

I (Consolidated up to 221/2009)

ALBERTA REGULATION 390/68

**Court of Appeal Act
Court of Queen's Bench Act
Civil Enforcement Act**

ALBERTA RULES OF COURT

Citation

1 These Rules may be cited as the “Alberta Rules of Court”.

AR 390/68 s1;338/83

**Part 1
Definitions and Introductory Matter**

Coming into force

2(1) These Rules come into force on the First day of January, 1969.

(2) *The Consolidated Rules of the Supreme Court*, being Alberta Regulation 561/57, are hereby rescinded.

AR 390/68 s2

Application of rules

3 These Rules apply so far as may be practicable, unless otherwise specially provided, to all proceedings taken on or after that day in all actions and other proceedings then pending.

AR 390/68 s3

Regulation by analogy

4 As to all matters not provided for in these Rules the practice as far as may be shall be regulated by analogy thereto.

AR 390/68 s4

Definitions

5(1) In these Rules,

- (a) “action” includes any issue directed to be tried;
- (b) “address for service” means
 - (i) a residence or place of business within 30 kilometres of the office of the clerk where the action was commenced or to which the action has been transferred, or

- (ii) a telecopier located in Alberta at which a document may be served in accordance with Rule 16.1;
- (b.1) “case management judge” means any judge assigned to the pre-trial management of any action;
- (c) “clerk” means the clerk, deputy clerk or acting clerk of the court of the judicial centre in which the action or other proceeding is pending or is about to be commenced and, where the context requires it, a process issuer;
- (d) “conduct money” means the sum to which a person is entitled in accordance with the allowances prescribed in Schedule E hereto, and when the term is used in reference to a payment before actual attendance, means such amount as is calculated he would be entitled to upon completion of his attendance;
- (d.1) “contingency fee agreement” means an agreement for payment of legal fees entered into under Rule 615 when the payment of the fees is dependent or contingent, in whole or part, on the successful accomplishment or disposition of a matter specified in the agreement;
- (e) “Court” includes a judge thereof;
- (f) “counterclaim” means a pleading by which the defendant makes against the plaintiff or against the plaintiff and others such a claim as he might have made by a statement of claim in an independent action;
- (g) “defence to counterclaim” means a pleading by which the plaintiff answers the defendant’s counterclaim;
- (g.1) “double registered mail” means a form of registered mail under which the sender is provided with a proof of mailing and, when the mail is delivered to the addressee or another person on behalf of the addressee, that addressee or other person must sign an acknowledgment of receipt card or similar document that is to be returned to the sender by the Canada Post Corporation;
- (h) “joinder of issue” means a pleading by which a party joins issue upon the previous pleading of an opposite party other than a statement of claim, a counterclaim or a third party notice;
- (h.1) “judicial centre” means Grande Prairie, Peace River, Fort McMurray, St. Paul, Edmonton, Wetaskiwin, Red Deer, Calgary, Drumheller, Lethbridge and Medicine Hat;
- (i) “liquidated demand” means a claim for a specific sum payable under an express or implied contract for the payment of a sum of money not being in the nature of a penalty or unliquidated

damages, the amount whereof is fixed by the terms of the contract or can be ascertained by calculation only or upon the taking of an account between the plaintiff and the defendant; or a claim for a specific sum of money, whether or not in the nature of a penalty or damages recoverable under a statute which contains an express provision that the sum sued for may be recovered as a liquidated demand or as liquidated damages;

- (i.1) “official court reporter” means
- (i) a person appointed as an official court reporter by order of the Attorney General, or
 - (ii) a certified shorthand reporter under the *Alberta Shorthand Reporters Regulation* (AR 197/96);
- (j) “order” includes a decree;
- (k) “originating notice” means a pleading by which an applicant commences his action;
- (l) “petition” means a pleading by which a petitioner commences his action;
- (m) “pleadings” means the written statements delivered alternately by the parties one to the other until the issues in the action are defined and include, a statement of claim, a statement of defence, a counterclaim, a defence to counterclaim, a reply, a reply to defence to counterclaim, a joinder of issue, a demand for particulars, a reply to demand for particulars, an originating notice and a petition;
- (n) “procedure book” includes any form of record authorized by the Attorney General for use by a Clerk;
- (n.1) “registered mail” means a form of mail that is provided by the Canada Post Corporation under which the addressee, or another person on behalf of the addressee, on taking delivery of the mail must sign an acknowledgment of receipt card or other document that is
- (i) to be kept in the records of the Canada Post Corporation, or
 - (ii) to be returned to the sender by the Canada Post Corporation;
- (o) “reply” means a statement by which the plaintiff answers the defendant’s statement of defence;
- (p) “reply to the defence to counterclaim” means a pleading by which the defendant answers the plaintiff’s defence to the counterclaim;
- (q) “Rules” includes forms;

- (r) “statement of claim” means a pleading by which a plaintiff commences his action;
- (s) “statement of defence” means a pleading by which a defendant answers the plaintiff’s statement of claim;

(s.1) “taxing officer” means

- (i) the clerk of the court for the judicial centre in which the proceedings are being carried on or were determined, or
- (ii) in the taxation of costs in any appeal to the Court of Appeal, the Registrar in whose jurisdiction the proceedings are being carried on or were determined;
- (t) “telecopier” means a machine or device that electronically transmits and receives a copy of a document, picture or other printed material by means of a telecommunication system;
- (u) “very long trial action” means an action which will or is likely to require more than 25 trial days;
- (v) “writ” means a document that authorizes steps to be taken to enforce a judgment or order and includes a writ of enforcement, a writ of possession, a writ of sequestration, a writ of delivery or any other writ that may be issued by the Court.

(2) Any reference in these Rules to the Attorney General is a reference to the Minister of Justice and Attorney General.

AR 390/68 s5;124/73;277/95;3/96;243/96;269/97;68/2000;16/2002

Determination of distances

5.01 Any reference in these Rules with respect to the distance from a judicial centre or a Queen’s Bench location is a reference to the distance from the Court House located in that judicial centre or Queen’s Bench location.

AR 269/97 s2

Signature and printed name

5.1 Where a document

- (a) is filed or issued pursuant to these Rules, and
- (b) is signed by a person or has noted on it a person’s consent,

the person signing the document or giving the consent shall next to that person’s signature legibly print or stamp in legible printing that person’s name.

AR 308/91 s2

Copies of computer generated documents

5.11(1) In this Rule, “computer generated document” means a document that a party to a proceeding files with, or causes to be issued by, the Clerk or Registrar that

- (a) is more than 10 pages long, and
- (b) was generated by computer.

(2) A party to a proceeding who receives a computer generated document, or the Court or a Court official, may request the person filing that document or causing it to be issued, to provide a copy of it in an electronic format designated by the person requesting the copy.

(3) As soon as practicable after receiving the request, and on payment of the actual disbursements for the production and delivery, the person receiving the request must provide a copy of the document in the electronic format requested, or if that is not readily possible, in ASCII text format.

(4) If a dispute arises over the costs referred to in subrule (3), a sum may be fixed ex parte by the taxing officer, on application by either party, subject to adjustment by the Court at a later date.

AR 101/99 s2

Formal parts of pleadings

5.12 Subject to the Rules relating to counterclaims, all documents filed or issued under these Rules shall contain

- (a) the name of the court and the judicial district in which the action was commenced,
- (b) a style of cause setting forth the names in full of the plaintiff and of the defendant (but not their residences or occupations) and the capacity in which the plaintiff sues and the defendant is sued, if it is a representative capacity,
- (c) the number of the action at the top of the front page and backer,
- (d) a heading specifying the type of document, and
- (e) at the end of the document, the date and the name and address of the party, solicitor or agent who filed the document or requested that it be issued.

AR 109/2001 s2

Original retained by clerk

5.13 Where a document is filed or issued under these Rules, the clerk shall retain the original of that document.

AR 16/2002 s3

Part 1.1

Audience Before the Court

Representation by solicitor

5.2 Subject to this Part, a person shall only be represented before the Court by a solicitor.

AR 87/92 s2

Self-representation

5.3 An individual may represent himself before the Court.

AR 87/92 s2

Representation by agent

5.4 With the permission of the Court, a person may be represented before the Court by an agent other than a solicitor.

AR 87/92 s2

Part 2 Commencement of Civil Proceedings

Statement of claim

6(1) Except as otherwise provided every proceeding shall be commenced by the issue of a statement of claim by the clerk.

Originating notice

(2) Proceedings may be commenced by originating notice where permitted by statute or by these Rules.

Petition

(3) Proceedings may be commenced by the issue of petition where

- (a) permitted by statute, or
- (b) there is no person against whom relief is sought, or
- (c) the person against whom relief is sought is unknown or unascertained,
or
- (d) there are no issues of fact,

and where required to be served shall be served together with a copy of each affidavit in support thereof 10 days before the day named for the hearing thereof.

AR 390/68 s6;124/73

Where to commence action

6.1(1) A document commencing an action shall be issued or filed, as the case may be, at the clerk's office in the closest judicial centre as determined under subrule (2).

(2) For the purposes of commencing an action, the closest judicial centre shall, unless otherwise directed by the Court, be determined in accordance with the following:

- (a) the closest judicial centre is the judicial centre that, by highway travel, is the nearest to the residences or places of business of all the parties to the action;
- (b) where a single judicial centre cannot be determined under clause (a) to be the closest judicial centre for all the parties to the action, the closest judicial centre shall be the judicial centre that, by highway travel, is the nearest to the residence or place of business of one of the parties to the action, that party being selected by the party commencing the action;

(c) where

- (i) a single judicial centre cannot be determined under clause (a) to be the closest judicial centre for all of the parties to the action, and
- (ii) it is not obvious in the particular case which judicial centre is the closest judicial centre under clause (b),

the party commencing the action shall select a judicial centre that for the purposes of the action shall be considered to be the closest judicial centre;

- (d) if a party to an action carries on business in more than one location in Alberta, the place of business in Alberta of that party is the place of business that is the nearest to the location at which the matters in question in the action arose or were transacted;
- (e) a residence or a place of business that is located outside of Alberta shall not be taken into consideration for the purposes of this Rule.

(3) Notwithstanding subrule (1), a document commencing an action may be issued or filed, as the case may be, at a clerk's office located in a judicial centre other than the judicial centre that is the closest judicial centre as determined under subrule (2) if

- (a) the Court so directs,
- (b) the Court directs the transfer of proceedings under Rule 12, or
- (c) all the parties to the action so agree in writing.

(4) Where

- (a) an action has been commenced by the issuing or filing of a document with the clerk, but
- (b) the document that commenced the action was not issued or filed in accordance with this Rule,

the commencement of that action is not invalid and the document commencing the action is not a nullity by reason only that the document was not issued or filed in accordance with this Rule.

(5) Subject to subrule (4), if a document that commenced an action was not issued or filed in accordance with this Rule, the Court may give directions and award costs as the Court considers appropriate in the circumstances.

AR 243/96 s3

Issue by clerk

7 The clerk upon the document by which proceedings are commenced being filed with him shall issue it by signing it and sealing it with the seal of his office.

AR 390/68 s7

Endorsements

8(1) Where the clerk is presented with a document by which a proceeding is to be commenced,

- (a) the clerk must
 - (i) endorse on the document,
 - (A) the number assigned to the proceeding by the clerk, and
 - (B) the date that the document is issued,
 - and
 - (ii) ensure that the person on whose behalf the document is being filed has endorsed on the document the office and judicial district from which the document is being issued,
- and
- (b) if a lawyer is acting in respect of the person on whose behalf the proceeding is being commenced, the clerk must ensure that the lawyer has endorsed on the document,
 - (i) the name and address of the law firm,
 - (ii) the name of the lawyer within the law firm who is acting in respect of the proceeding, and
 - (iii) the lawyer's telephone number.

(2) Where the clerk is presented with a document that is to be filed by the clerk in a proceeding after the proceeding commences,

- (a) the clerk must
 - (i) endorse on the document the date that the document is filed, and
 - (ii) ensure that the person on whose behalf the document is being filed has endorsed on the document

- (A) the office and judicial district in which the document is to be filed, and
- (B) the same number as that assigned to the proceeding by the clerk when the proceeding commenced,

and

- (b) if a lawyer is acting in respect of the person on whose behalf the document is being filed, the clerk must ensure that the lawyer has endorsed on the document
 - (i) the name and address of the law firm,
 - (ii) the name of the lawyer within the law firm who is acting in respect of the proceeding, and
 - (iii) the lawyer's telephone number.

(3) Where a document is issued by or filed with the clerk, the clerk shall note in the clerk's procedure book under the number assigned to the proceeding by the clerk the fact that the document was issued or filed.

AR 390/68 s8;160/93;166/94

Lost documents

9 Where a statement of claim or other document has been lost, the clerk, upon being satisfied of the loss and of the correctness of a copy thereof, may seal the copy which may be used in lieu of the original.

AR 390/68 s9

Concurrent document

10(1) During the currency of a document by which proceedings are commenced, the clerk may issue a concurrent document which shall be in force during the currency of the original document.

(2) The concurrent document shall bear date of the same day as the original document and shall be marked "concurrent" with the date of issue of the concurrent document.

AR 390/68 s10

Renewal of statement of claim

11(1) A statement of claim is in force for a period of 12 months commencing on the day that the statement of claim is issued and it expires at the end of the day of the first anniversary of the day that it is issued.

(2) The Court may, on application, grant an order renewing a statement of claim for a further period not exceeding 3 months.

(3) An application under subrule (2) may be brought at any time during the period of time referred to in subrule (1) but not after the termination of that period.

(4) Rule 548 does not apply to this Rule.

(5) A statement of claim may only be renewed once under subrule (2).

(6) Every application under subrule (2) shall be supported by an affidavit stating that one or more defendants have not been served and setting forth the reasons for the lack of service.

(7) When an order under subrule (2) is filed, the clerk shall sign and seal an endorsement on the statement of claim stating: “Renewed for the period of _____ months from _____ by order of _____”.

(8) Any copy of a statement of claim that is served after an order has been granted under subrule (2) in respect of that statement of claim must bear a copy of the endorsement referred to in subrule (7).

(9) Notwithstanding subrule (3), if the Court finds as a fact

- (a) that, before a statement of claim expired,
 - (i) a defendant,
 - (ii) anyone purporting to be a defendant, or
 - (iii) any lawyer or other person purporting to negotiate on behalf of a defendantcaused the plaintiff or the plaintiff’s lawyer to reasonably believe, and to rely on that belief, that
 - (iv) the defendant had been served,
 - (v) liability was not or would not be contested, or
 - (vi) the time limits provided for in subrule (3) or any other time limits that relate to the action would not be relied on or would be waived,

and

- (b) that the statement of claim has expired,

the Court may by order renew that statement of claim for a period of time not exceeding 3 months from the day that the order was made.

(10) A statement of claim renewed pursuant to an order made under subrule (9) operates only as against the defendant in respect of whom the order was made.

AR390/68 s11;308/91;373/91;160/93;269/97

Transfer of proceedings

12 The court may at any time direct that all proceedings in any action be transferred to the office of the clerk of any other judicial district and thence-forward the proceedings shall be intituled and continued in the other judicial district.

AR 390/68 s12

Part 3 Service of Documents

Manner of service

13(1) A document required by these Rules to be served need not be served personally unless personal service is expressly prescribed by these Rules or by order of the Court.

(2) Service may be effected on any day including Sunday.

AR 390/68 s13

Personal

14 A document by which an action or other proceeding is commenced shall be served personally.

AR 390/68 s14

On individual or corporation

15(1) Personal service is effected on an individual by leaving with him a true copy of the document to be served.

(2) Personal service is effected on a corporation either

(a) in the manner provided by statute, in which case these Rules as to mode of service do not apply, or

(b) by leaving a true copy of the document to be served with

(i) the mayor, reeve, president, chairman or other head officer, by whatever name that person is known, of the corporation, or

(ii) the manager, office manager, cashier, secretary, agent, attorney, councillor, alderman, director, vice-president, executive vice-president, treasurer, secretary-treasurer, branch manager, assistant manager, comptroller, governor, principal, superintendent or commander, as the case may be, of the corporation.

(3) Personal service is effected upon a firm where persons are sued as partners in the name of their firm by leaving the document to be served either with one or more of the partners or with any person at the principal place of business of the firm within the jurisdiction who appears to have management or control of the partnership business there, but if the partnership, to the knowledge of the plaintiffs, has been dissolved before the action was commenced the document shall be served on every person sought to be made liable.

(4) Repealed AR 16/2002 s4.

AR 390/68 s15;160/93;243/96;16/2002

Solicitor's undertaking

16(1) Personal service of a document by which an action or other proceeding is commenced is not required when the opposite party, by his solicitor, accepts service and undertakes to file a statement of defence or demand of notice, or undertakes to appear.

(2) When a solicitor fails in such undertaking, the Court may, on application of the plaintiff, make an order that the opposite party be noted in default or for final judgment or assessment of damages or otherwise as the plaintiff may be entitled to.

AR 390/68 s16

Service by telecopier

16.1(1) Where a document is not required to be served personally, the document may, in accordance with this Rule, be served by means of a telecopier

- (a) on the solicitor of the person being served or that solicitor's agent, or
- (b) in the case of service on a person other than under clause (a), at a telecopier that is situated in a residence or a place of business located in Alberta.

(2) In order for a document to be served by means of a telecopier, the document must be sent by telecopier and,

- (a) in the case of service on the solicitor of the party being served or on that solicitor's agent, be received by a receiving telecopier that is situated at the office of the solicitor or the solicitor's agent, and
- (b) in the case of service on a person other than under clause (a), be received by a receiving telecopier that is situated in a residence or a place of business located in Alberta.

(3) A telecopier may only be used for the purposes of this Rule if the telephone number for the telecopier at which the service is to take place has a 7-digit number that appears with the word "fax" or with any reference to a telecopier

- (a) in, or attached to, or
- (b) on a letter enclosing,

any pleading or notice under these Rules, by, from or on behalf of the party to be served or that party's solicitor or solicitor's agent.

AR 160/93 s5;277/95;243/96;172/99

Infant

17(1) Where an action is in respect of property in which an infant is interested, he shall be served by serving the guardian ad litem if there is one, or the guardian of his estate if there is one.

(2) If there is no guardian ad litem or guardian of his estate, the infant shall be served by serving the Public Trustee, who shall thereupon be guardian ad litem until the Court otherwise orders.

(3) Where the action is brought for the recovery of possession of real or personal property actually in the possession of an infant, he also shall be served in the same manner as if he were an adult.

AR 390/68 s17

Parent or guardian

18(1) In every other action an infant may be served in the same manner as if he were an adult, but the Court may order that in addition thereto service be made upon or notice be given to any other person with a view to the protection of the infant's interest.

(2) Where

- (a) an individual is or appears to be an infant, and
- (b) a document is to be served on that individual under subrule (1),

that document shall also be served on that individual's parent or guardian or on the person with whom that individual resides or who cares for that individual.

AR 390/68 s18;166/94

Person of unsound mind

19 A person of unsound mind, whether so found or not, shall be served by serving a person as the Court directs.

AR 390/68 s19;204/79

Agent within jurisdiction

20 If the defendant is out of the jurisdiction but has an agent, manager, office manager or other representative resident and carrying on his business within the jurisdiction, if the cause of action arose in respect of that business, service made upon the agent, manager, office manager or other representative is good service upon the defendant.

AR 390/68 s20

Agreement between parties

21(1) When the Court has jurisdiction in any action or other proceeding in respect of a contract and in the contract the parties have agreed on

- (a) a place for service, or
- (b) a mode of service, or
- (c) a person upon whom service can be effected,

service of any document in the action may be made in accordance with the agreement and, notwithstanding anything in this Part, service when so made is good service.

(2) If the place for service is without the jurisdiction, Rule 30 shall be complied with.

(3) No contractual stipulation as to service of a document invalidates a service thereof that would otherwise be valid and effective.

AR 390/68 s21

Registered mail

22(1) Notwithstanding anything in these Rules, service of any document may be made upon the party or other person for whom it is intended, by double registered mail, if the post office receipt for the envelope containing the document purporting to be signed by the party or person for whom the document is intended is produced as an exhibit to an affidavit of service, to the effect of Form A to these Rules.

(2) This Rule does not apply to service upon infants or persons of unsound mind or in divorce actions or actions for nullity of marriage.

(3) A document served under this Rule shall be deemed to be served on the day of the date of the receipt which purports to be signed by the person required to be served.

AR 390/68 s22

Substitutional service

23(1) Where personal service of a document is prescribed by these Rules and it appears to the Court that it is impractical for any reason to effect prompt personal service of the document the Court

- (a) may make an order for substituted service of it, or
- (b) may make an order dispensing with service.

(2) An application for an order for substituted service shall be supported by an affidavit setting forth why prompt personal service is impractical, and proposing an alternative mode of service which, in the opinion of the deponent will or is likely to be effective.

(3) Service of the document in accordance with the terms of an order for substitutional service will be good personal service.

(4) Where service has been effected pursuant to an order for substitutional service, judgment in default of defence shall not be entered except by leave of the Court.

(5) In the case of a missing person within the meaning of *The Public Trustee Act*, the Public Trustee shall be served in any event.

AR 390/68 s23;244/69;124/73

Address for service

24(1) If an address for service is furnished, all documents not required to be served personally shall be deemed to be sufficiently served if a true copy is left at or sent by prepaid registered mail to that address.

(2) Service under subrule (1), Rule 26 or by mail pursuant to an enactment is not invalid by reason only that

- (a) the addressee refuses to accept the mail,
- (b) the addressee returns the mail,
- (c) in the case of registered mail, the addressee refuses to claim or take delivery of the registered mail, or
- (d) the addressee no longer resides or is otherwise not present at the address and has not provided the postal service with a current mailing address.

AR 390/68 s24;313/81;160/93

Proof upon solicitor

25 Admissions and acceptances of service of any document upon a party's solicitor or the solicitor's agent need not be verified by affidavit.

AR 390/68 s25

Subsequent documents

26(1) All documents not required to be served personally upon the party affected thereby may be served upon his solicitor or his solicitor's agent.

(2) In subrule (3), "document exchange" means a system whereby documents may be deposited at an address for service by a solicitor or a solicitor's agent for collection by another solicitor or solicitor's agent, and includes that address for service.

(3) Where

- (a) a document may be served under subrule (1), and
- (b) the solicitor or agent subscribes to a document exchange which

he has designated as an alternate address for service,

then another solicitor or agent who subscribes to that document exchange may effect service upon that solicitor or agent by depositing the document, addressed to him, at that document exchange, and the document shall be deemed to have been served on the day following that on which it was so deposited.

AR 390/68 s26;338/83

Set aside service

27 A defendant before delivering a defence may apply to the Court to set aside the service of the statement of claim upon him, to discharge or set aside the order authorizing such service or to set aside the statement of claim, on the ground of irregularity or otherwise, and the application shall not be deemed to be a submission to the jurisdiction of the Court.

AR 390/68 s27

Office closed or service frustrated

28(1) In this Rule,

- (a) “closed” means not open to the general public;
- (b) “mail” means prepaid registered mail;
- (c) “office or place” means
 - (i) the office of the solicitor for the party upon whom the service is sought to be effected;
 - (ii) the address for service of the party upon whom the service is sought to be effected;
 - (iii) a place at which or an address to which documents may be served or delivered or notice may be given on behalf of the party upon whom the service is sought to be made under an enactment, contract, order of the court or power of attorney;
 - (iv) the address of the solicitor referred to in Rule 29;
- (d) “office hours” means any time between 8:30 a.m. and 5:00 p.m. on any day that is not a Saturday, Sunday or holiday.

(2) For the purpose of this Rule, service of a document is frustrated if

- (a) no one is in attendance at the office or place who can or will receive the document being served,
- (b) at the time that service of the document is to be made the office or place is inaccessible to the public,

- (c) the office or place cannot be found after a reasonable effort has been made to locate the office or place,
- (d) the address for service is a post office, or
- (e) the address for service is a postal address corresponding to no specific office or place.

(3) Where for the purpose of effecting service of a document on a person an attendance is made at an office or place during office hours and

- (a) the office or place is closed, or
- (b) the service of the document is frustrated,

service of the document may be effected on that person by sending the document by mail addressed to that person at that office or place or to that person's solicitor at the solicitor's office.

(4) A document being served under subrule (3) must be accompanied by or have endorsed on it a notice referring to the fact that the document is being served pursuant to Rule 28.

(5) If

- (a) an attendance was made on an office or place during office hours for the purpose of effecting service of a document and
 - (i) the office or place was closed, or
 - (ii) the service of the document was frustrated,

and

- (b) the document to be served was mailed to that office or place pursuant to subrule (3) at any time during the same day that the attendance was made to that office or place,

service of that document is deemed to have been effected at the time that the attendance was made at that office or place.

AR 390/68 s28;160/93

Judgment creditor in mortgage action

29 In any action by a mortgagee or other person having a charge in real property, for foreclosure or sale, to which action any judgment creditor of the mortgagor or of the person whose property is liable to the charge, is required to be served, service upon that judgment creditor is not necessary if service is effected upon his solicitor in the action in which the judgment has been recovered.

AR 390/68 s29

Part 4 Service Outside of Alberta

By order

30 Service outside of Alberta of any document by which any proceeding is commenced, or of notice thereof, may be allowed by the Court whenever:

- (a) the whole subject matter is land situated within Alberta (with or without rents or profits) or the perpetuation of testimony relating to lands so situated;
- (b) any act, deed, will, contract, obligation or liability affecting land situated within Alberta is sought to be construed, rectified, set aside or enforced;
- (c) relief is sought against a person domiciled or ordinarily resident within Alberta;
- (d) the proceeding is for the administration of the estate of a person who died domiciled within Alberta, or for any relief or remedy which might be obtained in any such proceeding;
- (e) the proceeding is for the execution as to property situated within Alberta of the trusts of a written instrument that ought to be executed according to Alberta law, and of which the person to be served is a trustee, or the proceeding is for any relief or remedy which might be obtained in any such proceeding;
- (f) the proceeding is to enforce, rescind, resolve, annul or otherwise affect a contract or to recover damages or obtain any other relief in respect of the breach of a contract, being (in any case) a contract
 - (i) made within Alberta, or
 - (ii) made by or through an agent trading or residing within Alberta on behalf of a principal trading or residing out of Alberta, or
 - (iii) which is by its terms, or by implication governed by Alberta law, or
 - (iv) in which the parties thereto agree that the courts of Alberta shall have jurisdiction to entertain any action in respect of the contract;
- (g) the action is in respect of a breach committed within Alberta of a contract made within or out of Alberta, and irrespective of the fact, if that is the case, that the breach was preceded or accompanied by a breach committed out of Alberta that rendered impossible the performance of so much of the contract as ought to have been performed within Alberta;

- (h) the action is founded on a tort committed within Alberta;
- (i) in the action an injunction is sought ordering a defendant to do or refrain from doing anything within Alberta (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
- (j) a person out of Alberta is a necessary or proper party to an action properly brought against another person served within Alberta;
- (k) the action is by a mortgagee of property (other than land) situated within Alberta and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property (but not an order for the payment of any monies due under the mortgage);
- (l) the action is brought by a mortgagor of property (other than land) situated within Alberta and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property (but not a personal judgment);
- (m) the proceeding is founded upon a judgment of any court of Alberta;
- (n) the proceeding is a matrimonial cause or an action by a person against his or her adult interdependent partner or former adult interdependent partner;
- (o) the proceeding is an action brought under the *Carriage by Air Act* (Canada);
- (p) it appears that the person initiating the proceeding has a good cause of action upon a judgment or for alimony or maintenance, and the person against whom the proceeding is initiated has assets in Alberta of the value of at least \$500 which may be rendered liable for the satisfaction of any judgment or order pronounced in the proceeding; but in that case, if no defence is filed, no judgment shall be entered except by leave of the Court and upon such conditions as it considers proper;
- (q) the proceeding relates to the breach of an equitable duty within Alberta.

AR 390/68 s30;306/71;52/2001;200/2003

Affidavit

31 Every application for leave to serve any document, or to give notice thereof, out of Alberta shall be supported by affidavit or other evidence,

- (a) stating that in the belief of the deponent the applicant has a reasonable cause of action,
- (b) showing in what place or country the person to be served is, or probably may be found, and

- (c) giving the grounds upon which the application is made;

and every order allowing such service shall limit the time within which the proceedings may be answered or opposed, and in limiting the time regard shall be had to the place where service is to be effected.

AR 390/68 s31;306/71

Service abroad

31.1 Where service is allowed outside Alberta pursuant to this Part, the document or notice may be served pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, and, if so served,

- (a) unless the Court otherwise directs, service may be effected in accordance with the domestic law of the receiving jurisdiction,
- (b) a certificate of service issued by the central authority of the receiving jurisdiction is sufficient proof of service, and
- (c) any judgment entered upon default of defence may only be set aside under Rule 158.

AR 34/89 s2

PART 5**PARTIES & JOINDER OF CAUSES OF ACTION*****Uniting causes of action***

32 Subject to this Part, a plaintiff may unite several causes of action in the same action.

AR 390/68 s32

Bankruptcy

33 A claim by a trustee in bankruptcy as such shall not except by leave of the court be joined with a claim by him in any other capacity.

AR 390/68 s33

Husband or wife

34 A claim by or against a husband and wife may be joined with a claim by or against either of them separately.

AR 390/68 s34

Executor

35 A claim by or against an executor or administrator may be joined with a claim by or against him personally if the last mentioned claim is alleged to have arisen with reference to the estate represented by him in the action.

AR 390/68 s35

Same transaction

36 Claims by one or more plaintiffs against one or more defendants in respect of or arising out of the same transaction or occurrence or out of the same series of transactions or occurrences may be joined in the same action whether the plaintiffs claim to be entitled to relief jointly or separately or in the alternative, and whether the defendants are sought to be charged jointly or separately or in the alternative, and whether or not the relief or remedy against the several defendants is the same.

AR 390/68 s36

Misjoinder causes of action

37 If several causes of action have been misjoined or cannot conveniently be disposed of in one action, the Court may order any of them to be tried separately and may make all necessary directions.

AR 390/68 s37

Misjoinder of parties

38(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

(2) Where an action has been commenced in the name of the wrong person as plaintiff or, where it is doubtful whether it has been commenced in the

name of the right plaintiff, the Court may, to determine the real matter in dispute, order any other person to be substituted or added as plaintiff with or without terms.

(3) The Court may, either upon or without the application of any party and with or without terms order that the name of any party improperly joined be struck out and that any person be added who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, or in order to protect the rights or interests of any person or class of persons interested under the plaintiff or defendant.

(4) No person shall be added or substituted as a plaintiff or as the next friend of a plaintiff without his own consent in writing thereto being first filed.

(5) Where a co-plaintiff has been improperly or unnecessarily joined and a defendant has set up a counterclaim, he may establish his counterclaim against the parties other than the co-plaintiff so joined notwithstanding the misjoinder or any proceedings consequent thereon.

(6) The court may, upon being satisfied by any person not a party to an action;

- (a) that he is interested in the subject matter or result of the action, and
- (b) that he should be allowed to defend the action or any issue therein,

order the person to be added as a defendant and make all necessary directions.

(7) An application to add, strike out or substitute a plaintiff or defendant may be made at any stage of the proceedings.

AR 390/68 s38

Adding defendant

39(1) Where a defendant is added or substituted the plaintiff shall, unless otherwise ordered, amend his statement of claim in such manner as the joining of the new defendant makes proper and serve the amended statement of claim upon the new defendant.

(2) The new defendant shall, unless it is otherwise ordered, have the same time to deliver a statement of defence as if he had been a defendant in the first instance and the proceedings as against him shall be deemed to have begun at the time when he was added.

AR 390/68 s39

Want of parties

40 Where it appears that an action is defective for want of parties, the Court may render judgment saving the rights of all persons not parties.

AR 390/68 s40

41 Repealed AR 238/2004 s2.

Definition

41.1 In Rules 41.2 to 41.6, “Act” means the *Class Proceedings Act*.

AR 238/2004 s3

Style of cause

41.2(1) The style of cause in an action under the Act must include the words “Brought under the *Class Proceedings Act*” immediately below the listed parties if

- (a) it is intended, at the commencement of the proceeding, that a certification order will be sought under the Act, or
- (b) in any other case, a certification order is subsequently made in respect of the proceeding under the Act.

(2) Where a certification order is refused in respect of the proceeding or the proceeding is decertified, the words “Brought under the *Class Proceedings Act*” must be removed from the style of cause.

AR 238/2004 s3

Amendment of pleadings

41.3 Notwithstanding Rule 130, after a certification order is made pursuant to the Act, a party may amend a pleading of that party only with the leave of the court.

AR 238/2004 s3

Discovery of class and subclass members

41.4(1) Rules 187(3) and 201 do not apply to a class member or subclass member as defined in the Act.

(2) Where, pursuant to section 18(2) of the Act, the court requires a class member or subclass member to file and serve an affidavit of records, the court may

- (a) limit the purpose and scope of the discovery of records, and
- (b) determine the use that may be made of the evidence obtained through the discovery of records.

(3) Where a class member or subclass member is examined for discovery pursuant to section 18(2) of the Act, the court may

- (a) limit the purpose and scope of the examination for discovery, and
- (b) determine the use that may be made of the evidence obtained in the examination for discovery.

AR 238/2004 s3

Streamlined procedure inapplicable

41.5 Part 48 of these Rules does not apply to class proceedings under the Act.

AR 238/2004 s3

Procedures

41.6 Notwithstanding anything in these Rules, the court may, on application on notice or on its own motion, order the procedures it considers appropriate for a class proceeding under the Act to ensure the fair and expeditious determination of the proceeding and to achieve the objects of the Act.

AR 238/2004 s3

Common interest

42 Where numerous persons have a common interest in the subject of an intended action, one or more of those persons may sue or be sued or may be authorized by the Court to defend on behalf of or for the benefit of all.

AR 390/68 s42

Trustees

43 Trustees, executors or administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees, or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing those persons.

AR 390/68 s43

Judgment for execution of trust, etc.

44 A judgment or order for the execution of a trust or the administration of an estate may be obtained without making any person interested, other than the trustee, executor or administrator, a party to the proceedings.

AR 390/68 s44

Against beneficiary

45 Any executor, administrator or trustee entitled to a judgment or order for the administration of the estate or the execution of the trust may have the judgment or order against any one legatee, devisee, next of kin or beneficiary.

AR 390/68 s45

Joinder of defendants

46 All persons may be joined in one action as defendants against whom any right to relief in respect of or arising out of the same transaction or occurrence or series of transactions or occurrences is alleged to exist whether jointly, severally or in the alternative, where, if separate actions were brought against those persons, any common question of law or fact would arise except if it appears that such joinder may embarrass or delay the trial or action, the court may order separate trials or make such other order as may be expedient; and judgment may be given against such one or more of the defendants as may be found to be liable according to and to the extent of his or their respective liabilities without amendment.

AR 390/68 s46

Defendant having no interest

47 It is not necessary that every defendant be interested as to all the relief prayed for or as to every cause of action included in any proceeding against him; but the Court may make whatever order appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

AR 390/68 s47

Joint and several liability June, 2002

48 A plaintiff may join in the same action all or any of the parties severally or jointly, or jointly and severally, liable on or in respect of any one contract, and all or any of the parties to any kind of negotiable instrument.

AR 390/68 s48

Surety

49 A surety for the performance of any terms of a contract may be made a party to any action upon the contract.

AR 390/68 s49

Deceased person

50(1) In any action or intended action, where it appears that a deceased person, who was interested in the matters in question in an action or proceeding, has no personal representative, the Court may

- (a) proceed in the absence of any person representing his estate, or
- (b) appoint some person to represent the estate for all purposes of the action or proceeding whether as plaintiff, defendant, plaintiff by counterclaim, defendant by counterclaim, third party or otherwise notwithstanding that
 - (i) the estate may have a substantial interest in the matters, or
 - (ii) there may be active duties to be performed by the person so appointed, or

- (iii) a claim is made for administration of the estate, or
- (iv) the person appointed may represent interests adverse to any other party.

(2) An order so made and any orders consequent thereon bind the estate of the deceased person in the same manner as if his personal representative had been a party to the action or proceeding.

(3) Moneys payable to an estate by a judgment in an action in which the estate is represented by an administrator ad litem, shall be paid into Court to be paid out to the executor or administrator of the estate when letters probate or administration have issued or as the Court may direct.

AR 390/68 s50;85/2002

Appointment of representative

51(1) In any proceedings concerning

- (a) the administration of the estate of a deceased person, or
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in subrule (2) are satisfied, may appoint one or more persons to represent any person, including an unborn person, or class who is or may be interested, whether presently or for any future, contingent or unascertained interest, in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by subrule (1) are:

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient, regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined, to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which subrule (1) applies, the Court exercises the power conferred by that subrule, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court is binding on the person or class represented by the person or persons so appointed.

AR 390/68 s51

Adjudicate when persons not joined

52 Where expedient, the Court may, when not all of the persons interested in property are before it, adjudicate upon the questions arising between those persons without joining as parties the other persons interested in the property.

AR 390/68 s52

Approval of compromise when parties not joined

53 Where, in proceedings concerning a trust or an estate, a compromise is proposed and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court, if satisfied that the compromise will be for the benefit of the absent persons and that to require service on those persons would cause unreasonable expense or delay, may approve the compromise and order that it is binding on the absent persons and they are bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

AR 390/68 s53

Action continuing when cause of action survives

54 If

- (a) by reason of death where the cause of action survives, or
- (b) by assignment or conveyance, or
- (c) by operation of law,

any estate, interest or title devolves or is transferred, an action may be continued by or against the person to or upon whom the estate, interest or title has come or devolved.

AR 390/68 s54

No abatement by death

55 Whether or not the cause of action survives there shall be no abatement by the death of either party after the hearing of all evidence but before the entry of judgment and judgment may be entered notwithstanding the death.

AR 390/68 s55

Adding party after change of interest occurs

56(1) Where a change or transmission of interest or liability has taken place or where by reason of any person interested coming into existence after the commencement of the action it becomes necessary or desirable that a person not already a party should be made a party, or that a person already a party should be made a party in another capacity, an order that the proceedings be carried on between the continuing parties and the new party may be obtained on ex parte application.

(2) The order and a notice in Form B shall be served upon the continuing parties or their solicitors and upon the new party.

(3) A person served with the order may apply to the Court to discharge or vary it at any time within 10 days from its service.

(4) Where the person served with the order is under disability and has no committee, guardian of his estate or guardian ad litem, the time within which an application may be made to the Court to discharge or vary it is 10 days from the appointment of a committee, guardian of his estate or guardian ad litem, and until the period of 10 days has expired, the order has no force or effect against the person under disability.

AR 390/68 s56

Death of plaintiff

57(1) Where a plaintiff has died and proceedings may be continued, the defendant may apply to the Court on notice to compel the person entitled to proceed with the action to proceed according to these Rules within such time as the Court orders, in default of which the action shall stand dismissed for want of prosecution.

(2) Where an action is so dismissed, an order for payment of costs may be made and enforced against the goods and lands that were the property of the deceased plaintiff.

AR 390/68 s57

Part 6 Parties Under Disability

Infant suing

58 An infant may sue or counterclaim by his next friend.

AR 390/68 s58

Infant defending

59(1) An infant may defend by his guardian unless he has a guardian ad litem, in which case he may defend by the guardian ad litem.

(2) The court may appoint a guardian ad litem whenever it appears to be in the interests of an infant.

AR 390/68 s59

Unsound mind

60 An adult person of unsound mind in respect of whom there is no trustee or guardian appointed under *The Dependent Adults Act* may sue or counterclaim by his next friend and may defend by a guardian ad litem appointed by the Court.

AR 390/68 s60;204/79

Dependent adult

61 An adult person of unsound mind in respect of whom there is a trustee or guardian appointed under *The Dependent Adults Act* authorized to commence an action may sue or counterclaim by such person and may defend by him or by a guardian ad litem appointed by the Court.

AR 390/68 s61;204/79

Next friend

62 Unless otherwise ordered, before the name of any person is used as next friend that person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the office in which the proceeding is commenced.

AR 390/68 s62

Court appointed guardian ad litem

63 When an infant or person of unsound mind has been served with notice of a judgment or order and is not represented, the Court may appoint a guardian ad litem for that person.

AR 390/68 s63;152/98

Duties of guardian ad litem

64 Where a guardian ad litem is appointed for an individual, the guardian ad litem shall, with respect to the matter for which the guardian ad litem was appointed, do the following:

- (a) promptly attend to the interests of that individual;
- (b) take all proceedings that may be necessary to protect the interests of that individual;
- (c) for the purposes of carrying out the duties under clauses (a) and (b), communicate with all the proper persons and parties, including
 - (i) the parent of the individual, in the case where the individual is an infant,
 - (ii) the guardian of the estate of the individual, in the case where there is a guardian of the estate,
 - (iii) the person who actually cares for the individual, in the case where the individual is actually cared for by a person other than the individual's parent or guardian, and
 - (iv) the person under whose care the individual is, in the case where the individual is under the care of a person other than the individual's parent or a guardian.

AR 390/68 s64;166/94

Mode of taking evidence

65 In any matter to which a person under a disability is a party the next friend, guardian or committee may, with the approval of the court, consent to any mode of taking evidence, or to any procedure, and the consent has the same effect as if the party were under no disability and had consented.

AR 390/68 s65

Part 7

Third Party Procedure

Third party notice

66(1) When a defendant claims against any person (whether or not that person is already a party to the action) that the person is or may be liable to him for all or part of the plaintiff's claim against him he may serve a third party notice.

(2) A third party notice shall state the nature and grounds of the claim and therewith shall be served a copy of the statement of claim.

(3) All copies of a third party notice which are served shall have endorsed at the foot or end thereof a notice in, or to the same effect as, Form C in the Schedule hereto.

(4) A third party notice shall be sealed with the Court seal, filed with the Clerk of the Court within 6 months from the time the defendant has filed his defence or demand of notice, but before he has been noted in default or has had judgment entered against him, and served within 30 days of filing.

AR 390/68 s66;313/81

Service

67 Copies of all third party notices and pleadings in the proceedings shall be served upon the plaintiff's solicitor within 5 days after the filing thereof.

AR 390/68 s67

Motion to set aside

68 A third party may at any time before he defends and the plaintiff may at any time after service of the notice move to set the notice aside.

AR 390/68 s68

Fourth party

69 Any person served with a third party notice may in the same manner as a defendant serve any other person against whom he claims with a notice to that effect and all provisions of these Rules relating to third parties apply mutatis mutandis to any person served with that notice.

AR 390/68 s69

Service ex juris

70 Service of a third party notice outside Alberta may be allowed by the Court, and Rules 30 and 31 apply as if the third party notice were a document by which an action was commenced.

AR 390/68 s70;306/71

Time for defence

71(1) A third party shall deliver his defence within 15 days from service of

the third party notice upon him.

(2) A third party may by a statement of defence dispute the liability of the defendant to the plaintiff or his own liability to the defendant, or both.

(2.1) Where the third party disputes the liability of the defendant to the plaintiff, the plaintiff shall be at liberty to deliver a reply to the third party's defence within 10 days after service of that defence and the pleadings between the plaintiff and third party shall be included in and form part of the record in the action.

(3) If a third party does not dispute the liability of the defendant to the plaintiff he shall be deemed to admit the validity of any judgment which is obtained against the defendant, whether obtained by consent or otherwise.

(4) If a third party does not dispute his liability to the defendant he shall be deemed to admit his liability to the extent claimed in the notice.

AR 390/68 s71;313/81

Third party in default

72(1) Where a third party fails to defend within the time limited, the party issuing the third party notice may, on praecipe and proof by affidavit of service of the third party notice and the failure to file or serve a statement of defence or a demand of notice, require the Clerk to note in the procedure book that the third party is in default.

(2) Thereafter, the third party shall not, except by leave of the Court, file or serve a statement of defence to the third party notice or a demand of notice.

AR 390/68 s72

Judgment by leave against third party

73 Where a third party fails to defend and the defendant giving the notice suffers judgment by default, he may at any time before or after satisfaction of the judgment, by leave of the Court have judgment against the third party to the extent claimed in the third party notice; and the Court may set aside or vary the judgment upon such terms as seem just.

AR 390/68 s73

Judgment after trial against defendant, default by third party

74(1) If a third party fails to defend and the plaintiff obtains a judgment other than by default, the Court may at or after the trial of the action or if the action is decided other than by trial at any time after judgment give such judgment as the nature of the case requires for the defendant against the third party.

(2) A writ shall not issue on a judgment given under this Rule without leave until the judgment against the defendant has been satisfied.

AR 390/68 s74;277/95

Third party defending motion for directions

75(1) Where the third party has delivered a statement of defence he shall be considered for all purposes to be a party to the action and shall be entitled

- (a) to be served with all subsequent pleadings and proceedings in the action;
- (b) to production of documents from and examination for discovery of all other parties to the action with whom the pleadings disclose he has an issue or issues.

(2) Unless the Court otherwise directs, the issues between the third party and any other party shall be tried as part of the action but if it appears that the plaintiff may be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned, the Court may on the application of any party give any directions the Court considers necessary.

AR 390/68 s75;313/81

Order may be varied

76 Any order made under Rule 75 may be varied or rescinded at anytime.

AR 390/68 s76

Claims against co-defendant

77(1) When a defendant claims against a co-defendant a contribution or indemnity by reason of the *Tort-Feasors Act* or the *Contributory Negligence Act*, it is not necessary to serve a third party notice, but

- (a) the defendant may, within 10 days after filing a defence or demand of notice, file and serve on a co-defendant a notice claiming that relief, and
- (b) it is not necessary to file any pleadings in respect of that claim, unless otherwise ordered.

(2) The claim for that relief shall be determined at the trial of the action.

AR 390/68 s77;124/73;204/79;152/98

78 Repealed AR 313/81 s6.

Counterclaim

79 When a counterclaim is made by a defendant, this Part applies in relation to the counterclaim

- (a) as if the subject matter of the counterclaim were the original subject matter of the action, and

- (b) as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

AR 390/68 s79

Part 8 Actions By or Against Firms

Partnership

80(1) Subject to the provisions of any enactment, any two or more persons claiming to be entitled or alleged to be liable as partners in respect of a cause of action and carrying on business within the jurisdiction may sue or be sued in the name of the firm of which they were partners at the time when the cause of action accrued.

(2) A defence by persons sued as partners in the name of their firm shall be in the name of their firm but any member of the firm is, nevertheless, at liberty to defend in his own name individually; but all subsequent proceedings shall continue in the name of the firm.

(3) Any

- (a) defendant to an action brought by partners in the name of the firm, and
- (b) plaintiff in an action against partners in the name of a firm,

may serve on the opposite party a notice requiring that party to furnish a written statement of the names and places of residence of all persons who were partners when the cause of action accrued.

(4) If the notice is not complied with the court may order that the statement be furnished and verified on oath or otherwise as may be specified.

(5) Where the application is made by the defendant, the court may order the action to be stayed and where the application is made by the plaintiff, the court may make such other order as is expedient.

(6) If in an action by a firm the names of the partners have been declared in compliance with a notice or an order made under this Rule, the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs.

AR 390/68 s80

Person denying he is partner

81(1) Where in an action against a firm the statement of claim by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter a defence to the action and state in his defence that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

(2) A defence entered in accordance with this Rule shall, unless it is set aside, be treated as a defence for the firm.

AR 390/68 s81

Enforcing Judgment or Order Against a Firm

Execution against firm

82(1) Where a judgment is given or order made against a firm, a writ to enforce the judgment or order may issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, a writ to enforce the judgment or order may, subject to subrule (3), issue against any person who

- (a) entered a defence in the action as a partner, or
- (b) having been served as a partner with the statement of claim failed to enter a defence in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(3) A writ to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the statement of claim was issued unless he

- (a) entered a defence in the action as a partner, or
- (b) was served within the jurisdiction with the statement of claim as a partner, or
- (c) was, with the leave of the court, served out of the jurisdiction with the statement of claim as a partner;

and, except as provided by subrule (1) and by this subrule, a judgment or order given or made against a firm does not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the statement of claim was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and subrules (1) to (3) do not apply in relation to that person, that party may apply to the court for leave to issue a writ against that person, the application to be made by notice of motion which shall be served personally on that person.

(5) Where the person against whom an application under subrule (4) is made does not dispute his liability, the court hearing the application may, subject to subrule (3), give leave to issue a writ against that person, and, where that

person disputes his liability, the court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(6) A writ to enforce a judgment or order given or made in

- (a) an action by or against a firm in the name of the firm against or by a member of the firm, or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the court.

(7) The court hearing an application under this Rule may give directions, including directions as to the taking of accounts and the making of inquiries.

AR 390/68 s82;277/95

Person using a firm name

83 An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm and this part shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

AR 390/68 s83

Part 9 Pleadings

Time for Delivery of Pleadings

Delivery

84 In this part delivering a pleading includes the filing and service thereof.

AR 390/68 s84

Time for defence or demand notice

85(1) The period of time after delivery of the statement of claim within which a defendant is required to deliver his statement of defence or demand of notice,

- (a) if served out of the jurisdiction, shall, subject to Rule 565.1(5), be such time as is fixed by the order permitting such service, and
- (b) if served within the jurisdiction shall be 15 days after service, excluding the day of service.

(2) The time for the delivery of a defence to a third party notice is 15 days.

AR 390/68 s85;133/97

Time to answer pleading

86(1) Except in the case of a defence or a defence to a counterclaim by a person not a party to the action, or a defence to a third party notice, the time within which a pleading is to be delivered is 8 days after the service of the pleading to be answered.

(2) A defendant who is required to serve a copy of the counterclaim made by him on any person who before service is already a party to the action shall do so within the period within which he must serve on the plaintiff the defence to which the counterclaim is added.

(3) Any person served with a counterclaim has the same time for the delivery of a defence thereto as if the counterclaim had been a statement of claim.

AR 390/68 s86

Formal Requirements of Pleadings

Formal parts of pleadings

87 Subject to the Rules relating to counterclaims, all pleadings shall contain a statement setting out whether, in the opinion of the party issuing the pleading, the action will likely take more than 25 days to try.

AR 390/68 s87;277/95;152/2000;109/2001

Name of solicitor or agent issuing

88(1) The statement of claim and all copies which are served shall have at the foot or end thereof or endorsed thereon or attached thereto

- (a) if the statement of claim is issued by a solicitor for the plaintiff, a statement to that effect and the solicitor's name and address for service; or if by a solicitor as agent for another solicitor, the solicitor's name and address and also the agent's name and address for service,
- (b) if the statement of claim is issued by the plaintiff in person, a statement to that effect and the plaintiff's address for service,
- (c) a statement of the plaintiff's residence,
- (d) a statement of the defendant's residence so far as known to the plaintiff, and
- (e) a notice to the following effect:

TO (NAME OF DEFENDANT)

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in _____, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

(2) The notice referred to in subrule (1)(e) does not need to be at the foot of, at the end of, endorsed on or attached to the statement of claim at the time that the statement of claim is issued but must be at the foot of, at the end of, endorsed on or attached to the copy of the statement of claim when that copy of the statement of claim is served.

AR 390/68 s88;160/93

Applies to all commencing documents

89 In all cases where proceedings are commenced otherwise than by statement of claim, (including proceedings by counterclaim against a person not a party to the action) the provisions of Rule 88, adapted so far as applicable, apply to the document by which the proceedings are commenced.

AR 390/68 s89

Name of party issuing defence

90 The statement of Defence or Demand of notice and the copies served therewith shall have at the end thereof or endorsed thereon statements showing

- (a) by whom the statement of defence or demand is filed and whether by the defendant in person or by a solicitor on his behalf or an agent for him,
- (b) the defendant's residence, and
- (c) the defendant's address for service.

AR 390/68 s90

No address or false address

91 If a party fails to give an address for service or gives an address which the court on ex parte application declares to be a fictitious or illusory address, he is not entitled to be served with any pleadings or other proceedings in the action.

AR 390/68 s91

Defence of Tender**Tender before action**

92 Where in any action a defence of tender before action is pleaded, the defendant shall pay into court the amount alleged to have been tendered, and the tender is not available as a defence unless and until payment into court has been made.

AR 390/68 s92

Counterclaim**Counterclaim or set-off**

93(1) A defendant may by way of counterclaim against the plaintiff's claim or cause of action set up any claim or cause of action by the defendant either against the plaintiff alone or one or more of several plaintiffs or against the plaintiff and another person whether a party to the action or not.

(2) All matters which might be pleaded by way of set-off shall if it is desired to set the same up in the action, be pleaded by way of counterclaim.

(3) A counterclaim has the same effect as a cross-action so as to enable the court to pronounce a final judgment in the same action both on the original and on the counterclaim.

(4) The counterclaim shall be conjoined and pleaded with the statement of defence.

(5) A defence to counterclaim shall be conjoined and pleaded with the reply.

AR 390/68 s93

Counterclaim against person not party

94 Where a defendant joins a person as a party against whom he makes a counterclaim, he shall add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this Rule, if he is not already a party to the action, becomes a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been sued in the ordinary way by the party making the counterclaim.

AR 390/68 s94

Counterclaim may be tried separately

95 Where a counterclaim cannot be conveniently disposed of in the same action the court may order the counterclaim to be excluded or tried separately or make such other order as it considers expedient.

AR 390/68 s95

Where action dismissed

96 A counterclaim may be proceeded with notwithstanding that the action of the plaintiff is stayed, discontinued or dismissed.

AR 390/68 s96

Judgment for balance

97 Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the court may give judgment for the balance.

AR 390/68 s97

Counterclaim without defence

98 Where a defendant does not dispute the plaintiff's claim and sets up no defence thereto, but sets up a counterclaim, the court may stay proceedings respecting the plaintiff's claim, with or without terms, until the counterclaim is disposed of.

AR 390/68 s98

Joinder of Issue

When issue may be joined

99 A party in his pleading may expressly join issue on the next preceding pleading but may not join issue on a statement of claim or counterclaim or third party notice.

AR 390/68 s99

Denial

100 Every material fact in a pleading upon which issue is joined shall be deemed to have been denied except those facts that are stated to be admitted.

AR 390/68 s100

Pleading after reply only with leave

101 No pleading other than a joinder of issue subsequent to a reply or a reply to a defence to counterclaim may be pleaded except by leave of the court.

AR 390/68 s101

Implied joinder after defence

102 If no reply or joinder of issue has been delivered there shall be an implied joinder of issue 8 days after the delivery of the statement of defence or defence to counterclaim.

AR 390/68 s102

Close of Pleadings

When deemed closed

103 As soon as

- (a) either party has delivered a joinder of issue upon the pleading of the opposite party, or
- (b) joinder of issue is implied,

the pleadings shall be deemed to be closed and issue joined as between the parties.

AR 390/68 s103

Contents of Pleadings

Summary of facts

104 Every pleading shall contain only a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits.

AR 390/68 s104

Numbers

105 A pleading shall when convenient be divided into paragraphs numbered consecutively and dates, sums and numbers shall be expressed in figures and not words.

AR 390/68 s105

Documents and conversations not to be quoted at length

106 The effect of any document or the purport of any conversation referred to in the pleadings shall, if material, be briefly stated and the precise words of the document or conversation need not be stated except insofar as those words are themselves material.

AR 390/68 s106

Presumption of law

107 A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

AR 390/68 s107

Denying condition precedent

108 A statement of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading and when any party intends to contest the performance of any condition precedent he shall specify the condition and its non performance.

AR 390/68 s108

When specific pleading required

109 A party shall in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, payment, any statute of limitation, statute of frauds, fraud or any fact showing illegality

- (a) which he alleges makes any claim or defence of the opposite party not maintainable, or
- (b) which, if not specifically pleaded, might take the opposite party by surprise, or
- (c) which raises issues of fact not arising out of the preceding pleading.

AR 390/68 s109

Matter arising after action started

110(1) A party may plead any matter which has arisen since the action was commenced except that if by reason of that new matter it becomes necessary to amend any pleading already delivered the amendment may only be made with the leave of the court.

(2) No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous

pleadings of the party pleading it.

(3) Where a defendant alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of that defence and either party may apply to a judge to dispose of the costs of the action or such portion thereof as pertains to the defence so confessed.

AR 390/68 s110

Pleading in the alternative

111 Notwithstanding anything contained herein a party may plead claims or defences in the alternative.

AR 390/68 s111

Point of law

112 A party may by his pleading raise any point of law.

AR 390/68 s112

Malice or other mental state

113 Whenever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it is sufficient to allege it as a fact without setting out the circumstances from which it is to be inferred.

AR 390/68 s113

Alleging notice to person

114 Whenever it is material to allege notice to any person of any fact, matter or thing, it is sufficient to allege the notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is to be inferred are material.

AR 390/68 s114

When particulars to be pleaded

115 In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, particulars (with dates and items, if necessary) shall be stated in the pleading.

AR 390/68 s115

Particulars may be set out in separate document

116 Where it is necessary to give particulars of a debt, expenses or damages and those particulars exceed 200 words, they may be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been delivered and if so, when, or is to be served with the pleading.

AR 390/68 s116

Further particulars

117(1) A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered to be

delivered within a time to be fixed and failing the time having been fixed, the time for the delivery of the particulars shall be within 8 days.

(2) The statement or particulars shall be filed and attached to the pleading, notice or writing to which it refers.

AR 390/68 s117

Time for pleading after particulars

118 The party at whose instance particulars have been delivered under a judge's order has, unless the order otherwise provided, 8 days for pleading after the delivery of the particulars.

AR 390/68 s118

Silence not an admission

119 Except as otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party shall not be construed as an admission of the truth of the allegation.

AR 390/68 s119

Relief need not be claimed

120 In any pleading costs need not be claimed and it is not necessary to ask for general or other relief, both of which may always be given to the same extent as if they had been asked for.

AR 390/68 s120

Different version to disprove case

121 If the defendant proposes at the trial to disprove the case, or part of the case, set up by the plaintiff by proving a different version of the transaction or occurrence or series of transactions or occurrences relied upon by the plaintiff in support of his cause of action or part thereof, a mere denial of the allegation of the statement of claim or silence in the pleading with respect thereto is not sufficient, but the defendant shall set up his version in his defence, and this Rule applies to a defence to a counterclaim.

AR 390/68 s121

Incorporation

122 Unless the incorporation of a corporate party is specifically denied, it is not necessary to prove it.

AR 390/68 s122

Denial of contract

123 When a contract, promise or agreement is alleged in any pleading, a bare denial of it by the opposite party or silence with respect thereto in his pleading shall be construed only as a denial in fact of the express contract, promise or agreement alleged or of the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise or agreement, whether with reference to the Statute of Frauds or otherwise.

AR 390/68 s123

Pleading to bills of exchange

124 Notwithstanding Rule 119, in actions upon bills of exchange, promissory notes or cheques, a defence shall deny some matter of fact; e.g., the drawing, making, endorsing, accepting, presenting or notice of dishonour, of the bill, note or cheque.

AR 390/68 s124

Money demands

125 Notwithstanding Rule 119, in actions for money demands, a defence in denial shall deny such matters of fact from which the liability of the defendant is alleged to arise as are disputed; (e.g., in actions for goods bargained and sold or sold and delivered, the defence shall deny the order or contract, the delivery or the amount claimed; in an action for money had and received, it shall deny the receipt of the money or the existence of those facts which are alleged to make the receipt by the defendant a receipt to the use of the plaintiff).

AR 390/68 s125

Denial must not be evasive

126 When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively but shall answer the point of substance.

AR 390/68 s126

Executorship or trusteeship

127 If either party wishes to deny the right of any other party to claim as executor or as trustee (whether for the benefit of creditors or otherwise), or in any representative or other capacity, or the alleged constitution of any partnership firm, he shall deny it specifically.

AR 390/68 s127

Cost where facts not admitted

128 Where the court is of opinion that any allegations of facts denied or not admitted, ought to have been admitted, the court may make an order with respect to any extra costs occasioned by their having been denied or not admitted.

AR 390/68 s128

Striking Out Pleadings**Striking out or amending**

129(1) The court may at any stage of the proceedings order to be struck out or amended any pleading in the action, on the ground that

- (a) it discloses no cause of action or defence, as the case may be, or
- (b) it is scandalous, frivolous or vexatious, or

- (c) it may prejudice, embarrass or delay the fair trial of the action, or
- (d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly.

(2) No evidence shall be admissible on an application under clause (a) of subrule (1).

(3) This Rule, so far as applicable, applies to an originating notice and a petition.

AR 390/68 s129

Amendment of Pleadings Without Leave

Amending without leave

130(1) A party may, without the leave of the court, amend any pleading of his once at any time before the pleadings are closed and, where he does so, he shall deliver the amended pleading to the opposite party.

(1.1) A pleading may be amended under subrule (1) to add, remove or substitute a party.

(1.2) The removal of a party is subject to the payment of such costs as the Court may order on application by the party that has been removed.

(2) Where an amended statement of claim is delivered

- (a) the defendant, if he has already delivered a defence may amend his defence, and
- (b) the period for delivering his defence, if not already delivered, or his amended defence, as the case may be, is 8 days after the amended statement of claim is delivered.

(3) Where an amended defence is served on the plaintiff by the defendant

- (a) the plaintiff if he has already delivered a reply may amend his reply, and
- (b) the period for delivering his reply, if not already delivered, or his amended reply is 8 days after the amended defence is delivered.

(4) In this Rule where a party is entitled to deliver an amended defence to an amended statement of claim he may in lieu thereof deliver a new defence to the amended statement of claim and where he is entitled to deliver an amended reply he may in lieu thereof deliver a new reply to the amended statement of defence.

(5) In this Rule a reference to a defence or a reply include references to a counterclaim and a defence to counterclaim and to third party proceedings.

(6) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made subrule (2) applies as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(7) Where a party has pleaded to a pleading which is subsequently amended and served on him then, if that party does not amend his pleading under this Rule, he shall be taken to rely on it in answer to the amended pleading.

AR 390/68 s130; 16/2002

Application for Disallowance

Time for disallowing amendment

131 Where any party has amended his pleading under Rule 130, the opposite party may, within 8 days after the delivery to him of the amended pleading, apply to the court to disallow the amendment or any part thereof and the court may disallow it or allow it subject to terms as to costs or otherwise.

AR 390/68 s131

Amendment with Leave

Court may allow amendment

132 The court may at any stage of the proceedings allow any party to alter or amend his pleadings or other proceedings in such manner and on such terms as may be necessary for the purpose of determining the real question in issue between the parties.

AR 390/68 s132

Amendment of defect or error

133 The court may at any time, on terms as to costs or otherwise, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

AR 390/68 s133

Time for amendment after order

134 If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order or, if no time is thereby limited, then within 14 days from the date of the order, the order to amend shall on the expiration of the time limited, or of the 14 days, as the case may be, become inoperative unless the time is extended by the court.

AR 390/68 s134

Amendment by consent

135 Any party may amend his pleadings at any time without order on filing the written consent of the opposite party or his solicitor.

AR 390/68 s135

Method of amendment

136 A pleading may be amended by written alterations in the copies filed and served or by additions on paper to be interleaved therewith, if necessary, unless the amendments require the insertion of more than 20 words in any one place or are so numerous or of such a nature that making them in the copies filed and served would render them difficult or inconvenient to read, in either of which cases the amendments shall be made by delivering a reprint or fresh copy of the pleadings as amended.

AR 390/68 s136

Endorsement of amendment

137(1) Where a pleading is amended it shall be marked by the clerk with the date upon which the amendment is made and of the order or consent, if any, under which it is so amended, in the following manner:

“Amended ____ day of _____ (under order
(or consent) dated _____ day of _____).”

(2) The amendment shall be written or underlined in ink of a different colour from that used in the original pleading.

AR 390/68 s137

Time for delivery

138 The amended pleading shall be delivered within the time allowed for amending it.

AR 390/68 s138

At trial

139(1) Where an amendment is directed or allowed at the trial it is not necessary to issue an order regarding it, and

(2) The amendment unless otherwise directed, shall be made forthwith in the record.

AR 390/68 s139

Record

140 Where an amendment is directed of any record of the Court or document filed, other than a pleading, no physical alteration of the record or document shall be made, but a note shall be made in the margin or other convenient place of the amendment directed.

AR 390/68 s140

Costs

141 The costs, if any, occasioned by any amendment shall be borne by the party making it unless the Court otherwise orders.

AR 390/68 s141

Part 10 Procedure on Default

Enter final judgment or note in default

142(1) If the defendant has failed to file a statement of defence or demand of notice, the plaintiff may on proof by affidavit that the statement of claim has been served, having regard to the nature of the claim,

- (a) enter final judgment against the defendant, or
- (b) on praecipe require the clerk to enter in the procedure book a note to the effect that the defendant is in default.

(2) If the defendant has filed but has failed to serve a statement of defence or demand of notice, the plaintiff may on proof by affidavit that the statement of claim has been served but no statement of defence or demand of notice has been served, having regard to the nature of the claim,

- (a) enter final judgment against the defendant, or
- (b) on praecipe require the clerk to enter in the procedure book a note to the effect the defendant is in default.

(3) A defendant may, before he has been noted in default or final judgment has been given against him, deliver either a statement of defence or demand of notice.

AR 390/68 s142;313/81

Infant or person of unsound mind

143 Judgment shall not be entered against an infant or a person of unsound mind on default except by leave of the Court.

AR 390/68 s143

Defendant not entitled to further notice

144 Except where otherwise provided by these Rules or where otherwise ordered by the Court, a defendant who fails to defend or demand notice is not entitled to notice of any subsequent proceedings in the action.

AR 390/68 s144

Filing proof of service

145 Judgment shall not be entered against a defendant under this Part unless the plaintiff files an affidavit proving service on that defendant of the statement of claim or other document by which proceedings are commenced.

AR 390/68 s145

Demand of notice entitles defendant to notice

146 Where a defendant delivers a demand of notice the plaintiff may proceed against him as if he had failed to defend, except that

- (a) he is, unless otherwise ordered, entitled to notice of all subsequent motions against him, and
- (b) judgment may be obtained only on motion with notice to him.

AR 390/68 s146

Defence struck out

147 Where an order is made striking out the defence of a defendant, the plaintiff may proceed against him as if he had failed to defend or demand notice.

AR 390/68 s147

Liquidated demand

148(1) Where a statement of claim includes a claim for a debt or liquidated demand with or without interest, (whether as debt or damages) and any defendant fails to defend or demand notice as to that debt or demand, or any part thereof, the plaintiff may enter judgment against the defendant for a sum not in excess of the amount in respect of which there is no defence or demand of notice and costs, together with such interest indebtedness as is justified by the statement of claim, except that if interest is claimed by the way of damages (whether under statute or otherwise) judgment for the interest may only be entered by leave of the court, which may direct that the interest claim be determined on an assessment in the manner provided by Rule 152.

(2) In any case to which subrule (1) applies the plaintiff may, after entering judgment, proceed with the action against any other defendants and in respect of any other claims.

(3) Where in any action on a bond for non-performance of any covenant or agreement contained in any deed or indenture or writing a defendant fails to defend or demand notice, the plaintiff may not sign judgment under this Rule but shall proceed by way of assessment upon the breaches alleged in the statement of claim and in respect of further breaches from time to time by serving upon the defendant notice of the further breaches.

AR 390/68 s148

Claim for recovery of goods or land

149(1) Where a statement of claim includes a claim for the recovery of goods or land and any defendant fails to deliver a defence or demand of notice to that claim, the plaintiff may enter judgment against that defendant for the recovery of the goods or lands, or such part thereof as has not been the subject of a defence or demand of notice, and for costs.

(2) In any case to which subrule (1) applies, the plaintiff may, after entering the judgment, proceed with the action against other defendants and in respect of other claims.

AR 390/68 s149

Praecipe to note in default

150 In all cases other than those in respect of which a plaintiff has entered judgment under Rule 148 or 149, where a defendant has failed to defend or demand notice, the plaintiff may, on praecipe, note the defendant in default.

AR 390/68 s150

Execution or garnishee after counter-claim

151 When a defendant sets up a counterclaim in any action to which this part applies, the plaintiff may not issue a writ or a garnishee summons without leave.

AR 390/68 s151;277/95

Remedy where noted in default

152 If a sole defendant has, or all the defendants have, been noted in default, the plaintiff may

- (a) apply ex parte to the court for judgment, and the judge hearing the application may
 - (i) upon proof of the plaintiff's claim by affidavit or otherwise, give final judgment or direct an accounting, or
 - (ii) set the matter over for a hearing on notice, and notice shall be given to a defendant in the same manner as hereinafter provided on assessment.

or

- (b) set the matter down for assessment, giving at least 10 days notice of the date set for assessment.

AR 390/68 s152;124/73;152/98

Striking out defendants not served

153 Where in an action there are several defendants of whom one or more have been served, and another or others of them have not, the court may order the striking out of the defendant or defendants not served, and allow the plaintiff to proceed with his action against the defendant or defendants served, on payment of costs or otherwise as may be considered just.

AR 390/68 s153

Some defendants served

154 Where there are several defendants and some only have defended or demanded notice the plaintiff may

- (a) proceed to trial against those who have defended, (and the court may give judgment against any or all of the defendants), or
- (b) apply to the court on notice to the defendants who have defended or demanded notice, for judgment against the other defendants,

and the court may give final judgment or direct an assessment of damages against those defendants as the plaintiff is entitled to without prejudice to the right of the plaintiff to proceed with the action against the other defendants.

AR 390/68 s154

Application to counterclaim

155 This Part applies to a counterclaim to the same extent as if a counterclaim were a separate action except that

- (a) where the plaintiff in the original action has not filed a statement of defence or demand of notice to a counterclaim, a judgment on the counterclaim may be obtained against the plaintiff only on motion with notice to the plaintiff, and
- (b) neither a garnishee summons nor a writ shall issue against the plaintiff in the original action without leave.

AR 390/68 s155;277/95;200/2003

Judgment on claim for damages

156 Where a plaintiff claims damages and becomes entitled to note a defendant in default, he may instead sign final judgment for the sum of \$10 and, if that claim is the only claim in the action, for his costs to be taxed.

AR 390/68 s156

Judgment in excess of claim

157 If upon any application to set aside judgment entered under this Part, it appears to the court that the judgment has been entered for an amount in excess of that to which the plaintiff was entitled upon his pleadings or by the order of the court, the court, if satisfied that the judgment was entered for an amount in excess of that so due, by inadvertence, may direct that the judgment be amended as may be necessary and upon terms as to costs or otherwise.

AR 390/68 s157

Set aside judgment

158 The court may, upon such terms as it thinks just, set aside or vary any judgment entered upon default of defence or in pursuance of an order obtained ex parte or permit a defence to be filed by a party who has been noted in default.

AR 390/68 s158

Part 11 Summary Judgment

Division 1 Summary Trials

Application

158.1(1) By notice of motion, a party may apply to a judge for judgment in a summary trial procedure, either on an issue or generally.

(2) Unless otherwise ordered, there must be at least 21 days between the delivery of the notice of motion and the day named in the notice for the hearing of the summary trial.

(3) Unless otherwise ordered, an applicant for judgment under this Division shall file and serve with the notice of motion any of the following material on which the applicant intends to rely:

- (a) every affidavit not already served;
- (b) any other affidavit filed in the action, whether for the purposes of an application under this Division or not;
- (c) answers to interrogatories;
- (d) evidence taken on examination for discovery or pursuant to Rule 266;
- (e) other documents and admissions.

(4) The applicant for judgment shall not file any further affidavit or material except

- (a) to adduce evidence that would, at a trial, be admitted as rebuttal evidence,
- (b) in reply to a notice of motion filed and delivered by another party of record, or
- (c) with leave of a judge.

AR 152/98 s6;152/2000 s3

Reply

158.2 Unless otherwise ordered, a party who receives notice of motion for judgment in a summary trial procedure shall, at least 7 days before the hearing of the summary trial, file and serve any of the following material on which that party intends to rely:

- (a) affidavits,
- (b) answers to interrogatories,

- (c) evidence taken on examinations for discovery or pursuant to Rule 266, and
- (d) other documents and admissions.

AR 152/98 s6;152/2000 s4

Judge alone

158.3 A summary trial under this Division shall be heard by a judge alone even though a party may have obtained an order directing that the trial of the action be heard with a jury.

AR 152/98 s6;152/2000 s5

Discretion of judge

158.4(1) On or before the hearing of a summary trial under this Division, the judge may

- (a) give advice and directions respecting the determination of a summary trial that are not inconsistent with these Rules, including, without determining the merits of a summary trial procedure, a determination, subject to 158.6(1), whether any issue raised in the notice of motion is suitable for disposition under this Division;
- (a.1) adjourn the summary trial, in which case the judge making the order is not seized of the summary trial, unless the judge otherwise orders;
- (b) dismiss the summary trial on the grounds that
 - (i) the issues raised by the notice of motion are not suitable for disposition under this Division, or
 - (ii) the summary trial will not assist the efficient resolution of the action.

(2) On or before the hearing of a summary trial under this Division the judge may order that

- (a) a party file and deliver, within a fixed time, any of the evidence that was the subject of an order under Rule 158.1(3) or Rule 158.2 and that the party intends to adduce at the trial;
- (b) a deponent attend for cross-examination, either before the judge or before another person as the judge directs, and that the cross-examinations on affidavits be completed within a fixed time;
- (c) no further evidence be adduced on the summary trial after a fixed time;
- (d) a party file and deliver a brief, with such contents as the judge may order, within a fixed time.

(3) Before or at the summary trial, the judge may vary or set aside an order made under subrule (2).

AR 152/98 s6;152/2000 s6

Adducing evidence

158.5(1) On a summary trial pursuant to this Division, the applicant and each other party may adduce evidence by any or all of the following:

- (a) affidavit;
- (b) an answer, or part of an answer, to written interrogatories;
- (c) any part of the evidence taken on an examination for discovery of a party adverse in interest;
- (d) any part of the evidence taken on an examination pursuant to Rule 266 or Rule 270;
- (e) any documents properly produced in the action;
- (f) an admission or admissions under Rule 230;
- (g) with leave of a judge, oral evidence.

(2) The following Rules apply to evidence adduced at a summary trial under this Division:

- (a) Rule 214(1) and (4);
- (b) Rule 261;
- (c) Rule 261.1;
- (d) Rule 266;
- (e) Rule 270.

AR 152/98 s6

Decision

158.6(1) On the hearing of a summary trial, and on being satisfied that there is sufficient evidence for adjudication, and irrespective of the amounts involved, the complexity of the issues and the existence of conflicting evidence, the judge may

- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the judge is unable, on the whole of the evidence before the judge on the summary trial, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the judge is of the opinion that it would be unjust to decide the issues on the summary trial,

in which case the judge shall direct the matter to a trial in

accordance with subrule (2),

- (b) impose terms respecting enforcement of a judgment granted under clause (a), including a stay of execution, as the judge thinks just, and
- (c) award costs.

(2) If the judge is unable to grant judgment under subrule (1) and considers that the proceeding ought to be expedited by giving directions, the judge may order the trial of the proceeding generally or on an issue, and may order that

- (a) the pleadings be amended or closed within a fixed time;
- (b) a party file and deliver, within a fixed time, to each party as specified by the judge, a list of documents or an affidavit verifying the list of documents in accordance with the directions that the judge may give;
- (c) interlocutory applications be brought within a fixed time;
- (d) a general application for directions be brought within a fixed time;
- (e) a statement of agreed facts be filed within a fixed time;
- (f) all procedures for discovery be conducted in accordance with a schedule and plan directed by the judge and the plan may set limitations on those discovery procedures;
- (g) the obligation to pay conduct money to any of the parties or persons to be examined be allocated in the manner specified in the order;
- (h) an examination for discovery or a pre-trial examination of a witness be of limited duration;
- (i) a party deliver a written summary of the proposed evidence of a witness within a fixed time;
- (j) the evidence in chief of a witness be of limited duration;
- (k) the evidence in chief of a witness be given in whole or part by the production of a written statement;
- (l) experts who have been retained by the parties meet, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;
- (m) evidence be adduced in a manner provided by Rule 158.5;
- (n) a party deliver a written summary of the whole or part of the

party's argument within a fixed time;

- (o) all or any part of the submissions of counsel be in writing or of limited length;
- (p) a pre-trial conference be held at a time and place to be fixed at which any of the orders in this subrule may be made;
- (q) with the approval of the Chief Justice, the proceeding be set for trial on a particular date;
- (r) any other action be taken or not taken as the judge considers appropriate and that is not inconsistent with these Rules.

(3) If the judge does not grant judgment on an issue under subrule (1), the applicant may not make a further application under this Division on the same issue.

(4) If the judge does not grant judgment on the matter generally under subrule (1), the applicant may not make a further application under this Division on the matter generally, but may make an application on a particular issue that has not previously been heard under this Division.

(5) Before or at the full trial of a matter, a judge may vary or set aside an order made under subrule (2).

AR 152/98 s6

Limitation on judge hearing both summary and full trial

158.7 A judge who has heard a summary trial under this Division shall not preside at a full trial of the matter unless all parties consent.

AR 152/98 s6

Division 2 Summary Judgment

When available

159(1) In any action in which a defence has been filed, the plaintiff may, on the ground that there is no defence to a claim or part of a claim or that the only genuine issue is as to amount, apply to the court for judgment on an affidavit made by him or some other person who can swear positively to the facts, verifying the claim or part of the claim and stating that in the deponent's belief there is no genuine issue to be tried or that the only genuine issue is as to amount.

(2) A defendant may, after delivering a statement of defence, on the ground that there is no merit to a claim or part of a claim or that the only genuine issue is as to amount, apply to the court for a judgment on an affidavit sworn by him or some other person who can swear positively to the facts, stating that there is no merit to the whole or part of the claim or that the only genuine issue is as to amount and that the deponent knows of no facts that would substantiate the claim or any part of it.

(3) On hearing the motion, if the court is satisfied that there is no genuine issue for trial with respect to any claim, the court may give summary judgment against the plaintiff or a defendant.

(4) The court may order that an action proceed or not proceed on terms binding one or more parties as to the following:

- (a) the giving of security;
- (b) time;
- (c) the staying of proceedings pending the determination of a counterclaim;
- (d) the mode of trial or other method respecting the determination of the matter.

(5) Where the court is satisfied that the only genuine issue is as to amount, it may direct that the action proceed only to assess the amount or may direct a reference or accounting.

(6) Where the court is satisfied that the only genuine issue is a question of law, it may direct the determination of that issue and that judgment be given in accordance with that determination.

(6.1) The Court may give summary judgment for or in respect of a part of a claim or a lesser amount and send the rest of the claim to trial or assessment, whether or not the claim is for a single and undivided debt or other cause of action.

(7) This Rule does not apply to the following:

- (a) any divorce proceeding as defined in Rule 561.1(b);
- (b) any combined action consisting of a divorce proceeding as defined in Rule 561.1(b) and the division of matrimonial property pursuant to a matrimonial property proceeding as defined in Rule 561.1(c.1).

AR 390/68 s159;216/86;318/86;160/93;277/95;243/96;101/99

Without prejudice to proceed against others

160 Judgment given and a writ issued under this Part are without prejudice to the right to proceed against any other defendants, and a plaintiff who obtains judgment on a claim, or part of a claim, hereunder, may proceed with the action in respect of any other claim.

AR 390/68 s160;277/95

Motion for judgment in emergency

161(1) At any time after the issue of the statement of claim, on special reason for urgency being shown, the plaintiff may, by leave obtained, ex parte, serve a notice of motion for judgment.

(2) The court giving leave may give special directions as to the service of the notice of motion.

(3) Upon the hearing of the motion the court, instead of either granting or refusing the application, may give such directions for the examination of either parties or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit or otherwise as the case may require, and upon terms as to costs.

AR 390/68 s161

Admissions of fact or documentary evidence

162 At any stage of the proceedings the court may, upon application, give any judgment or order to which the applicant may be entitled when

- (a) admissions of fact have been made on the pleadings or otherwise, or
- (b) the only evidence consists of documents and such affidavits as are sufficient to prove their execution or identity.

AR 390/68 s162

Changing into motion for judgment

163 The court may direct any application to be turned into a motion for judgment.

AR 390/68 s163

Part applies to counterclaim

164 This part applies to proceedings by way of counterclaim to the same extent as if a counterclaim were a separate action, but the court hearing an application may stay proceedings pending the determination of the plaintiff's action.

AR 390/68 s164

PART 12**COMPROMISE USING COURT PROCESS*****Not available where defence of tender before action***

165 This Part does not apply where the defence of tender before action is pleaded.

AR 84/84 s2

Payment into court by defendant

166(1) A defendant may, before or after pleading, pay into Court a sum of money in satisfaction of the claim, or, where there is more than one claim, in satisfaction of any of them.

(2) Where money is paid into Court, a notice in writing specifying the claim or claims in respect of which payment is made and the sum paid in respect of each claim shall be served on the plaintiff within 15 days after the payment into Court.

(3) Money may be paid into Court under this Rule by one or more of several defendants sued jointly or in the alternative on notice to the other defendant or defendants.

(4) Where a counterclaim has been made, a defendant may offer to surrender his counterclaim or to surrender his counterclaim and pay into Court a sum of money in satisfaction of the claim or claims.

AR 390/68 ss165,168(1),170(1);84/84

Acceptance by plaintiff

167(1) Where money is paid into Court under Rule 166, the plaintiff may, by giving notice to all other parties to the action at any time before the commencement of trial and while the money remains in Court, accept the whole sum or any one or more of the specified sums together with any offer to surrender a counterclaim, in satisfaction of a claim in respect of which this Rule has been employed.

(2) If all of the plaintiff's claims have been satisfied by his acceptance under subrule (1) or if he gives notice that he abandons any remaining claims, he may tax his costs incurred to the time of the payment into Court, and, if those costs are not paid within 7 days after taxation, he may enter judgment for those costs.

AR 390/68 s166;84/84

Time limit for acceptance

168 Where the whole of the money in Court has not been accepted by the Plaintiff, the defendant may, upon praecipe, receive payment of any moneys remaining in Court, unless the Court otherwise orders, any time after 45 days from service of the notice of payment in.

AR 390/68 s167;84/84

Defendant's offer of judgment

169(1) At any time before the commencement of trial, a defendant may serve upon the plaintiff an offer of judgment specifying the terms upon which he is willing to settle a claim, or, where there is more than one, any of them.

(2) On accepting the offer and filing the offer and acceptance in Court at any time before the commencement of trial, the plaintiff may apply to the Court for judgment in accordance with the offer and for costs, and may proceed with the action in respect of any claim not covered by the judgment or against any other defendant.

(3) Where an offer of judgment has been made under subrule (1), it may not be withdrawn except in the following circumstances:

- (a) within 45 days from service of the offer of judgment with leave of the Court, on notice to the plaintiff, in special circumstances;
- (b) after 45 days from service of the offer of judgment, if no acceptance of the offer of judgment has been filed, by serving a notice of withdrawal on the plaintiff.

AR 84/84 s2;150/89;238/2004

Plaintiff's offer to settle

170(1) At any time after the issuance of the statement of claim but before the commencement of the trial the plaintiff may serve on the defendant an offer specifying the terms under which the plaintiff is willing to settle the plaintiff's claim or, if more than one claim is made, any one or more of the plaintiff's claims.

(2) At any time before the commencement of trial, a defendant may

- (a) file in Court a copy of the plaintiff's offer to settle and the defendant's acceptance of it and, at the same time, pay into Court the sum specified by the offer and notify the plaintiff of his acceptance and payment in, or
- (b) file in Court and deliver to the plaintiff a confession of judgment in accordance with the plaintiff's offer to settle.

(3) On the filing and delivery of a confession under subrule (2), the plaintiff may apply to the Court for judgment in accordance with the confession, and may proceed with the action in respect of a claim not covered by the judgment or against any other defendant.

(4) If the offer to settle or the confession of judgment does not otherwise deal with costs, the plaintiff may tax his costs of that portion of the action thereby concluded to the date of acceptance of the offer to settle or confession.

(5) Where no acceptance or confession has been filed, the plaintiff may, by serving notice of withdrawal on the defendant, withdraw the offer at any time after 45 days from the service of the offer.

AR 84/84 s2;308/91;269/97

Offers made without prejudice

171 Unless otherwise expressly stated therein, notice of payment into Court under Rule 166, with or without an offer to surrender a counterclaim, or an offer to settle under Rules 169 and 170 or an acceptance of a confession shall be deemed to be an offer of compromise made without prejudice, and shall not be deemed an admission.

AR 84/84 s2

Stay of proceedings on acceptance

172 On acceptance by the plaintiff of moneys paid into Court or of an offer to surrender the counterclaim as provided by Rule 166 or of the defendant's offer under Rule 169, or on the acceptance or confession of a judgment by the defendant respecting the plaintiff's offer to settle, all proceedings with respect to matters specified in the acceptance or confession shall be stayed, other than for the enforcement of any resulting judgment.

AR 390/68 ss168(2),170(2);84/84

No knowledge of compromise to be before court

173 Except in an action to which is pleaded a defence of tender before action or in which a plea has been filed under section 5 of the *Defamation Act*, no statement that a party has employed these Rules shall be inserted in the pleadings or made to the judge or jury until all questions of liability and the quantum of debt or damages have been decided, or, on appeal, until all questions except those relating to costs have been decided.

AR 390/68 s169;84/84

Award of costs

174(1) Where a plaintiff does not

- (a) with respect to the claim specified by a defendant in his payment into Court under Rule 166, recover a sum greater than the payment, including the amount of any counterclaim surrendered, or
- (b) with respect to an offer of judgment made under Rule 169, recover a judgment more favourable than the judgment offered therein,

the judge or the Court of Appeal shall, unless for special reason, award costs to the defendant for all steps in relation to that claim after the service of notice.

(1.1) When costs are payable to the defendant under subrule (1) and the action is dismissed entirely, those costs shall, unless for special reason, be double the amount of costs (excluding disbursements) the defendant would otherwise have recovered for all steps in relation to the defence after the service of the notice of payment or the offer.

(1.2) Subrule (1.1) applies to

- (a) actions commenced but not concluded before the coming into force of subrule (1.1), and
- (b) actions commenced on and after the date subrule (1.1) comes into force.

(2) Where a plaintiff, with respect to the matters specified by him in his offer to settle under Rule 170, recovers a judgment equal to or more favourable than the judgment offered, the judge or the Court of Appeal shall, unless for special reason, award the plaintiff double the amount of costs (excluding disbursements) he would otherwise have recovered for all steps in relation to the claim after the service of the offer.

(2.1) Subrule (1.1) or (2) does not require a judge or the Court of Appeal in awarding solicitor-client costs to award double solicitor-client costs, but the judge or the Court of Appeal may, in the judge's or the Court of Appeal's discretion, award costs exceeding solicitor-client costs.

(NOTE: As to the application of subrule (2.1), see AR 200/2003, section 4(2).)

(3) This Rule applies notwithstanding

- (a) the repayment of money under Rule 168,
- (b) the withdrawal of an offer under Rule 169 or 170, or
- (c) Rule 609.

AR 84/84 s2;166/94;152/98;200/2003

PART 12 A**MONEY IN COURT*****Money paid into Court in trust***

175(1) Money paid into Court shall be paid to the clerk on praecipe with a designation of the proceedings in respect to which the payment is made.

(2) The clerk shall give a receipt for money paid into Court and shall, unless otherwise ordered, deposit the money in a trust account in a bank or in a treasury branch in the judicial district.

(3) A person paying money into Court is entitled to credit for the money as of the date on which it was paid to the clerk.

AR 390/68 ss171,172,174;84/84;160/93

Litigants' accounts

176(1) Money paid into Court shall be credited to a litigants' account in respect to the proceedings in which the payment is made.

(2) The Clerk shall be in charge of litigants' accounts and shall enter in each account details of each sum paid in or paid out, the person making or receiving the payment and the authority for the payment.

AR 390/68 ss175,176,177;84/84

Trustee Act

177(1) An application for leave to pay money or securities into Court under the *Trustee Act* or a payment thereof into Court under that Act where no application for leave is required shall be accompanied by an affidavit of the trustee or any of the trustees setting forth

- (a) a brief description of the trust and of the instrument creating it or of the circumstances under which it arose,
- (b) the names of the persons interested in or entitled to the money or securities with their addresses so far as known, and
- (c) an address for service.

(2) Notice of the application or of the payment into Court, as the case may be, shall be given to such persons and in such manner as the Court directs.

AR 390/68 s173;84/84

Payment out from the Court

178 Money which has been paid into Court may only be paid out

- (a) if a clerk's certificate certifying that the money is in Court is produced,
- (b) under an order of the Court, unless otherwise authorized,

- (c) by cheque signed and countersigned by such persons as may from time to time be designated for that purpose by the Attorney General, and
- (d) to
 - (i) the person entitled thereto,
 - (ii) his solicitor, or
 - (iii) another person
 - (A) on the written authority of the person entitled, or
 - (B) specified by the Court.

AR 390/68 ss178,179,180;84/84

Money received as tender on judicial sale

179(1) Certified cheques received by the clerk as a tender on a judicial sale shall be held on behalf of the person making the tender.

(2) Where the clerk expects the tender to be considered by the Court or otherwise dealt with within 30 days after receiving it, the clerk may hold the cheque received without depositing it.

(3) Where it may reasonably be expected that a tender will not be considered by the Court or otherwise dealt with within 30 days, or where the person making the tender so requests within 30 days of the tender, the clerk shall invest the money in accordance with Rule 183.

AR 84/84 s2

Interest

180 The interest earned on money in Court shall be paid to the person entitled thereto on payment out of the principal.

AR 390/68 s181;84/84

Disposition of small accounts

181(1) Where the balance remaining to the credit of any proceedings does not exceed \$100 and 2 years have elapsed without the balance being claimed, the account in the proceedings shall be closed by the transfer of the balance to the suspense account.

(2) After 10 years from the time of the last payment into Court in any proceedings, the balance shall be transferred to the suspense account.

(3) Money standing to the credit of the suspense account is subject to the control and direction of the Lieutenant Governor in Council.

(4) Nothing in this Rule prejudices the right of a person entitled to the balance to obtain payment.

AR 390/68 s182;84/84

Money of person of unsound mind

182(1) The Court may order money recovered on behalf of a person of unsound mind to be paid into Court.

(2) A sum paid into Court under an order under subrule (1) and any interest thereon shall be invested or paid out of Court or transferred to such persons to be held and applied for such purposes and in such manner as the Court orders.

AR 390/68 s183;84/84

Investment of money

183 Money under the control and subject to the order of the Court may be invested in the public funds of Canada or of the Province or in deposit certificates of a bank or trust company or in any other class of securities the Court may authorize.

AR 390/68 s184;84/84;160/93

Request for investment

184 A person having an interest in money referred to in Rule 183 and who wishes the money to be invested pursuant to that Rule, must serve the clerk with written notice of his request and a copy of the order.

AR 84/84 s2

Intestate entitled to fund

185 When the estate of a deceased person, who has died intestate, is entitled to a fund or to a share of a fund in court not exceeding \$1,500 and it is proved to the satisfaction of the court that no administration has been taken out and that the assets of the estate do not exceed \$1,500, including the amount in court to which the estate is entitled, the court may direct that the amount be paid or transferred to any person beneficially entitled thereto.

AR 390/68 s185