements;
- (f) if the lawyer is to receive any amount from a costs award, a statement that
 - (i) the amount is intended to be a complete or partial reimbursement of the lawyer's charges to the client,
 - (ii) the amount is owed by the client and that by signing the contingency fee agreement the client is waiving the right to any amount from a costs award that is payable to the lawyer in accordance with subclause (iv),
 - (iii) the amount from the costs award retained by the lawyer will be in addition to the lawyer's percentage, fixed fees or other form of legal fees, and
 - (iv) the percentage of a costs award that the lawyer may receive may not exceed the percentage of the judgment or settlement that the lawyer is entitled to receive in lawyer's fees;

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (g) a statement that, if the client gives notice in writing to the lawyer within 5 days after the client's copy of the contingency fee agreement is served on the client, the client may terminate the contingency fee agreement without incurring any liability for the lawyer's fees, but that the client is liable to reimburse the lawyer for reasonable disbursements;
 - (h) a statement that
 - (i) at the request of the client, a review officer may review either or both of the contingency fee agreement or any lawyer's charges in an account rendered under the agreement, and
 - (ii) either or both of the contingency fee agreement or any lawyer's charges may be further reviewed by way of an appeal from a review officer's decision to a judge.
- (3) The contingency fee agreement must be witnessed by a person who sees the client sign the agreement, and that person must then swear an affidavit of execution.
- (4) The client must be served with a copy of the signed contingency fee agreement within 10 days after the date on which the agreement is signed, and an affidavit of service to that effect must be executed by the person who served the agreement.
- (5) A client may terminate a contingency fee agreement without incurring any liability for the lawyer's fees under the agreement if the client, within 5 days after service on the client of the copy of the contingency fee agreement, gives written notice of the termination to the lawyer, but the client is liable to reimburse the lawyer for reasonable disbursements incurred by the lawyer.
- (6) If a contingency fee agreement provides that a lawyer is entitled to an amount from a costs award, the lawyer is not entitled to receive from the costs award any higher percentage of the judgment or settlement than the lawyer is entitled to receive in lawyer's fees.
- (7) Every account rendered under a contingency fee agreement must contain a statement that at the client's request a review officer may determine both the reasonableness of the account and the reasonableness of the contingency fee agreement.
- (8) An account that does not contain the statement required by subrule (7) is of no effect unless the court is satisfied that the omission of the statement was inadvertent, the client has not been misled or prejudiced, and the court waives the requirement for the statement.

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

Information note

The transitional provisions of these rules contain rules protecting former contingency fee agreements entered into before these rules come into force. See Part 14 [*Transitional Provisions and Coming Into Force*].

Lawyer's non-compliance with contingency fee agreement

10.8 If a lawyer does not comply with rule 10.7(1) to (6) [*Contingency fee agreement requirements*], the lawyer is, on successful accomplishment or disposition of the subject-matter of the contingency fee agreement, entitled only to lawyer's charges determined in accordance with rule 10.1 [*Payment for lawyer's services*] as if no contingency fee agreement had been entered into.

Subdivision 4
Right of Review

Reasonableness of retainer agreements and charges subject to review

10.9 The reasonableness of a retainer agreement and the reasonableness of a lawyer's charges are subject to review by a review officer in accordance with these rules, despite any agreement to the contrary.

Time limitation on reviewing retainer agreements and accounts

10.10(1) A retainer agreement may not be reviewed if 6 months have passed after the date the retainer agreement terminated.

(2) A lawyer's charges may not be reviewed if 6 months have passed after the date the account was sent to the client.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Appointment for review

10.11(1) A lawyer or a client may, by request in the prescribed form, obtain from a review officer an appointment date for a review of a retainer agreement or a lawyer's charges, or both.

(2) If a lawyer obtains the appointment date, the lawyer must, on receipt of the date, file a copy of a notice of the appointment to be served on the client and any other interested party, and

- (a) if the appointment is to review the lawyer's charges, file a copy of a signed account of the lawyer's charges that are to be reviewed and a copy of any retainer agreement between the lawyer and the client;
- (b) if the appointment is to review a retainer agreement, file a copy of the retainer agreement between the lawyer and client.

(3) If a client obtains the appointment date, the client must on receipt of the date,

- (a) if the appointment is for a review of a lawyer's charges, file the lawyer's account that is to be reviewed and a copy of any retainer agreement between the lawyer and the client, if they are available, and
- (b) if the appointment is for the review of a retainer agreement, file a copy of the retainer agreement between the lawyer and client, if it is available.

(4) The client or the lawyer who obtains the appointment date for review must serve notice of the appointment date in the prescribed form on the other party to the review and any other interested party 10 days or more before the appointment date, or within any other period specified by a review officer.

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

Client obtained appointment: lawyer's responsibility

10.12(1) If a lawyer is served with notice of an appointment for a review of the lawyer's charges or retainer agreement, or both, the lawyer must file a copy of the account, appropriately signed, in respect of which the client seeks a review and any retainer agreement, whether or not the lawyer intends to rely on them.

(2) The documents must be filed 5 or more days before the appointment date or within any other period specified by a review officer, and the review officer may vary the period before or after the time limit has passed.

(3) If the lawyer does not comply with this rule, the lawyer forfeits the right to payment of the lawyer's charges in any account that is the subject of a review, unless the review officer otherwise directs.

Retainer agreement confidentiality

10.13 A retainer agreement filed under rule 10.11 [*Appointment for review*] or rule 10.12 [*Client obtained appointment: lawyer's responsibility*] is confidential and, unless otherwise ordered to do so by the court,

- (a) the court clerk, review officer and any person under their supervision must not disclose to any person the existence of the agreement or information in it, and
- (b) the copy of the agreement or information that is filed is not available for inspection by any person other than
 - (i) a party to the agreement;
 - (ii) a review officer;
 - (iii) the court.

Absence of person at appointment for review

10.14 A review officer may, on proof of service of the notice of appointment, proceed with the review of a retainer agreement or a lawyer's charges despite the absence of the person served.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Review officer's authority

10.15(1) For the purpose of conducting a review under this Division, a review officer may do all or any of the following:

- (a) take evidence either by affidavit or orally under oath, or both;
- (b) direct the production of records;
- (c) require notice of the appointment for the review to be served on persons who may be affected by the review or who have an interest in the trust, estate, fund or property out from which the lawyer's charges are or may be paid or charged;
- (d) give directions about how notice of the appointment for the review is to be served;
- (e) allow a party to be represented by a lawyer;
- (f) require details of a retainer agreement, or of the services provided, money collected and expended, disbursements or other charges claimed or any other matter necessary to understand the agreement or charges and decide whether the agreement or charges, or both, are reasonable;
- (g) validate service of the notice of appointment or, if service is impractical or impossible, dispense with service.

(2) A review officer may not review either a retainer agreement or a lawyer's charges that have previously been reviewed by a review officer unless, on appeal, the court so orders.

Reference to court

10.16(1) A review officer

- (a) must refer any question arising about the terms of a retainer agreement to the court for a decision or direction, and
- (b) may refer any question arising about a lawyer's charges to the court for a decision or direction.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(2) The review officer may do all or any of the following:

- (a) require one party to serve another party or other interested person with notice of the reference;
- (b) specify how a reference to the court is to be prepared and by whom;
- (c) prescribe time limits;
- (d) specify any other matter for the effective and efficient disposition of the reference.

(3) On considering a question referred to it, the court may make any order it considers appropriate in the circumstances, including

- (a) an order to enforce a direction given under rule 10.15 [*Review officer's authority*];
- (b) with respect to a review of the terms of a retainer agreement, approve the agreement, or vary or disallow the agreement in whole or in part.

(4) If a contingency fee agreement is disallowed, the amount payable to the lawyer for the lawyer's charges must be determined under rule 10.1 [*Payment for lawyer's services*].

Review officer's decision

10.17(1) A review of a lawyer's charges must take into consideration the factors described in rule 10.1 [*Payment for lawyer's services*], except to the extent that a retainer agreement otherwise provides.

(2) A review of a retainer agreement must be based on the circumstances that existed when the retainer agreement was entered into.

(3) The review officer may in a review of lawyer's charges, allow the charges, or vary, reduce or disallow all or any of the charges and certify the amount payable for and against each party, and may issue an interim certificate.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(4) A review officer's decision must be given by an interim or final certificate which may be endorsed on a copy of the lawyer's account and the certificate must

- (a) certify the amount to be paid by each party or person,
- (b) certify any special circumstance and the amount to be paid by each party or person with respect to the special circumstance, and
- (c) be dated and signed by the review officer and is conclusive proof of the amount that a party or person who had notice of the review must pay.

Enforcement of review officer's decision

10.18(1) The court may direct a decision of a review officer to be entered as a judgment or order.

(2) No order may be made under subrule (1) before the time for an appeal of the review officer's decision has expired or, if the decision is being appealed, before a decision is made under rule 10.25 [*Decision of the judge*].

Repayment of charges and action for payment of charges

10.19 On application by a client, the court may order a lawyer whose charges are disallowed, reduced, varied or forfeited, to repay to the client all or any part of the lawyer's charges paid by the client.

Action for payment of a lawyer's charges

10.20 If an action is brought for payment of a lawyer's charges,

- (a) despite rule 3.36 [*Judgment in default of defence and noting in default*], no judgment may be entered in default of defence without the court's permission, and
- (b) no costs award with respect to the action is to be made unless the court specifically so orders.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Information note

This rule is an exception to

- the general rule that judgment may be entered against a defendant who does not file a statement of defence or demand for notice (see rule 3.36 [*Judgment in default of defence and noting in default*]), and
- the general rule that a successful party is entitled to a costs award.

A lawyer who obtains a default judgment only gets costs if the court so orders.

Costs of a review

10.21 A review officer may allow or disallow the reasonable and proper costs of a review and fix the amount but may not make a costs award

- (a) against the client as a result of a client requested review unless the client's request was unreasonable or the client acts improperly or unreasonably at the review, and
- (b) against the client as a result of a lawyer requested review unless the client acts improperly or unreasonably at the review and the court approves the costs award.

Reviewing lawyer's charges: incomplete services and particular events

10.22(1) If any of the following events occur, a lawyer, the lawyer's personal representative, or a client, may make an appointment with a review officer for the purpose of determining the amount of the lawyer's charges payable by the client:

- (a) the lawyer dies;
- (b) the lawyer is suspended, disbarred or incapacitated;
- (c) the lawyer ceases to be the client's lawyer or the client ceases to be the lawyer's client;
- (d) a dispute arises about the apportionment of contingency fees under a contingency

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

fee agreement under which two or more lawyers are engaged, whether or not the contingency has occurred;

- (e) the client retains a new lawyer in the action;
- (f) any other event which creates uncertainty about a lawyer's charges or who is to pay them or to whom they are to be paid.

(2) When making a decision under this rule, the review officer must take into consideration the factors described in rule 10.1 [*Payment for lawyer's services*], except to the extent that a retainer agreement otherwise provides.

Order to return records

10.23 On application by a client, the court may order a lawyer to deliver to a person named in the order any record of the client under the lawyer's control.

Subdivision 5 Appeal from Review Officer's Decision

Appeal to judge

10.24(1) A party to a review officer's decision under this Division may appeal the decision to a judge.

(2) The appeal from a review officer's decision is an appeal on the record of proceedings before the review officer.

(3) The record of proceedings is

- (a) the prescribed form to obtain the appointment date with the review officer,
- (b) the material the parties filed to support, oppose, or that was required for, the review,
- (c) the transcript of the proceedings before the review officer, unless the judge waives this requirement, and

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (d) the review officer's certificate.

(4) The appellant must file and serve on the respondent to the appeal, within one month after the date of the review officer's decision,

- (a) notice of the appeal in the prescribed form, including the date, time and place of the hearing,
- (b) the record of proceedings described in subrule (3), and
- (c) any further written argument.

(5) The respondent to the appeal must, within 10 days after service of the notice of appeal, file and serve on the appellant any written argument the respondent wishes to make.

Decision of the judge

10.25 After hearing an appeal from a review officer's decision, the judge may make any one or more of the following orders:

- (a) confirm, vary or revoke the decision;
- (b) revoke the decision and substitute a decision;
- (c) revoke all or part of the decision and refer the matter back to the review officer or to another review officer;
- (d) make any other order the judge considers appropriate.

Division 2
Recoverable Costs of Litigation

Subdivision 1
General Rule, Considerations and Court Authority

Definition of "party"

10.26 In this Division, *party* includes a person filing or participating in an application or

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

proceeding who is or may be entitled to or subject to a costs award.

Information note

Party is defined in the Appendix [*Definitions*] as a party to an action. There are other court proceedings that are not “actions” and so the definition of *party* is expanded to allow a costs award against anyone participating in an application or proceeding that is not an action started by statement of claim or originating application.

General rule for payment of litigation costs

10.27(1) A successful party to an application, a proceeding or action is entitled to a costs award against the unsuccessful party subject to

- (a) the court’s general discretion under rule 10.29 [*Court-ordered costs award*],
- (b) the assessment officer’s discretion under rule 10.39 [*Assessment officer’s decision*],
- (c) particular rules governing who is to pay costs in particular circumstances,
- (d) an enactment governing who is to pay costs in particular circumstances, and
- (e) subrule (2).

(2) If an application or proceeding is heard without notice to a party, the court may

- (a) make a costs award with respect to the application or proceeding, or
- (b) defer making a decision on who is liable to pay the costs of the application or proceeding until every party is served with notice of the date, time and place where the court will consider who is liable to pay the costs.

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

When a costs award may be made

10.28(1) Unless the court otherwise orders or these rules otherwise provide, a costs award may be made

- (a) in respect of an application or proceeding of which a party had notice, after the application has been decided;
- (b) in respect of a settlement of an action, application or proceeding, or any part of any of them, in which it is agreed that one party will pay costs without determining the amount;
- (c) in respect of trials and all other matters in an action, after judgment or a final order has been entered.

(2) If the court does not make a costs award or an order for an assessment officer to assess the costs payable when an application or proceeding is decided or when judgment is pronounced or a final order is made, either party may request an assessment officer for an appointment date for an assessment of costs under rule 10.35 [*Appointment for assessment*].

Court-ordered costs award

10.29(1) After considering the matters described in rule 10.31 [*Court considerations in making a costs award*], the court may order one party to pay to another party, as a costs award, either or a combination of the following:

- (a) the reasonable and proper costs that a party incurred to file an application, or take proceedings or carry on an action, or incurred by a party to participate in an application, proceeding or action, or
- (b) any amount that the court considers to be appropriate in the circumstances including, without limitation,
 - (i) an indemnity to a party for their lawyer's charges, or
 - (ii) a lump sum instead of or in addition to assessed costs.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(2) Reasonable and proper costs under subrule (1)

- (a) include the reasonable and proper costs that a party incurred to bring an action;
- (b) unless the court otherwise orders, include costs incurred by a party
 - (i) in an assessment of costs before the court, or
 - (ii) in an assessment of costs before an assessment officer;
- (c) do not include costs related to a dispute resolution process described in rule 4.16 [*Dispute resolution processes*], or a judicial dispute resolution process under an arrangement described in rule 4.18 [*Judicial dispute resolution arrangement*], unless a party engages in serious misconduct in the course of the dispute resolution process or judicial dispute resolution process;
- (d) do not include, unless the court otherwise orders, the fees and other charges of an expert for an investigation or inquiry, or the fees of an expert for assisting in the conduct of a summary trial or a trial.

(3) In making a costs award under subrule (1)(a), the court may order one party to pay to another any one or more of the following:

- (a) all or part of the reasonable and proper costs with or without reference to Schedule C [*Tariff of Recoverable Fees*];
- (b) a multiple, proportion or fraction of any column of Schedule C [*Tariff of Recoverable Fees*] or an amount based on one column, and to pay another party or other parties on the same or another column;
- (c) all or part of the reasonable and proper costs with respect to a particular issue, an application or proceeding, or part of an action;
- (d) a percentage of assessed costs, or to pay assessed costs up to or from a particular point in an action.

(4) The court may adjust the amount payable by way of deduction or set-off, if the party that is liable to pay a costs award is also entitled to receive an amount under a costs award.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(5) In appropriate circumstances, the court may order in a costs award payment to a self-represented litigant of an amount or part of an amount equivalent to the fees specified in Schedule C [*Tariff of Recoverable Fees*].

(6) The court's discretion under this rule is subject to any specific requirement of these rules about who is to pay costs and what costs are to be paid.

Costs in a class action

10.30 In an action under the *Class Proceedings Act* or in a representative action, the court, in determining whether a costs award should be made against the unsuccessful representative party may take into account one or more of the following factors, in addition to any other factors the court considers appropriate:

- (a) the public interest;
- (b) whether the action involved a novel point of law;
- (c) whether the action was a test case;
- (d) access to justice considerations.

Court considerations in making a costs award

10.31(1) In making a costs award, the court may consider all or any of the following:

- (a) the result of the action and the degree of success of each party;
- (b) the amount claimed and the amount recovered;
- (c) the importance of the issues;
- (d) the complexity of the action;
- (e) the apportionment of liability;
- (f) the conduct of a party that tended to shorten the action;

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (g) any other matter related to the question of reasonable and proper costs that the court considers appropriate.

(2) In deciding whether to impose, deny or vary an amount in a costs award, the court may consider all or any of the following:

- (a) the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;
- (b) a party's denial of or refusal to admit anything that should have been admitted;
- (c) whether a party started separate actions for claims that should have been filed in one action or whether a party unnecessarily separated their defence from another party;
- (d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;
- (e) an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document;
- (f) a contravention of or non-compliance with these rules or an order;
- (g) whether a party has engaged in misconduct.

Information note

The court has complete discretion over what to order in a costs award unless a specific rule limits that discretion.

The typical starting point will be to decide what are the reasonable and proper costs incurred in carrying on litigation, see rule 10.29 [*Court-ordered costs award*]. Rule 10.31 [*Court considerations in making a costs award*] sets out a list of matters the court may consider related to the litigation (degree of success, amount involved, complexity and so on) and in subrule (2) the court may consider matters related to the conduct of the parties, including unnecessary steps or delay, misconduct, and contravention of the rules or contravention of court orders. If the conduct of a party is found to be inappropriate, the court can impose, deny or vary an amount that otherwise would have been allowed in the costs award.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Note that some rules have immediate costs consequences, for example, rule 5.12 [*Penalty for not serving affidavit of records*] contains a specific sanction for not serving an affidavit of records in accordance with the rules.

Court-ordered assessment of costs

10.32(1) The court may order an assessment of costs by an assessment officer and may give directions to the assessment officer about the assessment.

(2) The court must keep a note of a direction

- (a) given to an assessment officer;
- (b) requested by a party and refused by the court;
- (c) requested by a party that the court declines to make but leaves to an assessment officer's discretion.

*Subdivision 2
Assessment of Costs
by Assessment Officer*

Preparation of bill of costs

10.33(1) A party entitled to payment under a costs award must prepare a bill of costs in the prescribed form

- (a) if that party wishes or is required to have the costs assessed by an assessment officer, or
- (b) on request of a party against whom a costs award is made.

(2) The bill of costs must

- (a) itemize all the costs sought to be recovered, distinguishing between fees, disbursements and other charges, and

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (b) be signed by the person responsible for its preparation.

Assessment of bill of costs

10.34(1) After a judgment or order has been entered, an assessment officer, in accordance with any court direction or order, may make an assessment of costs payable in accordance with rule 10.39 [*Assessment officer's decision*] in any of the following circumstances:

- (a) under rule 3.36(3) [*Judgment in default of defence and noting in default*];
- (b) under rule 3.37(1) [*Application for judgment against defendant noted in default*];
- (c) under rule 3.38 [*Judgment for recovery of property*];
- (d) under rule 3.39 [*Judgment for debt or liquidated demand*].

(2) In cases other than those referred to in subrule (1), the amount assessed as payable under rule 10.39 [*Assessment officer's decision*] by one party to another must be determined by way of an appointment with an assessment officer, unless the court or the assessment officer otherwise permits.

(3) Despite subrules (1) and (2), if one party approves a bill of costs prepared by another party adverse in interest, an assessment officer must certify the bill of costs under rule 10.41 [*Certification of costs payable*], without change.

Appointment for assessment

10.35(1) A party entitled to a costs award may, in the prescribed form, obtain from an assessment officer an appointment date for an assessment of costs.

(2) If a party entitled to a costs award makes the appointment, that party must, 10 days or more before the appointment date,

- (a) file a proposed bill of costs, and
- (b) serve every party affected by the appointment with notice of the appointment date and the proposed bill of costs.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (3) If any other party obtains an appointment date, that party must
- (a) 20 or more days before the appointment date, serve notice of the appointment date on every party affected, and
 - (b) serve on the party entitled to costs a request that the entitled party prepare a proposed bill of costs.
- (4) The recipient of the request to prepare a proposed bill of costs must do so as soon as practicable and file and serve it on every other party 10 days or more before the appointment date for the assessment.
- (5) An assessment officer may vary a time period referred to in this rule whether or not the period has passed.

Assessment officer's authority

10.36(1) For the purpose of assessing costs payable, an assessment officer may do all or any of the following:

- (a) take evidence either by affidavit or orally under oath, or both;
- (b) direct the production of records;
- (c) require notice of the appointment for the assessment to be served on persons who may be affected by the assessment or who have an interest in the trust, estate, fund or property from which the costs are or may be paid or charged;
- (d) give directions about how a notice of the appointment for the assessment is to be served;
- (e) allow a party to be independently represented by a lawyer;
- (f) require details of the services provided, disbursements or other charges claimed or require information about any other matter necessary to understand the reason for an item in the bill of costs and to decide whether the item and charge is reasonable and proper;
- (g) validate service of the notice of the appointment or if service is impractical or

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

impossible dispense with service.

(2) An assessment officer may not conduct an assessment of costs that have previously been assessed by an assessment officer unless the court so orders or if the parties agree.

Reference to court

10.37(1) An assessment officer may direct any question arising about the assessment of costs payable to be referred to the court for a decision or direction.

(2) The assessment officer may do all or any of the following:

- (a) require one party to serve another or other interested person with notice of the reference;
- (b) specify how a reference to the court is to be prepared and by whom;
- (c) prescribe time limits;
- (d) specify any other matter for the effective and efficient disposition of the reference.

(3) On considering a question referred to it, the court may make any order it considers appropriate in the circumstances, including an order to enforce a direction given under rule 10.36 [*Assessment officer's authority*].

Absence of person served with notice of appointment for assessment

10.38 An assessment officer may, on proof of service of the notice of appointment and proposed bill of costs, proceed with the assessment of costs payable despite the absence of the person served.

Assessment officer's decision

10.39(1) Subject to an order, if any, an assessment officer may, with respect to an assessment of costs payable, determine the reasonable and proper costs that a party incurred to file an application or take proceedings or carry on an action or incurred by a party to participate in an action, application or proceeding.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(2) Reasonable and proper costs of a party under subrule (1)

- (a) include the reasonable and proper costs that a party incurred to bring an action;
- (b) unless the court otherwise orders, include costs which a party incurred in an assessment of costs before the court;
- (c) unless the court or an assessment officer otherwise directs, include costs which a party incurred in an assessment of costs before an assessment officer;
- (d) do not include costs related to a dispute resolution process described in rule 4.16 [*Dispute resolution processes*], or a judicial dispute resolution process under an arrangement described in rule 4.18 [*Judicial dispute resolution arrangement*], unless a party engages in serious misconduct in the course of the dispute resolution process or the judicial dispute resolution process;
- (e) do not include, unless the court otherwise orders, the fees of an expert for an investigation or inquiry, or the fees of an expert for assisting in the conduct of a summary trial or a trial.

(3) In making an assessment under subrule (1) and taking into account the conduct of the parties, the assessment officer

- (a) may decide whether an item in the bill of costs is reasonably and properly incurred;
- (b) may not allow lawyer's fees at more than the amounts specified in Schedule C [*Tariff of Recoverable Fees*], except when these rules, including the Schedule, explicitly permit;
- (c) may not reduce an amount provided for in Schedule C [*Tariff of Recoverable Fees*]
 - (i) unless Schedule C [*Tariff of Recoverable Fees*] so permits, or
 - (ii) except in exceptional circumstances;
- (d) may reduce, or allow a fraction of an amount, if the services were incomplete or limited;

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

- (e) may disallow or reduce any amount that is excessive;
- (f) may disallow an item in a bill of costs that is improper, unnecessary or a mistake;
- (g) may fix the amount recoverable for services provided by a lawyer that are not specified or described in Schedule C [*Tariff of Recoverable Fees*].

(4) If the assessment officer disallows or reduces a fee specified in Schedule C [*Tariff of Recoverable Fees*] the assessment officer must give reasons for doing so.

(5) If a party that is liable to pay costs is also entitled to receive costs, the assessment officer may

- (a) adjust the amount payable by way of deduction or set-off, or
- (b) delay ordering the payment of costs to a party until that party has paid any costs for which the party is liable.

Actions within Provincial Court jurisdiction

10.40(1) This rule applies only to actions the subject-matter of which is within the jurisdiction of the Provincial Court.

(2) Despite anything in this Division or Schedule C [*Tariff of Recoverable Fees*], unless the court otherwise orders,

- (a) in the case of an action brought in the Court of Queen's Bench for which the amount sued for or the amount of the judgment or order does not exceed the amount for which the Provincial Court has jurisdiction under section 9.6 of the *Provincial Court Act*, the costs to and including judgment or order must be assessed, if at all, at not more than 75% of the amount specified under Column 1 of Schedule C [*Tariff of Recoverable Fees*];
- (b) in the case of an action described in clause (a), post-judgment matters are to be assessed, if at all, at not more than 100% of the amount specified in Column 1 of Schedule C [*Tariff of Recoverable Fees*].

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Certification of costs payable

10.41(1) An assessment officer's decision must be given by an interim or final certificate which may be endorsed on a bill of costs and the certificate must

- (a) certify the amount to be paid by each party or person, and
- (b) certify any special circumstance and the amount to be paid by each party or person with respect to the special circumstance.

(2) The certificate must be dated and signed by the assessment officer and is conclusive proof of the amount that a party or person who had notice of the assessment must pay.

Subdivision 3
Appeal from Assessment Officer's Decision

Appeal to judge

10.42(1) A party to an assessment officer's decision under this Division, or a party to an assessment officer's decision under rule 9.35 [*Checking calculations: assessment of costs and corrections*], may appeal the decision to a judge.

(2) The appeal from an assessment officer's decision is an appeal on the record of proceedings before the assessment officer.

(3) The record of proceedings is

- (a) the prescribed form to obtain the appointment date with the assessment officer,
- (b) the material the parties filed to support, oppose, or that was required for, the assessment,
- (c) the transcript of the proceedings before the assessment officer, unless the judge waives this requirement, and
- (d) the assessment officer's certificate.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(4) The appellant must file and serve on the respondent to the appeal, within one month after the date of the assessment officer's decision,

- (a) notice of the appeal in the prescribed form, including the date, time and place of the hearing,
- (b) the record of proceedings described in subrule (3), and
- (c) any further written argument.

(5) The respondent to the appeal must, within 10 days after service of the notice of appeal, file and serve on the appellant any written argument the respondent wishes to make.

Decision of the judge

10.43 After hearing an appeal from an assessment officer's decision, the judge may make one or more of the following orders:

- (a) confirm, vary or revoke the decision;
- (b) revoke the decision and substitute a decision;
- (c) revoke all or part of the decision and refer the matter back to the same or another assessment officer;
- (d) make any other order the judge considers appropriate.

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

Division 3
Other Matters Related to
Lawyer's Charges and Litigation Costs

Review and assessment under enactments

10.44(1) If an enactment requires or authorizes an amount to be considered, taxed, assessed or reviewed under these rules, a review officer or an assessment officer, as the circumstances require, must do so

- (a) in accordance with the enactment, and
- (b) in accordance with any of the rules that apply or that can be applied or should be applied by analogy.

(2) A review officer or assessment officer acting under this rule has all the powers that the officer has in carrying out a review or an assessment of costs under this Part in addition to any powers that the officer has under the enactment.

(3) A decision of a review officer or an assessment officer may be appealed under rule 10.24 [*Appeal to judge*] or rule 10.42 [*Appeal to judge*], as circumstances permit and rules 10.25 [*Decision of the judge*] or 10.43 [*Decision of the judge*] apply as the case requires.

(4) If an enactment requires or permits both lawyer's charges and other costs of proceedings to be considered, taxed, assessed or reviewed under these rules, a review officer must perform the function and

- (a) the review officer's decision may be appealed under rule 10.24 [*Appeal to judge*], and
- (b) rule 10.25 [*Decision of the judge*] applies.

Liability of litigation representative for costs

10.45(1) A litigation representative for a plaintiff is liable to pay a costs award against the plaintiff.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

(2) A litigation representative for a defendant is not liable to pay a costs award against the defendant unless

- (a) the litigation representative has engaged in serious misconduct, and
- (b) the court so orders.

Information note

For rules about litigation representatives see Part 2 [*The Parties to Litigation*]
Division 2 [*Litigation Representatives*].

Recovery of goods and services tax

10.46(1) Unless the court otherwise orders, a party entitled to costs in a costs award is entitled to recover the goods and services tax on those costs by providing a certificate in accordance with subrule (2) that is satisfactory to the assessment officer.

(2) The certificate must be in the form of an affidavit endorsed on, attached to or filed with the bill of costs stating that

- (a) the person making the affidavit has personal knowledge of the facts stated,
- (b) the party entitled to receive payment under the bill of costs, and not another party, will actually pay the goods and services tax on that party's costs,
- (c) the goods and services tax will not be passed on to, or be reimbursed by, any other person, and
- (d) the party entitled to receive payment under the bill of costs is not eligible for the goods and services tax input tax credit.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

**Division 4
Sanctions**

***Subdivision 1
Penalty***

Penalty for contravening the rules

10.47(1) The court may order a party, lawyer or other person to pay to the court clerk a penalty in an amount determined by the court if

- (a) the party, lawyer or other person contravenes or fails to comply with these rules without adequate excuse, and
- (b) the contravention or failure to comply has, in the court's opinion, interfered with or may interfere with the proper or efficient administration of justice.

(2) The order applies despite

- (a) a settlement of the action, or
- (b) an agreement to the contrary by the parties.

Costs imposed on lawyer

10.48 If a lawyer for a party engages in serious misconduct the court may order the lawyer to pay a costs award with respect to a person named in the order.

***Subdivision 2
Civil Contempt of Court***

Order to appear

10.49 The court may order a person to appear before it, or may order a peace officer in the prescribed form to take into custody and to bring a person before the court, to show cause why that person should not be declared to be in civil contempt of court.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Declaration of civil contempt

10.50(1) Except when a person is before the court as described in subrule (3)(b) or (3)(e), before an order declaring a person in civil contempt of court is made, notice of the application for a declaration for civil contempt must be served on the person concerned in the same manner as a commencement document.

(2) If a lawyer accepts service of a notice of an application seeking an order declaring the lawyer's client to be in civil contempt of court, the lawyer must notify the client of the notice as soon as practicable after being served.

(3) A judge may declare a person in civil contempt of court if, without reasonable excuse,

- (a) the person does not comply with an order, other than an order to pay money, that has been served in accordance with these rules for service of commencement documents or of which the person has actual knowledge;
- (b) the person is before the court and engages in conduct that warrants a declaration of civil contempt of court;
- (c) the person does not comply with an order served on the person, or an order of which the person has actual knowledge, to appear before the court to show cause why the person should not be declared in civil contempt of court;
- (d) a person does not comply with an order served on the person, or an order of which the person has actual knowledge, to attend for questioning under these rules or to answer questions the person is ordered by a court to answer;
- (e) a witness in an application or at trial refuses to be sworn or refuses to answer proper questions;
- (f) if a person does not perform or observe the terms of an undertaking given to the court;
- (g) an enactment so provides.

(4) Nothing in this Division provides, or is to be interpreted as providing, a penalty or punishment or other mode of proceeding to enforce the *Protection Against Family Violence Act*, or is a penalty or punishment in relation to the enforcement of that Act.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Punishment for civil contempt of court

10.51(1) Every person declared to be in civil contempt of court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:

- (a) imprisonment until the person has purged their contempt;
- (b) imprisonment for not more than 2 years;
- (c) a fine and in default of paying the fine to imprisonment for not more than 6 months;
- (d) if the person is a party to an action, application or proceeding, an order that
 - (i) all or part of a commencement document, affidavit or pleading be struck out;
 - (ii) an action or an application be stayed;
 - (iii) a claim, action, defence, application or a proceeding be dismissed, or that judgment be entered or an order be made;
 - (iv) a record or evidence be prohibited from being used or entered in an application, proceeding or at trial.

(2) The court may also make a costs award against a person declared to be in civil contempt of court.

(3) If a person declared to be in civil contempt of court purges their contempt, the court may waive or suspend any penalty or sanction.

(4) The judge who imposed a sanction for civil contempt may, on notice to the person concerned, increase, vary or remit the sanction.

Alberta Rules of Court

Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions

Division 5
Medical Examination

Mental disorder

10.52(1) In this rule,

- (a) **examination** means a medical examination conducted for the purpose of determining a person's mental state;
- (b) **facility** means
 - (i) a *facility* as defined in the *Mental Health Act*, or
 - (ii) a *correctional institution* as defined in the *Corrections Act*.

(2) If a person is declared to be in civil contempt of court and the judge is satisfied that there are reasonable and probable grounds to believe that the person is

- (a) suffering from a mental disorder, or
- (b) in a condition presenting or likely to present a danger to themselves or others,

and would otherwise be unwilling, on that person's own initiative, to attend an examination, the judge may order that the person be taken into custody by a peace officer and taken to a facility for the purpose of examination and a report to the court, as directed by the court.

(3) The order made under subrule (2) is sufficient authority to detain, control, transport, examine, care for, observe, assess and to prepare a report for the court about the person named in the order.

Alberta Rules of Court

**Part 10: Lawyer's Charges, Recoverable Costs of Litigation,
and Sanctions**

Division 6
Inherent Jurisdiction

Inherent jurisdiction

10.53 Nothing in these rules prevents or is to be interpreted as preventing the court, as a superior court, from exercising its inherent power to punish and cite in contempt those who disobey the court's lawful orders or who otherwise display contempt for its process.

PART 11: SERVICE OF DOCUMENTS

What this Part is about: Many rules require documents to be served on parties to a court action. This Part describes how the documents that start court actions (*commencement documents*) and all other documents must be served. Special rules describe how documents are to be served outside Alberta. This Part also includes rules

- for situations that require service to be validated, other methods of service to be used (substitutional service) service to be dispensed with
- describing how service of documents is proved and the time within which a defendant must apply to set aside service of a commencement document.

PART 11: SERVICE OF DOCUMENTS

Starts at rule #

Division 1: Originals and Copies of Documents..	11.1
Division 2: Service of Commencement Documents in Alberta..	11.2
Division 3: Service of Documents, other than Commencement Documents, in Alberta.	11.18
Division 4: Service of Documents, other than Commencement Documents, in Foreclosure Actions.....	11.22
Division 5: Service of Documents Outside Alberta.	11.24
Division 6: Validating, Substituting, Dispensing with and Setting Aside Service.	11.26
Division 7: Service of Foreign Process.	11.31

Information note

Words and phrases used in this Part that have defined meanings in the Appendix
[\[Definitions\]](#) include:

- | | |
|-------------------------|---------------------------|
| • claim | • order |
| • commencement document | • partnership |
| • court | • party |
| • court clerk | • personal representative |
| • defendant | • plaintiff |
| • enactment | • property |
| • file | • recorded mail |
| • foreclosure action | • rules |
| • judicial centre | • secured land |
| • land | • secured property |
| • lawyer | • trustee |

PART 11: SERVICE OF DOCUMENTS

Division 1 Originals and Copies of Documents

Service of original documents and copies

11.1 When a document must or may be served under these rules, either the original document or a copy of the original document may be served, unless the court otherwise orders.

Division 2 Service of Commencement Documents in Alberta

Methods of service in Alberta

11.2 Unless the court otherwise orders or these rules otherwise provide, a commencement document must be served in Alberta and in accordance with

- (a) a method of service provided by an enactment, or
- (b) this Division [*Service of Commencement Documents in Alberta*].

Information note

Several Acts set out methods for service for documents which could be used under rule 11.2(a), for example,

- section 256 of the *Business Corporations Act*
- section 92 of the *Partnership Act*.

Alberta Rules of Court

Part 11: Service of Documents

When an enactment refers to service by double, single, registered or certified mail, section 24 of the *Interpretation Act* says that this includes

any form of mail for which the addressee or a person on behalf of the addressee is required to acknowledge receipt of the mail by providing a signature.

Section 23 of the *Interpretation Act* deals with presumptions of service of documents served under an enactment.

Sections 43-48 of the *Judicature Act* deal with service of documents during periods of postal interruption.

For service of documents outside Alberta, see rule 11.24 [*Real and substantial connection*] and rule 11.25 [*Methods of service outside Alberta*].

Note that *recorded mail* is a defined term in the Appendix [*Definitions*] and that *commencement document* means a statement of claim, an originating application, a counterclaim and a 3rd party claim.

Service on individuals

11.3(1) A commencement document may be served on an individual who is not required to be served by another method under this Division by

- (a) leaving the commencement document with the individual, or
- (b) sending the commencement document by recorded mail addressed to the individual.

(2) Service is effected under this rule,

- (a) if the document is left with the individual, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed by the addressee.

Alberta Rules of Court

Part 11: Service of Documents

Information note

Individuals may be required to be served by other methods in their capacity as trustees or personal representatives (see rule 11.4 [*Service on trustees and personal representatives*]), as litigation representatives, (see rule 11.5 [*Service on litigation representatives*]) and as missing persons (see rule 11.6 [*Missing persons*]). Individuals operating a business in a trade name may be served under rule 11.10 [*Service on individuals using another name*].

Service on trustees and personal representatives

11.4(1) A commencement document may be served on a trustee or personal representative who is an individual

- (a) by leaving the commencement document with the trustee or personal representative, or
- (b) by sending the commencement document by recorded mail addressed to the trustee or personal representative.

(2) Service is effected under subrule (1),

- (a) if the document is left with the individual, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed by the addressee.

(3) A commencement document may be served on a trustee or personal representative that is a corporation in accordance with rule 11.7(1) [*Service on corporations*] and service is effected on the trustee or personal representative in accordance with rule 11.7(2).

Information note

See also rule 2.1 [*Actions by or against personal representatives and trustees*].

Alberta Rules of Court

Part 11: Service of Documents

Service on litigation representatives

11.5(1) A commencement document may be served on a litigation representative who is an individual

- (a) by leaving the commencement document with the litigation representative, or
- (b) by sending the commencement document by recorded mail addressed to the litigation representative.

(2) Service is effected under subrule (1),

- (a) if the document is left with the litigation representative, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed by the addressee.

(3) A commencement document may be served on a litigation representative that is a corporation in accordance with rule 11.7(1) [*Service on corporations*] and service is effected on the litigation representative in accordance with rule 11.7(2).

Information note

Rule 2.12(2) [*Types of litigation representatives and service of documents*] requires documents to be served on litigation representatives and not on the person the litigation representative represents.

Missing persons

11.6(1) A commencement document may be served on an individual who is declared to be a missing person under the *Public Trustee Act*

- (a) by leaving the commencement document at the office of the Public Trustee with an individual who appears to have management or control responsibilities in that office, or
- (b) by sending the commencement document by recorded mail to the Public Trustee.

Alberta Rules of Court

Part 11: Service of Documents

(2) Service is effected under this rule,

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Service on corporations

11.7(1) A commencement document may be served on a corporation

- (a) by leaving the commencement document
 - (i) with an officer of the corporation who appears to have management or control responsibilities with respect to the corporation, or
 - (ii) with an individual who appears to have management or control responsibilities with respect to the corporation at its principal place of business or activity in Alberta, or at the corporation's place of business or activity, in Alberta, where the claim arose, or
- (b) by sending the commencement document by recorded mail, addressed to the corporation, to the principal place of business or activity in Alberta of the corporation.

(2) Service is effected under this rule,

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Alberta Rules of Court

Part 11: Service of Documents

Information note

The *Business Corporations Act* and the *Companies Act* provide methods for service on corporations and companies incorporated under those Acts and foreign business corporations.

Service on limited partnerships

11.8(1) A commencement document may be served on a limited partnership that is the subject of a claim in the name of the limited partnership

- (a) by leaving the commencement document
 - (i) with a general partner who is an individual, or
 - (ii) with an individual who appears to have management or control responsibilities with respect to the limited partnership at its principal place of business or activity in Alberta, or at the limited partnership's place of business or activity, in Alberta, where the claim arose, or
- (b) by sending the commencement document by recorded mail, addressed to the limited partnership, to the principal place of business or activity in Alberta of the limited partnership.

(2) Service is effected under subrule (1),

- (a) if the document is left with an individual, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

(3) If a general partner is a corporation, the commencement document may be served on that general partner in accordance with rule 11.7(1) [*Service on corporations*] and service is effected on the corporation in accordance with rule 11.7(2).

Alberta Rules of Court

Part 11: Service of Documents

Information note

Rule 2.2 [*Actions by or against partners and partnerships*] authorizes actions by and against partnerships and partners. For service rules on partnerships other than limited partnerships, see rule 11.9 [*Service on partnerships other than limited partnerships*].

Service on partnerships other than limited partnerships

11.9(1) A commencement document may be served on every partnership that is the subject of a claim in the name of the partnership, other than limited partnerships,

- (a) by leaving the commencement document
 - (i) with a partner who is an individual, or
 - (ii) with an individual who appears to have management or control responsibilities with respect to the partnership at its principal place of business or activity in Alberta, or at the partnership's place of business or activity, in Alberta, where the claim arose, or
- (b) by sending the commencement document by recorded mail, addressed to the partnership, to the principal place of business or activity in Alberta of the partnership.

(2) Service is effected under subrule (1),

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

(3) If a partner is a corporation, the commencement document may be served on that partner in accordance with rule 11.7(1) [*Service on corporations*] and service is effected on the corporation in accordance with rule 11.7(2).

Alberta Rules of Court

Part 11: Service of Documents

Service on individuals using another name

11.10(1) If a claim is made against a single individual carrying on business, operating or engaged in an activity in a name other than their own, a commencement document may be served on the individual

- (a) by leaving the commencement document
 - (i) with the individual, or
 - (ii) with an individual who appears to have management or control responsibilities with respect to the business, operation or activity at the principal place of business, operation or activity in Alberta, or at the individual's place of business, operation or activity, in Alberta, where the claim arose, or
- (b) by sending the commencement document by recorded mail, addressed to the business or operating name, to the principal place of business or activity in Alberta of the business or operation.

(2) Service is effected under subrule (1),

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Service on a corporation using another name

11.11(1) If a claim is made against a single corporation carrying on business or operating in a name other than its own, a commencement document may be served on that corporation

- (a) by leaving the commencement document
 - (i) with an officer of the corporation who appears to have management or control responsibilities with respect to the corporation, or
 - (ii) with an individual who appears to have management or control

Alberta Rules of Court

Part 11: Service of Documents

responsibilities with respect to the corporation at the principal place of business or activity, in Alberta, of the corporation, or at the place of business or activity, in Alberta, of the corporation at which the claim arose, or

- (b) by sending the commencement document by recorded mail, addressed to the business or operating name of the corporation, to the principal place of business activity in Alberta of the corporation.

(2) Service is effected under this rule,

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Information note

See rule 2.5 [*Actions by and against sole proprietors*].

Service on statutory and other entities

11.12(1) A commencement document may be served on an entity established by or under an enactment, or an entity not otherwise described in this Part, that is capable of being the subject of an action,

- (a) by leaving the document
 - (i) with an officer or administrator of the entity who appears to have management or control responsibilities with respect to the entity, or
 - (ii) with an individual who appears to have management or control responsibilities with respect to the entity at the entity's principal place of business or activity in Alberta, or at the entity's place of business or activity, in Alberta, where the claim arose, or
- (b) by sending the document by recorded mail, addressed to the entity, to the entity's

Alberta Rules of Court

Part 11: Service of Documents

principal place of business or activity in Alberta.

(2) Service is effected under this rule,

- (a) if the document is left with an individual in accordance with subrule (1)(a), on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Service on a person providing an address for service

11.13(1) In an action, a commencement document may be served on a person who has provided an address for service on a filed document

- (a) by leaving the commencement document, addressed to the person, at that address, or
- (b) by sending the document by recorded mail, addressed to the person, at that address.

(2) Service is effected under subrule (1),

- (a) if the document is left at the address, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Service on a lawyer

11.14(1) If a lawyer acts for a person in an action and the person must be served with a commencement document, the lawyer may, in writing, accept service on behalf of the person.

(2) Service is effected under this rule on the date service of the commencement document is accepted in writing by the lawyer.

Alberta Rules of Court

Part 11: Service of Documents

Service on lawyer of record

11.15(1) A commencement document may be served on a party by serving it on the lawyer of record for the party

- (a) by leaving the commencement document with the lawyer, leaving it at the lawyer's office, or leaving it at another address specified by the lawyer, or
- (b) by sending the document by recorded mail, addressed to the lawyer, to the lawyer's office.

(2) Service is effected under this rule,

- (a) if the document is left with the lawyer, at the lawyer's office, or at another address specified by the lawyer, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed.

Information note

A lawyer of record is a lawyer whose name appears on a document filed in an action. For rules about lawyers of record, see Part 2 [*The Parties to Litigation*], starting at rule 2.24 [*Lawyer of record*].

The lawyer may designate a document exchange facility as their address for service.

Service on self-represented litigants

11.16(1) A self-represented litigant may accept service of a commencement document, in writing.

(2) Service is effected under this rule on the date that the self-represented litigant accepts service of the document in writing.

Information note

Proving service of a document is dealt with in rule 11.29 [*Proving service of documents*].

Service on business representatives of absent parties

11.17(1) A commencement document may be served on a party who is out of Alberta but who has a representative resident and carrying on the absent party's business in Alberta, and if the claim arose in respect of that business,

- (a) by leaving the document with the representative, or
- (b) by sending the document by recorded mail addressed to the representative.

(2) Service is effected under subrule (1),

- (a) if the document is left with an individual, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date confirmation of receipt is signed by the addressee.

(3) If the representative described in subrule (1) is a corporation, the corporation may be served in accordance with rule 11.7(1) [*Service on corporations*] and service is effected on the representative in accordance with rule 11.7(2).

Division 3
Service of Documents, other
than Commencement Documents, in Alberta

Service of documents, other than commencement documents, in Alberta

11.18 Unless the court otherwise orders or these rules or an enactment otherwise provide, every document, other than a commencement document, that is to be served in Alberta may only be served by

- (a) a method of service described in Division 2 [*Service of Commencement Documents in Alberta*] for service of a commencement document,
- (b) a method of service described in rule 11.19 [*Service by an electronic method*],
- (c) recorded mail under rule 11.20 [*Recorded mail service*], or
- (d) a method of service agreed to under rule 11.21 [*Agreement between parties*].

Information note

There are a few occasions when non-commencement documents must be served in the same way as commencement documents, for example

- rule 9.21(3)(b) [*Application for new judgment or order*]
- rule 9.22(2)(c) [*Application that judgment or order has been satisfied*]
- rule 10.50(3)(a) [*Declaration of civil contempt*].

The methods of service described by rule 11.18(a) include service at an address for service on a filed document (under rule 11.13 [*Service on a person providing an address for service*]).

Either the original document or a copy of the original document may be served, see rule 11.1 [*Service of original documents and copies*].

Service by an electronic method

11.19(1) A document, other than a commencement document, may be served on a person who has specifically provided an address to which information or data in respect of an action may be transmitted, if the document is sent to the person at the specified address, and

- (a) the electronic agent receiving the document at that address receives the document in a form that is usable for subsequent reference, and
- (b) the sending electronic agent obtains or receives a confirmation that the transmission to the address of the person to be served was successfully completed.

(2) Service is effected under subrule (1) when the transmitting electronic agent obtains or receives confirmation of the successfully completed transmission.

(3) In this rule, *electronic* and *electronic agent* have the same meanings as they have in the *Electronic Transactions Act*.

Information note

Section 1(1)(a) and (b) of the *Electronic Transactions Act* defines “electronic” and “electronic agent” read

- (a) “electronic” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;
- (b) “electronic agent” means a computer program or any other electronic means used to initiate an act or to respond to electronic information, records or acts, in whole or in part, without review by an individual at the time of the initiation or response;

This rule would allow service by fax if the conditions described in the rule are met.

Alberta Rules of Court

Part 11: Service of Documents

Recorded mail service

11.20(1) A document, other than a commencement document, may be served on a party in Alberta by sending the document by recorded mail, addressed to the party at the address for service provided in the most recently filed document in the action.

(2) Service is effected under this rule on the earlier of

- (a) the date confirmation of receipt is signed, or
- (b) 7 days after the date on which the recorded mail is sent.

Information note

See also rule 11.30(3) [*Setting aside service*] for when service under subrule (2) may be set aside.

Agreement between parties

11.21(1) If, in a contract that is the subject of an action, the parties agree on

- (a) a place for service,
- (b) a mode of service, or
- (c) a person on whom service can be effected,

service of a document, other than a commencement document, may be made in accordance with the agreement and service is effected when so made.

(2) An agreed method of service described in subrule (1) that applies outside Alberta, must comply with rule 11.24 [*Real and substantial connection*].

(3) An agreement about service of documents under this rule does not invalidate the service of a document that otherwise complies with the rules in this Part.

Alberta Rules of Court

Part 11: Service of Documents

Division 4
Service of Documents, other than Commencement
Documents, in Foreclosure Actions

Additional service options in foreclosure actions

11.22(1) In addition to the other methods of service described in this Part, service of every document in a foreclosure action, other than a commencement document, may be effected, unless the court otherwise orders

- (a) by leaving the document, addressed to the person to be served, at an address described in subrule (2), or
- (b) by sending the document by recorded mail, addressed to the person to be served, to an address described in subrule (2).

(2) The addresses are:

- (a) the address of the place where the person to be served resides,
- (b) if the person to be served carries on business at the address of secured land that is the subject of the action, that address,
- (c) if the address of the place where the person to be served resides is not known to the person attempting service or if the person to be served does not carry on business at the address of the secured land that is the subject of the action, then
 - (i) the address of the person to be served shown on the current title to the secured land, or
 - (ii) if the person to be served is named as a secured party in a current registration of a security interest in the Personal Property Registry, then the address of that person as shown in the registration, or
- (d) in the case of an offeror or tenderer, the address of the offeror or tenderer shown in the offer or tender for secured property.

(3) Service is effected under this rule,

- (a) if the document is left at the address, on the date it is left, or

Alberta Rules of Court

Part 11: Service of Documents

- (b) if the document is sent by recorded mail, on the earlier of
 - (i) the date confirmation of receipt is signed, or
 - (ii) 7 days after the date on which the recorded mail is sent.

Notice of address for service in foreclosure actions

11.23 In a foreclosure action, encumbrancers, tenants, offerors, tenderers, and defendants whether or not they have been noted in default, may file and serve on any plaintiff, encumbrancer, tenant, offeror, tenderer or defendant in the action, a notice in the prescribed form giving an address for service in Alberta, including an address described in rule 11.19 [*Service by an electronic method*], at which any document that is required to be served on them in the action may be served.

Information note

See also rule 3.41 [*When no defence is filed in a foreclosure action*] and rule 3.77 [*Subsequent encumbrancers not parties in a foreclosure action*].

Division 5

Service of Documents Outside Alberta

Real and substantial connection

11.24(1) A commencement document may only be served outside Alberta and in Canada if

- (a) a real and substantial connection exists between Alberta and the facts on which a claim in the action is based, and
- (b) it discloses the facts and specifically refers to the grounds for service of the document outside Alberta and in Canada.

Alberta Rules of Court**Part 11: Service of Documents**

(2) A commencement document may only be served outside Canada if

- (a) a real and substantial connection exists between Alberta and the facts on which a claim in an action is based and the commencement document is accompanied by a document that sets out the grounds for service of the document outside Canada, or
- (b) the court, on application supported by an affidavit satisfactory to the court, permits service outside Canada.

(3) Without limiting the circumstances in which a real and substantial connection may exist between Alberta and the facts on which a claim in an action is based, the following examples describe circumstances in which a real and substantial connection is presumed to exist:

- (a) the claim relates to land in Alberta;
- (b) the claim relates to a contract or alleged contract made, performed or breached in Alberta;
- (c) the claim is governed by Alberta law;
- (d) the claim relates to a tort committed in Alberta;
- (e) the claim relates to the enforcement of a security against property other than land by the sale, possession or recovery of the property in Alberta;
- (f) the claim relates to an injunction in which a person is to do or to refrain from doing something in Alberta;
- (g) the defendant is resident in Alberta;
- (h) the claim relates to the administration of an estate and the deceased died ordinarily resident in Alberta;
- (i) the defendant, although outside Alberta, is a necessary or proper party to the action brought against the defendant;
- (j) the claim is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
 - (i) the trust assets include immovable or movable property in Alberta and the

Alberta Rules of Court**Part 11: Service of Documents**

- relief claimed is only as to that property;
- (ii) the trustee is ordinarily resident in Alberta;
 - (iii) the administration of the trust is principally carried on in Alberta;
 - (iv) by the express terms of a trust document, the trust is governed by the law of Alberta;
- (k) the action relates to a breach of an equitable duty in Alberta.

Methods of service outside Alberta

11.25(1) Unless the court otherwise orders, if a document may be served outside Alberta under these rules, the document must be served

- (a) by a method provided by these rules for service of the document in Alberta,
- (b) in accordance with a method of service of documents under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* that is allowed by the jurisdiction in which the document is to be served, if the convention applies, or
- (c) in accordance with the law of the jurisdiction in which the person to be served is located.

(2) Service is effected under this rule,

- (a) if the document is served by a method of service provided for service of documents in Alberta, on the date specified by these rules for when service is effected,
- (b) if the document is served under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Document in Civil or Commercial Matters*, on the date service is effected under the *Convention*, or
- (c) in accordance with the law of the jurisdiction in which the person is served.

Alberta Rules of Court

Part 11: Service of Documents

Information note

Note that rule 11.25 [*Methods of service outside Alberta*] does not authorize service of non-commencement documents outside Alberta, and neither does rule 11.18 [*Service of documents, other than commencement documents, in Alberta*]. Authority for service outside Alberta is found in other rules and may be provided under rule 11.24 [*Real and substantial connection*].

Division 6
Validating, Substituting, Dispensing with and
Setting Aside Service

Validating service

11.26(1) On application, the court may make an order validating the service of a document served inside or outside Alberta in a manner that is not specified by these rules if the court is satisfied that the method of service used brought or was likely to have brought the document to the attention of the person to be served.

(2) On application, the court may make an order validating the service of a document served inside or outside Alberta if the court is satisfied that the document would have been served on the person or would have come to the attention of the person if the person had not evaded service.

(3) If service is validated by the court under this rule, service is effected on the date specified in the order.

Substitutional service

11.27(1) If service of a document is impractical, inside or outside Alberta, on application, the court may make an order for substitutional service.

(2) The application must be supported by an affidavit

- (a) setting out why service is impractical,
- (b) proposing an alternative method of service, and
- (c) stating why the alternative method of service is likely to bring the document to the

Alberta Rules of Court

Part 11: Service of Documents

attention of the person to be served.

(3) Unless otherwise ordered, an order for substitutional service of a document must be served with the document except when substitutional service is by advertisement, in which case the advertisement must contain a reference to the order.

(4) If a document is served in accordance with an order for substitutional service, service is effected on the date specified in the order.

Dispensing with service

11.28(1) On application, the court may grant an order dispensing with service, inside or outside Alberta, if service of a document by a method prescribed by these rules is impractical or impossible.

(2) The application must be supported by an affidavit

- (a) setting out that all reasonable efforts to serve the document have been exhausted or are impractical or impossible,
- (b) stating why there is no or little likelihood that the issue will be disputed, and
- (c) stating that no other method of serving the document is or is apparently available.

Information note

Rule 2.32(2) [*Automatic termination of lawyer of record and resolving difficulties*] provides that a party may apply to the court for directions concerning service of documents if a lawyer stops acting for a client.

Alberta Rules of Court

Part 11: Service of Documents

Proving service of documents

11.29(1) Service of a document in Alberta and service of documents other than commencement documents outside Alberta, may be proved to have been effected

- (a) by an affidavit
 - (i) stating that the person was served,
 - (ii) describing the method of service, and
 - (iii) stating the date, time and place of service,
- (b) by an acknowledgement or acceptance of service in writing by the person served or by a lawyer on their behalf, or
- (c) by an order validating service under rule 11.26 [*Validating service*].

(2) Service of a commencement document outside Alberta may be proved to have been effected

- (a) by an affidavit
 - (i) stating the real and substantial connection between Alberta and the claim,
 - (ii) stating that the person was served,
 - (iii) describing the method of service, and
 - (iii) stating the date, time and place of service,
- (b) by an acknowledgement or acceptance of service in writing by the person served or by a lawyer on their behalf, or
- (c) by an order validating service under rule 11.26 [*Validating service*].

Setting aside service

11.30(1) A defendant may only apply to the court to set aside

- (a) service of a commencement document,
- (b) an order for substitutional service of a commencement document, or
- (c) an order dispensing with service of a commencement document,

before the defendant files a statement of defence or a demand for notice.

(2) An application under this rule is not an acknowledgment by the defendant that the court has jurisdiction with respect to a claim, counterclaim or 3rd party claim in respect of which the application is filed.

(3) If the court is satisfied that

- (a) the addressee did not receive a document, other than a commencement document, sent by recorded mail within 7 days after the date on which the recorded mail was sent,
- (b) the failure of the addressee to receive the document is not attributable to the addressee's own efforts to avoid receiving the document, and
- (c) the addressee would be prejudiced by the application of rule 11.20(2) [*Recorded mail service*],

the court may make any order that the court considers appropriate in respect of any matter relating to the document, including setting aside service.

Division 7
Service of Foreign Process

Procedure for service

11.31 If the court clerk receives a written request from a court or tribunal in a foreign country to serve on a person in Alberta a process or citation, in respect of a civil or commercial matter, the following rules apply:

- (a) 2 copies of the process or citation to be served must be provided to the court clerk;
- (b) if the request, process or citation is not in the English language, 2 copies of an English translation of any document that is not in the English language must be provided to the court clerk;
- (c) service may be effected in accordance with the Alberta rules for service of the same or similar document, or in a manner directed in the request of the foreign court or tribunal to the court clerk;
- (d) after service has been effected, the person effecting service must return to the court clerk of the appropriate judicial centre one copy of the process or citation, together with an affidavit of service and particulars of the cost of service;
- (e) the court must return to the foreign court or tribunal that made the request, the request, together with the affidavit of service, and must certify
 - (i) the amount properly payable for service,
 - (ii) that the affidavit of service is sufficient proof of service as required by these rules, and
 - (iii) if it is the case, that the service is effective under these rules.

PART 12: TECHNICAL RULES

What this Part is about: This Part contains rules calculating time and various administrative matters, including the filing of documents and certification of copies of original documents. The Part also deals with the contents of pleadings, affidavits, exhibits, payments into and out of court, and the responsibilities of court officers and court reporters.

PART 12: TECHNICAL RULES

	Starts at rule #
Division 1: Judge Unable to Continue..	12.1
Division 2: Calculating Time.	12.2
Division 3: Pleadings..	12.6
Division 4: Filed Documents.	12.13
<i>Subdivision 1: Content and Filing.</i>	12.13
<i>Subdivision 2: Form and Content of Affidavits and Exhibits..</i>	12.19
<i>Subdivision 3: Lost and Concurrent Documents, Certified Copies, Authenticated Photographs and Video Recordings.</i>	12.28
Division 5: Payment of Fees and Allowances, and Waivers of Fees.	12.33
Division 6: Judge's Fiat, Court Officers and Court Reporters.	12.39
Division 7: Payment Into Court and Payment Out of Court.	12.49

Information note

Words and phrases used in this Part that have defined meanings in the Appendix [\[Definitions\]](#) include

- | | |
|--------------------------------|-------------------|
| • assessment officer | • judicial centre |
| • Attorney General for Alberta | • lawyer |
| • Chief Justice | • order |
| • claim | • party |
| • commencement document | • plaintiff |
| • court | • pleading |
| • court clerk | • prescribed form |
| • court reporter | • property |
| • defendant | • record |
| • enactment | • remedy |
| • file | • rules |
| • judge | • trustee |
| • judgment | |

PART 12: TECHNICAL RULES

Division 1 Judge Unable to Continue

When one judge may act in place of or replace another

12.1 One judge may act in place of or replace another if

- (a) the judge dies,
- (b) the judge ceases to be a judge, or
- (c) it is inconvenient, improper, inappropriate or impossible for the judge to act.

Information note

Section 7 of the *Court of Queen's Bench Act* also provides for a judge to give judgment in a case fully heard by him or her for up to 3 months after ceasing to hold office. Section 7 reads:

Judgment by former judge

7 If a judge ceases to hold office without giving a judgment in any matter that was fully heard by him or her, the judge may, within 3 months after ceasing to hold office, give judgment in that matter as if the judge were still a judge of the Court and that judgment has the same effect as though given by a judge of the Court.

Section 18(3) of the *Interpretation Act* may also be applicable, it reads:

(3) If an enactment provides that a proceeding, matter or thing is to be done by or before a judge, the proceeding, matter or thing, if properly commenced before a judge, may be continued or completed before any other judge of the same court.

Division 2 Calculating Time

Application of the rules for calculating time

12.2 This Division describes how to calculate periods of time and applies to

- (a) these rules, and
- (b) judgments and orders.

Information note

The convention used in these rules is that

- 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.

Counting days

12.3(1) When counting to or from an event or activity in days, the date on which the event or activity occurs is not counted.

(2) For example,

- (a) if a document must be filed and served within 20 days after an event or activity, the 20th day of the count is the last day on which the document may be filed and served;
- (b) if a document must be filed 10 days or more before an event or activity, the 10th day of the count is the last day on which the document may be filed.

Information note

The basic rule can be illustrated as follows:

Counting forwards

In rule 3.31(3)(a) [*Statement of defence*] the defendant must file and serve a statement of defence in Alberta within 20 days after service of the statement of claim.

If the effective date of service of the statement of claim is January 4 (the event referred to in rule 12.3(1) [*Counting days*]), the statement of defence must be filed and served on or before January 24. The day of the event – the date service of the statement of claim is effected – is not counted.

Counting backwards

Rule 3.9 [*Service of originating application and evidence*] requires certain documents to be filed and served on parties 10 days or more before the date scheduled for hearing the application.

If the scheduled date is May 15, the materials must be filed and served on or before May 5. The day of the event – the scheduled hearing day – is not counted).

The rule for counting months is different, see rule 12.4 [*Counting months and years*].

Note that if a time period expires on a Sunday or a holiday there is *no* extension to the next day that is not a holiday. Section 22(1) of the *Interpretation Act* does not apply because rule 1.8(b) [*Interpretation Act*] excludes that *Interpretation Act* rule.

Counting months and years

12.4(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 (the target 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 target month, then the count ends on the last day of the target month.

Alberta Rules of Court

Part 12: Technical Rules

(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 (the target year), as the case requires.

(4) If the count starts on February 29 and there is no same-numbered date in the target year, then the count ends on February 28 of the target year.

Information note

For example:

- (i) a time period of 3 months counted forward from an event or activity on January 15 ends on April 15;
- (ii) a time period of 3 months counted forward from an event or activity on January 31 ends on April 30;
- (iii) a time period of 3 months counted backwards from an event or activity on April 30 ends on January 30;
- (iv) a time period of one year counted from an event or activity on January 15 of a year ends on January 15 of the next year.

Note that if a time period expires on a Sunday or a holiday there is *no* extension of time to the next day that is not a holiday. Section 22(1) of the *Interpretation Act* does not apply because rule 1.8(b) [*Interpretation Act*] excludes that *Interpretation Act* rule.

Variation of time periods

12.5(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 by the parties.

Alberta Rules of Court

Part 12: Technical Rules

(3) The order to extend or shorten a time period may be made whether or not the period has expired.

Information note

Examples of where the rules prohibit time from being extended by the court or the parties include:

- the time for service of a statement of claim under rule 3.26(3) [*Time for service of statement of claim*]
- the time for bringing most originating applications for judicial review under rule 3.15(2) [*Originating application for judicial review*].

Division 3
Pleadings

Pleadings: general requirements

12.6(1) A pleading must be

- (a) succinct, and
- (b) divided into paragraphs, consecutively numbered, with dates and numbers expressed in numerals, unless words or a combination of words and numerals, make the meaning clearer.

Information note

Very large numbers are better expressed in a combination of numerals and words, for example, \$25 billion. The first word of a sentence is usually better expressed as a word than a numeral. For dates, unless the pleading is clear about the convention being used, the month should be stated as a word.

(2) A pleading must state any of the following matters that are relevant:

- (a) the facts on which a party relies, but not the evidence by which the facts are to be proved;

Alberta Rules of Court

Part 12: Technical Rules

- (b) a matter that defeats, or raises a defence to, a claim or the claim of another party;
- (c) the remedy claimed, including
 - (i) the type of damages claimed,
 - (ii) to the extent known, the amount of general and special damages claimed, or if either or both are not known, an estimate of the amount or the total amount that will be claimed, and
 - (iii) a statement of any interest claimed, including the basis for the interest, and the method of calculating the interest.

(3) A pleading must also include a statement of any matter in which a party intends to rely that may take another party by surprise, including, without limitation, any of the following matters:

- (a) breach of trust;
- (b) duress;
- (c) estoppel;
- (d) fraud;
- (e) illegality or invalidity of a contract, including the grounds;
- (f) malice or ill will;
- (g) misrepresentation;
- (h) payment;
- (i) performance;
- (j) release;
- (k) undue influence;
- (l) voluntary assumption of risk;

Alberta Rules of Court

Part 12: Technical Rules

- (m) waiver;
- (n) lack of capacity or authority;
- (o) wilful default;
- (p) tender of payment;
- (q) a limitation period;
- (r) a provision of an enactment;
- (s) if the defendant proposes to produce evidence about the plaintiff's reputation in mitigation of damages, the defendant must include in a pleading the facts on which the defendant intends to rely.

Pleadings: other requirements**12.7** A pleading must give particulars of

- (a) breach of trust;
- (b) fraud;
- (c) misrepresentation;
- (d) wilful default;
- (e) undue influence;
- (f) defamation.

Pleadings: other contents**12.8(1)** A pleading may include all or any of the following:

- (a) alternative claims or defences;

Alberta Rules of Court

Part 12: Technical Rules

- (b) a statement of a point of law, and if so, the facts that make the statement applicable;
- (c) a matter that arises after the commencement document was filed.

(2) A general or other remedy claimed by a party need not be claimed in a pleading.

Defence of tender

12.9 Tender before action may not be pleaded as a defence in an action unless, before the defence is filed, the defendant pays into court the amount alleged to have been tendered.

Pleadings: specific requirements for replies

12.10 In addition to the other requirements of these rules, in a reply to

- (a) a statement of defence,
- (b) a statement of defence to a counterclaim, or
- (c) a statement of defence to a 3rd party claim,

the reply may only make admissions or respond to matters raised for the first time in the statement of defence.

Information note

The “other requirements” for pleadings are mainly contained in rule 12.6 [*Pleadings: general requirements*], rule 12.7 [*Pleadings: other requirements*], rule 12.8 [*Pleadings: other contents*] and in rule 12.13 [*Requirements for all filed documents*].

Alberta Rules of Court

Part 12: Technical Rules

Pleadings: specific requirements for class proceedings

12.11(1) The title of a proceeding under the *Class Proceedings Act* must include the words "*Brought under the Class Proceedings Act*" immediately below the listed parties

- (a) if it is intended, when the proceeding starts, that a certification order will be sought under the Act, or
- (b) if a certification order is subsequently made in respect of the proceeding under the Act.

(2) If a certification order is refused in respect of the proceeding or the proceeding is decertified, the words "*Brought under the Class Proceedings Act*" must not be included in the title in all subsequent pleadings and documents filed in the proceeding.

Pleadings: denial of facts

12.12(1) Every fact in a pleading is denied if the fact is not admitted in another pleading filed by a party opposite in interest.

(2) A denial of a fact in a pleading must meet the point of substance.

Division 4
Filed Documents

Subdivision 1
Content and Filing

Requirements for all filed documents

12.13(1) Every document filed in an action must be in the prescribed form, if a form is prescribed, which may be modified as circumstances require.

(2) Whether or not a form is prescribed, the document must include all the following:

- (a) the name of the court;
- (b) the name of the judicial centre;

Alberta Rules of Court

Part 12: Technical Rules

- (c) the names of the parties as set out in the commencement document, unless amended in accordance with these rules;
- (d) the action number;
- (e) the nature of the document;
- (f) an address for service of documents;
- (g) the name and address of the party or lawyer of record who prepared the document;
- (h) once filed, the date the document is filed;
- (i) anything required to be included in the document by these rules.

(3) Every document filed and every exhibit to an affidavit must be legible.

(4) When a document is filed, the court clerk must retain the original of the document, unless the court otherwise directs.

Information note

When a form is prescribed for use under these rules keep in mind rule 12.16 [*Deviations and changes to prescribed forms*]. Rules for affidavits and exhibits are contained in rule 12.19 [*Types of affidavit*] to rule 12.27 [*Exhibits: filing and return*].

Endorsements on documents

12.14(1) When the court clerk is presented with a commencement document for filing, the court clerk must

- (a) endorse on the document an action number assigned to the action by the court clerk, and the date that the document is issued, and
- (b) ensure that the document to be filed has endorsed on it the judicial centre from which the document is issued.

(2) If a lawyer is acting for a person on whose behalf the action is started, when the court clerk is

Alberta Rules of Court

Part 12: Technical Rules

presented with a commencement document for filing, the court clerk must ensure that the lawyer has endorsed on the document

- (a) the name and address of the law firm,
- (b) the name of the lawyer in the law firm in charge of the action, and
- (c) the lawyer's telephone number.

(3) When the court clerk is presented with a statement of defence or a demand for notice for filing, the court clerk must ensure that the document has endorsed on it

- (a) the name of the person filing the document and, if the person filing the document is a lawyer, the same information that is required under subrule (2)(a) to (c), and
- (b) the defendant's address for service.

(4) When the court clerk is presented with a document that is to be filed in an action after the action has started, the court clerk must

- (a) endorse on the document the date that the document is filed, and
- (b) ensure that the document to be filed has endorsed on it
 - (i) the judicial centre at which the document is filed, and
 - (ii) the appropriate action number.

(5) If the court clerk is presented with a document that is to be filed after an action has started, the court clerk must also, if a lawyer is acting in respect of the person on whose behalf the document is filed, ensure that the lawyer has endorsed on the document the same information that is required under subrule (2)(a) to (c).

(6) When a document is filed, the court clerk must note in the court file, under the number assigned to the action by the court clerk, the fact that the document was issued or filed.

When a document is filed

12.15 A document is filed when the court clerk of the judicial centre acknowledges on the

Alberta Rules of Court

Part 12: Technical Rules

document that the document is filed in the action.

Information note

The appropriate judicial centre is determined under rules 3.3 [*Determining the appropriate judicial centre*] and rule 3.4 [*Claim for possession of land*].

Deviations and changes to prescribed forms

12.16 A prescribed form or a document prepared in place of a prescribed form is not invalidated nor is there any contravention of these rules if there is a deviation from or an addition to or omission from the form or document that

- (a) does not adversely affect the substance of the information required to be provided or that the court requires to be provided, and
- (b) is not intended to mislead.

When a commencement document is issued

12.17 When a commencement document is filed, the court clerk must issue it by signing the commencement document and sealing it with the court clerk's seal of office.

Amendments to records other than pleadings or affidavits

12.18 If the court orders that an amendment be made to a document or other record filed with the court, other than a commencement document, pleading, or affidavit,

- (a) a note of the amendment must be attached to, made on, or made in the document or record,
- (b) the amendment must be
 - (i) dated, identified and each amended version identified, and

- (ii) endorsed by the court clerk in the following form:

Amended on [date] by [order]

Dated . . . and

- (c) except as required by this rule, the document or other record must not be otherwise physically altered.

Subdivision 2
Form and Content of Affidavits and Exhibits

Types of affidavit

12.19(1) An affidavit may be sworn

- (a) on the basis of personal knowledge, or
- (b) on the basis of information known to the person swearing the affidavit and that person's belief.

(2) If an affidavit is sworn on the basis of information and belief, the source of the information must be disclosed in the affidavit.

(3) If an affidavit is used in support of an application that may dispose of all or part of a claim, the affidavit must be sworn on the basis of the personal knowledge of the person swearing the affidavit.

Information note

Under section 28(1)(11) of the *Interpretation Act*, references to affidavits and to sworn statements permit a person to make a solemn affirmation or solemn declaration instead of an affidavit.

Requirements for affidavits

12.20(1) In addition to complying with rule 12.13 [*Requirements for all filed documents*] an affidavit under these rules must comply with all of the following:

- (a) be in the prescribed form,
- (b) state, on the front page, the full name of the individual swearing the affidavit and the date the affidavit was sworn,
- (c) state the place of residence of the person swearing the affidavit,
- (d) be written in the first person,
- (e) be divided into paragraphs, consecutively numbered, with dates and numbers expressed in numerals, unless words or words and numerals make the meaning clearer,
- (f) subject to rule 12.23 [*Affidavits by the visually impaired or those unable to read*], be signed or acknowledged and sworn before a person empowered to administer oaths, whether that person prepared the affidavit or not,
- (g) contain a statement of when, where and before whom the affidavit was sworn, and
- (h) be signed by the person administering the oath.

(2) An affidavit is not invalid or otherwise improper just because it was sworn before a commencement document was filed.

Information note

The place of residence referred to in subrule (1)(b) could be an address or the municipality in which the person swearing the affidavit resides.

Alberta Rules of Court

Part 12: Technical Rules

Changes in affidavits

12.21 An affidavit with an insertion, alteration or erasure must not be used without the court's permission unless the insertion, alteration or erasure is authenticated by the initials of the person administering the oath.

Requirements for exhibits to an affidavit

12.22(1) A record to be used with an affidavit must be

- (a) an exhibit to the affidavit, and
- (b) identified by a certificate of the person administering the oath.

(2) If the total number of pages of an affidavit and attached exhibits is 25 or more,

- (a) the exhibits must be separated by tabs, and the pages within each tab must be numbered consecutively, or
- (b) the pages of the affidavit and all exhibits must be consecutively numbered using a single series of numbers.

(3) An exhibit to an affidavit must be attached or appended to the affidavit when the affidavit is filed, unless

- (a) the exhibit is unduly large or bulky and can be adequately identified,
- (b) the exhibit has already been filed and is identified, or
- (c) the court otherwise orders.

Affidavits by the visually impaired or those unable to read

12.23(1) If it seems to the person administering the oath that the individual swearing the affidavit is visually impaired or unable to read, the person administering the oath must read the affidavit to the individual swearing the affidavit and certify that

- (a) the affidavit was read to the individual,

Alberta Rules of Court

Part 12: Technical Rules

- (b) the individual seemed to understand it, and
- (c) the individual signed the affidavit or made their mark in the presence of the person administering the oath.

(2) The affidavit must not be used in evidence without the certification referred to in subrule (1) unless the court is satisfied that the affidavit was read to, and appeared to be understood by, the individual swearing it.

Understanding an affidavit

12.24(1) If it seems to the person administering the oath that the individual swearing a written affidavit does not understand the language in which the affidavit is written, the contents of the affidavit must be translated for the person swearing the affidavit by a person competent to do so, before the affidavit is sworn.

(2) Before the affidavit is translated, the translator must be sworn to accurately translate the affidavit and oath.

(3) The person administering the oath must certify as to their belief that the affidavit was translated for the individual swearing the affidavit by the sworn translator.

(4) Unless otherwise permitted by the court, a sworn affidavit that is not in the English language must be translated into English by a translator competent to do so and, when the affidavit is filed, be accompanied by a certificate of the translator that the translation is accurate and complete.

More than one individual swearing an affidavit

12.25 An affidavit may be made by 2 or more individuals and that fact must be stated in the statement of when, where and before whom the affidavit was sworn.

Use of filed affidavits

12.26 In an application or proceeding in an action, a party may use and refer to an affidavit filed in the action.

Alberta Rules of Court

Part 12: Technical Rules

Exhibits: filing and return

12.27(1) Exhibits filed with the court clerk must

- (a) be dated and numbered,
- (b) indicate the parties involved in the action, application or proceeding for which the exhibit is filed, and
- (c) state who owns the exhibit and by whom the exhibit is filed.

(2) A list of exhibits filed in an action, application or proceeding, briefly describing the exhibits and who filed them, must be noted in the court file.

(3) After the time for an appeal has expired, the court clerk may, subject to any order, return a record or exhibit to the owner or person who filed it.

(4) The court clerk may destroy or dispose of a record or exhibit if the court clerk

- (a) gives at least 3 months written notice by ordinary mail to the owner or person who filed it of the court clerk's intention to destroy or dispose of the record or exhibit, and
- (b) receives no response to the notice.

Subdivision 3

***Lost and Concurrent Documents, Certified Copies,
Authenticated Photographs and Video Recordings***

Lost documents

12.28 If a commencement or other document has been lost, the court clerk, if satisfied of the loss and of the correctness of a copy of the document, may seal the copy which may be used in place of the original.

Concurrent document

12.29(1) During the validity of a commencement document, the court clerk may issue a

Alberta Rules of Court

Part 12: Technical Rules

concurrent document which is in force during the validity of the original document.

(2) The concurrent document must have the same date as the original document and must be marked “concurrent” with the date of issue of the concurrent document.

Certified copies of original records

12.30(1) The court may give directions

- (a) respecting the preparation of a certified copy of an original record that has been filed, and
- (b) if necessary, the use of the certified copy in place of the original record in an action, application or proceeding.

(2) The court clerk may certify or authenticate any document in the court file.

(3) The certified copy of an original record is admissible in evidence to the same extent as the original.

Authenticated photographs of personal property

12.31(1) If a party wishes to put personal property in evidence, the party may, in addition to or in substitution for the property, file one or more photographs

- (a) if permitted or directed by the court, or
- (b) with the agreement of every other party.

(2) The party filing the photographs must provide an accompanying certificate by the photographer certifying its authenticity and, with respect to each photograph,

- (a) the date, time and place where the photograph was taken;
- (b) the photographer’s name;
- (c) whether the photograph has been modified, enhanced or altered in any way, or otherwise tampered with;

Alberta Rules of Court

Part 12: Technical Rules

- (d) any other matter directed by the court.

(3) An authenticated photograph filed under this rule must be treated by the court in the same manner as if the personal property had been received in evidence, but if in the court's opinion the quality or content of a photograph is not adequate, the court may

- (a) direct that the photograph not be used, or
- (b) give any other direction the court considers appropriate in the circumstances.

Video recordings in place of transcripts

12.32 If the parties agree or the court orders that a video recording be made instead of a transcript, the person operating the video recording device which records the questioning must give a certificate containing the following:

- (a) the name and address of the person giving the certification,
- (b) the date, time and place of the video recording,
- (c) the names of the persons questioned and the persons doing the questioning,
- (d) whether the video recording is of the entire questioning or only a portion of it, and
- (e) any other information required by the court.

Division 5

Payment of Fees and Allowances, and Waivers of Fees

Fees and allowances

12.33(1) In every action, application or proceeding in court, there must be paid to the appropriate court officer or other appropriate person the fee specified, referred to or determined in accordance with Schedule B [*Court Fees and Witness and Other Allowances*] unless the court clerk waives the fee, in whole or in part, in accordance with guidelines, if any, established or adopted by the Attorney General for Alberta for persons unable to pay fees.

Alberta Rules of Court

Part 12: Technical Rules

(2) Except for fees for transcripts, the fees referred to in subrule (1) are payable in advance unless the court clerk otherwise permits or the court otherwise orders.

Uncertainty of amount of fees and allowances

12.34(1) If a fee, allowance or other amount is uncertain or impossible to determine, the fee or amount may be estimated by the court clerk and adjusted when the fee or amount is fixed by a judge.

(2) When a person is paid or given an allowance before actual attendance at an application or proceeding conducted under these rules, the person is entitled to receive any additional sum that is determined to be payable after completion of the attendance.

(3) When a party is permitted or required to pay an allowance, that party may have the amount fixed by an assessment officer without notice to any other person, subject to adjustment after completion of the actual attendance.

Fee accounts

12.35 The court clerk may establish and operate accounts for the purpose of allowing lawyers to charge fees or other amounts to the account and for the court clerk to send an invoice for fees and other amounts as required.

Fee exemption

12.36(1) A peace officer is exempt from the payment of fees or other amounts under Schedule B [*Court Fees and Witness and Other Allowances*] for the search of a name, the inspection of a file or a copy or the certification of a document when the court service is required in the execution or discharge of the peace officer's duties.

(2) In this rule, *peace officer* means the following persons:

- (a) a member of the Royal Canadian Mounted Police;
- (b) a member of a municipal police service within the meaning of the *Police Act*;
- (c) a peace officer under the *Peace Officer Act*;

Alberta Rules of Court

Part 12: Technical Rules

- (d) a person whose legal functions include written authorization to issue violation tickets under Part 2 or 3, or both, of the *Provincial Offences Procedure Act*;
- (e) a person appointed under the regulations under the *National Defence Act* (Canada) for the purposes of section 156 of that Act.

Fee waiver: legal aid

12.37(1) In this rule,

certificate means a Legal Aid Certificate issued by the Legal Aid Society of Alberta;

document means any document that may be filed for which a fee is payable under rule 1, Schedule B [*Court Fees and Witness and Other Allowances*].

(2) A court clerk who is requested to file a document must waive the filing fee otherwise payable if presented with a subsisting certificate issued in respect of the person for whom the document is to be filed.

(3) If a document was filed in an action before a certificate is issued in respect of the person for whom the document was filed, the fee paid for filing the document may not be waived under this rule.

Fee waiver: restraining orders

12.38(1) In this rule, ***restraining order*** means a restraining order that is sought in respect of an interpersonal matter between individuals and includes the costs associated with respect to that restraining order.

(2) If a court clerk files or issues a commencement document in which the remedy claimed is a restraining order, the court clerk must waive the fee payable under rule 1, Schedule B [*Court Fees and Witness and Other Allowances*].

(3) Despite subrule (2), the fee referred to in subrule (2) must not be waived if any remedy, other than or in addition to a restraining order, is being sought in respect of the matter for which the document is being filed or issued.

(4) A fee that was waived becomes immediately payable if the party in respect of whom the fee

was waived claims or seeks a remedy in respect of the matter other than or in addition to the restraining order.

Division 6

Judge's Fiat, Court Officers and Court Reporters

Judge's fiat

12.39(1) A judge may authorize, direct or give permission to a court officer, other than a lawyer, to do an act and a note signed by the judge is sufficient authority to carry out the act.

(2) The authorization, direction or permission is not to be filed unless the court otherwise directs.

Court officers

12.40 The persons holding the following positions are court officers:

- (a) the court clerk and every person delegated authority by the court clerk or authorized by the court clerk to perform any court clerk functions;
- (b) the sheriff;
- (c) a person appointed as a deputy of a person described in clause (a) or (b).

Court officers may delegate authority

12.41(1) A court officer may, in writing, appoint a person to act on their behalf if they are absent or unable to act.

(2) A court officer may appoint a person to sign, on the court officer's behalf, anything required to be signed by the court officer.

Alberta Rules of Court

Part 12: Technical Rules

Authority of court clerk

12.42(1) Subject to subrules (2) and (3), the court clerk must file, issue, certify or do any thing with respect to an action, application or proceeding that complies with these rules.

(2) The court clerk must not file, issue, certify or do any thing with respect to an action, application or proceeding except:

- (a) on the personal attendance at the court office by the party or person concerned, or if that party or person is represented, by their lawyer or the lawyer's representative;
- (b) at the written request of the party or person concerned or their lawyer who completes the prescribed form or other required document and who provides it to the court clerk with a prepaid and addressed envelope when return of a document is required;
- (c) by a means authorized by the court, which may include filing by fax or electronic mail, or both.

(3) A court clerk may refuse to file, issue, certify or do any other thing with respect to an action, application or proceeding if

- (a) the instructions to the court clerk are not clear,
- (b) a document or prescribed form is not satisfactory or not satisfactorily completed, or
- (c) a requirement of these rules has not been complied with.

Absence of court clerk

12.43 In the absence or inability of the court clerk or other officer of the court to act or to do a thing, the duty may be performed by a person designated for that purpose by the Chief Justice.

Seal

12.44(1) Each court clerk must have a seal.

Alberta Rules of Court

Part 12: Technical Rules

(2) The court clerk's seal and the court clerk's signature must be placed on all commencement documents and other documents issued by the court clerk.

Duties of court clerk

12.45 In addition to any other duties that a court clerk is required by law to perform, a court clerk has the following duties and responsibilities:

- (a) to establish and maintain a court file for each action started in the court and to keep the record up to date;
- (b) to receive, file and have custody of all commencement documents, pleadings, affidavits and records filed in every action, application or proceeding;
- (c) to have custody of all documents required or ordered to be deposited for safekeeping or otherwise under an order or an enactment;
- (d) to take any action or do any thing required or permitted under these rules, an enactment or an order or judgment;
- (e) in accordance with the court's directions, to keep a detailed log of court proceedings and ensure that the recording and log are properly and securely stored including any record that is capable of being represented or reproduced visually or by sound, or both;
- (f) to keep proper accounts and records of money or property received, paid out or disposed of;
- (g) to perform any other functions required by the Attorney General for Alberta or the Chief Justice.

Notice to be given to court officers

12.46(1) Every party or person

- (a) who receives an order or judgment, or
- (b) in whose favour an order or judgment is made

Alberta Rules of Court

Part 12: Technical Rules

that imposes duties on a court officer must give to the officer written notice of the order or judgment and of the duty imposed under the order or judgment, unless the court otherwise orders.

(2) Filing the order or judgment is not notice to the court officer.

Court reporters

12.47(1) A court reporter must perform the duties required under these rules or assigned by the Attorney General for Alberta or the court and must:

- (a) keep in safe custody the record of any proceedings or questioning taken by the reporter, and
- (b) honestly and accurately transcribe the record of those proceedings or questioning, and
- (c) deliver a copy of the transcript as required by these rules.

(2) On or attached to a transcript, the court reporter must

- (a) state their name,
- (b) specify the date and place where the transcript was taken, and
- (c) certify the transcript, or the portion of the transcript transcribed, as complete and accurate.

Proof of court reporter's signature not required

12.48 Proof of the signature of a court reporter or a person transcribing questioning under these rules is not required unless the court so orders.

Division 7
Payment Into Court and Payment Out of Court

When money can be paid into court

12.49 Money may be paid into court in accordance with

- (a) these rules;
- (b) an enactment;
- (c) a judgment or order.

How money is paid into court

12.50(1) Money paid into court must be paid to the court clerk accompanied by the prescribed form.

(2) The court clerk must

- (a) give a receipt for money paid into court, and
- (b) deposit the money in an account in a bank or treasury branch, unless otherwise ordered.

Tender on a judicial sale

12.51(1) Certified cheques received by the court clerk as a tender on a judicial sale must be held by the court clerk on behalf of the person making the tender.

(2) If the court clerk expects the tender to be considered by the court or otherwise dealt with within one month after receipt of the certified cheque, the court clerk may hold the cheque without depositing it.

(3) If the court clerk expects that a tender will not be considered or otherwise dealt with within one month after receipt of the certified cheque, or if the person making the tender so requests within one month after making the tender, the court clerk must invest the money in securities described in rule 12.55 [*Investments and payment earnings*].

Alberta Rules of Court

Part 12: Technical Rules

Litigant's accounts

12.52(1) Money paid into court must be credited to a litigant's account for an action, application or proceeding for which the payment is made.

(2) The court clerk is in charge of every litigant's account and must record all transactions related to the account and the authority for the transaction.

Payments into court under the *Trustee Act*

12.53(1) An application for permission to pay money or securities into court under the *Trustee Act* or a payment into court under that Act must be accompanied by an affidavit of one or more trustees setting out

- (a) a brief description of the trust, the instrument or enactment creating it or of the circumstances under which it arose,
- (b) the name of every person interested in or entitled to the money or securities together with their addresses, if known, and
- (c) an address for service of documents.

(2) Notice of the application or payment into court must be given to every person that the court orders be notified.

Payments out of court

12.54 Money paid into court may only be paid out of court

- (a) if the court clerk certifies that the money is in court,
- (b) in accordance with an order, unless otherwise permitted by the court,
- (c) by cheque signed and countersigned by a person designated by the Attorney General for Alberta, and

Alberta Rules of Court

Part 12: Technical Rules

- (d) if the payment is to
 - (i) the person entitled to the money or the person's lawyer, or
 - (ii) another person specified by the court or named by the person entitled to the money.

Investments and payment earnings

12.55(1) Money paid into court or money subject to an order may be invested on the court clerk's initiative or on the written request of a person having an interest in the money and if the money is invested, the money may only be invested in

- (a) public funds of Alberta or Canada,
- (b) deposit certificates of a bank, treasury branch or trust company, or
- (c) securities or a class of securities authorized by the court.

(2) Money earned on investments made under subrule (1) must be paid to the person entitled to the money paid into court when the principal amount is paid out, unless the court otherwise orders.

Disposition of money in accounts

12.56(1) If the balance remaining to the credit of a court account is less than \$100 and 2 years have passed after the amount was deposited in the account without being claimed, the account must be closed by transferring the balance to the suspense account maintained by the court clerk.

(2) Ten years after the last payment into a court account, the balance must be transferred to the suspense account.

(3) Money in the suspense account, including interest or any return on money in that account is subject to the control of and may be paid out only in accordance with a direction of the Lieutenant Governor in Council.

(4) This rule does not affect the right of a person entitled to the money in the suspense account, including the right to recover the money.

PART 13: APPEALS

What this Part is about:

[Placeholder]

PART 13: APPEALS

Starts at rule #

PART 13: APPEALS

[Placeholder]

PART 14: TRANSITIONAL PROVISIONS AND COMING INTO FORCE

What this Part is about: This Part describes what happens to legal proceedings that are going on when the new rules come into effect. The Part is intended to ensure a smooth transition from the former rules to these rules.

PART 14: TRANSITIONAL PROVISIONS AND COMING INTO FORCE

	Rule #
Definitions.	14.1
New rules apply to existing proceedings.	14.2
Dispute resolution requirements.	14.3
Complex cases.	14.4
Dismissal for long delay: bridging provision.	14.5
Contingency fee agreements.	14.6
Resolution of difficulty or doubt.	14.7
Repeal.	14.8
Coming into force.	14.9

Information note

Words and phrases used in this Part that have defined meanings in the Appendix
[Definitions] include

- | | |
|-----------------------------|------------|
| • contingency fee agreement | • judgment |
| • court | • order |
| • enactment | • party |
| • file | • rules |

PART 14: TRANSITIONAL PROVISIONS AND COMING INTO FORCE

Definitions

14.1 In this Part,

existing proceeding means a court proceeding commenced but not concluded under the former rules;

former rules means the Alberta Rules of Court in effect immediately before these rules came into force.

New rules apply to existing proceedings

14.2(1) Except as otherwise provided in an enactment, by this Part or by an order under rule 14.7 *[Resolution of difficulty or doubt]*, these rules apply to every existing proceeding.

(2) Every order or judgment made under the former rules and every thing 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.

Dispute resolution requirements

14.3 Rule 4.16 *[Dispute resolution processes]* does not apply to an existing proceeding if, before this rule comes into effect, a trial date has been scheduled for the existing proceeding.

Complex cases

14.4 Rule 4.5 *[Complex cases]* does not apply to an existing proceeding that is, under these rules, categorized as a complex case, if on the date this rule comes into effect a trial date has been scheduled for the existing proceeding.

Alberta Rules of Court

Part 14: Transitional Provisions and Coming into Force

Dismissal for long delay: bridging provision

14.5(1) If the shorter of the following periods has passed since the last thing done to significantly advance an action:

- (a) 2 years after the coming into force of this rule, or
- (b) the period between the last thing done to significantly advance the action and 5 years,

the court, on application, must dismiss the action as against the applicant unless subrule (2) applies.

(2) The court must not dismiss the action if

- (a) the parties to the application agreed to the delay,
- (b) the action has been stayed or adjourned by order or an order has extended the time for doing the next thing in the action,
- (c) one party has acquiesced in the delay of the other, or both parties have acquiesced in the delay, and the court considers the acquiescence sufficient reason not to dismiss the action, or
- (d) an application has been filed or proceedings have been taken since the delay and the applicant has participated in them for a purpose and to the extent that, in the opinion of the court, warrants the action continuing.

Contingency fee agreements

14.6(1) Rule 10.7(2) does not apply to a contingency fee agreement entered into before this rule comes into effect if the agreement complied with the former rules.

(2) Rule 10.7(2)(e), (f), (g) and (h) [*Contingency fee agreement requirements*], and subrules (3), (4), (5) and (6) of that rule do not apply to a contingency fee agreement entered into before May 1, 2000 if

- (a) the agreement complied with rule 617 of the *Alberta Rules of Court* as it existed before May 1, 2000, and

Alberta Rules of Court**Part 14: Transitional Provisions and Coming into Force**

- (b) a copy of the agreement was filed with the court in accordance with rule 617 of the *Alberta Rules of Court* as that rule existed before May 1, 2000.

Resolution of difficulty or doubt

14.7 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:

- (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.

Repeal

14.8 [*Repeal of rules here or in the enacting legislation.*]

Coming into force

14.9(1) [*Coming into force date here or in the enacting legislation.*]

(2) Rule 4.33 [*Dismissal for long delay*] comes into force 2 years after rule 14.5 [*Dismissal for long delay: bridging provision*] comes into force.

(3) Rule 14.5 [*Dismissal for long delay: bridging provision*] is repealed when rule 4.33 [*Dismissal for long delay*] comes into force.

SCHEDULE A: FORMS

SCHEDULE A: FORMS

List of Prescribed Forms

Rule number	Description of Prescribed Forms
2.14	Affidavit of Self-Appointed Litigation Representative
2.14(1)(b)	Notice of Self-appointment of Litigation Representative
2.28	Notice of Change of Representation
2.29	Notice of Withdrawal of Lawyer
3.2(2)(f)	Originating Application – Appeal
3.4	Requisition for Transfer of Action
3.8	Originating Application
3.18	Notice to Obtain Record of Proceedings
3.19	Notice Sending in Record of Proceedings
3.25	Statement of Claim
3.31	Statement of Defence
3.33	Reply to a Defence
3.34	Demand for Notice
3.36(1)	Noting in Default
3.43	Notice of Claim against Co-Defendant
3.45	3 rd Party Claim
3.49	3 rd Party Statement of Defence
3.50	Demand for Notice by 3 rd Party Defendant
3.53	Application by Defendant to Enforce Judgement Against 3 rd Party Defendant
3.54	Reply to Defence of 3 rd Party Defendant
3.57	Counterclaim
4.24	Formal Offer to Settle
4.36(4)	Discontinuance of Claim

4.37	Discontinuance of Defence
5.6	Affidavit of Records
5.34	Expert Report
6.3	Application
6.5	Questionnaire Under the <i>Protection Against Family Violence Act</i>
6.15	Notice of Appeal of Master's Decision
6.18	Notice of Appointment for Questioning
6.24(4)	Order that Evidence be Taken Outside Alberta
6.24(4)	Letter of Request to Judicial Authority
6.33	Application for Order Restricting Access
6.39	Notice to Admit Facts
6.58	Originating Application for Interpleader Order
6.61	Civil Enforcement Agency Direction to Instructing Creditor
7.5(2)	Application for a Summary Trial
8.4	Request of Trial Coordinator to Schedule a Trial Date
8.6	Application for Court to set a Trial Date
8.7	Confirmation of Trial Date
8.8	Notice to Attend as Witness at Trial
9.22	Application that a Judgment has been Satisfied
10.11	Notice of Appointment for Review of Retainer Agreement/Lawyer's Charges
10.24	Notice of Appeal of Review of Officer's Decision
10.33(1)	Bill of Costs
10.35	Order for Assessment of Costs
10.42	Notice of Appeal of Assessment Officer's Decision
10.49	Order to Appeal
11.23	Notice of Address for Service in Foreclosure Action

12.20	Generic Affidavit
12.50	Money Paid Into Court

[To see the prescribed forms, go to Appendix I – Proposed Court Forms.]

SCHEDULE B: COURT FEES AND WITNESS AND OTHER ALLOWANCES

SCHEDULE B: COURT FEES AND WITNESS AND OTHER ALLOWANCES

Starts at rule #

Division 1: Court Clerk Fees.	1
Division 2: Sheriff's Fees.	11
Division 3: Allowances Payable to Witnesses and Jurors in Civil Proceedings.	13
Division 4: Fees for Receiver Functions.	23

SCHEDULE B: COURT FEES AND WITNESS AND OTHER ALLOWANCES

Division 1 Court Clerk Fees

1 The fee for

- (a) commencement of an action by statement of claim or originating application and all subsequent applications and proceedings in the action, or
- (b) if there is no action number already assigned, all subsequent proceedings under the action number then assigned to that application,

but excluding an application to schedule a trial date, an appointment for a review of lawyer's charges and an appointment for an assessment of costs, is a single fee of \$200.00

2 The fee for an application for a trial date is..... \$600.00

3 The fee for each appointment for review by a review officer or appointment for an assessment of costs by an assessment officer is. \$100.00

4 The fee for certification of a document is. \$10.00

5 The fee for certification of one copy of a document at time of filing the document is. no charge

6 The fee to search a name, including the inspection of one file is. \$10.00

7 The fee to inspect a court file is..... \$10.00

Alberta Rules of Court

Schedule B: Court Fees and Witness and Other Allowances

8 The fee to copy a document, per page, is..... \$1.00

9 The fee for commencement of interpleader proceedings or proceedings to determine the rights of various parties is..... \$100.00
(See Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*]).

10 If an action has not been commenced the fee for filing a court order, together with related affidavits, is..... \$25.00

**Division 2
Sheriff's Fees**

11 The fee for selecting jurors and preparing the list is..... \$200.00

12 The fee for serving each juror is..... \$20.00

**Division 3
Allowances Payable to Witnesses
and Jurors in Civil Proceedings**

***Note:** Allowances to witnesses and jurors may be increased under special circumstances by a judge.*

13 The allowance payable for each day or part of a day necessarily spent by a witness or juror in travelling to and staying as long as is reasonably necessary to give evidence or to attend as a juror and travelling back from the place of trial is..... \$100.00

14 If a witness or juror does not reside within reasonable commuting distance of the place of trial, the witness or juror is to be reimbursed an amount paid for accommodation as an assessment officer considers reasonable.

Alberta Rules of Court

Schedule B: Court Fees and Witness and Other Allowances

15 For necessary meals and accommodation, the same rate is to be paid to witnesses and jurors as is payable to Government employees under regulations made under the *Public Service Act* or any successor Act.

16 For every kilometre necessarily travelled by a witness or juror in going to and returning from the place of trial

- (a) by train, bus or other public transportation, the witness or juror is to be reimbursed the actual fare paid;
- (b) by private vehicle, the witness or juror is to be paid at the same rate that is payable to Government employees under regulations made under the *Public Service Act*.

17 If a witness is an expert witness, is not a party to the action and is called as an expert to give evidence for a day or part of a day, that witness is entitled to

- (a) reasonable fees,
- (b) every fee or expense to which a witness is entitled under this Division, and
- (c) an allowance of..... \$100.00

18 If a witness or juror has to travel over 200 kilometres and uses a regularly scheduled air carrier, the witness or juror is to be reimbursed the airfare actually paid by the witness or juror.

Transcripts

19 For a transcript of notes of evidence on questioning, the following fees apply:

- (a) for each regular transcript that is
 - (i) in double-spaced format, per page..... \$2.20
 - (ii) in single-spaced format, per page..... \$3.70

Alberta Rules of Court**Schedule B: Court Fees and Witness and Other Allowances**

- (b) for each expedited transcript (produced on accelerated priority basis) that is
 - (i) in double-spaced format, per page. \$2.95
 - (ii) in single-spaced format, per page. \$5.20
- (c) for each daily copy of a transcript produced within 24 hours after it is taken that is
 - (i) in double-spaced format, per page. \$3.95
 - (ii) in single-spaced format, per page. \$6.70
- (d) for each additional copy to the same party, per page. 0.20

Oral Judgments

- 20** For each copy of an oral judgment, the fee per page is. \$2.20

Other transcripts

21 Transcriptions of proceedings when required by a trial judge

- (a) in civil cases are charged on the above tariff of fees and become costs of the action;
- (b) in criminal cases are charged on the above tariff of fees and are paid by the Crown.

22 The fee for any transcription or work required to be done by a court reporter and that is not specified by this tariff is to be fixed by analogy.

Alberta Rules of Court

Schedule B: Court Fees and Witness and Other Allowances

Division 4
Fees for Receiver Functions

23 Fees payable to the court clerk or sheriff when acting as a receiver are to be computed upon gross income received, and subject to be increased or decreased in special cases in the discretion of a judge:

On first \$ 1000.00 or fraction, a fee of.	6%
On next \$ 1,500.00 or fraction, a fee of.	5%
On next \$ 2,500.00 or fraction, a fee of.	4%
On next \$ 5,000.00 or fraction, a fee of.	3%
On next \$ 90,000.00 or fraction, a fee of.	2%
Above \$ 100,000.00 or fraction, a fee of.	1%

SCHEDULE C: TARIFF OF RECOVERABLE FEES

SCHEDULE C: TARIFF OF RECOVERABLE FEES

Starts at rule #

Division 1: Introduction..... 1

Division 2: The Tariff..... following rule 3

SCHEDULE C: TARIFF OF RECOVERABLE FEES

Division 1 Introduction

Framework

1(1) This Schedule specifies the lawyer's fees that may be recovered by one party from another under a costs award.

(2) Each column of the tariff in Division 2 [*The Tariff*] gives a dollar amount range for the purpose of determining the lawyer's fee under that column for the work described under each item.

(3) Subject to subrule (4), the dollar range indicates the amount recoverable

- (a) as against the plaintiff, with reference to the amount claimed by the plaintiff,
- (b) as against the defendant, with reference to the amount of the judgment or order against the defendant, or
- (c) in the case of an interlocutory application, as against the person liable to pay the costs with reference to the amount claimed by the plaintiff.

(4) Unless the court otherwise orders,

- (a) when a remedy is given in a judgment or order other than or in addition to the payment of money, or
- (b) when judgment is given for a defendant in an action in which a remedy other than or in addition to the payment of money is sought,

costs must be assessed according to the higher of Column 1 of the tariff in Division 2 [*The Tariff*], or the scale that would have applied if the other remedy had not been given or sought.

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

Information note

Note rule 10.40 [*Actions within Provincial Court jurisdiction*].

What the items in the tariff include

2(1) The description of items in Division 2 [*The Tariff*] includes, with respect to each item:

- (a) instructions from a client;
- (b) all preparatory work related to the commencement of an action and preparatory work related to an item and the preparation of all records and material;
- (c) the drafting, issuing and service of any required commencement document, pleading, affidavit and related documents;
- (d) attendances;
- (e) correspondence;
- (f) all material read or written;
- (g) if an application is abandoned, all work done in connection with the abandonment;
- (h) other activity undertaken or implied in the item, including necessary or convenient services.

(2) If an item described in the tariff has been started but not completed, or is only partially completed, a proportion of the fee may be allowed.

Information note

For rules related to the application of the tariff see Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation and Sanctions*] Division 2 [*Recoverable costs of litigation*], and in particular rule 10.29 [*Court-ordered costs award*] and rule 10.39 [*Assessment officer's decision*].

Application of the tariff

3 The tariff in Division 2 [*The Tariff*] applies whether the services described in the tariff were provided before, on or after these rules come into force.

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

Division 2 The Tariff

ITEM AND ITEM NUMBER	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
	Up to and including \$50,000	Over \$50,000 up to and including \$150,000	Over \$150,000 up to and including \$500,000	Over \$500,000 up to and including \$1.5 million	Over \$1.5 million

Unless the court otherwise orders, matters which have no monetary amounts, for example, injunctions, will be dealt with under Column 1. Costs in relation to residential tenancies are not dealt with under any of these columns and are in the discretion of the court. For monetary amounts within the jurisdiction of the Provincial Court, see rule 10.40 [*Actions within Provincial Court jurisdiction*].

Commencement documents, pleadings related documents

1 (1) Commencement documents, affidavits, pleadings and related documents, and amendments.	1000	1500	2000	2500	3500
---	------	------	------	------	------

(2) When the matter is uncontested (a default judgment is an example of an uncontested matter), the limit of recovery is 50% of this amount.

Uncontested trial

2 Uncontested trial appearance.	200	400	600	800	1000
--	-----	-----	-----	-----	------

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

Disclosure under Part 5

[Disclosure of Information]

3(1) Disclosure of records under Part 5 <i>[Disclosure of Information]</i> including affidavit of records.	500	750	1000	1250	1500
--	-----	-----	------	------	------

(2) Review of opposite party documents (once per action), including statement of property: the equivalent of a ½ day fee under item 5(2); this amount may be increased if the circumstances warrant.

(3) If there are only a few records requiring a limited amount of time to review, the fee may be reduced.

Expedition or better definition of the case

4 Notice to admit facts, opinion or non-adverse inference or the admission of any of these if, in the opinion of the court, the notice or admission resulted in expediting the case or better defining the matters in question.	200	400	800	1200	1600
---	-----	-----	-----	------	------

Oral questioning under Part 5

[Discovery of Information]

5(1) Preparation for questioning under Part 5 (once per action): the equivalent of a ½ day attendance fee under item 5(2).

(2) First ½ day or portion of it for attendance for questioning under Part 5 of parties or witnesses or cross-examination on an affidavit.	500	750	1000	1250	1500
--	-----	-----	------	------	------

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

(3) Each additional ½ day (If an attending counsel is acting for neither witness nor examining party, 50% of these amounts).	500	750	1000	1250	1500
--	-----	-----	------	------	------

(4) Preparation of and response to written questions – a fee equivalent to one full days' attendance for oral questioning under item 5.

Applications: uncontested

6(1) Uncontested applications	300	400	600	700	800
(2) Applications without notice to another party	100	100	100	100	100

Applications: contested

7(1) Contested applications or assessments and reviews before a master, judge, assessment officer or review officer and appeal from Provincial Court, masters, review officers and assessment officers.	500	750	1000	1250	1500
---	-----	-----	------	------	------

(2) Contested adjournment applications	150	150	150	150	150
--	-----	-----	-----	-----	-----

(3) Abandoned applications

A fee of 50% of the equivalent item that would be payable under this item if the application had not been abandoned.

Applications: requiring written briefs

8(1) Applications when a brief is required or allowed by the court

First ½ day or portion of it.	1000	1250	1500	1750	2000
Each additional ½ day (limited to ½ day unless the court otherwise orders).	500	625	750	875	1000

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

For complex chambers applications, the court may direct that costs relating to an Appearance to argue before Appeal Court apply, instead of the costs in this item.

(2) Abandoned applications

A fee of 50% of the equivalent item that would be payable under this item if the application had not been abandoned.

Trial readiness/case management

9(1) Each pre-trial application to schedule a trial date and each case management attendance, (including an interlocutory application, if it is heard during those applications or attendances other than an application under rule 6.3 [<i>Applications generally</i>]).	250	400	600	800	1000
--	-----	-----	-----	-----	------

(2) If an interlocutory application is brought under rule 6.3 [*Applications generally*] and heard during case management attendance, the fee awarded may include either a fee for the application or fees for both the application and case management attendance, depending on the duplication of work, if any.

Trial and summary trial

10(1) Preparation for trial and summary trial.	2000	4000	6000	8000	10 000
---	------	------	------	------	--------

(2) This item amount may be varied up or down depending on the length and complexity of the trial or summary trial.

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

11 Trial and summary trial

For first ½ day or portion of it	1000	1250	1500	1750	2000
Second counsel fee (when allowed by trial judge)	500	625	750	875	1000
Each additional ½ day	500	700	900	1200	1500
Second counsel fee (when allowed by trial judge)	250	350	450	600	750

Written argument

12 Submission of written argument at the request of the trial judge or where allowed by the trial judge.	1000	2000	3000	4000	5000
---	------	------	------	------	------

Post-judgment

13(1) Issue of writ of enforcement including the registration of the writ in the Personal Property Registry	200	250	300	350	400
(2) Registering a status report in the Personal Property Registry to renew the writ (allowed once every 2 years)	100	100	100	100	100
(3) Registering a status report in the Personal Property Registry to amend the writ	25	25	25	25	25
14(1) Request and review of a financial report from enforcement debtor	100	200	300	400	500
(2) Examination in Aid of Enforcement under the <i>Civil Enforcement Act</i>	100	200	300	400	500
15 Seizure and related matters	100	200	300	400	500

Alberta Rules of Court

Schedule C: Tariff of Recoverable Fees

16 Garnishee Summons, Notice of Continuing Attachment under the <i>Maintenance Enforcement Act</i> , or Garnishee Summons Renewal Statement	200	250	300	350	400
17 Sale of lands under order or judgment (including attendance at sale whether aborted or not)	200	300	400	500	600

APPENDIX: DEFINITIONS

APPENDIX

DEFINITIONS

List of defined words and phrases

In these rules,

abandoned goods in rule 9.28 [*Abandoned goods*] means personal property left on land or at premises by a person who has

- (a) been evicted from the land or premises by a civil enforcement agency, or
- (b) vacated the land or premises as a result of a judgment or order of possession;

Act in Part 9 [*Judgments and Orders*] Division 7 [*Reciprocal Enforcement of United Kingdom Judgments*] means Part 3 of the *International Conventions Implementation Act* and includes the Convention;

an application for an interpleader order in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] means an application filed under rule 6.57 [*Nature of application for interpleader order*] whether an originating application or an application;

applicant in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] means an applicant for an interpleader order, whether an originating applicant or applicant, as the context requires;

assessment officer means the court clerk for the judicial centre in which the action is located;

Attorney General for Alberta means the Minister of Justice and Attorney General for Alberta;

certificate in rule 12.37 [*Fee waiver: legal aid*] means a Legal Aid Certificate issued by the Legal Aid Society of Alberta;

certified copy in Part 9 [*Judgments and Orders*] Division 7 [*Reciprocal Enforcement of United Kingdom Judgments*] means the original document or a copy of the document certified as being a true copy by the original or facsimile signature of a proper officer of the foreign court;

Chief Justice means

- (a) the Chief Justice of the Court of Queen's Bench of Alberta,

- (b) the Associate Chief Justice of the Court of Queen's Bench of Alberta, or
- (c) a judge designated to act on behalf of the Chief Justice by the Chief Justice or by the Associate Chief Justice;

civil enforcement agency has the same meaning as ***agency*** in the *Civil Enforcement Act*, and where the context permits, includes a civil enforcement bailiff under the *Civil Enforcement Act*;

claim means a claim in respect of a matter in which a plaintiff, originating applicant, plaintiff-by-counterclaim or 3rd party plaintiff seeks a remedy;

claimant in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] means a person who files or is expected to file an adverse claim against personal property;

client includes a former client and

- (a) any person to whom a lawyer has rendered an account for lawyer's charges;
- (b) a person who is or may be liable to pay or who has paid lawyer's charges or part of them;

commencement document means

- (a) a statement of claim;
- (b) an originating application;
- (c) a counterclaim;
- (d) a 3rd party claim,

and includes an amendment to any of these documents;

contingency fee agreement means an agreement under rule 10.7 [*Contingency fee agreement requirements*];

Alberta Rules of Court

Appendix: Definitions

convention in Part 9 [*Judgments and Orders*] Division 7 [*Reciprocal Enforcement of United Kingdom Judgments*] means the Convention in Schedule 3 to the Act;

convention judgment, convention judgment creditor, convention judgment debtor and original court in Part 9 [*Judgments and Orders*] Division 7 [*Reciprocal Enforcement of United Kingdom Judgments*] have the same meaning respectively as **judgment, judgment creditor, judgment debtor, and original court** have in the Convention;

corporate representative means a person appointed as the representative of a corporation under rule 5.4 [*Appointment of corporate representatives*];

corporate witness means

- (a) an employee or former employee of a corporation;
- (b) an officer or former officer of a corporation, other than the corporate representative;
- (c) a person questioned under rule 5.18 [*Persons providing services to a corporation*];

costs award means the amount payable by one party to another in accordance with either or both of the following:

- (a) an order under rule 10.29 [*Court-ordered costs award*];
- (b) a certificate under rule 10.41 [*Certification of costs payable*];

court means the Court of Queen's Bench of Alberta acting by a judge or master except when the context refers to the court as an institution;

court clerk means an officer of the court designated under the *Court of Queen's Bench Act* as the clerk of the court appointed for or in a judicial centre, or a delegate or a person authorized by the clerk, or a person appointed as deputy clerk of the court;

court reporter means

- (a) a person appointed as a court reporter by the Attorney General for Alberta;
- (b) a person recognized under an enactment as a court reporter;

Alberta Rules of Court

Appendix: Definitions

defendant means a person against whom a remedy is sought in a statement of claim;

document in rule 12.37 [*Fee waiver: legal aid*] means any document that may be filed for which a fee is payable under rule 1, Schedule B [*Court Fees and Witness and Other Allowances*];

electronic hearing in rule 6.11(1) [*Electronic hearings*] means an application, proceeding, summary trial or trial conducted, in whole or part, by electronic means in which all the participants in a hearing, and the court, can hear each other, whether or not all or some of the participants and the court can see each other or are in each other's presence;

enactment means an Act or a regulation or any portion of an Act or regulation of Alberta or Canada, but does not include these rules;

encumbrance means a registered charge on secured property securing payment of money or performance of an obligation;

examination in rule 10.52 [*Mental disorder*] means a medical examination conducted for the purpose of determining a person's mental state;

existing proceeding in rule 14.1 [*Definitions*] means a court proceeding commenced but not concluded under the former rules;

expert means a person who is proposed to give expert opinion evidence;

facility in rule 10.52 [*Mental disorder*] means

- (a) a *facility* as defined in the *Mental Health Act*, or
- (b) a *correctional institution* as defined in the *Corrections Act*;

file means presenting to the court clerk the correct document and obtaining an acknowledgment by the court clerk that a commencement document, pleading, affidavit or other document is part of the court file;

foreclosure action includes the following:

- (a) an action for recovery of money secured by a mortgage, agreement for sale or encumbrance;

Alberta Rules of Court

Appendix: Definitions

- (b) an action for enforcement of any provision of a mortgage, agreement for sale or encumbrance;
- (c) an action for sale, foreclosure, redemption or specific performance with respect to land, with or without other security, that is subject to a mortgage, agreement for sale or encumbrance;

foreclosure order includes an order cancelling or determining an agreement for sale;

former rules in rule 14.1 [*Definitions*] means the Alberta Rules of Court in effect immediately before these rules came into force;

health care professional means

- (a) a person entitled to practice a profession as
 - (i) a member of the Alberta College of Physicians and Surgeons under the *Medical Profession Act*;
 - (ii) a chiropractor under the *Health Professions Act*;
 - (iii) a dentist under the *Health Professions Act*;
 - (iv) an occupational therapist under the *Health Professions Act*;
 - (v) a physical therapist under the *Physical Therapy Profession Act* ;
 - (vi) a psychologist under the *Health Professions Act*;
 - (vii) a registered nurse under the *Health Professions Act*;
- (b) a health care professional who is a medical practitioner, chiropractor, dentist, occupational therapist, physical therapist, registered nurse or psychologist who is regulated, registered or certified in that capacity in another jurisdiction and who is agreed to by the parties or approved by the court;
- (c) a person appointed by the court who is qualified to conduct a medical examination;

instructing creditor in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] has the same meaning as it has in the *Civil Enforcement Act*;

judge means a judge of the court and includes a supernumerary judge of the court;

judgment means a judgment of the court;

judgment creditor means a person who has a judgment or order requiring a person to pay money or that part of a judgment or order that requires a person to pay money;

judgment debtor means a person who is the subject of a judgment or order requiring the person to pay money or that part of a judgment or order that requires the person to pay money;

judgment holder in rule 9.28 [*Abandoned goods*] means a person who has a judgment or order of possession;

judicial centre means the office of the court in

- (a) Calgary;
- (b) Drumheller;
- (c) Edmonton;
- (d) Fort McMurray;
- (e) Grande Prairie;
- (f) Lethbridge;
- (g) Medicine Hat;
- (h) Peace River;
- (i) Red Deer;
- (j) St. Paul;
- (k) Wetaskiwin;

land means real property;

Alberta Rules of Court

Appendix: Definitions

lawyer means a person entitled to practice law in Alberta;

lawyer's charges means

- (a) the fees charged by a lawyer for services performed,
- (b) any disbursements paid or payable by the lawyer in the performance of services, and
- (c) other charges, if any, by a lawyer;

liquidated demand in rule 3.39 [*Judgment for debt or liquidated demand*] means

- (a) a claim for a specific sum payable under an express or implied contract for the payment of money, including interest, not being in the nature of a penalty or unliquidated damages, and the amount of money claimed can be determined by
 - (i) the terms of the contract,
 - (ii) calculation only, or
 - (iii) taking an account between the plaintiff and the defendant, or
- (b) a claim for a specific sum of money, whether or not in the nature of a penalty or damages, recoverable under an enactment which contains an express provision that the sum that is the subject of the claim may be recovered as a liquidated demand or as liquidated damages;

master means a *master in chambers* as defined in the *Court of Queen's Bench Act*;

medical examination means an examination or assessment of an individual's mental or physical condition;

order means an order of the court;

partnership means a partnership to which the *Partnership Act* applies;

party means a party to an action; in Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation and Sanctions*] Division 2 [*Recoverable costs of Litigation*] the word **party** has an extended definition, including a person filing or participating in an application or proceeding who is or may be entitled to or subject to a costs award;

Alberta Rules of Court

Appendix: Definitions

peace officer in rule 12.36 [*Fee exemption*] means the following persons:

- (a) a member of the Royal Canadian Mounted Police;
- (b) a member of a municipal police service within the meaning of the *Police Act*;
- (c) a peace officer under the *Peace Officer Act*;
- (d) a person whose legal functions include written authorization to issue violation tickets under Part 2 or 3, or both, of the *Provincial Offences Procedure Act*;
- (e) a person appointed under the regulations under the *National Defence Act* (Canada) for the purposes of section 156 of that Act;

personal property in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] includes a debt;

personal representative has the same meaning as it has in section 1(l) of the *Surrogate Rules* (AR 130/95);

plaintiff means a person who is named as plaintiff in a statement of claim;

pleading means

- (a) a statement of claim;
- (b) a statement of defence;
- (c) a counterclaim;
- (d) a defence to a counterclaim;
- (e) a reply to a statement of defence;
- (f) a reply to a statement of defence to a counterclaim;
- (g) a 3rd party claim;
- (h) a defence to a 3rd party claim;
- (i) a reply to a 3rd party's statement of defence;

Alberta Rules of Court

Appendix: Definitions

(j) a response to a request for particulars or a response to an order for particulars;

prescribed form means the appropriate form in Schedule A [*Forms*], completed and modified as circumstances require;

procedural order means an order relating to practice or procedure under rule 1.4 [*Procedural orders*] or any other rule respecting practice or procedure;

property includes land and personal property;

record includes the representation of or a record of any information, data or other thing that is or is capable of being represented or reproduced visually or by sound, or both;

recorded mail means a form of document delivery by mail or courier by which the addressee of the document, or a person on the addressee's behalf, is required to acknowledge receipt of the document by signing for it;

redemption order includes an order nisi and an order for specific performance;

referee means a person who is a referee under rule 6.46 [*Persons who are referees*];

related writ in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] has the same meaning as it has in the *Civil Enforcement Act*;

relevant and material is defined in rule 5.2 [*When is something relevant and material?*] for the purposes of Part 5 [*Disclosure of Information*];

remedy means relief or a remedy described or referred to in rule 1.3(1) [*General authority of the court to provide remedies*];

restraining order in rule 12.38 [*Fee waiver: restraining orders*] means a restraining order that is sought in respect of an interpersonal matter between individuals and includes the costs associated with respect to that restraining order;

retainer agreement means an express or implied agreement between a lawyer and a client with respect to the payment by the client of lawyer's charges, including a contingency fee agreement;

review officer means an assessment officer who, in the opinion of the court clerk,

(a) has an acceptable degree in law, and

Alberta Rules of Court

Appendix: Definitions

(b) sufficient experience in the practice of law,

and who is designated by the court clerk as a review officer;

rules includes the Schedules and the Appendix to these rules;

secured land means all secured land about which a claim is made in a foreclosure action;

secured property means the secured land and all secured personal property about which a claim is made in a foreclosure action, or any part of either or both;

target date in rule 4.4 [*Target dates for completing key stages in simple and standard cases*] means a date on or before which a stage in an action is expected to be complete;

3rd party defendant means the person named as defendant in a 3rd party claim;

3rd party plaintiff means the following:

(a) a defendant who files a 3rd party claim against another person;

(b) any 3rd party defendant who files a 3rd party claim against another person;

trustee means

(a) an executor, an administrator, or a trustee of the estate of a person;

(b) a person expressly appointed as trustee;

(c) a person who is or becomes a trustee at law, either expressly or by implication;

(d) a person who is appointed as a trustee under an enactment or who becomes a trustee by virtue of an enactment;

(e) several joint trustees;

(f) a person appointed as a trustee by the court;

writ proceedings in Part 6 [*Resolving Issues and Preserving Rights*] Division 9 [*Interpleader*] has the same meaning as it has in the *Civil Enforcement Act*.

PROPOSED COURT FORMS

(To go to individual forms, click on form title below, or use Adobe Acrobat bookmark tabs to the left.)

Rule #

2.14	Affidavit of Self-Appointed Litigation Representative
2.14(1)(b)	Notice of Self-appointment of Litigation Representative
2.28	Notice of Change of Representation
2.29	Notice of Withdrawal of Lawyer
3.2(2)(f)	Originating Application – Appeal
3.4	Requisition for Transfer of Action
3.8	Originating Application
3.18	Notice to Obtain Record of Proceedings
3.19	Notice Sending in Record of Proceedings
3.25	Statement of Claim
3.31	Statement of Defence
3.33	Reply to a Defence
3.34	Demand for Notice
3.36(1)	Noting in Default
3.43	Notice of Claim against Co-Defendant
3.45	3rd Party Claim
3.49	3rd Party Statement of Defence
3.50	Demand for Notice by 3rd Party Defendant
3.53	Application to Enforce Judgment Against 3rd Party Defendant
3.54	Reply to Defence of 3rd Party Defendant
3.57	Counterclaim
4.24	Formal Offer to Settle
4.36(4)	Discontinuance of Claim
4.37	Discontinuance of Defence
5.6	Affidavit of Records
5.34	Expert Report
6.3	Application

6.5	Questionnaire Under the <i>Protection Against Family Violence Act</i>
6.15	Notice of Appeal of Master's Decision
6.18	Notice of Appointment for Questioning
6.24(4)	Order that Evidence be Taken Outside Alberta
6.24(4)	Letter of Request to Judicial Authority
6.33	Application for Order Restricting Access
6.39	Notice to Admit Facts
6.58	Originating Application for Interpleader Order
6.61	Civil Enforcement Agency Direction to Instructing Creditor
7.5(2)	Application for a Summary Trial
8.4	Request of Trial Coordinator to Schedule a Trial Date
8.6	Application for Court to set a Trial Date
8.7	Confirmation of Trial Date
8.8	Notice to Attend as Witness at Trial
9.22	Application that a Judgment has been Satisfied
10.11	Notice of Appointment for Review of Retainer Agreement/Lawyer's Charges
10.24	Notice of Appeal of Review Officer's Decision
10.33(1)	Bill of Costs
10.35	Order for Assessment of Costs
10.42	Notice of Appeal of Assessment Officer's Decision
10.49	Order to Appear
11.23	Notice of Address for Service in Foreclosure Action
12.20	Generic Affidavit
12.50	Money Paid Into Court

PROPOSED COURT FORMS **(alphabetically)**

	Rule #
3rd Party Claim	3.45
3rd Party Statement of Defence	3.49
Affidavit of Records	5.6
Affidavit of Self-Appointed Litigation Representative	2.14
Application to Enforce Judgment Against 3 rd Party Defendant	3.53
Application	6.3
Application for Court to set a Trial Date	8.6
Application for a Summary Trial	7.5(2)
Application for Order Restricting Access	6.33
Application that a Judgment has been Satisfied	9.22
Bill of Costs	10.33(1)
Civil Enforcement Agency Direction to Instructing Creditor	6.61
Confirmation of Trial Date	8.7
Counterclaim	3.57
Demand for Notice	3.34
Demand for Notice by 3rd Party Defendant	3.50
Discontinuance of Claim	4.36(4)
Discontinuance of Defence	4.37
Expert Report	5.34
Formal Offer to Settle	4.24
Generic Affidavit	12.20
Letter of Request to Judicial Authority	6.24(4)
Money Paid Into Court	12.50
Notice of Address for Service in Foreclosure Action	11.23
Notice of Appeal of Assessment Officer's Decision	10.42
Notice of Appeal of Master's Decision	6.15
Notice of Appeal of Review Officer's Decision	10.24
Notice of Appointment for Questioning	6.18
Notice of Appointment for Review of Retainer Agreement/Lawyer's Charges	10.11

Notice of Change of Representation	2.28
Notice of Claim against Co-Defendant	3.43
Notice of Self-appointment of Litigation Representative	2.14(1)(b)
Notice of Withdrawal of Lawyer	2.29
Notice Sending in Records of Proceedings	3.19
Notice to Admit Facts	6.39
Notice to Attend as Witness at Trial	8.8
Notice to Obtain Record of Proceedings	3.18
Noting in Default	3.36(1)
Order for Assessment of Costs	10.35
Order that the Evidence be Taken Outside Alberta	6.24(4)
Order to Appear	10.49
Originating Application – Appeal	3.2(2)(f)
Originating Application for Interpleader Order	6.58
Originating Application	3.8
Questionnaire Under the <i>Protection Against Family Violence Act</i>	6.5
Reply to a Defence	3.33
Reply to Defence of 3rd Party Defendant	3.54
Request of Trial Coordinator to Schedule a Trial Date	8.4
Requisition for Transfer of Action	3.4
Statement of Claim	3.25
Statement of Defence	3.31

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>AFFIDAVIT OF SELF-APPOINTED LITIGATION REPRESENTATIVE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

AFFIDAVIT OF SELF-APPOINTED LITIGATION

REPRESENTATIVE _____

Sworn on _____

[RULE 2.14]

I, _____, whose address is _____, have personal knowledge of the following:

1. Attached as Exhibit 1 is my agreement in writing to be the litigation representative.
2. The reason(s) for this self-appointment as the litigation representative is/are:
(a)
(b)
3. The relationship between myself and the party I will represent as the litigation representative is _____.
4. I have no interest in the action adverse in interest to the party I will represent as the litigation representative.
5. I acknowledge potential liability for payment of a costs award attributable to or liable to be paid in these proceedings where I will be the litigation representative

[below are additional paragraphs required where person wishes to self-appoint as the litigation representative for the estate of a deceased person].

6. The estate of _____ has a substantial interest in this matter.
7. There are/are not/may be active duties to be performed by myself as litigation representative with respect to the administration of the estate of _____.
8. An application has been/has not been/will be made for the administration of the estate of _____.

9. I do/do not/may represent interests adverse to any other party in the action/proposed action.
10. The service of notice of the appointment in the form attached as Exhibit 2 has been effected on the beneficiaries and heirs at law of the estate of _____.

SWORN BEFORE ME at _____,)
Alberta, _____, 20____.)

A Commissioner for Oaths in the Province of)
Alberta)

PRINT NAME AND EXPIRY/LAWYER/STUDENT-AT-LAW)

SIGNATURE

PRINT NAME

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
THE ESTATE OF:	Melinda Grace Jones
DOCUMENT	<u>NOTICE OF SELF-APPOINTMENT OF LITIGATION REPRESENTATIVE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

THE ESTATE OF: MELINDA GRACE JONES

NOTICE OF SELF-APPOINTMENT OF LITIGATION REPRESENTATIVE

[RULE 2.14(1)(b)]

Purpose of this appointment

The purpose of this appointment is notify you that with the filing of an affidavit in a prescribed form with the court and the service of this notice on the beneficiaries and heirs at law of the deceased _____, _____ is appointed as the litigation representative of the deceased.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF CHANGE OF REPRESENTATION</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

NOTICE OF CHANGE OF REPRESENTATION [NAME AND STATUS]
[RULE 2.28]

[Name and Status] has changed their lawyer of record from [Legal Counsel, Law Firm Name] to [Legal Counsel, Law Firm Name].

OR

[Name and Status], formerly a self-represented litigant has retained as their lawyer of record [Legal Counsel, Law firm Name].

OR

[Name and Status], has changed their lawyer of record from [Legal Counsel, Law Firm Name] to become a self-represented litigant.

Legal Counsel for the [Name and Status]:
Law firm name:

Per: _____

Print Name of Lawyer Signing

OR

[Name and Status]

Print name

WARNING

This change of representation takes effect after the affidavit of service of this document on every party is filed. After that date, no pleading or other document relating to the action is to be served on the former lawyer of record or at any address for service previously provided by the former lawyer of record, or on the self-represented litigant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF WITHDRAWAL OF LAWYER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

NOTICE OF WITHDRAWAL OF LAWYER FOR [NAME AND STATUS]
[RULE 2.29]

Counsel for the [Name and Status] withdraw as counsel for that party.

The last known address for [Name and Status] is as follows:

Legal Counsel for the [Name and Status]:
Law firm name:

Per: _____

Print Name of Lawyer Signing

WARNING

This withdrawal of lawyer of record takes effect 10 days after the affidavit of service of this document on every party is filed. After that date, no pleading or other document relating to the action is to be served on the former lawyer of record or at any address for service previously provided by the former lawyer of record

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
APPLICANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>ORIGINATING APPLICATION – NOTICE OF APPEAL/REFERENCE UNDER AN ENACTMENT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

[Only use if there are respondents]

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Applicant)
GEOFFREY JAMES JONES (Respondent)

ORIGINATING APPLICATION – NOTICE OF APPEAL FROM _____ *
/REFERENCE TO THE COURT UNDER _____ *
[Rule 3.2(2)(f)]

[* Insert "Master", "Review Officer", "Provincial Court – Civil Division", "Surface Rights Board" etc. as appropriate]

Type of claim made/nature of reference, appeal or matter to be put before the court:

1.

Basis for the claim/reference/appeal/matter to be put before the court:

2.

Remedy sought:

3.

Affidavit or Other Evidence to be Used in Support of this Application:

4.

Applicable Acts and Regulations:

5.

[Only use if there are respondents]

NOTICE TO THE RESPONDENT(S)

You have the right to state your side of this matter before the court.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to without any further notice of them to you. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>REQUISITION FOR TRANSFER OF ACTION</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	---

NOTICE TO THE PLAINTIFF(S) AND COURT CLERK

The Defendant(s) by this requisition is/are requiring the Court Clerk in the Judicial Centre in which this action is located to transfer the action to the Judicial Centre of _____.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

REQUISITION FOR TRANSFER OF ACTION
DUE TO CLAIM FOR POSSESSION OF LAND

[RULE 3.4]

Requisition:

1. The Defendant(s) require(s) the Court Clerk in the Judicial Centre of _____ to transfer this action to the Judicial Centre of _____.
2. The reason for the transfer is that the possession of the following land is claimed in the Statement of Claim: [put in legal description and municipal address]
3. This land is nearest by road to the Judicial Centre of _____.

[alternative to 2 and 3]

2. My residence is located at [put in legal description and municipal address].
3. The Judicial Centre of _____ is nearest by road to my Alberta residence.

NOTICE TO THE PLAINTIFF(S)

The possession of land is claimed in the Statement of Claim that you filed. The Defendant(s) state(s) that the Judicial Centre that by road is nearest to the land, or the Judicial Centre that by road is nearest to the Alberta residence of the Defendant(s), is _____.

The court clerk is required to transfer this action to the Judicial Centre of _____ unless these facts as stated by the Defendant(s) are incorrect, the pleadings in this action have closed, or one of the exceptions stated in the Notice to the Court Clerk below apply.

WARNING

If you do not immediately notify the court clerk in the Judicial Centre in which this action is located and dispute the facts as stated by the Defendant(s) in this requisition, or alternatively, that the pleadings have closed or why one of the exceptions stated in the Notice to the Court Clerk below apply within ____ days of service of this requisition on you, the court clerk will transfer this action to the Judicial Centre requested by the Defendant(s) without further notice to you.

NOTICE TO THE COURT CLERK

You must transfer this action to the Judicial Centre of _____ unless the facts as stated by the Defendant(s) in this requisition are incorrect, the pleadings in this action have closed, or one of the following applies:

- (a) the court has issued an order directing the action be started in or transferred to a particular judicial centre,
- (b) the parties agree that an action be started in or be transferred to a particular judicial centre, or
- (c) the action has already been transferred to a Judicial Centre by requisition under this rule.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
APPLICANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>ORIGINATING APPLICATION</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Applicant)
GEOFFREY JAMES JONES (Respondent)

ORIGINATING APPLICATION

[RULE 3.8]

Type of Claim made:

1.

Basis for this Claim:

2.

Remedy sought:

3.

Affidavit or Other Evidence to be Used in Support of this Application:

4.

Applicable Acts and Regulations:

5.

NOTICE TO THE RESPONDENT(S)

You have the right to state your side of this matter before the court.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____.

Where _____

Before Whom _____

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of the personal property identified in this [originating] application. If you do not come to court either in person or by your lawyer, the court may make an order declaring you and all persons claiming under you, to be barred from taking any further interpleading proceedings as against the applicant(s) and as against all persons claiming under the applicant(s). You will be bound by any order the court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the [originating] application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
APPLICANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE TO OBTAIN RECORD OF PROCEEDINGS</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Applicant)
GEOFFREY JAMES JONES (Respondent)**

NOTICE TO OBTAIN RECORD OF PROCEEDINGS FROM

[NAME OF PARTY FROM WHOM RECORD IS SOUGHT]

[RULE 3.18]

Requirement

You are required to provide the following or an explanation as to why they, or any of them, cannot be provided:

- (a) the decision or act that is the subject of the originating application for judicial review,
- (b) the reasons given for the decision or act, if any,
- (c) the document starting the proceeding,
- (d) the evidence and exhibits filed with you if any, and
- (e) anything else relevant to the decision or act in your possession.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
APPLICANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE SENDING IN RECORD OF PROCEEDINGS</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Applicant)
GEOFFREY JAMES JONES (Respondent)

NOTICE SENDING IN RECORD OF PROCEEDINGS

[RULE 3.19]

1. Please find attached
 - (a) The decision or act that is the subject of the original application for judicial review,
 - (b) The reasons given for the decision or act, if any,
 - (c) The document starting the proceeding,
 - (d) The evidence and exhibits filed with us, and
 - (e) Anything else relevant to the decision or act in our possession, namely
 - (i)
 - (ii)
2. The following are parts of the notice to obtain record of proceedings we cannot fully comply with and why we cannot do so:
 - (a)
 - (b)

Person Who Certifies This Record:

Name _____

Position _____

Signature _____

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>STATEMENT OF CLAIM</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

NOTICE TO DEFENDANT(S)

You have been sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

STATEMENT OF CLAIM

[RULE 3.25]

Note: State below only facts and not evidence (Rule 12.11)

Type of claim made:

- 1.
- 2.

Statement of facts relied on:

- 3.
- 4.
- 5.

Remedy sought:

- 6.
- 7.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the Office of the Clerk of the Court of Queen's Bench at _____, Alberta, AND by serving your Statement of Defence or a Demand for Notice on the plaintiff(s)' address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>STATEMENT OF DEFENCE</u>
PARTY FILING THIS DOCUMENT:	Geoffrey James Jones.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	E. Nedward McKimble 12400, 10135- 1-6 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/ENM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

STATEMENT OF DEFENCE OF [NAME]

[RULE 3.31]

Note: State below only facts and not evidence (Rule 12.11)

Statement of facts relied on:

- 1.
- 2.
- 3.

Any matters that defeat the claim of the plaintiff(s):

- 4.
- 5.
- 6.

Remedy sought:

- 7.
- 8.
- 9.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>REPLY TO DEFENCE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

REPLY TO A DEFENCE OF [NAME AND STATUS]

[RULE 3.33]

Statement of facts relied on:

1.

Any matters that defeat the claim/defence of the defendant(s):

2.

Remedy sought:

3.

WARNING

This reply may only make admissions or respond to matters raised for the first time in the statement of defence.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>DEMAND OF NOTICE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

DEMAND FOR NOTICE BY DEFENDANT(S)
[RULE 3.34]

The defendant(s) demands notice of any application or proceeding in this action.

WARNING

Filing and service of this Demand for Notice does not give the defendant(s) a right to contest liability. The defendant(s) filing a Demand for Notice may only subsequently file a Statement of Defence with the court's consent.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTING IN DEFAULT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

NOTING IN DEFAULT
[RULE 3.36(1)]

The [Name and Status] require(s) the court clerk to enter in the court record of this action a note to the effect that the [Name and Status] has/have not filed a statement of defence and consequently is/are noted in default.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF CLAIM AGAINST CO-DEFENDANT(S)</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	---

NOTICE TO THE CO-DEFENDANT(S) [NAME]

This claim for contribution or indemnity, or both, is made against you.

Go to the end of this document to see what, if anything, you must do.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

NOTICE OF CLAIM AGAINST CO-DEFENDANT(S)

[RULE 3.43]

The defendant(s) _____ claim(s) a contribution or indemnity, or both, against you under the *Tort-Feasors Act* [or the *Contributory Negligence Act*].

NOTICE TO THE CO-DEFENDANT(S)

You need not file a pleading in respect of your claim or defence under the *Tort-Feasors Act* or the *Contributory Negligence Act*, unless the court otherwise orders.

The Defendant also need not file and serve a third party claim on you.

WARNING

This claim against you under the *Tort-Feasors Act* or *Contributory Negligence Act* must be determined at the trial of the Plaintiff(s)' claim against the Defendant(s), or if there is no trial, as directed by the court.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
3 RD PARTY DEFENDANT(S)	Thomas Anthony Jones
DOCUMENT	<u>3RD PARTY CLAIM</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

NOTICE TO 3RD PARTY DEFENDANT(S):

This 3rd Party claim is made against you. You are a 3rd Party Defendant.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)
THOMAS ANTHONY JONES (3RD Party Defendant)**

**3RD PARTY CLAIM BY [NAME AND STATUS]
[RULE 3.45]**

Note: State below only facts and not evidence (Rule 12.11)

Type of claim made:

1.

Statement of facts relied on:

2.

Remedy sought:

3.

Statement of Claim:

4. A copy of the Statement of Claim filed in this action is attached.

NOTICE TO THE 3RD PARTY DEFENDANT(S)

You only have a short time to do something to respond to this 3rd party claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the Office of the Clerk of the Court of Queen's Bench at _____, Alberta, AND by serving your Statement of Defence or a Demand for Notice on the Defendant(s)/3rd Party Plaintiff(s)' address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the claim against you automatically. If you do not file, or do not serve or are late in doing either of these things, a court may give judgment to the Defendant(s)/3rd Party Plaintiff(s) against you.

This third party claim must be tried with other claims in the action, unless the court otherwise orders.

If you do not file a Statement of Defence disputing liability of the Defendant(s) to the Plaintiff(s), you admit the validity of any judgment that the Plaintiff(s) obtain(s) against the Defendant(s), whether obtained by agreement or otherwise.

If you do not file a Statement of Defence disputing your own liability to the 3rd Party Plaintiff(s) under the 3rd Party Claim, you admit liability to the extent claimed in the 3rd Party Claim.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
3 RD PARTY DEFENDANT(S)	Thomas Anthony Jones
DOCUMENT	<u>3RD PARTY STATEMENT OF DEFENCE</u>
PARTY FILING THIS DOCUMENT	Thomas Anthony Jones
ADDRESS FOR SERVICE OF PARTY FILING THIS DOCUMENT	E. Nedward McKimble 12400, 10135 – 106 St Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/ENM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)
THOMAS ANTHONY JONES (3RD Party Defendant)

3RD PARTY STATEMENT OF DEFENCE
[RULE 3.49]

Note: State below only facts and not evidence (Rule 12.11)

Statement of facts relied on:

1.

Any matters that defeat the claim of the Defendant(s)/Third Party Plaintiff(s):

2.

Dispute of liability:

3. This 3rd party defendant(s) does/does not dispute defendant(s)' liability to the plaintiff(s).

4. This 3rd party defendant(s) does/does not dispute the 3rd party defendant(s)' liability to the extent claimed in the 3rd party claim.

Remedy sought:

5.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
3 RD PARTY DEFENDANT(S)	Thomas Anthony Jones
DOCUMENT	<u>DEMAND FOR NOTICE BY 3RD PARTY DEFENDANT(S)</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughey Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)
THOMAS ANTHONY JONES (3RD Party Defendant)

DEMAND FOR NOTICE BY 3RD PARTY DEFENDANT(S)

[RULE 3.50]

**The third party defendant(s) demands notice of
any application or proceeding in this action.**

WARNING

Filing and service of this Demand for Notice does not give the 3rd Party Defendant(s) a right to contest liability. The 3rd Party Defendant(s) filing the Demand for Notice may only subsequently file a Statement of Defence with the court's consent.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (RESPONDENT)	Melinda Grace Jones
DEFENDANT(S) (APPLICANT)	Geoffrey James Jones
3 RD PARTY DEFENDANT(S) (RESPONDENT)	Thomas Anthony Jones
DOCUMENT	<u>APPLICATION TO ENFORCE JUDGMENT AGAINST 3RD PARTY DEFENDANT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughey Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO 3RD PARTY DEFENDANT(S):

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Plaintiff/Respondent)
GEOFFREY JAMES JONES (Defendant/Applicant)
THOMAS ANTHONY JONES (3RD Party Defendant/Respondent)

APPLICATION BY DEFENDANT [NAME] TO ENFORCE
JUDGMENT AGAINST THE 3RD PARTY DEFENDANT(S) [NAME]

[RULE 3.53]

Remedy claimed or sought:

1. Permission from the court to enforce the judgment against the 3rd party defendant [NAME] granted in favour of the defendant(s) [NAME], prior to the defendant(s) satisfying the judgment granted against him/her/it/them.
2. Details of the judgment sought to be enforced against the 3rd party defendant is attached/described below.

Grounds for making this application:

3.

Material or evidence to be relied on:

4.

Applicable Rules:

5.

Applicable Acts and Regulations:

6.

Any irregularity complained of or objection relied on:

7.

How the Application is proposed to be heard or considered:

8.

NOTICE TO RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
3 RD PARTY DEFENDANT(S)	Thomas Anthony Jones
DOCUMENT	<u>REPLY TO DEFENCE OF THE 3RD PARTY DEFENDANT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)
THOMAS ANTHONY JONES (3RD Party Defendant)**

**REPLY TO DEFENCE OF THE 3RD PARTY DEFENDANT
[NAME AND STATUS]**

[RULE 3.54]

Statement of facts relied on:

1.

Any matters that defeat the claim/defence of the 3rd party defendant(s):

2.

Remedy sought:

3.

WARNING

This reply may only make admissions or respond to matters raised for the first time in the statement of defence of the 3rd party defendant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) BY COUNTERCLAIM	Geoffrey James Jones
DEFENDANT(S) BY COUNTERCLAIM	Melinda Grace Jones
DOCUMENT	<u>COUNTERCLAIM</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	E. Nedward McKimble 12400, 10135 – 106 St Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/ENM

NOTICE TO DEFENDANT(S) BY COUNTERCLAIM

You have been sued. You are a Defendant by Counterclaim

Go to the end of this document to see what you can do and when you must do it.

**GEOFFREY JAMES JONES (Plaintiff by Counterclaim)
MELINDA GRACE JONES (Defendant by Counterclaim)**

COUNTERCLAIM

[RULE 3.57]

NOTE: State below only facts and not evidence [Rule 12.11]

Type of claim made:

1.

Statement of facts relied on:

2.

Remedy sought:

3.

NOTICE TO THE DEFENDANT(S) BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice to Counterclaim in the Office of the Clerk of the Court of Queen's Bench at _____, Alberta, AND by serving your Statement of Defence or a Demand for Notice to Counterclaim on the plaintiff(s) by counterclaim's address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice to Counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve or are late in doing either of these things, a court may give a judgment to the plaintiff(s) by counterclaim against you after notice of the application has been served on you.

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>FORMAL OFFER TO SETTLE</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY MAKING THIS OFFER	D. Edward McDoughey Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
--	---

NOTICE TO PARTY RECEIVING OFFER

You have received a formal offer to settle.

Go the end of this document to see what the consequences are of your failing to accept this offer.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

**FORMAL OFFER TO SETTLE
[RULE 4.24]**

Party making the offer:

1.

To whom the offer is made:

2.

What the offer is:

3.

Conditions attached to the offer:

4.

Interest:

- (a) Is/is not included in the offer: _____
- (b) If included, to what date: _____
- (c) Rate at which interest is payable: _____

Costs:

- (a) Are/are not included in the offer: _____
- (b) If included, nature of them: _____
- (c) If included, to what date: _____

Requirements that must be complied with to accept the offer:

5.

Form of acceptance of the offer:

6. Form of acceptance is attached.

Expiry date of this offer:

WARNING

If this formal offer of the Plaintiff(s) is not accepted and subsequently the Plaintiff(s) obtains a judgment or order in the action that is equal to or more favourable to the Plaintiff(s) than this formal offer, the Plaintiff(s) is (are) entitled to double the costs to which they would otherwise have been entitled for all steps taken in the action in relation to the action or claim specified in this formal offer, excluding disbursements, after service of this formal offer.

Or

If this formal offer of the Defendant(s) is not accepted and a judgment or order in the action is made that is equal to or more favourable to the Defendant(s) than this formal offer, the Defendant(s) is (are) entitled to costs for all steps taken in the action in relation to the action or the claim specified in this formal offer, after service of this formal offer. If the Defendant's(s') formal offer is not accepted and the claim or claims that are the subject matter of this formal offer are dismissed, the Defendant(s) is (are) entitled to double the costs mentioned in the last sentence, excluding disbursements.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>DISCONTINUANCE OF CLAIM</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

DISCONTINUANCE OF CLAIM

[RULE 4.36(4)]

**The plaintiff(s) discontinues the action (the parts of the action described below)
against the defendant(s) [NAME(S)]**

WARNING

The discontinuance of the action/part of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>DISCONTINUANCE OF DEFENCE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

DISCONTINUANCE OF DEFENCE OF [NAME]

[RULE 4.37]

The defendant(s) [NAME] discontinue(s) the whole of the statement of defence he/she/it/they filed.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>AFFIDAVIT OF RECORDS</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

AFFIDAVIT OF RECORDS OF [NAME AND STATUS] SWORN BY

_____ ON _____

[RULE 5.6]

I, _____, whose address is _____, have personal knowledge of the following:

1. I am the plaintiff/defendant/plaintiff's representative/defendant's representative.
2. I/The plaintiff(s)/The defendant(s) have/has under my/its/our control the records listed in the schedules 1 and 2.
3. I/The plaintiff(s)/The defendant(s) object(s) to produce the records listed in schedule 2 on the grounds of privilege identified in that schedule.
4. I/The plaintiff(s)/The defendant(s) previously had under my/its/our control the records listed in schedule 3. The time when, and the manner in which, the documents listed in schedule 3 ceased to be under my/the plaintiff's(s)/the defendant's(s)' control and the present location of those records is also stated in schedule 3.
5. Other than the records listed in schedules 1, 2, and 3, I/the plaintiff(s)/the defendant(s) have(has) never had any other relevant and material records under my/its/our control.

6.

SWORN BEFORE ME at _____,)
Alberta, _____, 20___.)

A Commissioner for Oaths in the Province of)
Alberta)

SIGNATURE

PRINT NAME

PRINT NAME AND EXPIRY/LAWYER/STUDENT-AT-LAW

SCHEDULE 1

Material and relevant records under my/its/our control which I/it/we does (do) not object to produce:

	DATE (OR OTHER CONVENIENT ORDER)	DESCRIPTION
1.		
2.		
3.		

SCHEDULE 2

Material and relevant records under my/its/our control which I/it/we does (do) object to produce:

- (a) without prejudice communications:

Bundle of documents numbered _____ to _____

- (b) communications and copies of communications between solicitor and client:

Bundle of documents numbered _____ to _____

- (c) my/its/our solicitors' work product, including all interoffice memoranda, correspondence, notes, memoranda and other records prepared by my/its/our solicitors or their assistants:

Bundle of documents numbered _____ to _____

- (d) records made or created for the dominant purpose of litigation, existing or anticipated:

Bundle of documents numbered _____ to _____

- (e) records that fall into two or more of the categories described above:

Bundle of documents numbered _____ to _____

SCHEDULE 3

Showing relevant and material records I/the Plaintiff(s)/the Defendant(s) previously had under my/its/our control:

DESCRIPTION OF RECORD	WHEN THIS RECORD CEASED TO BE UNDER MY/ITS/OUR CONTROL	MANNER IN WHICH THIS RECORD CEASED TO BE UNDER MY/ITS/OUR CONTROL	PRESENT LOCATION OF THE RECORD
1.			
2.			
3.			

NOTICE

The time when the producible records listed in this affidavit of records may be inspected is _____.

The place at which the producible records may be inspected is _____.

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>EXPERT REPORT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY PREPARING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTE:

This form is to include the following components (p. 3 instructions on *Expert Evidence*)
– the following is a guide only.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

**EXPERT REPORT OF [NAME]
[RULE 5.34]**

- 1. Name of expert:**
- 2. Expert's qualifications:**
- 3. List of literature or other material used in making the report:**
- 4. State fully and clearly all assumptions made in preparing the report:**
- 5. Identify any persons who carried out experiments or tests on which the expert relied in preparing this report and state their qualifications:**
- 6. If more than one opinion is given in the report, the report must also summarize each opinion:**
- 7. Each opinion must be supported by reasons:**
- 8. Attached to this report, or summarize in it**
 - (a) the facts, matters and assumptions on which the report is based**
 - (b) the [records] and other material that the expert has been instructed to consider**

- 9. If this report refers to extrinsic material, for example, photographs, plans, calculations, analyses, measurements, survey reports, they must be attached to, form part of, or otherwise be provided as part of the report**

DATE: _____

SIGNATURE OF EXPERT

PRINT NAME

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPLICANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>APPLICATION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff/Applicant)
GEOFFREY JAMES JONES (Defendant/Respondent))**

APPLICATION BY [NAME AND STATUS]

[RULE 6.3]

Remedy claimed or sought:

1.

Grounds for making this application:

2.

Material or evidence to be relied on:

3.

Applicable Rules:

4.

Applicable Acts and Regulations:

5.

Any irregularity complained of or objection relied on:

6.

How the Application is proposed to be heard or considered:

7.

NOTICE TO RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
CLAIMANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>QUESTIONNAIRE UNDER THE PROTECTION AGAINST FAMILY VIOLENCE ACT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF CLAIMANT FILING THIS DOCUMENT	Melinda Grace Jones 325 Maple Ridge Drive Edmonton, AB T5H 1Z2 Ph. (780) 438-1234
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF RESPONDENT	Geoffrey James Jones 125 Juniper Crescent Edmonton, AB T5H 2Y2 Ph. (780) 432-5678

MELINDA GRACE JONES (Claimant)
GEOFFREY JAMES JONES (Respondent)

QUESTIONNAIRE PERTAINING TO AN
APPLICATION FOR A QUEEN'S BENCH PROTECTION ORDER
PURSUANT TO SECTION 4 OF THE *PROTECTION*
AGAINST FAMILY VIOLENCE ACT

[RULE 6.5]

RELATIONSHIP BETWEEN CLAIMANT AND RESPONDENT:

**DATE & ACTION NUMBER OF ANY PREVIOUS LEGAL PROCEEDINGS RELATING
TO FAMILY VIOLENCE AND WHETHER OR NOT AN ORDER WAS GRANTED:**

Year/Month/Day	Action Number	Order Granted	
		Yes	No

Number and date(s) of birth child(ren) in the custody of the Claimant:

REASONS FOR REQUESTING A PROTECTION ORDER:

[Set out details of why you need a Protection Order against the Respondent stating all **relevant** facts including the dates, nature and history of family violence, and whether any weapon(s) were involved, and if so, the type of weapon(s) which prompted this application]

REASONS FOR REQUESTING A PROTECTION ORDER (continued)

I REQUEST THE QUEEN'S BENCH PROTECTION ORDER INCLUDE THE FOLLOWING CONDITIONS:

- ☐ 1. The Respondent is restrained from attending at, entering or being within 200 metres from the following places:

(a) the Claimant's/family member's residence:

_____ address

(b) the Claimant's/family member's place of employment:

_____ address

(c) the claimant's/family member's other addresses:

_____ address

Or from being within 100 metres of the Claimant and family members anywhere in the Province of Alberta.

- ☐ 2. The Respondent is restrained from contacting the Claimant or associating in any way with the Claimant. The Respondent is further restrained from subjecting the Claimant to family violence.

- ☐ 3. The Claimant and other family members are granted exclusive occupation of the residence located at:

_____ for _____.
specify time period

- ☐ 4. The Respondent shall reimburse the Claimant in the amount of \$_____ for monetary losses for the following expenses:
- _____
- ☐ 5. The Claimant/Respondent [NAME] is granted temporary possession of:
- _____
- specify personal property
- ☐ 6. The Claimant/Respondent [NAME] may not take, convert, damage or otherwise deal with:
- _____
- specify property
- ☐ 7. The Respondent may not make any communication likely to cause annoyance or alarm to the Claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the Claimant and other family members or their employers, employees, co-workers or the following specified persons:
- _____
- ☐ 8. A peace officer shall remove the Respondent from the residence located at:
- _____
- address
- immediately or within _____.
specify time period
- ☐ 9. A peace officer shall accompany [NAME] to the residence within _____ to supervise the removal of
specify time period
personal belongings.
- ☐ 10. The Respondent shall post the following bond:
- _____
- ☐ 11. The Respondent shall attend the following counseling:
- _____
- ☐ 12. The child [NAME] is authorized to attend counseling without the consent of the Respondent.

☐ 13. A peace officer shall seize and store the following weapons:

☐ 14.

I, [NAME] solemnly declare that the facts set out in this document are true. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me to be true on

_____ yyyy/mm/dd
at _____, Alberta.

Commissioner for Oaths for Alberta

Signature of Claimant

Print name and expiry/Lawyer/Student-at-law

NOTE: It is an offence to make a false declaration.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPELLANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF APPEAL OF MASTER'S DECISION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S):

This appeal is made against an order of the master that was in your favour. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

NOTICE OF APPEAL OF MASTER'S DECISION

[RULE 6.15]

Record filed and served with this appeal consists of the following:

1. Application before the Master.
2. The following Affidavits and other evidence filed by the parties respecting the application before the Master:
 - (a)
 - (b)
3. Transcript of the proceedings before the Master (unless the court has dispensed with this requirement).
4. The Order of the Master appealed.
5. Written Reasons of the Master (if any).

Further written argument is/is not being made by the Appellant.

The Appellant will/will not rely on its written argument that was before the Master (if any).

NOTICE OF APPEAL HEARING

This appeal will be heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____ a judge _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the appellant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this appeal, you or your lawyer must attend in court on the date and time shown above. You may rely on your original written argument, if any, that was before the master. Within 10 days of service of this notice of appeal, you must file and serve on the appellant any further written argument you wish to make.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF APPOINTMENT FOR QUESTIONING</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	---

NOTICE TO WITNESS

This notice requires certain things of you.

Go to the end of this document to see what you must do and when you must do it.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

NOTICE OF APPOINTMENT FOR QUESTIONING

[RULE 6.18]

NOTICE TO PERSON REQUIRED TO ATTEND APPOINTMENT FOR QUESTIONING

You must attend at the date, time, place, and for the period specified below:

DATE: _____

TIME: _____

PLACE: _____

PERIOD OF ATTENDANCE: _____

You must also bring the records described below.

You also must bring the following records (or are not required to bring any records):

(a)

Accompanying this notice is (or indicate this allowance will be paid a reasonable period of time before the trial date) an allowance that is required to be paid to you for attending as a witness. Such allowance is calculated as follows:

Allowance payable for each day or part of a day necessarily spent by you as a witness:	\$
Meals	\$
Accommodation	\$
Transportation	\$
TOTAL	\$

WARNING

The court may order a person to attend for questioning, at a date, place and time specified by the court, if the person

- (a) is required to be questioned under these rules,
- (b) was served with an appointment for questioning under these rules,
- (c) was provided with an allowance, determined in accordance with Schedule B [Court Fees and Witness and Other Allowances], if so required by these rules, and
- (d) did not attend the appointment.

The court may order the person to be questioned to bring records to the questioning that the person could be required to produce at trial.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>ORDER THAT EVIDENCE BE TAKEN OUTSIDE ALBERTA</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

**ORDER THAT EVIDENCE OF [NAME]
BE TAKEN OUTSIDE ALBERTA**
[RULE 6.24(4)]

DATE ON WHICH ORDER WAS PRONOUNCED:

NAME OF MASTER/JUDGE WHO MADE THIS ORDER:

ORDER

The court is convinced that it is necessary to question [name] ("the Witness") in the jurisdiction in which he/she resides and therefore orders as follows:

1. The taking of the evidence of the Witness is authorized to be taken before [name].
2. [name] ("the Examiner"), the person before whom the evidence of the Witness will be taken, shall follow these instructions:
 - (a) A transcript of the evidence shall be prepared;
 - (b)
3. The following records applicable to the questioning of the Witness shall be produced by him/her:
 - (a)
 - (b)
4. The letter of request in the form attached as Schedule 1 to this order is authorized and approved to be sent to the judicial authority of [name].

(and if any of the following is directed by the court, the form of the order shall be as follows)

5. The time, date and place of questioning of the Witness will be:

DATE: _____

TIME: _____

PLACE: _____

6. The minimum notice to be given of the date for questioning will be [hours or days].
7. The amount of the allowance to be paid to the Witness in relation to his/her questioning shall be \$_____, such allowance being calculated as follows:

Allowance payable for each day or part of a day necessarily spent by you as a witness:	\$
Meals	\$
Accommodation	\$
Transportation	\$
TOTAL	\$

J.C.Q.B.A.

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>LETTER OF REQUEST TO THE JUDICIAL AUTHORITY</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY PREPARING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

**LETTER OF REQUEST TO THE JUDICIAL AUTHORITY
OF [JURISDICTION] IN RELATION TO [NAME OF WITNESS]
[RULE 6.24(4)]**

TO: THE JUDICIAL AUTHORITY OF [JURISDICTION]

1. Pursuant to the order of _____, a certified copy of which is attached, the Alberta court is convinced that it is necessary to question [name] in your court jurisdiction.

2. The date, time and place for questioning of [name] is as follows:

DATE: _____

TIME: _____

PLACE: _____

3. The Alberta court has directed [name] be given _____ days (hours)' notice of the date for this questioning and directed that this questioning be conducted before [name].

4. [Name] has been directed by the Alberta court to bring the following documents to this questioning:

(a)

(b)

5. The form of oath that would be administered to [name] at this questioning is as follows:

(a) Please place your hand on the Bible. Do you solemnly swear that the evidence that you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

OR

(b) Do you solemnly affirm that the evidence that you are about to give shall be the truth, the whole truth and nothing but the truth; you do so affirm?

6. The Alberta court has also directed that the sum of \$_____ be paid to [name] in relation to this questioning. The amount of this allowance was calculated as follows:

Allowance payable for each day or part of a day necessarily spent by you as a witness:	\$
Meals	\$
Accommodation	\$
Transportation	\$
TOTAL	\$

7. The Alberta court requests that you cause the necessary order or document to be issued to require [name] to attend before [name] (and produce the records listed above) and it be permitted that such questioning be carried out in accordance with the *Alberta Rules of Court* and evidence.

DATE:

CERTIFICATE OF CLERK OF THE COURT:

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (Applicant)	Melinda Grace Jones
DEFENDANT(S) (Respondent)	Geoffrey James Jones
ADDITIONAL RESPONDENT(S)	Thomas Anthony Jones
DOCUMENT	<u>APPLICATION FOR ORDER RESTRICTING ACCESS</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDougherty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	--

NOTICE TO THE RESPONDENT(S):

_____ wishes to apply for an order restricting access.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Plaintiff) (Applicant)
GEOFFREY JAMES JONES (Defendant) (Respondent)
THOMAS ANTHONY JONES (Additional Respondent)

APPLICATION BY [NAME AND STATUS] FOR ORDER
RESTRICTING ACCESS

[RULE 6.33]

Remedy claimed or sought:

1.

Grounds for making this application:

2.

Material or evidence to be relied on:

3.

Applicable Rules:

4.

Applicable Acts and Regulations:

5.

Any irregularity complained of or objection relied on:

6.

How the Application is proposed to be heard or considered:

7.

NOTICE TO THE RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____ a judge _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

A person may make an application for an order restricting publication only if a judge has authority to make such an order under an enactment or at common law.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE TO ADMIT FACTS</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	---

NOTICE TO PARTY RECEIVING NOTICE TO ADMIT

You have received a notice to admit.

Go to the end of this document to see what you must do and by when you must do it.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

NOTICE TO ADMIT FACTS
[WRITTEN OPINIONS]

[RULE 6.39]

**You are called on to admit for purposes of an application/originating application/
a trial, the following:**

1. [List facts in relation to which an admission is sought, or attach any written opinion which states the facts on which the opinion is based]

WARNING

Each of the matters for which an admission is requested is rebuttably presumed to be admitted, unless within 20 days of the date of service of the notice to admit, you serve on the party requesting the admission a statement:

- (a) denying specially the facts or the opinion, or both, for which an admission is requested and setting out in detail the reasons why the facts cannot be admitted or the opinion cannot be admitted, as the case requires, or
- (b) setting out an objection on the ground that some or all of the requested admissions are, in whole or in part,
 - (i) privileged, or
 - (ii) irrelevant, improper or unnecessary.

A denial by you must fairly meet the substance of the requested admission and when only some of the facts or opinions for which an admission is requested are denied, the denial must specify the facts or opinions that are admitted and deny only the remainder.

You may only amend or withdraw an admission or a denial made with the court's consent, or by agreement of the parties.

Any admission you make is only for the specific purpose for which it is made and may not be used as an admission against you on any other occasion, or in favour of a person other than the person giving this notice, unless you agree otherwise.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
APPLICANT(S)	Melinda Grace Jones
RESPONDENT(S)	Geoffrey James Jones
DOCUMENT	<u>ORIGINATING APPLICATION FOR INTERPLEADER ORDER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO THE RESPONDENT(S)

This application affects you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Applicant)
GEOFFREY JAMES JONES (Respondent)

ORIGINATING APPLICATION FOR INTERPLEADER ORDER

[RULE 6.58]

Type of Claim made:

1.

Basis for the Claim:

2.

Remedy sought:

3.

Affidavit or Other Evidence to be Used in Support of this Application:

4.

Applicable Acts and Regulations:

5.

[and if made by way of application as opposed to originating application, include the following]

Applicable Rules:

6.

Any irregularity complained of or objection relied on:

7.

How the application is proposed to be heard or considered:

8.

NOTICE TO THE RESPONDENT(S)

You have the right to state your side of this matter before the court.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____.

Where _____

Before Whom _____

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of the personal property identified in this [originating] application. If you do not come to court either in person or by your lawyer, the court may make an order declaring you and all persons claiming under you, to be barred from taking any further interpleading proceedings as against the applicant(s) and as against all persons claiming under the applicant(s). You will be bound by any order the court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the [originating] application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>CIVIL ENFORCEMENT AGENCY</u> <u>DIRECTIONS TO INSTRUCTING CREDITOR</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY PREPARING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

CIVIL ENFORCEMENT AGENCY
DIRECTION TO INSTRUCTING CREDITOR
[RULE 6.61]

TO: [name], the instructing creditor

Regarding writ proceedings [or acting under the authority of the court] regarding [name of debtor].

NOTICE TO THE INSTRUCTING CREDITOR

This direction is given to you by the civil enforcement agency mentioned below.

Go to the end of this document to see what you must do.

Address for service of documents on the civil enforcement agency [name]:

Name and address of party or law firm and responsible lawyer who prepared this document (same as above or give details if not the same):

We have received the following claims with respect to the personal property under seizure pursuant to the *Civil Enforcement Act* as specified below:

1. Claim of _____, a copy of which is attached;
2. Claim of _____, a copy of which is attached;

We direct you to apply to the court to determine the rights of the various claimants.

NOTICE TO THE INSTRUCTING CREDITOR

You must apply for or obtain an order determining the rights of the various claimants.

WARNING

If you fail to apply for or obtain an order determining the rights of the various claimants, the civil enforcement agency may:

- (i) Apply for an interpleader order, or
- (ii) Release the personal property from seizure.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPLICANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>APPLICATION FOR SUMMARY TRIAL</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff/Applicant)
GEOFFREY JAMES JONES (Defendant/Respondent))**

**APPLICATION BY [NAME AND STATUS]
FOR A SUMMARY TRIAL
[RULE 7.5(2)]**

Remedy claimed or sought, including issue or issues to be determined (or indicate that the claim as a whole is to be determined):

1.

Grounds for making this application:

2.

Basis on which this case is appropriate for summary trial:

3.

Material or evidence to be relied on:

4.

Applicable Rules:

5.

Applicable Acts and Regulations:

6.

Any irregularity complained of or objection relied on:

7.

How the Application is proposed to be heard or considered:

8.

NOTICE TO RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

You may also object to this application at or before the hearing of the application on either or both of the following grounds:

- (a) The issue or issues related in the claim, or the claim generally, is not suitable for a summary trial;
- (b) A summary trial will not facilitate resolution of the claim or any part of it.

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. Notice of the objection to this application and anything on which you intend to rely in relation to your objection, must be filed and served on the applicant five days or more before the objection is scheduled to be heard. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's stamp:

COURT FILE NUMBER

0803-00287

COURT

Court of Queen's Bench

JUDICIAL CENTRE

Edmonton

PLAINTIFF(S)

Melinda Grace Jones

DEFENDANT(S)

Geoffrey James Jones

DOCUMENT

**REQUEST OF THE TRIAL COORDINATOR
TO SCHEDULE A TRIAL DATE**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

D. Edward McDoughy
Jibbet & Jobbet LLP
3400, 10234 – 105 St.
Edmonton, AB T5H 7Y6
Ph. (780) 438-8734 Fx. (780) 422-2387
File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

REQUEST OF THE TRIAL COORDINATOR
TO SCHEDULE A TRIAL DATE

[RULE 8.4]

Information re Plaintiff

Name of party and status:
Responsible lawyer:
Law Firm:
Address of party or law firm:
Address for service:
Phone number of lawyer:
File number of lawyer:
Electronic address of lawyer:

Information re Defendant

Name of party and status:
Responsible lawyer:
Law Firm:
Address of party or law firm:
Address for service:
Phone number of lawyer:
File number of lawyer:
Electronic address of lawyer:

Information required by the court

Estimated number of witnesses

non-expert: _____
expert _____

Estimated length of trial: _____

Copy of the pleadings, and particulars if any for use by the judge of trial are provided with this request.

Order for trial by jury: a copy is provided with this request/not applicable.

The party/parties making this request also confirm the following:

- (a) The parties have participated in at least one of the dispute resolution processes described in rule 4.5(1), details of which are: _____ (or a copy of the order made under rule 4.5(2) waiving the dispute resolution process requirement, is provided with this request).
- (b) All expert reports have been exchanged and the process described in Part 5 [*Disclosure of Information*] Division 2 [*Experts and Expert Reports*], including questioning of experts, is complete.
- (c) That any required medical examinations and reports under Part 5 [*Disclosure of Information*] Division 3 [*Medical Examinations by Health Care Professionals*] are complete.
- (d) That all undertakings given by persons questioned under Part 5 [*Disclosure of Information*] have been discharged.
- (e) We will be ready for trial by _____ (or, [name and status], certifies that the parties will be ready by trial by _____).
- (f) This case is/is not a jury trial (and if a jury trial) that the deposit required under rule 8.5 [*Deposit for a jury*] was paid on _____.
- (g) All known amendments to pleadings have been filed and served.

Legal Counsel for the Plaintiff(s):

Law firm name:

Per: _____

Print Name of Lawyer Signing

Legal Counsel for the Defendant(s):

Law firm name:

Per: _____

Print Name of Lawyer Signing

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPLICANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>APPLICATION FOR COURT TO SET A TRIAL DATE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff/Applicant)
GEOFFREY JAMES JONES (Defendant/Respondent))**

**APPLICATION BY [NAME AND STATUS]
FOR A COURT TO SET A TRIAL DATE
[RULE 8.6]**

Remedy claimed or sought:

1. An order setting a trial date or directing the court clerk to do so.

Grounds for making this application:

2. The parties have participated in at least one of the dispute resolution processes described in rule 4.5(1) (or alternatively, that an order has been made under rule 4.5(2) waiving the dispute resolution process requirement).
3. The parties are or should be ready for trial by a date scheduled by the court for trial of the action.

Material or evidence to be relied on:

- 4.

Applicable Rules:

5. 4.5 and 8.2.

Applicable Acts and Regulations:

- 6.

Any irregularity complained of or objection relied on:

- 7.

How the Application is proposed to be heard or considered:

8.

NOTICE TO RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>CONFIRMATION OF TRIAL DATE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

CONFIRMATION OF TRIAL DATE

[RULE 8.7]

Information re Plaintiff:

**Name of party and status:
Responsible lawyer:
Law Firm:
Address of party or law firm:
Address for service:
Phone number of lawyer:
File number of lawyer:
Electronic address of lawyer:**

Information re Defendant:

**Name of party and status:
Responsible lawyer:
Law Firm:
Address of party or law firm:
Address for service:
Phone number of lawyer:
File number of lawyer:
Electronic address of lawyer:**

We confirm to the court on behalf of [name and status] that we are ready to proceed with the trial on the scheduled trial date of _____, _____ and we verify/modify the estimated number of witnesses and the estimated length of trial as follows:

Estimated number of witnesses

non-expert: _____
expert _____

Estimated length of trial: _____

Legal Counsel for the Plaintiff(s):

Law firm name:

Per: _____

Print Name of Lawyer Signing

Legal Counsel for the Defendant(s):

Law firm name:

Per: _____

Print Name of Lawyer Signing

WARNING

If only one party confirms trial readiness, the date scheduled for trial remains, unless the court otherwise orders.

If no party confirms trial readiness, the date scheduled for trial is cancelled.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>NOTICE TO ATTEND AS WITNESS AT TRIAL</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO WITNESS

This notice requires certain things of you

Go to the end of this document to see what you must do and when you must do it.

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

NOTICE TO ATTEND AS WITNESS AT TRIAL

[RULE 8.8]

You also must bring the following records (or are not required to bring any records):

(a)

Accompanying this notice is (or indicate this allowance will be paid a reasonable period of time before the trial date) an allowance that is required to be paid to you for attending as a witness. Such allowance is calculated as follows:

Allowance payable for each day or part of a day necessarily spent by you as a witness:	\$
Meals	\$
Accommodation	\$
Transportation	\$
TOTAL	\$

NOTICE TO WITNESS

You must attend at the date, time, place, and for the period specified below:

DATE: _____

TIME: _____

PLACE: _____

PERIOD OF ATTENDANCE: _____

You must also bring the records described above.

WARNING

If you do not attend as a witness at the trial as indicated above, or do not attend or remain in attendance in accordance with this notice, the court may order one or more of the following:

- (a) You be brought immediately, or at a time specified, before the court or before a person named by the court;
- (b) You bring the records described by the order;
- (c) You be detained in custody in accordance with the order until your presence is no longer required;
- (d) You be released on a recognizance, with or without sureties, on a condition that you appear as directed, for a specified purpose;
- (e) Any other order necessary to ensure your attendance and the production of records ordered to be produced as required by the order.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPLICANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>APPLICATION THAT A JUDGMENT [OR ORDER HAS BEEN SATISFIED</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

**MELINDA GRACE JONES (Plaintiff/Applicant)
GEOFFREY JAMES JONES (Defendant/Respondent))**

**APPLICATION BY [NAME AND STATUS] THAT
A JUDGMENT [OR ORDER] HAS BEEN SATISFIED**
[RULE 9.22]

Remedy claimed or sought:

1. An order that the judgment [or order] attached/described below, has been satisfied.

Grounds for making this application:

- 2.

Material or evidence to be relied on:

- 3.

Applicable Rules:

- 4.

Applicable Acts and Regulations:

- 5.

Any irregularity complained of or objection relied on:

- 6.

How the Application is proposed to be heard or considered:

7.

NOTICE TO RESPONDENT(S)

You have the right to state your side of this matter before the master/judge.

To do so, you must be in court when the application is heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
CLIENT(S)	Melinda Grace Jones
LAWYER(S)	Jibbet & Jobbet LLP
DOCUMENT	<u>NOTICE OF APPOINTMENT FOR REVIEW OF RETAINER AGREEMENT/ LAWYER'S CHARGES</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE

This appointment relates to the account/retainer agreement which is attached.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Client)
JIBBET & JOBBET (Lawyers)

NOTICE OF APPOINTMENT FOR REVIEW OF RETAINER
AGREEMENT /LAWYER'S CHARGES

[RULE 10.11]

Purpose of this appointment

The purpose of this appointment is to determine the reasonableness of the retainer agreement/lawyer's charges reflected in the attached retainer agreement/account.

NOTICE OF APPOINTMENT FOR REVIEW

You have the right to state your side of this matter before the review officer.

To do so, you must be present when this matter is heard by the review officer as shown below:

Date: _____

Time: _____

Where: _____

WARNING

If you do not attend this appointment either in person or by your lawyer, the review officer may give the party who took out this appointment what they want in your absence. You will be bound by the review officer's decision. If you want to take part in this appointment, you or your lawyer must attend before the review officer on the date and time as shown above.

If you are a lawyer responding to this appointment pertaining to your charges or retainer agreement, you must file a copy of the signed account in respect of which the client seeks a review and any retainer agreement, whether or not you intend to rely on them at the appointment. This must be done five (5) or more days before the date of the appointment for review or any other period specified by the review officer, and if you do not comply with this rule, you forfeit your right to payment of the charges in the account that are the subject of review, unless the review officer otherwise directs.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
CLIENT(S) (APPELLANT)	Melinda Grace Jones
LAWYER(S) (RESPONDENT)	Jibbet & Jobbet LLP
DOCUMENT	<u>NOTICE OF APPEAL OF REVIEW OFFICER'S DECISION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S):

This appeal is made against an order of the review officer's decision that was in your favour. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Client/Appellant)
JIBBET & JOBBET LLP (Lawyer/Respondent)

NOTICE OF APPEAL OF REVIEW OFFICER'S DECISION

[RULE 10.24]

Record filed and served with this appeal consists of the following:

1. The request for the appointment to the review officer.
2. The following materials filed by the parties in support of, opposed to or required for the review:
 - (a)
 - (b)
3. Transcript of the proceedings before the review officer (unless the judge dispenses with this requirement).
4. The decision of the review officer.
5. Written argument filed in support of this appeal.

NOTICE OF APPEAL HEARING

This appeal will be heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____ a judge _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the appellant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this appeal, you or your lawyer must attend in court on the date and time shown above. Within 10 days of the service of this notice of appeal, you must file and serve on the appellant any written argument you wish to make.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>BILL OF COSTS</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

BILL OF COSTS
PREPARED BY [NAME AND STATUS]
[RULE 10.33(1)]

Fees claimed:

ITEM NO.	ITEM	AMOUNT
1(1)	Pleadings	\$1,000.00

Disbursements:

DESCRIPTION	AMOUNT
ABC Court Reporters – June 1, 2007	\$2,000.00

Other Charges:

DESCRIPTION	AMOUNT
Filing of Statement of Claim	\$ 600.00

GST:

- (a) Amount claimed on fees: \$ _____
- (b) Amount claimed on disbursements: \$ _____
- (c) Amount claimed on other charges: \$ _____
- TOTAL GST:** \$ _____

Total amount claimed:

Fees: \$ _____

Disbursements: \$ _____

Other Charges: \$ _____

GST: \$ _____

TOTAL: \$ _____

Amount allowed by assessment officer:

Fees: \$ _____

Disbursements: \$ _____

Other Charges: \$ _____

GST: \$ _____

TOTAL: \$ _____

Person responsible for preparation of this Bill of Costs:

SIGNATURE

PRINT NAME

CERTIFICATE OF ASSESSMENT OFFICER:

I, _____, certify the following amount(s) that is (are) to be paid

By Plaintiff: \$ _____

By Defendant: \$ _____

to (name of party or parties to receive the costs awarded).

I also certify the following special circumstance(s) and the amount to be paid by each party with respect to this special circumstance(s):

SPECIAL CIRCUMSTANCE	AMOUNT TO BE PAID RE SPECIAL CIRCUMSTANCE

Dated: _____

Name of Assessment Officer: _____

(Certificate in form of an affidavit required if Goods & Services Tax are claimed as part of the Bill of Costs)

AFFIDAVIT of _____

Sworn on _____

I, _____, whose address is _____, have personal knowledge of the following:

1. The party entitled to receive payment under the bill of costs attached to (or endorsed on or filed with) this bill of costs, and not another party, will actually be paying the goods and services tax on that party's costs.
2. The goods and services tax will not be passed on to, or be reimbursed by, any other person.
3. The party entitled to receive payment under the bill of costs is not eligible for the goods and services tax input tax credit.

SWORN BEFORE ME at _____,)
Alberta, _____, 20____.)

Commissioner for Oaths in the Province of
Alberta

SIGNATURE

PRINT NAME

PRINT NAME AND EXPIRY/LAWYER/STUDENT-AT-LAW

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>ORDER FOR ASSESSMENT OF COSTS</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE

This appointment relates to the bill of costs which is attached (or this appointment relates to a bill of costs that has been requested by the party filing this appointment).

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

ORDER FOR ASSESSMENT OF COSTS

[RULE 10.35]

This appointment is to assess the bill of costs attached (or [name and status] requests [name and status] to prepare a proposed bill of costs).

NOTICE OF APPOINTMENT FOR REVIEW

You have the right to state your side of this matter before the assessment officer.

To do so, you must be present when this matter is heard by the assessment officer as shown below:

Date: _____

Time: _____

Where: _____

WARNING

If you do not attend this appointment either in person or by your lawyer, the assessment officer may give the party who took out this appointment what they want in your absence. You will be bound by the assessment officer's decision. If you want to take part in this appointment, you or your lawyer must attend before the assessment officer on the date and time as shown above.

If you have been requested by this appointment to prepare a proposed bill of costs, you must do so as soon as practical and file and serve it on every other party 10 days or more before the appointment for assessment.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S) (APPELLANT)	Melinda Grace Jones
DEFENDANT(S) (RESPONDENT)	Geoffrey James Jones
DOCUMENT	<u>NOTICE OF APPEAL OF ASSESSMENT OFFICER'S DECISION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

NOTICE TO RESPONDENT(S):

This appeal is made against an order of the assessment officer's decision that was in your favour. You are a respondent.

Go to the end of this document to see what you can do and when you must do it.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

NOTICE OF APPEAL OF ASSESSMENT OFFICER'S DECISION

[RULE 10.42]

Record filed and served with this appeal consists of the following:

1. The request for the appointment to the assessment officer.
2. The following materials filed by the parties in support of, opposed to or required for the review:
 - (a)
 - (b)
3. Transcript of the proceedings before the assessment officer (unless the judge dispenses with this requirement).
4. The decision of the assessment officer.
5. Written argument filed in support of this appeal.

NOTICE OF APPEAL HEARING

This appeal will be heard as shown below:

Date _____

Time _____

Where _____

Before Whom _____ a judge _____

WARNING

If you do not come to court either in person or by your lawyer, the court may give the appellant(s) what they want in your absence. You will be bound by any order that the court makes. If you want to take part in this appeal, you or your lawyer must attend in court on the date and time shown above. Within 10 days of the service of this notice of appeal, you must file and serve on the appellant any written argument you wish to make.

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>ORDER TO APPEAR</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

**MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)**

DATE ON WHICH ORDER WAS PRONOUNCED:

NAMES OF MASTER/JUDGE WHO MADE THIS ORDER:

ORDER TO APPEAR

[RULE 10.49]

1. [Name] is ordered to appear before this Court.
2. A Peace Officer shall take into custody [Name] and bring that person before the Court to show why [he/she] should not be declared to be held in civil contempt of Court.
3. A warrant shall issue in the form attached as Schedule "A".

J.C.Q.B.A.

SCHEDULE "A"

ACTION NO. _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF _____

WARRANT FOR ARREST

TO THE PEACE OFFICERS IN ALBERTA:

This warrant is issued for the arrest of _____
Name of party to be arrested

of _____
Address Postal Code

Date of Birth: _____
yyyy/mm/dd Occupation

WHEREAS there is reasonable and probable grounds to believe that

_____ should be brought before this Court to show
Name of party to be arrested

cause why he/she should not be declared to be in civil contempt of Court. This
therefore is to command you, in Her Majesty's name, forthwith to arrest and detain
_____ and to bring him/her before a Justice of the Court of
Name of party to be arrested

Queen's Alberta to be dealt with according to law. This warrant is sufficient authority for
the keeper of a correctional institution to receive and detain _____
Name of party to be arrested

into custody and to safely keep that party pending appearance before a Justice in the
Court of Queen's Bench of Alberta.

DATED _____,

at _____, Alberta.

Justice, Master or Clerk of the Court
of Queen's Bench

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
ENCUMBRANCER (OR TENANT, OFFERER OR TENDERER)	Thomas Anthony Jones
DOCUMENT	<u>NOTICE OF ADDRESS FOR SERVICE IN FORECLOSURE ACTION</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughey Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

NOTICE OF ADDRESS FOR SERVICE IN FORECLOSURE ACTION

[RULE 11.23]

The Encumbrancer [or Tenant, Offeror, Tenderer, Defendant noted in default] notifies the Plaintiff that the following is the Notice of Address for service of this party in Alberta:

[Name of party to be served]

[Address for service in Alberta including postal code]

NOTE: **If address for service does not include a street address, a full legal description must be included.**

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>AFFIDAVIT</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughy Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

AFFIDAVIT OF _____

Sworn on _____

[RULE 12.20]

I, _____, whose address is _____, have personal knowledge of the following:

- 1.
- 2.
- 3.

SWORN BEFORE ME at _____,)
Alberta, _____, 20____.)

A Commissioner for Oaths in the Province of)
Alberta)

SIGNATURE

PRINT NAME

PRINT NAME AND EXPIRY/LAWYER/STUDENT-AT-LAW

This is exhibit "___" referred to in the affidavit of
_____ sworn before me on _____

A Commissioner of Oaths for the Province of
Alberta

PRINT NAME AND EXPIRY/LAWYER/STUDENT-AT-LAW

Clerk's stamp:

COURT FILE NUMBER	0803-00287
COURT	Court of Queen's Bench
JUDICIAL CENTRE	Edmonton
PLAINTIFF(S)	Melinda Grace Jones
DEFENDANT(S)	Geoffrey James Jones
DOCUMENT	<u>MONEY PAID INTO COURT</u>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	D. Edward McDoughty Jibbet & Jobbet LLP 3400, 10234 – 105 St. Edmonton, AB T5H 7Y6 Ph. (780) 438-8734 Fx. (780) 422-2387 File No. 8234/DEM
---	---

NOTICE TO COURT CLERK

You have received money paid into court.

Go to the end of this document to see what you must do.

MELINDA GRACE JONES (Plaintiff)
GEOFFREY JAMES JONES (Defendant)

MONEY PAID INTO COURT

[RULE 12.50]

**\$_____ is paid into court in the following circumstances
(specify the rule, enactment, judgment or order, or permission of the court clerk,
you have to pay this money into court):**

NOTICE TO COURT CLERK

You must give a receipt for the money paid into court, and unless otherwise ordered, deposit the money in an account in a bank or treasury branch.

ALBERTA LAW REFORM INSTITUTE

EDMONTON, ALBERTA

RULES OF COURT PROJECT

Guide to the Proposed Rules

October 2008

Table of Contents

ACKNOWLEDGMENTS.	iii
INTRODUCTION.	1
A. New Rule Solutions.	1
B. Rule Organization and User Tools.	2
C. Interpretation.	3
D. Implementation.	4
E. Rules Project Consultation.	4
Part 1 – Foundational Rules.	5
Part 2 – The Parties to Litigation.	7
Part 3 – Court Actions.	9
Part 4 – Managing Litigation.	12
Part 5 – Disclosure of Information.	14
Part 6 – Resolving Issues and Preserving Rights.	17
Part 7 – Resolving Claims Without a Full Trial.	19
Part 8 – Trial.	20
Part 9 – Judgments and Orders.	22
Part 10 – Lawyer’s Charges, Recoverable Costs of Litigation, and Sanctions.	25
Part 11 – Service of Documents.	29
Part 12 – Technical Rules.	31
Part 13 – Appeals.	33
Part 14 – Transitional Provisions and Coming Into Force.	34

Schedules	35
Appendix – Definitions	36

ACKNOWLEDGMENTS

The Rules of Court Project gratefully acknowledges the following staff and volunteers for their generous contributions of expert advice and assistance in support of the Project.

Board

The Hon. Justice Neil C. Wittmann, ACJ
(Chair)
Dr. Carl G. Amrhein
Mr. Clark Dalton, Q.C.
Ms. Anne de Villars, Q.C.
Ms. Jeanette W. Fedorak
Mr. Alan D. Fielding, Q.C.
The Hon. Judge Nancy A. Flatters
Ms. Peggy M. Hartman, Q.C.
Dr. Patricia Hughes
Mr. William H. Hurlburt, Q.C.
Mr. H.J. Lyndon Irwin, Q.C.
Mr. Peter J.M. Lown, Q.C.
The Hon. Justice Alan D. Macleod
The Hon. Justice Sheilah L. Martin
Dr. Doug R. Owsram
Mr. James S. Peacock, Q.C.
The Hon. Justice Bonnie L. Rawlins
Prof. & Vice-Dean Wayne N. Renke
Mr. Nolan D. Steed, Q.C.
Mr. Doug R. Stollery, Q.C.
The Hon. Justice Keith D. Yamauchi

Lead Counsel

The Hon. Justice June M. Ross
Mr. Peter J.M. Lown, Q.C.
Mr. H.J. Lyndon Irwin, Q.C.
Mr. William H. Hurlburt, Q.C.

Counsel

Ms. Suzanne Condlin
Mr. Witek Gierulski
Ms. Debra Hathaway
Ms. Cheryl Hunter Loewen
Ms. Jamie Dee Larkam
Ms. Maria Lavelle
Ms. Leah Lis
Ms. Cynthia Martens
Ms. Sheryl Pearson
Ms. Sandra Petersson
Ms. Margaret A. Shone, Q.C.
Ms. Hilary Stout
Ms. Geneviève Tremblay-McCaig

Special Counsel

Mr. Tom Archibald
Mr. Bruce Baugh
Mr. (C.R.B.) Dick Dunlop
Mr. David Elliott
Ms. Denise Gagnon
Prof. & Vice-Dean Wayne N. Renke
Ms. Doris I. Wilson, Q.C.

Support Staff

Ms. Carol Burgess
Ms. Ilze Hobin
Ms. Jenny Koziar
Ms. Marlene Welton

Student Research Assistants

Ms. Alicia Backman-Beharry
Ms. Jessica Bortnick
Ms. Shannon Brochu
Dr. Tania Bubela
Mr. Alec Campbell
Ms. Paulette deKelder
Mr. Darryl Douglas
Mr. Jeff Fixsen
Mr. Jason Golbey
Ms. Orrice Harron
Ms. Allyson Jeffs
Ms. Lori Kennedy
Mr. Jeremiah Kowalchuk

Dr. Ryan Krushelnitzky
Ms. Kristen Lewicki
Ms. Raisa MacLeod
Ms. Chelsea McKay
Ms. Jill Miles
Ms. Kelly Nychka
Ms. Kajal Patel
Mr. Simon Rabinovitch
Ms. Caron Rollins
Mr. Weston Rudd
Ms. Lisa Statt
Ms. Erin Viala
Ms. Kathy Wang

RULES OF COURT PROJECT COMMITTEES:

Steering Committee

The Hon. Justice Neil C. Wittmann, ACJ (Chair)

The Hon. Judge Allan A. Fradsham

Mr. Peter J.M. Lown, Q.C.

The Hon. Justice Alan D. Macleod

The Hon. Justice June M. Ross

The Hon. Justice Joanne B. Veit

The Hon. Judge Geoff Ho (*observer*)

The Hon. Justice Eric F. Macklin

Mr. Robert Maybank, Q.C. (*observer*)

Ms. Phyllis A. Smith, Q.C.

Appeals

The Hon. Justice Carole M. Conrad

Ms. Ritu Khullar

Mr. Havelock B. Madill, Q.C.

Ms. Sandra Petersson

Mr. H. Martin Kay, Q.C.

Mr. Peter J.M. Lown, Q.C.

The Hon. Justice Sheilah L. Martin

Costs

The Hon. Justice Myra B. Bielby

Mr. James A.B. Christensen

The Hon. Judge Heather A. Lamoureux

Ms. Cynthia L. Martens

Mr. James F. McGinnis

The Hon. Justice Patricia A. Rowbotham

Mr. Gary W. Wanless

Prof. Barbara A. Billingsley

Mr. William H. Hurlburt, Q.C.

Mr. Peter J.M. Lown, Q.C.

Ms. Virginia M. May, Q.C.

Ms. Sheryl Pearson

Ms. Hilary L. Stout

Ms. Doris I. Wilson, Q.C.

Criminal Rules

The Hon. Judge Michael G. Allen
The Hon. Justice Ronald L. Berger
The Hon. Justice Elizabeth A. Hughes
Ms. Sandra Petersson
Mr. Peter J. Royal, Q.C.
The Hon. Judge Donna R. Valgardson

The Hon. Judge John D. Bascom
Mr. Josh Hawkes, Q.C.
Mr. H.J. Lyndon Irwin, Q.C.
Prof. and Vice-Dean Wayne N. Renke
Ms. Laura K. Stevens, Q.C.

Discovery and Evidence

The Hon. Justice Scott Brooker
Mr. Alan D. Hunter, Q.C.
Ms. Beverly Jean Larbalestier, Q.C.
Ms. Cynthia L. Martens
The Hon. Justice Keith G. Ritter
Ms. Doris I. Wilson, Q.C.

The Hon. Justice Robert A. Graesser
Mr. William H. Hurlburt, Q.C.
Prof. Christopher Levy
Mr. Douglas A. McGillivray, Q.C.
Ms. Hilary L. Stout

Drafting

Mr. David C. Elliott
Mr. H.J. Lyndon Irwin, Q.C.
Ms. Sandra Petersson

Mr. William H. Hurlburt, Q.C.
Mr. Peter J.M. Lown, Q.C.

Enforcement of Judgments

The Hon. Justice John A. Agrios
Mr. C.R.B. (Dick) Dunlop
Ms. Debra Hathaway
Master Keith R. Laycock
Mr. Calvin C. Robb
The Hon. Justice Barbara E.C. Romaine

Mr. Françoise H. Belzil
Mr. Max Gold
Mr. H.J. Lyndon Irwin, Q.C.
Ms. Cynthia L. Martens
Ms. Susan L. Robinson Burns, Q.C.
Mr. Raymond (Bud) W. Steen

Foreclosure

Mr. H.J. Lyndon Irwin, Q.C.

Mr. Francis C.R. Price, Q.C.

Forms

Ms. Anne de Villars, Q.C.
Mr. Dan T. Gallagher, Q.C.
Mr. Paul Wood

Mr. David C. Elliott
Mr. Peter J.M. Lown, Q.C.

General Rewrite

The Hon. Justice Brian R. Burrows
Mr. Alan D. Fielding, Q.C.
Ms. Debra Hathaway
The Hon. Justice Eric F. Macklin
The Hon. Justice Terrence F. McMahon
The Hon. Justice June M. Ross

Mr. James T. Eamon
The Hon. Judge Allan A. Fradsham
Mr. William H. Hurlburt, Q.C.
The Hon. Justice Alan D. Macleod
Ms. Sheryl Pearson
Mr. Wayne Samis

Judicial Review

Mr. Tom Archibald
Mr. Tim Hurlburt, Q.C.
Mr. David N. Jardine
Ms. Peggy Kobly
Prof. Alastair R. Lucas, Q.C.
Ms. Margaret A. Shone, Q.C.

The Hon. Justice Gerard C. Hawco
Mr. H.J. Lyndon Irwin, Q.C.
Mr. David P. Jones, Q.C.
Ms. Jo-Ann R. Kolmes
Mr. Thomas W.R. Ross
The Hon. Justice Frans F. Slatter

Management of Litigation

Mr. Kenneth F. Bailey, Q.C.
Mr. Anthony L. Friend, Q.C.
The Hon. Justice C. Adele Kent
Ms. Cynthia L. Martens
The Hon. Justice Doreen A. Sulyma

Mr. P. Jonathan Faulds, Q.C.
The Hon. Judge Elizabeth A. Johnson
Mr. Peter J.M. Lown, Q.C.
Mr. Gerald F. Scott, Q.C.
Ms. Doris I. Wilson, Q.C.

Promoting Early Resolution of Disputes

Mr. Patrick M. Bishop
The Hon. Judge Nancy A. Flatters
Mr. J. Royal Nickerson, Q.C.
The Hon. Justice Bonnie L. Rawlins
Ms. Karen M. Trace
Ms. Camilla Witt, Q.C.

The Hon. Justice Peter T. Costigan
Mr. William H. Hurlburt, Q.C.
Ms. Sandra Petersson
Ms. Margaret A. Shone, Q.C.
Mr. Kenneth J. Warren, Q.C.

INTRODUCTION

The Guide to the Proposed Rules is a compilation of general information about the proposed Alberta Rules of Court and the rules project. The guide is released with the final report solely in order to provide a general orientation to the proposed rules. The proposed rules are under review by the government.

A. New Rule Solutions

The Rules of Court Project was launched in 2001 as the forum for rethinking, reforming and rewriting Alberta's civil practice and procedural rules. An extensive consultation effort at the start of the Project revealed three major problems with the existing rules and confirmed that fixing the problems was high on the public priority list.

Members of the Alberta bench, bar and legal community took on the challenge of developing new rules and set the Project objectives:

Create rules that are clear, useful and effective tools for accessing a fair, timely and cost efficient civil justice system.

Project participants established a rigorous, inclusive and collaborative development process and worked diligently to draft, review and refine rules within a logical scheme. The result is a sustainable set of civil rules that resolves the problems. Here's how:

Problem 1 – The public perception is that it takes too much time and money, and it is too difficult to use the court system.

Solution: The proposed rules describe a clear, step-by-step dispute resolution process with deadlines set by the parties. The goals of the process are to minimize the dollar and time costs of litigation and maximize procedural transparency.

Problem 2 – The rules are long, disorganized and not consistently applied or enforced. This confusion impedes access to justice and frustrates efforts to run an efficient, effective justice system.

Solution: The proposed rules are short, logical, well arranged and written in plain English. It is now easy to find and follow the right rules.

Problem 3 – The old rules are out of date. The last major review was done in 1968 and the rules no longer reflect modern practice.

Solution: The proposed rules blend core principles of procedural justice with the best contemporary legal and administrative practices into a single, comprehensive, consistent procedural code.

B. Rule Organization and User Tools

The proposed rules have 14 Parts, three Schedules and one Appendix. Generally speaking, the Parts and rules are organized to follow the sequence of a legal action. This said, rules for service of documents and most of the technical rules are collected in Parts 11 and 12, respectively. The reasons for this arrangement are that these rules may be applied throughout the course of a legal action and to incorporate them earlier would impede the logical flow of rules that otherwise appear in the same sequence as steps in a legal action.

The rules are divided, numbered and arranged as follows:

- Rules that relate to a particular subject area are grouped into Parts with a number assigned to each Part. For example
Part 3 - Court Actions
Part 4 - Managing Litigation
Part 8 - Trial
- Rules are numbered first with the Part number and then consecutively. For example, in Part 5 the rules are numbered 5.1, 5.2, 5.3 and so on.

- If a rule is divided into two or more identifiable sentences, **subrules** are noted by bracketed numbers, for example 5.1(1), (2), (3).
- If a rule or subrule is further divided into **clauses**, these are shown using bracketed lowercase letters, for example 3.24(a), (b) or 5.1(1)(a), (b).
- **Subclauses** are indicated by bracketed roman numerals, for example 3.24(a)(i),(ii) or 5.1(1) (a)(i),(ii), (iii).

The rules include a consolidated **Appendix** of defined words and phrases. The definitions are an integral part of the rules and have legal effect.

The rules contain two features to help users find and apply the appropriate rule. The first is the highlighted **Information Notes** found before the Table of Contents and throughout the document. Information notes are ‘signposts’ which provide additional information about the subject and references to related rules that may be helpful. In the electronic copy of the rules, the references to other Parts are hyperlinks. The second feature is a boxed summary section at the beginning of each Part titled ***What this Part is About***. Text found in the notes or boxed portions of the rules document has no legal effect.

C. Interpretation

The primary mechanisms for interpreting a proposed rule are the text, purpose and procedural context of the rule itself. In addition, some of the User Tools contained in the rules and parts of the *Interpretation Act* may help to determine a rule’s meaning. If a rule requires further clarification, the Project’s Consultation Memoranda and final report may provide some information about the legal and external context of a rule, but only to the extent that the rule reflects the principles or issues explained in the publication. An old rule case that addresses a fundamental principle might occasionally offer insight into a proposed rule, but only if both rules embody the same principle. Early draft versions of a rule have no interpretive value because they are not legislative materials.

D. Implementation

The Project published the proposed rules as part of a final report. The Rules of Court Committee is responsible for making a recommendation to the Lieutenant Governor in Council concerning adoption of the proposed rules. The government is charged with passing the legislation needed to implement the rules and setting the date when the rules take effect. In addition to enacting the proposed rules, legislation will repeal old rules and amend other statutes. For example, the *Civil Enforcement Act* or Regulation will be changed to include many of the provisions currently found in the old rules Part 28, “Enforcement of Judgments and Orders.”

E. Rules Project Consultation

The Project was a multi-year, consultative reform effort managed by the Alberta Law Reform Institute with funding assistance from Alberta Justice, the Law Society of Alberta and the Alberta Law Foundation. The Project Steering Committee, which was made up of the eminent legal professionals previously acknowledged, provided leadership and executive guidance throughout the Project.

Consultation activities took place at every stage of the Project. In the first phase, ideas from over 40 open meetings with legal groups, two public forums and the more than 800 responses to a rule reform paper were used to set the Project’s scope and process.

In the rule development stage, the knowledge and experience of the legal community powered the rule creation effort. More than 85 members of Alberta’s bench and bar generously gave over 30,000 hours of time and talent in the 11 Project working groups to produce 21 Consultation Memoranda and consider approximately 300 sets of response comments. The CM consultations resulted in 9 draft proposed rule documents, including the publicly released TD 3 version, and 25 sets of comments on TD 3.

The final stage of the Project included more than a dozen detailed discussions with the Rules of Court Committee over a period of 20 months. These consultations, supported by hundreds of hours of legal research, resulted in the final changes needed to shape the proposed rules into an efficient, modern, comprehensive procedural code that reflects the best of Alberta’s civil litigation practices and traditions.

Part 1 – Foundational Rules

OVERVIEW

Part 1 provides the philosophy underlying the rules through purpose and intention statements. These are followed by rules about how the rules are to be interpreted, the remedies the court may give, a general provision about practice and procedural orders that may be made by the court in a legal action, and how the court may deal with contravention and noncompliance with the rules and irregularities. The foundational rules are critical to the interpretation of all other rules.

WHAT'S KEY?

- R 1.2 sets out the purposes and objectives of the rules, and the responsibility of parties to act in accordance with these purposes and objectives.
- R 1.3 gives the court wide discretion to grant any remedy or relief provided for in the *Judicature Act* and applicable statutes, whether or not the remedy is expressly requested in pleadings.
- R 1.4 introduces practice and procedural orders that the court can make so that the rules work as intended. It lists the practice, procedural, cost, interest and other orders that the court can make. In the event a practice or procedural decision of the court is not written in a formal order, it must be recorded in the court record of the action or endorsed by the clerk on a filed pleading or document.
- R 1.5 is a consolidation of the old slip rules. It clarifies that the fundamental approach to rule contraventions, non-compliance and irregularities is to promptly “cure first” with setting aside as a last resort. It states when a cure is, and is not, appropriate. The information note for this rule lists other rules which provide specific methods for fixing specific contraventions.
- R 1.7 provides that the main tool of rule interpretation is the text and context of the rule itself.
- R 1.8 states that the *Interpretation Act* applies to the rules, with the exception of certain provisions. In particular, provisions of the Act relating to reference aids, calculating time, service and the use of forms and words are excluded.

- R 1.9** clarifies that if there is a conflict between the rules and an enactment, the enactment prevails to the extent of the inconsistency.
- R 1.10** definitions of words and phrases used in the rules are found in the Appendix.

Part 2 – The Parties to Litigation

OVERVIEW

Part 2 includes rules to facilitate actions by and against partnerships, sole proprietors and other entities. It contains rules for when a litigation representative must be appointed, when the parties in litigation may represent themselves and the responsibilities of lawyers of record.

WHAT'S KEY?

- R 2.2 - 2.4** state the ways to bring an action against a partnership and/or individual partners.
- R 2.5** provides that a sole proprietor may both sue and be sued using their trade name and clarifies the procedure for disclosure of a sole proprietor's legal name.
- R 2.6** describes the rules for a representative action or defence.
- R 2.7 - 2.9** provide the rules necessary to start procedures contained in the *Class Proceedings Act*.
- R 2.10** states that the court may on application grant intervenor status to anyone and may set the terms of participation as it sees fit.
- R 2.11 - 2.20** contains the scheme for a litigation representative to act for minors, vulnerable and dependent adults, missing persons and estates that have no personal representative. Of note, the new term "litigation representative" replaces the old terms of guardian, guardian *ad litem* and next friend.
- R 2.11** notes the persons who must have a litigation representative.
- R 2.12** describes the 3 types of litigation representatives as
- automatic with authority derived from an enactment, instrument or order under the *Surrogate Rules*. Automatic litigation representatives act pursuant to Rule 2.13,

- self-appointed as in persons who file an affidavit of disclosure and, in the case of an estate, serve notice on beneficiaries and heirs-at-law. The self appointment process is detailed in Rule 2.14, or
- court appointed in accordance with Rules 2.15, 2.16 or 2.21.

- R 2.17** provides that the court may appoint a lawyer as the litigation representative and may direct how the costs of the lawyer acting in this capacity are to be paid.
- R 2.19** states that, absent an expression of specific authority in an instrument, order or enactment, a litigation representative may only settle, discontinue, or abandon an action with the court's approval.
- R 2.20** notes that money, other than a cost award, that is payable to a litigation representative must be paid into court.
- R 2.22** states that individuals may represent themselves in court.
- R 2.23** provides that a party may have a person assist them before the court and describes the type of assistance that may be given. This is the rule for a *MacKenzie* friend.
- R 2.24 - 2.32** describe the rules applicable to lawyers of record. Rules 2.24 and 2.25 are new rules stipulating the role and duties, respectively, of a lawyer of record.
- R 2.27** is a new rule which provides that a party may use a lawyer for limited purposes during the course of an action.
- R 2.32** reflects a new policy that a lawyer of record will be automatically terminated if the lawyer dies, is suspended or ceases to practice and that a firm automatically ceases to be the lawyer of record if the firm dissolves. It also contains new rules for seeking court directions for the service of documents when a lawyer has been terminated. These provisions are intended to help bridge the procedural gap, if any, between termination and new legal representation.

Part 3 – Court Actions

OVERVIEW

This Part describes the process for starting court actions and where to start them. Court actions are started either by filing a statement of claim or by filing an originating application. It contains the requirements for originating applications and the specific rules for originating applications for judicial review.

The Part then describes the documents and procedures for actions started by statement of claim, including rules related to time limits, defences, counterclaims and 3rd party claims. There are also rules for obtaining particulars about a claim, making amendments to, and closing, pleadings, joining or separating claims and parties, dealing with deficiencies, and changes to the parties.

WHAT'S KEY?

- R 3.2** is a new rule which provides that a court action can only be started by filing one of 2 commencement documents, a statement of claim or an originating application, in the appropriate judicial centre. Commencement by statement of claim is the default method. Originating applications are used if there are no facts in dispute or if the matter is governed by statute or subject to judicial review. This rule also gives the court power to make a practice or procedural order if needed to put an action on the correct path.
- R 3.3** describes how to ascertain the appropriate judicial centre by reference to nearness of the centre to the Alberta residences and places of business of one or all parties.
- R 3.4** includes special subrules for ensuring that actions involving claims for possession of land will proceed in the judicial centre that is nearest to the land or Alberta residence of the defendant.
- R 3.6** includes a new requirement that all actions must be conducted in the judicial centre in which they were commenced, or be transferred pursuant to Rule 3.4 or 3.5. This rule preserves the possibility that a matter may, if a court so orders, be conducted in some place other than a judicial centre.

- R 3.7** is a new rule which states that a judgment may be enforced in a judicial centre other than the one in which the proceedings have been carried on, after a certified copy of the judgment has been filed in the other judicial centre.
- R 3.10** provides that the rules governing management of litigation and disclosure of information do not apply to actions started by originating application, unless agreed by the parties or ordered by the court. This rule preserves administrative law principles that general discovery rules do not apply to judicial reviews, unless there are exceptional circumstances.
- R 3.11** provides that applicants and respondents must provide reasonable notice of intent to rely on affidavits in advance of the hearing set for a matter raised by originating application. This rule is consistent with the current practice of filing affidavits at least one month before a hearing and roughly coincident with the filing of briefs.
- R 3.15 - 3.24** deal with judicial review. Rule 3.15 consolidates the requirements for making an originating application for judicial review, including the rules that the application must be filed within 6 months of the decision or act that is to be reviewed, and that the Attorney General must be served.
- R 3.16** provides that *habeus corpus* may be sought at any time.
- R 3.17** states that the Attorney General has the right to appear at a judicial review.
- R 3.18 - 3.20** deal with obtaining the record of the proceedings that are being reviewed.
- R 3.21** states that no person may be questioned as a witness before the hearing without the permission of the court.
- R 3.25 - 3.29** provide the requirements associated with a statement of claim, including the rules for time of service.
- R 3.30 - 3.35** deal with defences, demands for notice and replies.
- R 3.36 - 3.42** govern default judgments, noting in default and related matters. Rule 3.41 continues a special requirement that a plaintiff must note in default the defendant who fails to file a defence in a foreclosure action before making application for a judgment or foreclosure remedy.

- R 3.42** is a new limitation on the use of default judgment or noting in default rules in that these measures can not be applied against a defendant who has made an application concerning the statement of claim, service or proceeding until the defendant's application has been decided.
- R 3.43 - 3.55** deal with claims against co-defendants and 3rd party claims. Rule 3.44 broadens the circumstances in which a 3rd party claim can be brought.
- R 3.55** specifically states that rules which apply to plaintiffs and defendants also apply to 3rd party plaintiffs and defendants.
- R 3.56 - 3.60** deal with counterclaims. Rule 3.58 states that a counterclaim is an independent action.
- R 3.60** notes that rules that apply to plaintiffs, defendants, 3rd parties and pleadings also apply to plaintiffs-by-counterclaim, defendants-by-counterclaim and the 3rd parties and pleadings of counterclaims.
- R 3.61 - 3.67** cover requests for particulars, contain new and more liberal rules for amending pleadings and provide the rules for closing pleadings.
- R 3.69** provides that a party may join 2 or more claims and sue or be sued in more than one capacity within an action. Further, it is not necessary for each defendant or respondent to have an interest in all remedies sought or in every claim in the action.
- R 3.70** states the 3 grounds for joining parties.
- R 3.71** provides the 2 grounds for separating actions or parties.
- R 3.74 - 3.76** deal with adding, removing and substituting parties.

Part 4 – Managing Litigation

OVERVIEW

Part 4 puts the responsibility for managing litigation started by statement of claim on the parties and provides a framework to do that. Court assistance, in the form of procedural, interpretive, decision or case management orders, is available to move the case along at any time during the action. For most actions started by statement of claim, the parties must prove that they have engaged in a non-trial dispute resolution process before they will given a trial date. The rules recognize judicial dispute resolution as one means of resolving litigation without a full trial.

Other rules contained in this Part describe the processes for obtaining an order to secure payment of a costs award, settlement, dealing with delay, transfer of interests and liability, and discontinuance of claims and defences.

WHAT'S KEY?

- R 4.1** requires parties to manage their dispute and plan to resolve it in a timely cost effective way.
- R 4.2** describes what it means to manage responsibly and requires the parties to participate in one or more dispute resolution processes by which all or part of the case may be resolved short of trial unless the court, on the basis of an application, waives the requirement. Rule 8.4 states that a trial date cannot be set unless the parties engaged in a dispute resolution process or were excused from doing so.
- R 4.3** contains provisions for determining whether a case is simple, standard or complex.
- R 4.4** sets target dates for completing stages in a simple or standard case.
- R 4.5 - 4.6** require the parties to a complex matter to develop a detailed litigation plan and file it with the court.
- R 4.9** provides that if a party or the court is not satisfied that the action is being managed in accordance with Rule 1.2 (*i.e.* so as to fairly and justly resolve

the claim in a timely and cost effective way), the court may make a procedural or any other order necessary to move the action along.

- R 4.10 - 4.11** state that the court can help manage litigation by
- directing parties to attend a court conference,
 - making a practice or procedural order,
 - appointing a case management judge, or
 - making orders for specific direction or remedies as contemplated under the rules.
- R 4.12 - 4.14** describe the case management process.
- R 4.17 - 4.21** set the framework for the parties to request a judicial dispute resolution process (JDR). There are rules for asking for a specific judge, upfront agreement as to the JDR ground rules, attendance entitlements, documentation, confidentiality and the judge's involvement after the JDR ends.
- R 4.24 - 4.29** set out the court process for settlement through a formal offer and acceptance, with costs consequences if an offer is not accepted and the offeror obtains a better result than that which was offered.
- R 4.30** notes that the court settlement process does not apply to an action involving a "defence of tender" unless the defence is withdrawn.
- R 4.33** provides for dismissal for long delay. If 2 or more years have passed since an act which significantly advanced an action, the court, on application, must dismiss unless one of four criteria are met. Of note, the court cannot extend or vary a time period under Rule 4.33. The procedures for extending time are found in Part 12.

Part 5 – Disclosure of Information

OVERVIEW

Part 5 describes the information that must be disclosed by the parties to a court action and when and how the parties may question each other about the case. Early disclosure of facts and admissions helps parties to evaluate the case and can facilitate early resolution of the dispute. This Part also deals with expert reports and medical examinations by health care professionals. The substance, but not the form, of most of the old discovery rules continues in the new rules.

WHAT'S KEY?

- R 5.1** provides that the purpose of this Part is to obtain evidence, narrow and define issues, encourage early disclosure, facilitate evaluation of positions and issue resolution, and to discourage conduct that causes unnecessary delay or increases costs.
- R 5.2** describes the relevant and material test that is used to determine if information should be disclosed.
- R 5.4** states that a corporate representative appointed to undergo questioning on behalf of the corporation has a positive duty to prepare and inform themselves of relevant and material records and information prior to giving evidence. In addition, the court may order a representative to get up to speed or may, if the representative is not suitable, appoint a different one.
- R 5.5** states that a plaintiff must serve the affidavit of records within 3 months of being served with the first statement of defence; a defendant, within one month of service of the plaintiff's affidavit of records; and a 3rd party defendant, within 3 months of filing a defence.
- R 5.6 - 5.8** prescribe the form of the affidavit of records that is to be used to disclose all records relevant and material to the issues in the action. Rules include means for describing documents as bundles and noting a record for which privilege is claimed together with the type of privilege and grounds.
- R 5.9** states that an affidavit of records may only be sworn by an agent if the other parties agree or the court so orders.

- R 5.10** contains the ongoing duty to disclose omitted or new records.
- R 5.12** sets the potential for double tariff cost penalties for inexcusable delay in producing an affidavit of records and for failure to disclose subsequent records or comply with a record disclosure order.
- R 5.17** states that a party adverse in interest, the corporate representative and officers, former officers, and persons who are or were employees of a corporate party and acquired information because of their office or employment may be questioned about relevant and material records and information.
- R 5.18** provides that other persons who have provided services to the corporation may be examined under some circumstances.
- R 5.23** stipulates that a person, other than a corporate representative, must be reasonably prepared to answer questions and bring non-privileged records that might be required to the questioning.
- R 5.22** provides for written questions and answers.
- R 5.25** sets the rules for appropriate questions and grounds for objection.
- R 5.27** contains the ongoing duty to correct answers that were or become incorrect.
- R 5.29** prohibits reading in at trial of evidence given on prior questioning by a corporate witness unless a corporate representative acknowledges that the evidence is information of the corporation.
- R 5.30** defines and describes the undertaking process. This is the a process whereby a person who does not know the answer to a question may, in some circumstances, be required to give an undertaking to inform themselves and provide the answer.
- R 5.31** provides for the use of the evidence in the transcript of a corporate representative or witness' questioning at trial or on an application if the corporate representative has acknowledged that the evidence is information of the corporation under Rule 5.29.

- R 5.32** states that transcripts, affidavits of records, affidavits, written answers to questions and corrections must not be filed unless needed to support an application proceeding or trial.
- R 5.33** is a new rule that states that all information disclosed is confidential and may only be used for purposes of the action, unless otherwise ordered by the court, the parties agree or permitted by law.
- R 5.34 - 5.40** govern the use of experts in civil litigation. Expert is a defined term contained in the Appendix.
- R 5.34** prescribes the form of the expert report in order to facilitate the exchange of useful and comprehensive information.
- R 5.35** sets a scheme for the sequential exchange of expert reports.
- R 5.37** provides that an expert may be questioned prior to trial in exceptional circumstances.
- R 5.38** states that an expert has a duty to disclose any changes in opinion that occur following preparation of the report.
- R 5.39** describes the process for using an expert report at trial without calling the expert as a witness.
- R 5.41 - 5.44** set the process for medical examinations and reports. The Appendix contains an expanded definition of the type of health care professionals who may conduct a medical examination.
- R 5.41** states that a medical examination may be ordered if the physical or mental condition of a person is at issue. Of note, under Part 10 the court may order, on its own initiative, a medical examination in the context of a civil contempt of court process.
- R 5.42** is a new rule giving the person being examined the options of having a nominee attend the examination or having the examination videotaped or recorded, word for word.

Part 6 – Resolving Issues and Preserving Rights

OVERVIEW

Part 6 contains the rules for making applications to obtain court directions or to resolve issues arising during the course of the litigation. The Part provides procedures for questioning on affidavits and applications and for the court's use of experts, referees and receivers. Part 6 also includes:

- rules for obtaining evidence outside Alberta,
- orders for the protection and inspection of property, and
- rules respecting replevin orders and interpleader proceedings.

WHAT'S KEY?

- R 6.1** states that this Part governs all applications to court except originating applications.
- R 6.3** establishes the application process, including the requirement of notice 5 days before the application hearing or consideration date unless notice is dispensed with under Rule 6.4.
- R 6.6** describes the notice requirements associated with a foreclosure action in terms of who must be served depending on the nature of the foreclosure action contemplated.
- R 6.8 - 6.9** provide for questioning on affidavits and questioning of witnesses to obtain evidence for hearings.
- R 6.10 - 6.11** provide ways in which applications may be considered, including personal attendance, electronic hearings and document consideration.
- R 6.14** is a new rule that requires an application to be recorded where only one party appears unless a judge orders otherwise.
- R 6.15** provides for an appeal of a master's order and states that the appeal is on the record, not a new hearing.
- R 6.16** describes the orders which a judge may make in connection with an appeal from a master's decision.

- R 6.21** requires a party in need of an interpreter for questioning purposes to provide reasonable notice of the need to the party conducting the examination. The examining party shall then provide an impartial and competent interpreter at their expense.
- R 6.23 - 6.25** modernize and consolidate the processes for taking evidence outside of court and outside of Alberta.
- R 6.26** is a new rule authorizing the Alberta court to assist an extra-territorial judicial authority in obtaining evidence from a person in Alberta.
- R 6.27 - 6.29** contain rules for preservation, protection, inspection and disposition of property.
- R 6.30 - 6.38** are new rules that reflect the processes related to restrictions on media and public access to court materials and proceedings.
- R 6.50 - 6.55** govern the replevin process. Of note, clerks can no longer issue replevin orders.
- R 6.53** provides that only a civil enforcement agency can enforce a replevin order and that personal property may not be given to the applicant without a further court order.
- R 6.55** provides that a replevin order acquired without notice expires pursuant to its terms. An order with notice expires the earlier of dismissal of an action or 2 months from date of judgment in favour of the applicant.
- R 6.56 - 6.67** apply to proceedings for an interpleader order which may be started by way of originating application or, if the applicant is party to an action respecting personal property, by application.
- R 6.56** contains specialized definitions that apply in the context of interpleader proceedings.

Old rules related to the examination of a debtor, which are currently called examination in aid of execution, will be moved to the *Civil Enforcement Act* or Regulation.

Part 7 – Resolving Claims Without a Full Trial

OVERVIEW

Part 7 includes the rules to apply for judgment on admissions or records, summary judgment, judgment in a summary trial and trial of particular questions or issues, including issues of law.

WHAT'S KEY?

- R 7.1** describes how a court may hear and decide a particular question or issue before, at or after trial.
- R 7.2** states that summary judgment may be applied for at any stage of the action and there is no requirement to wait for the filing of a statement of defence.
- R 7.5 - 7.9** describe the summary trial proceeding as a one-stage procedure, rebuttable on application by the respondent.
- R 7.10** stipulates that the judge who conducted a summary trial remains seized of the matter and must preside at any full trial.

Part 8 – Trial

OVERVIEW

Part 8 contains rules for the mode, scheduling and the conduct of a trial.

WHAT'S KEY?

- R 8.1** provides that judge alone is the default trial mode.
- R 8.2 - 8.3** describe the process for requesting a jury trial.
- R 8.4** states that one or more parties can request a trial date. The clerk must schedule a trial if the parties can show that they have completed specific steps, including having engaged in, or been exempted from a dispute resolution process and have concluded the disclosure process. To schedule a trial date using this rule, the exchange of expert or medical reports, questioning and undertakings must be complete.
- R 8.5** allows the court, on application, to set a trial date if satisfied that dispute resolution measures were taken or waived and that parties are or should be ready by the trial date. This rule permits the court to issue a practice or procedural order to facilitate conclusion of the activities which must be completed prior to getting a firm trial date.
- R 8.6** is a new rule which states that the clerk will give notice of a scheduled trial date. In addition, a trial may not be abandoned, adjourned or dates changed without court permission.
- R 8.7** states that a trial date, length and the estimated number of witnesses must be confirmed 3 months or more before the trial date. If only one party confirms, the trial goes ahead, unless the court otherwise orders. If no one confirms, the trial is cancelled.
- R 8.10** prescribes the order for presenting evidence and statements at a trial including when opening and closing statements may be made by the parties.
- R 8.12** describes when a witness may and may not be excluded from the courtroom.
- R 8.22** is a new rule providing for jury trials to continue by judge alone in certain circumstances.

R 8.23 states that the court, in pronouncing judgment in a jury trial, may draw inferences of fact that are not inconsistent with the jury's findings.

Part 9 – Judgments and Orders

OVERVIEW

Part 9 includes rules for preparing, entering, correcting, setting aside and enforcing court judgments and orders. This Part describes how a civil enforcement agency may enforce court pronouncements and contains the rules for abandoned goods. Part 9 also deals with how judgments and orders from jurisdictions other than Alberta.

WHAT'S KEY?

- R 9.2** states that the successful party, unless otherwise ordered, is responsible for preparing and serving a draft judgment or order within 10 days of the pronouncement of the judgment or order and that the other parties have 10 days to approve or reject the draft. If the draft judgment or order is not expressly approved or rejected, it may be signed and entered.
- R 9.3** provides that disputes concerning content of orders or judgments must be resolved by the court, not the clerk.
- R 9.4** provides for the signing of the order by the judge or master or, in some circumstances, by the clerk.
- R 9.5** requires judgments and orders to be entered within 3 months of pronouncement. Judgments and orders may not be entered beyond the 3 month period without the court's consent.
- R 9.8** states that the party entering judgment or the order must serve a copy on every other party.
- R 9.9 - 9.11** provide for determination of continuing damages, judgment for the balance owing when determining a counterclaim and a judgment or order against beneficiaries for the administration of an estate.
- R 9.12** provides that the court, on application, may correct a mistake in a judgment or order that occurred because of an accident, slip or omission.
- R 9.14** allows the court, on application, to make further orders in a matter after entry if doing so does not require changes to the original order and the subsequent order is needed.

- R 9.15** contains all the rules for setting aside, varying or discharging an order or judgment.
- R 9.16** states that the applications to correct mistakes, issue further orders or change judgments or orders must, unless otherwise ordered, be made to the master or judge who issued the original judgment or order.
- R 9.21** stipulates that a judgment creditor may apply for a new judgment or order in respect of unsatisfied parts of a judgment but the application must be made within the limitation period set under the *Limitations Act*.
- R 9.23** describes enforcement of judgments and orders against partnerships.
- R 9.24** applies to fraudulent preferences and conveyances.
- R 9.28** contains provisions that apply when personal property is left behind by a person evicted or forced to vacate lands or premises.
- R 9.29** states that the court, on application, may order a person to be questioned in order to assist in the enforcement of a judgment or order.
- R 9.30 - 9.36** describe the process and associated orders in a foreclosure action.
- R 9.34** contains a new subrule that prevents an order confirming sale from being registered in the Land Titles Office before appropriate evidence showing that payment of the amount ordered by the court has been paid into court or the plaintiff has received the money.
- R 9.35** provides for the calculation by the clerk of amounts owing after the court has made a declaration of the balance due, an order for sale to the plaintiff, an order confirming sale or granted judgment against any party in a foreclosure action. The rule also requires the plaintiff to file and serve the appropriate documents.
- R 9.36** requires the plaintiff in a foreclosure action to serve the certified bill of costs on every defendant and subsequent encumbrancer once they have been served with an order under r 9.35(1).
- R 9.40 - 9.49** describe the process for enforcement of United Kingdom judgments.

R 9.50 - 9.52 provide the process for registering judgments in accordance with the *Reciprocal Enforcement of Judgments Act*.

Part 10 – Lawyer’s Charges, Recoverable Costs of Litigation, and Sanctions

OVERVIEW

Part 10 provides the rules for how lawyers may provide and charge for legal services and includes rules for a review officer to review retainer arrangements, lawyer’s charges and contingency fee agreements. There are rules for appealing the decision of a review officer. This Part also contains the rules which establish a successful party’s entitlement to recover some of the costs of litigation and give the court discretion as to the amount to be recovered. Other rules state how the court or the assessment officer is to assess the recoverable costs and describe procedures for appealing the cost decisions of an assessment officer or the court.

Part 10 rules also describe the sanctions for not complying with the rules and the process the court may use to declare that a person is in civil contempt.

WHAT’S KEY?

- R 10.1 - 10.8** govern lawyer charges and fee arrangements.
- R10.3** permits a lawyer, if properly authorized, to charge lawyer’s fees when acting as guardian, mortgagee, personal representative or trustee.
- R 10.4** allows the court to make an order charging property as security for payment of a lawyer’s charges.
- R 10.9** provides that the reasonableness of a retainer agreement, including a contingency agreement, and a lawyer’s charges may be reviewed by a review officer.
- R 10.10** sets the limit for review of a retainer agreement at 6 months after the agreement ends.
- R 10.11** states that either a lawyer or client may arrange for a review appointment and must file and serve appropriate documents.

- R 10.12** provides that if a lawyer receives notice of a review appointment, the lawyer must send in a signed account 5 days before the appointment or risk forfeiture of the right to payment for any amounts that are subject to review.
- R 10.13** states that a retainer agreement filed in support of a review is confidential, unless otherwise ordered by the court.
- R 10.14** allows a review to proceed despite the absence of a person served with notice of the appointment.
- R 10.17** gives the review officer power to allow, vary, reduce or disallow lawyers' charges.
- R 10.18** provides that, on application, the court may adopt a decision of a review officer as a judgment or order of the court.
- R 10.22** provides a process for a review officer to make a decision concerning the amount of a lawyer's charges payable in the event the lawyer ceases to act in a matter.
- R 10.24** states that the appeal of a review officer's decision is to a judge and is an appeal on the record.
- R 10.26 - 10.43** govern recoverable costs of litigation. Rule 10.26 expands the definition of party to include a person making or participating in an application or proceeding for the purposes of awarding costs.
- R 10.27** contains the general rule that a successful party is entitled to costs against the unsuccessful party, with the exception that a decision concerning costs for an application where only one party appears may be deferred until later in the action.
- R 10.28** states that costs for interim applications and decisions are payable immediately.
- R 10.29** contains new rules providing for the award of pre-action costs and costs to successful self-represented litigants.
- R 10.30** describes special factors to be considered in an award of costs in a class or representative action.

- R 10.31** contains the general list of things to be considered when determining costs.
- R 10.32** provides that the court may order an assessment officer to assess costs.
- R 10.33** states that the party entitled to costs must prepare and submit a bill of costs in prescribed form to the assessment officer.
- R 10.35** describes the process for cost assessment appointments and requires the successful party to file and serve the bill of costs 10 days before the appointment and, if the appointment is made by the unsuccessful party, that party must serve notice of the appointment and request a bill of costs 20 days before the appointment.
- R 10.38** provides that an assessment may proceed in the absence of a party served with a notice of the appointment.
- R 10.39** lists the factors an assessment officer is to consider and states that the maximum amounts that may be awarded are as set in Schedule C.
- R 10.40** states that costs are reduced when a case that could have been decided in Provincial Court has been heard by the Queen's Bench.
- R 10.42** provides for the cost decision of an assessment officer to be appealed to a judge as an appeal on the record.
- R 10.44** states that review and assessment officers can take actions as may be required under other enactments and that the rules apply to those proceedings.
- R 10.45** describes the cost liability of litigation representatives. A plaintiff's representative is liable for costs. A defendant's representative is only liable if the representative has engaged in serious misconduct or if the court orders.
- R 10.46** stipulates that a party entitled to costs is also entitled to recover the goods and services tax on those costs.
- R 10.47** provides that the court may order a party, lawyer, or other person who has contravened the rules to pay a penalty in costs.
- R 10.48** provides that the court may order a lawyer who has engaged in serious misconduct to pay costs to a person named in the order.

- R 10.49 - 10.51** contain the rules for a civil contempt of court proceeding, including sanctions.
- R 10.52** states that a judge may order a medical examination in connection with a civil contempt matter.
- R 10.53** provides that the court, as a superior court, has inherent power and full discretion to punish and cite in contempt those who disobey the court or display contempt for any court process.

Part 11 – Service of Documents

OVERVIEW

Part 11 sets out the rules for how commencement and other documents related to an action must be served inside and outside Alberta. It also contains the rules for validating, setting aside and proving service, as well as the rules for substitutional service.

WHAT'S KEY?

- R 11.1 - 11.17** govern service of commencement documents on various persons and other entities.
- R 11.1** provides that either the original or a copy of the original may be served, unless otherwise ordered.
- R 11.3** provides the rule for serving an individual.
- R 11.10** describes how to serve a sole proprietor.
- R 11.11** contains the rule for serving a corporation doing business under a name other than the corporate name.
- R 11.12** describes how to serve a statutory or other entity.
- R 11.15** provides the rules for service on a party's lawyer of record.
- R 11.16** states that a self-represented litigant may accept service of a commencement document, in writing.
- R 11.18 - 11.21** describe the service requirements for non-commencement documents.
- R 11.18** provides that a non-commencement document must be served in Alberta by a method of service specified for service of a commencement document, by an electronic method if an address has been given for that purpose, or by recorded mail.
- R 11.19** provides for service by electronic methods.
- R 11.22** contains additional methods for service in a foreclosure action.

- R 11.24** states that a commencement document can be served outside Alberta only if there is a real and substantial connection between Alberta and the facts of the case, or as permitted by court order if service is effected outside Canada. This rule also describes the real and substantial connection test.
- R 11.26** provides that the court, on application, may make an order validating service of a document served inside or outside of Alberta by methods other than as set forth in the rules.
- R 11.27** deals with substitutional service.
- R 11.28** provides for dispensing with service.
- R 11.29** describes how to prove that service has been effected.
- R 11.31** contains the rule for service in Alberta of foreign process or citation.

Part 12 – Technical Rules

OVERVIEW

Part 12 contains rules about when judges may act in place of each other, calculating time, the content and filing of documents, affidavits and exhibits, payments into and out of court, and the responsibilities of court officers.

WHAT'S KEY?

- R 12.1 states when one judge may replace another.

- R 12.3 describes how to count days. When counting days to or from an event, do not include the day of the triggering event or activity. Time periods of less than one month are expressed in days and longer periods in months or years.

- R 12.4 describes how to count months and years. When counting months or years to or from an event, use the event date and count off to the same numbered day in the successor or prior month or year. If there is no such date, (*e.g.*, some months do not have a 29th, 30th or 31st day), the count ends on the last day of the target month.

- R 12.5 contains rules for extending a time period by agreement of the parties. It also provides for the court to stay, extend or shorten a time period unless a rule otherwise provides. Time for filing a statement of claim or originating notice for judicial review are 2 periods which may not be extended by operation of Rule 12.5.

- R 12.6 maintains the fact pleading system.

- R 12.7 provides that particulars must be provided in actions involving allegations of breach of trust, fraud, misrepresentation, wilful default, undue influence and defamation.

- R 12.10 is a new rule that limits the content of reply pleadings to admissions or responses to matters of fact raised for the first time in the statement of defence.

- R 12.13 - 12.32 contain requirements for all filed documents including pleadings, forms, affidavits and exhibits.

- R 12.16** allows for insubstantial deviations from prescribed forms, if the deviation does not adversely affect the substance of the information and is not intended to mislead.
- R 12.19** notes the 2 types of affidavits and states that an affidavit used in support of an application that may finally resolve all or part of a matter must be based on personal knowledge, not hearsay.
- R 12.23** describes the process for swearing an affidavit when a person is unable to read the affidavit.
- R 12.24** provides for affidavits to be translated into a language that a person understands before sworn, or to be sworn in another language and translated for court use.
- R 12.33 - 12.38** contain rules for the payment of various court fees consistent with Schedule B.
- R 12.39** is a new rule that describes a judge's fiat.
- R 12.40 - 48** define the officers of the court as the clerk, deputy clerk, sheriff and deputy sheriff and other duly authorized persons.
- R 12.42** describes the authority of the court clerk.
- R 12.45** lists the clerk's duties.
- R 12.47** governs court reporters.
- R 12.49 - 12.56** describe when and how money may be paid into court, invested and paid out of court.
- R 12.49** is a new rule that states the 3 situations where money may be paid to court.

Part 13 – Appeals

New rules for civil appeals to the Court of Appeal will be developed and incorporated as Part 13 at a later date.

Part 14 – Transitional Provisions and Coming Into Force

OVERVIEW

Part 14 provides the rules necessary for transition.

WHAT'S KEY?

- R 14.1** defines terms needed for the purposes of transition.
- R 14.2** states that the new rules apply to all proceedings. If a matter fits the exceptional circumstances that are described in the new rules, or if the court so orders, it may continue under the old rules.
- R 14.3** states that the dispute resolution requirement does not apply to a matter that has a trial date.
- R 14.4** provides that parties to a complex case do not need to comply with certain litigation management requirements if a trial date is set.
- R 14.5** describes the bridging provisions necessary to accommodate the long delay period changing from 5 years to 2 years.
- R 14.6** grandfathers contingency fee agreements entered into prior to May 1, 2000 provided such agreements were filed with the court in accordance with the old Rule 617.
- R 14.7** contains a procedure for applying to the court for an order resolving the matter of whether the old or new rules apply to an action or application and making appropriate adjustments.
- R 14.9** provides the coming into force date for the new rules.

Schedules

- Schedule A** **Forms** includes all the forms prescribed by the rules for use under the rules.
- Schedule B** **Court Fees and Witness and Other Allowances** prescribes court fees payable and allowances payable to witnesses, jurors and experts.
- Schedule C** **Tariff of Recoverable Fees** sets out a series of fees for services performed in a legal action to which reference may or will be made by the court or an assessment officer.

Appendix – Definitions

The Appendix definitions apply to all the rules. There are very few Part or rule-specific definitions. The following are some of the key changes to rule definitions:

- **assessment** and **review officers** are defined, and **taxation** is not used
- **court** includes a Queen’s Bench judge or master
- **encumbrance, foreclosure action, land, secured land, and property** are all defined
- **expert** is any person who is entitled to give expert opinion evidence
- **health care professional** includes doctors, dentists, occupational and physical therapists, nurses, psychologists, chiropractors and persons registered in those professions in other jurisdictions if agreed by the parties or approved by the court
- **litigation representative** replaces guardian, guardian ad litem and next friend
- mortgaged property is recast as **secured property**
- order nisi is now a **redemption order**
- **prescribed form** means the appropriate form as found in Schedule A, properly completed and modified if necessary
- **relevant and material** is defined for disclosure of information in rule 5.2
- **rules** include the Schedules and Appendix