

## Part 15 Experts

### Court expert

**218(1)** The court, on its own motion or upon the application of any party in any case where independent technical evidence would appear to be required (including the evidence of an independent medical practitioner) may appoint an independent expert (herein called “the court expert”).

**(2)** The court expert shall, if possible, be a person agreed between the parties and failing agreement shall be nominated by the court.

**(3)** The question or the instructions submitted to or given to the court expert, failing agreement between the parties, shall be settled by the court.

**(4)** The report of the court expert shall be in writing, verified by affidavit, and shall be admitted as evidence at the trial and given such weight as the court thinks fit.

**(5)** Copies of the report shall be forwarded by the clerk to the parties or their solicitors.

**(6)** Any party may, within 14 days after the receipt of a copy of the report or within such other time as the court directs, apply for leave to examine the court expert on his report and the court, on the application shall

- (a) order the cross-examination of the court expert prior to the trial; or
- (b) order the cross-examination of the court expert at the trial,

or both.

**(7)** The court may make such further and other directions respecting the carrying out of the instructions by the court expert, including the making of experiments and tests.

**(8)** Subject to the ultimate determination by the trial judge as to who shall pay the remuneration of a court expert it shall be paid in the first instance by the opposing parties in equal portions at such time as the court directs.

**(9)** Where the court expert is a medical practitioner he has all the powers and duties conferred on a medical practitioner acting under Rule 217.

**(10)** The appointment of a court expert does not prevent the parties from calling their own expert or experts at the trial.

AR 390/68 s218

**Notice to adduce expert evidence**

**218.1(1)** A party intending to adduce expert evidence at a trial shall, not less than 120 days before the day the trial commences or such other time as may be ordered by the Court, serve on other parties to the action

- (a) a statement of the substance of the evidence, signed by the expert, including the expert's opinion, the expert's name and qualifications, and a statement from counsel setting out the proposed area of expertise for which qualification as an expert will be sought, and
- (b) a copy of any expert's report, signed by the expert, on which the party intends to rely.

**(2)** The party serving the expert's report may, at the same time, also serve notice of intention to have the report entered as evidence without the necessity of calling the expert as a witness.

**(3)** The expert's report shall be entered as evidence at the trial unless, within 60 days after service of the notice under subrule (2) or such further time as the Court allows, the other party serves a statement

- (a) setting out those parts of the report which that party will not agree may be entered as evidence in writing in this way, and
- (b) giving reasons why that party cannot agree.

**(4)** Agreeing to have the expert's report entered as evidence without calling the expert as a witness is not, by itself, an admission of the truth or correctness of the evidence submitted.

AR 66/85 s3;34/89;277/95;152/98

**Demand for expert's attendance**

**218.11(1)** A party who agrees to have an expert's report entered in evidence may, at the same time as responding to the notice of intention, serve a demand that the expert be in attendance at the trial for cross-examination.

**(2)** The expert shall not give oral evidence at the trial unless

- (a) a demand has been served, or
- (b) the Court gives leave.

**(3)** The party who required the attendance of the expert for cross-examination shall pay the costs of the expert's attendance unless the Court considers that the cross-examination was of assistance and makes a different order about the payment of those costs.

**(4)** If the party proposing to enter the expert's report receives a demand to produce the expert for cross-examination, the party proposing to enter the report may examine the expert, so long as the examination is not in respect of matters substantially outside the matters covered by the report, and need not

rely only on the expert's written report.

AR 152/98 s8

**Expert witness called in rebuttal**

**218.12(1)** A party who intends to call an expert witness in rebuttal to the matters mentioned in the expert report served under Rule 218.1 shall, not more than 60 days after service of the expert's report, serve on every other party to the action

- (a) a statement of the substance of the rebuttal evidence, signed by the expert, and
- (b) a copy of any rebuttal report, signed by the expert, on which that party intends to rely.

**(2)** Rules 218.1 to 218.15 apply to the expert's rebuttal report in the same way that they apply to the expert's report, except that, under Rule 218.1(3), 30 days replaces 60 days.

AR 152/98 s8

**When expert may be called**

**218.13** A party may not call an expert witness to give evidence unless

- (a) Rule 218.1 or Rule 218.12 is complied with, or
- (b) the Court gives leave.

AR 152/98 s8;101/99

**Objection to admissibility of report**

**218.14(1)** A party who receives a report under Rule 218.1 or 218.12 shall notify the party delivering the report of

- (a) any objection to the admissibility of the expert's opinion that the party receiving the report intends to raise at the trial, and
- (b) the reasons for the objection.

**(2)** No objection under subrule (1) shall be permitted at trial unless

- (a) reasonable notice of the objection was given, or
- (b) the Court gives leave.

AR 152/98 s8

**Costs**

**218.15** When a party objects to the admission of an expert's opinion, the cost of calling the expert shall be paid by the party refusing the admission of the expert's report, whatever the result of the cause, matter or issue, unless the Court otherwise determines.

AR 152/98 s8

**Very long trials**

**218.16** Rules 218.1 to 218.15 do not apply to very long trial actions under Part 15.1, unless the Court so orders.

AR 152/98 s8

## **Part 15.1**

### **Very Long Trial Actions**

#### **Application**

**218.2** This Part does not apply to any trial other than a very long trial action.

AR 277/95 s14

#### **Expert evidence**

**218.3(1)** For the purposes of this Part, an expert is any person who is asked and is entitled to give expert opinion evidence.

**(2)** This Part does not apply to evidence given by an expert who is

- (a) personally involved in the events giving rise to the litigation, or
- (b) an employee of a party.

AR 277/95 s14

#### **Number of experts**

**218.4(1)** Except with leave of the Court, not more than one expert may give opinion evidence on any one subject on behalf of a party.

**(2)** For the purposes of this section, where

- (a) 2 or more corporate parties are owned in part or whole by the same owners, or
- (b) one or more corporate parties owns another or other corporate parties,

those related parties shall, unless otherwise directed by the Court, be treated as one for the purpose of entitlement to call expert witnesses.

**(3)** Where the related parties referred to in subrule (2) cannot agree on the selection of one or more experts, one or more of the parties may apply to the Court for an order for directions.

AR 277/95 s14

#### **Costs re unnecessary experts**

**218.5(1)** When

- (a) the leave of the Court is obtained for evidence to be given by an expert who is in addition to the number of experts that is permitted under Rule 218.4(1), and
- (b) the trial judge is of the opinion that the additional evidence was unnecessary,

the trial judge shall require the party on whose behalf the evidence was given to pay to the other party or parties the costs unnecessarily incurred.

(2) Except where the trial judge is of the opinion that unusual circumstances exist, the trial judge shall direct that costs required to be paid under subrule (1) shall be calculated on a solicitor and client basis.

(3) If more than one party is found responsible for calling unnecessary additional evidence, the trial judge shall determine the proportion of the costs to be paid and received.

AR 277/95 s14;243/96

### **Experts Document**

**218.6(1)** At a time as may be directed by the case management judge, each party shall deliver to the other party or parties a document known as an “Experts Document”.

(2) The Experts Document shall

- (a) be signed by the proposed expert, and
- (b) contain the following information with respect to each expert proposed to be called by the party submitting the document:
  - (i) the name and qualifications of the proposed expert;
  - (ii) the proposed expert’s area of expertise;
  - (iii) any report prepared by the proposed expert on which any party proposes to rely at trial;
  - (iv) where a report referred to in subclause (iii) has not been prepared, a detailed statement of the evidence proposed to be given.

(3) Within 60 days after having been served with an Experts Document, a party shall deliver to the party who served the Experts Document a document known as a “Reply to Experts Document”.

(4) The Reply to Experts Document must contain the following:

- (a) a statement as to whether or not the qualifications of the proposed expert are accepted;
- (b) if the qualifications of the proposed expert are not accepted, the reasons for non-acceptance;
- (c) a statement as to whether or not the party disagrees with any of the evidence intended to be given by the proposed expert;
- (d) if the party disagrees with any of the evidence intended to be

given by the proposed expert, the reasons for that disagreement.

AR 277/95 s14

#### **Costs re refusal to accept an expert**

**218.7(1)** If the trial judge is of the opinion that a party was unreasonable in refusing to accept the qualifications of a proposed expert or the evidence intended to be given by the proposed expert, the judge shall require the party to pay to the other party or parties the costs unnecessarily incurred.

**(2)** Where the trial judge awards costs under subrule (1), Rule 218.5(2) and (3) apply with respect to determining those costs.

AR 277/95 s14

#### **Examination of experts**

**218.8(1)** With leave of the case management judge, any expert proposed in an Experts Document may be examined by any party opposite in interest from the party proposing to call the expert witness, as if the examination were an examination for discovery of an employee of a party conducted pursuant to Rule 200.

**(2)** Any examination carried out pursuant to subrule (1) shall be limited to the matters touching the contents of the Experts Document of the person being examined.

**(3)** The case management judge may impose conditions in advance of any examination carried out pursuant to subrule (1) with respect to the following:

- (a) limiting the examination as to length;
- (b) directing the examination's location;
- (c) directing payment of costs incurred;
- (d) any other matter concerning the examination.

AR 277/95 s14

#### **Agreement for purpose of trial**

**218.9(1)** At any time, prior to the commencement of the trial, the case management judge may order that any experts who are expected to testify at the trial consult on a without prejudice basis to determine any matters on which agreement can be reached.

**(2)** In making an order under subrule (1), the judge may set an agenda and prescribe any other terms that the judge considers appropriate with respect to the consultations.

**(3)** Where the parties and their counsel pursuant to subrule (1) determine that there are matters that are agreed to, they must prepare a joint statement indicating those matters to which there is agreement.

(4) If there are matters remaining in dispute, those matters may be prepared and be entered in evidence at the trial.

(5) Subject to any agreement reached between the parties and their counsel, all matters that form a part of the consultations of experts will be entirely without prejudice to the position of all parties and no evidence as to what took place during the consultations is receivable at the trial.

AR 277/95 s14

**Expert in rebuttal**

**218.91(1)** Subject to subrule (2), nothing in these Rules shall prohibit a party, with the leave of the Court, from calling an expert in rebuttal.

(2) If the trial judge is of the opinion that rebuttal evidence given by an expert was unnecessary, the trial judge shall require the party on whose behalf the evidence was given to pay to the other party or parties the costs unnecessarily incurred.

(3) Where the trial judge awards costs under subrule (2), Rule 218.5(2) and (3) apply with respect to determining those costs.

AR 277/95 s14

## **Part 16**

### **Pre-trial Conference**

#### **Court may direct conference**

**219(1)** In any action, cause or matter, other than a very long trial action, the court, on application of a party, or on its own motion, may in its discretion, direct the solicitors for the parties or the parties themselves to appear before it for a conference to consider

- (a) the simplification of the issues,
- (b) the necessity or desirability of amendments to pleadings,
- (c) the possibility of obtaining any admission that will facilitate the trial, and
- (d) any other matters that may aid in the disposition of the action, cause or matter.

**(2)** Following the conference, the court may make an order reciting the results of the conference and giving such directions as the court considers advisable.

**(3)** The order, when entered, shall control the subsequent course of the action, cause or matter, unless modified at the trial or hearing to prevent injustice.

**(4)** The judge who conducts a pre-trial conference in any action, cause or matter shall not be deemed to be seized of that action, cause or matter which may thereafter be tried by him or by any other judge of the court.

AR 390/68 s219;124/73;277/95

#### **Very long trial action**

**219.1(1)** In a very long trial action,

- (a) any case timetable set,
- (b) any direction given as to steps,
- (c) any directions given in respect of procedures and times in the action,
- (d) any terms imposed, and
- (e) any other directions given in the management of the action,

shall become an order of the Court, whether arising from the application of the party or from the Court on its own motion.

**(2)** Where a case management judge has ordered that certain evidence, including expert evidence, need not be called by one or more parties to a very long trial action, that order becomes a part of the record so that it may be considered in conjunction with any invitation to draw an adverse inference as a result of the failure to call that evidence.

AR 277/95 s16

## **Part 17 Points of Law and Definition of Issues**

### **May be heard before or at trial**

**220** Where any point of law has been raised by the pleadings, it may, by leave of the court, be set down for hearing at any time before trial; otherwise it shall be disposed of at trial.

AR 390/68 s220

### **Issue may be tried at or after trial**

**221(1)** The court may order any question or issue arising in a proceeding whether of fact or law or partly fact and partly law to be tried before, at or after the trial and may give direction as to the manner in which the question or issue is to be stated, and may direct any pending application to be stayed until the question or issue has been determined.

**(2)** Where it appears to the court that the decision in that question or issue tried separately substantially disposes of the proceeding or renders the trial of further issues unnecessary, it may dismiss the proceeding or make such other order or give such other judgment as it considers proper.

AR 390/68 s221

### **Issue not defined by pleadings**

**222** Where it appears to the court that the pleadings do not sufficiently define the issues of fact it may direct the parties to prepare issues; or may settle the issues to be tried, and may give directions for the trial thereof.

AR 390/68 s222

### **Court may postpone discovery**

**223** The court may order that discovery or inspection of any kind as to one or more issues be delayed until the determination of other issue or issues and may make necessary directions consequent upon its order.

AR 390/68 s223

### **Trial by different modes**

**224** The court may order that different questions of fact in a proceeding be tried by different modes.

AR 390/68 s224

## Part 18 Discontinuance

### Before entry for trial

**225(1)** The plaintiff may at any time before entry for trial by notice in writing wholly discontinue the action against all or any of the defendants or withdraw any particular claim or claims made by him in his statement of claim as against any or all of the defendants, and thereupon he shall pay that defendant's taxed costs of the action, or if the action is not wholly discontinued, the taxed costs occasioned by the matters so withdrawn.

**(2)** The discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action for the same or substantially the same cause of action.

**(3)** Except as otherwise provided in this Rule, a plaintiff may not withdraw any claim or discontinue the action without leave of the court, but the court may, before, at or after the hearing or trial, upon such terms as to costs, and otherwise as may seem just, order the action to be discontinued or any particular claim made by him to be struck out.

**(4)** The court may, in like manner and with like discretion as to terms, upon the application of the defendant, order the whole or any part of his defence or counterclaim to be withdrawn or struck out; but a defendant may not withdraw his defence or any part thereof without leave.

**(5)** If all of the parties to an action consent, the action may be discontinued without leave of the court at any time before trial by filing with the clerk a written consent to the action being discontinued signed by all of the parties.

AR 390/68 s225

### Judgment for costs

**226** A defendant may enter judgment

- (a) for the costs of the action if it is wholly discontinued against him, or
- (b) for the costs occasioned by the matter withdrawn if the action is not wholly discontinued,

if those costs are not paid within four days after taxation.

AR 390/68 s226

### Stay until costs paid

**227** If a subsequent action is brought before payment of the costs of a

discontinued action for the same or substantially the same cause of action, the court may order a stay of the subsequent action until those costs have been paid.  
AR 390/68 s227

**Repealed**

**228** Repealed AR 160/93 s14.

## **Part 19**

### **Consolidation of Actions**

#### **Order of court**

**229** Where there are two or more actions or proceedings that

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

or where for any other reason it is desirable to make an order under this Rule, the court may order that the actions or proceedings be consolidated or be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

AR 390/68 s229

## Part 20 Admissions

### Notice to admit

**230(1)** A party may by notice in writing call on any other party to admit, for the purposes of the cause, matter or issue only, any fact mentioned in the notice, including any fact in respect of a document.

**(1.1)** Each of the matters for which an admission is requested is deemed to be admitted unless, within 30 days after service of the notice the other party serves on the party requesting the admission, a statement

- (a) denying specifically the matter for which an admission is requested,
- (b) setting out in detail the reasons why the other party cannot admit those matters, or
- (c) setting out objections on the ground that some or all of the requested admissions are privileged, or irrelevant, or that the request is otherwise improper in whole or in part.

**(2)** Rule 548 does not apply to subrule (1.1) so as to permit the Court to abridge the 30-day period.

**(2.1)** Repealed AR 172/99 s11.

**(3)** A denial by a party shall fairly meet the substance of the requested admission and when he denies only a part of a matter of which an admission is requested he shall specify so much of it as is admitted and deny only the remainder.

**(4)** Where a party refuses to make a requested admission and the matter of which an admission was requested is proved at the trial the cost of proving the matter shall be paid by the party who refused to make the requested admission, whatever the result of the cause, unless the court finds that the refusal was reasonable.

**(5)** The court may at any time allow any party to amend or withdraw any admission on such terms as may be just.

**(6)** Any admission pursuant to this Rule shall be deemed to be made only for the purposes of the particular cause, matter or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the person giving the notice.

**(7)** The court may at any time set aside a notice as being improper or

unnecessary and, if any notice comprises improper or unnecessary matters, the court may direct that all costs occasioned thereby shall be borne by the party giving the notice.

AR 390/68 s230;160/93;152/98;172/99

### Written opinion

**230.1(1)** A party may, by notice in writing, call on any other party to admit as correct any written opinion included in or attached to the notice.

(2) The written opinion shall state the facts on which it is based.

(3) Each of the opinions for which an admission is requested is deemed to be admitted as correct unless, within 30 days after service of the notice or such further time as the Court or the party requesting the admission allows, the other party serves on the party requesting the admission a statement

- (a) denying specifically the opinion for which an admission is requested,
- (b) setting out the reasons why the other party cannot admit the opinion, or
- (c) setting out objections on the ground that some or all of the requested admissions are irrelevant, or that the request is otherwise improper in whole or in part.

(4) Rule 548 does not apply so as to allow the Court to abridge the time mentioned in subrule (3).

(5) Rule 230(3) to (7) apply to this Rule, with necessary changes.

AR 152/98 s10

### Prima facie proof

**231** It is sufficient if written admissions are signed by the party or by the solicitor of the party by whom or on whose behalf they purport to be made; and the production of admissions purporting to be so signed is *prima facie* proof of the fact of that signature.

AR 390/68 s231

## **Part 21 Special Case**

### **Stating questions of law**

**232(1)** The parties to any proceedings may concur in stating questions of law arising in the form of a special case for the opinion of the court and may agree that, upon the judgment of the court being given in the affirmative or the negative to the question or questions or law raised, certain specific relief may be awarded.

**(2)** Upon the argument of the case the entire contents of the documents referred to therein may be read and the court may draw from the facts and documents any inference of fact as at a trial.

AR 390/68 s232

## **Part 22 Mode of Trial**

### **Repealed**

**233** Repealed AR 182/76.

### **Judge without jury**

**234** Subject to Rule 235, unless a trial is directed to be with a jury, the mode of trial shall be by a judge without a jury.

AR 390/68 s234

### **Assessors**

**235** The court may at any time order any cause, matter or issue to be tried by a judge sitting with assessors.

AR 390/68 s235

## **Part 23**

### **Entry for Trial**

#### **Certificate of readiness or praecipe**

**236(1)** When all parties have completed all pleadings, discoveries, admissions, undertakings and interlocutory proceedings that they propose to have, they may enter the action for trial by filing a certificate of readiness in a form approved by the Court of Queen's Bench.

**(2)** An undefended action may be entered for trial by filing a certificate of readiness signed by the solicitor for the plaintiff.

**(3)** If the parties do not agree to the filing of a certificate of readiness, any party may by notice of motion supported by his certificate of readiness, apply for an Order that the action be entered for trial.

**(4)** Upon the filing of the certificate of readiness or Order, as the case may be, the clerk shall enter the action on a list of actions to be heard and it shall not be withdrawn therefrom except by

- (a) the filing of a discontinuance,
- (b) the filing of a memorandum signed by all counsel that the action has been settled, or
- (c) leave of the Court.

**(5)** Subsections (1) to (4) inclusive, do not apply to uncontested divorces which may be set for hearing by filing a praecipe and a record.

**(6)** Except by leave of the Court, a party who has filed a certificate of readiness or Order shall not initiate or continue

- (a) any interlocutory proceedings, or
- (b) any form of discovery.

AR 390/68 s236;182/76;338/83;308/91

#### **Place of trial**

**237** Subject to any statutory provision the place of trial of an action shall be regulated as follows

- (a) the plaintiff shall in his statement of claim name the place (being a place at which regular sittings of the court are held) at which he proposes that the action shall be tried;
- (b) where the cause of action arose and the parties reside (or in the case of corporations carry on business) in the same judicial district, the place to be named shall be a place at which regular

sittings of the court are held in that judicial district;

- (c) where possession of land is claimed, the place to be named shall be a place at which regular sittings of the Court are held in the Judicial District in which the land is situated;
- (d) the action shall be tried at the place so named unless the court on the application of either party otherwise orders.

AR 390/68 s237;313/81

### **Repealed**

**238** Repealed AR 182/76.

### **Record**

**239** The party entering an action for trial shall at the time of entry file a record for the use of the judge at trial containing the whole of the pleadings and the particulars, if any.

AR 390/68 s239

### **Notice to other party**

**240** Any party who has entered an action for trial shall, within 5 days of such entry, serve a copy of the certificate of readiness and the record on each other party.

AR 390/68 s240;182/76

### **Deposit for jury**

**241(1)** When direction is made that a trial be with a jury the party at whose instance the direction is made shall, unless otherwise ordered, within 10 days of the direction deposit with the clerk such sum of money as the clerk considers sufficient to pay the expenses of the jury and in the event of that sum proving insufficient the party shall upon demand pay such further sum as the clerk requires.

**(2)** Any surplus remaining after the payment of the expenses by the clerk shall be returned.

**(3)** If the deposit is not made the court may order the trial to proceed with a judge without a jury.

AR 390/68 s241;182/76

### **Trial lists**

**242(1)** Under the direction of the Chief Justice of the Court of Queen's Bench, the clerk will assign the actions to trial lists.

**(2)** In Edmonton and Calgary, at least one month before a sitting begins, the Clerk will post in the appropriate Court House, a list of the actions to be tried at the sittings, showing the number and name of the action, the names of counsel and the date and hour the trial is to begin and he will at the same time send a copy of the list to each counsel thereon by ordinary mail at his address

as shown on the file.

- (3)** In centres other than Edmonton and Calgary, the trial list will be posted up and mailed not less than 15 days before the opening of a sitting.
- (4)** After such publication of the trial date any application to adjourn the trial shall be by motion supported by such material as the Court may require.
- (5)** If two adjournments have been granted any subsequent adjournment will result in the action being removed from the trial list and thereafter it may only be re-entered on the list of actions to be heard with the leave of the Court.
- (6)** No adjournment shall be allowed by a Judge by reason only of the consent of the parties.

AR 390/68 s242;182/76;338/83

## **Part 24**

### **Delay in Prosecution of Action**

#### **Interpretation**

**243(1)** In this Part, “action” includes a proceeding.

(2) For the purposes of this Part, prejudice to adverse parties in an action caused by delay can be of any nature and is not restricted to procedural or evidentiary difficulties.

(3) Rule 548 does not apply to this Part.

AR 234/94 s2

#### **Agreement re operation of Part**

**243.1(1)** Two or more parties to an action may by express agreement exclude or vary in whole or in part the application of any portion of this Part in relation to themselves.

(2) The parties to an agreement referred in subsection (1) must give written notice of the agreement to all the other parties to the action, including parties to a counterclaim or to third or fourth-party proceedings.

AR 234/94 s2

#### **Proposal as to timing**

**243.2(1)** Any party to an action may serve a proposal on another party opposite in interest proposing the pace or timing for some act relating to the action that is already permitted by law, and in default of a written agreement being entered into between those parties in respect of that proposal, either party may move for directions respecting the pace or timing of any act that was the subject of that proposal.

(2) This Rule may be used from time to time.

AR 234/94 s2

#### **Application to court**

**244(1)** Where there has been a delay in an action, the Court on application by a party to the action may, subject to any terms prescribed by the Court,

- (a) dismiss the action in whole or in part for want of prosecution, or
- (b) give directions for the expeditious determination of the action.

(2) If the Court denies the relief sought under subrule (1)(a), the Court

- (a) shall prescribe terms or give directions that, in the opinion of the Court, are sufficient to substantially prevent or remedy, as the case may be, any non-trivial prejudice caused to any adverse party by reason of the delay, and

(b) may prescribe terms or give directions that, in the opinion of the Court, will prevent further delay in the action.

(3) If in the opinion of the Court it is unable to devise terms or directions that are sufficient to satisfy subrule (2)(a), the Court shall find that there has been serious prejudice to the party moving to dismiss the action.

(4) Where, in determining an application under this Rule, the Court finds that the delay in an action is inordinate and inexcusable, that delay shall be prima facie evidence of serious prejudice to the party that brought the application.

AR 390/68 s244;234/94

#### **Five or more years**

**244.1(1)** Subject to Rule 244.2, where 5 or more years have expired from the time that the last thing was done in an action that materially advances the action, the Court shall, on the motion of a party to the action, dismiss that portion or part of the action that relates to the party bringing the motion.

(2) This Rule does not apply in respect of an action commenced under Part 49 or Rules 754 to 757.

AR 234/94 s2

#### **Cross action, counterclaim or set-off**

**244.2** Notwithstanding Rule 244 or 244.1, where in an action

- (a) there are cross actions, or
- (b) there is a counterclaim or a plea of set-off,

any order made under Rule 244 or 244.1 may be made subject to those terms or directions that the Court considers necessary to prevent any substantial injustice.

AR 234/94 s2

#### **Affidavits**

**244.3** On an application under this Part, affidavits containing statements as to the belief of the deponent and setting out the source and grounds under which the deponent was able to form that belief are admissible in respect of the application.

AR 234/94 s2

#### **Terms and directions**

**244.4** Without restricting the generality of the Court's power to grant an order under this Part subject to any terms or directions, the Court may in granting an order do one or more of the following:

- (a) award solicitor-client costs;
- (b) deny to the party causing the delay all or any part of the party's

- substantive claim, defence or relief, whether respecting principal, damages, interest or otherwise;
- (c) curtail or forbid discovery or other interlocutory proceedings by the party causing the delay;
  - (d) require compulsory admission of facts related to the prejudice caused by the delay;
  - (e) modify the types or effect of evidence that may or may not be used at trial to prove some or all facts;
  - (f) amend pleadings;
  - (g) enlarge or abridge substantive or procedural time periods otherwise applying;
  - (h) deny costs for tardy proceedings;
  - (i) direct that costs be payable personally by a solicitor;
  - (j) require security for costs;
  - (k) award interim costs;
  - (l) give directions respecting case management.

AR 234/94 s2

**Cross-examinations**

**244.5(1)** At or after the filing of a notice of motion under Rule 244 or 244.1, any party may, by appointment issued by the clerk or an examiner, cross-examine orally and under oath any party adverse in interest in regard to matters relevant to the motion.

**(2)** The Court may set aside an appointment issued under subrule (1) or end a cross-examination, if the motion, the appointment or the cross-examination is not issued or conducted in good faith.

**(3)** The party cross-examined under this Rule may be required to make further inquiries or to produce documents.

**(4)** Nothing in this Rule affects the right of any party to cross-examine a deponent of an affidavit filed in the motion.

**(5)** On hearing a motion under this Part, the Court may draw an adverse inference against any party who in the opinion of the Court fails, without reasonable justification, to produce direct evidence on matters touching the issues in the motion.

AR 234/94 s2

## Part 25 Trial

### Nonappearance of defendant

**245** If, when an action is called for trial, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim as far as the burden of proof lies upon him.

AR 390/68 s245

### Nonappearance of plaintiff

**246** If, when an action is called for trial, the defendant appears and the plaintiff does not, the defendant, if he has no counterclaim, is entitled to judgment dismissing the action; but if he has a counterclaim he may prove his counterclaim as far as the burden of proof lies upon him.

AR 390/68 s246

### Exclusion of witness

**247** The judge at the trial may order a witness, whether he is a party or not, to be excluded from the court until he is called to give evidence and after he has given evidence not to communicate with other witnesses before they give evidence, and the judge may in his discretion if there is improper communication exclude the testimony of any witness or party.

AR 390/68 s247

### Address to jury

**248(1)** Upon a trial with a jury the addresses to the jury shall be regulated as follows

- (a) the party who begins shall be allowed to open his case to the jury and at the close of his case (if his opponent announces his intention not to adduce further evidence) to address the jury a second time for the purpose of summing up the evidence, and his opponent has the right to reply, but
  - (b) if his opponent announces his intention to adduce further evidence, the opponent has the right to open his case and then to adduce such evidence as he sees fit and thereafter to sum up the evidence, and the party who begins has the right to reply.
- (2)** When a defendant claims a remedy over against a co-defendant, he has the right to address the jury after the co-defendant.
- (3)** When a party is represented by counsel, the right conferred by this Rule shall be exercised by his counsel.
- (4)** Unless the court otherwise orders, in non-jury cases the counsel for the party on whom lies the onus of proof shall first address the court and he has the right to reply.

AR 390/68 s248

**Omission to prove a fact or document**

**249** Where through accident or mistake or other cause, any party omits or fails to prove some fact or document material to his case,

- (a) the court may proceed with the trial subject to the fact or document being afterwards proved at such time and subject to such conditions as to costs or otherwise as the court directs, and
- (b) if the case is being tried by a jury,
  - (i) the judge may adjourn the jury sittings and require the attendance of the jury trying the case upon a date to be fixed by him upon such terms as to costs as he considers just under the circumstances, or
  - (ii) the judge may, if satisfied that the fact or document is one, formal proof of which could not be seriously controverted, direct the jury to find a verdict as if the fact or document had been proved before him, and the verdict takes effect on the fact or document being afterwards proved before him; and, if not so proved, judgment shall be entered for the opposite party, unless the court otherwise directs.

AR 390/68 s249

**Assessing damages**

**250** Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment.

AR 390/68 s250

**Adjournment of trial**

**251** A judge may postpone or adjourn a trial to such time and place and upon such terms as he thinks fit.

AR 390/68 s251

**View by jury**

**252** A party to an action may apply to the court for an order for the inspection by the jury of any real or personal property, inspection of which may be material to the proper determination of the question in dispute.

AR 390/68 s252

**View by judge**

**253** The judge by whom any action is tried with or without a jury or before whom any action is brought by way of appeal, may inspect any property or thing concerning which any question arises in the action.

AR 390/68 s253

**Defamation character of plaintiff**

**254** In actions for defamation in which the defendant does not by his defence assert the truth of the statement complained of, the defendant is not entitled on the trial to give evidence in chief (with a view to mitigation of damages) as to the character of the plaintiff without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

AR 390/68 s254

**Vexatious or irrelevant questions**

**255** A judge may in all cases disallow any questions put in cross-examination of any party or other witness which appear to him to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter.

AR 390/68 s255

**Exceeding estimated time**

**255.1** Following any pre-trial procedure where counsel has at the request of a case management judge or pursuant to a practice note given an estimate of the time necessary for an examination or cross-examination of a witness, the trial judge may disallow any questions put in examination or cross-examination of the witness where the counsel has, in the opinion of the trial judge, unreasonably exceeded the estimated amount of time with respect to that examination or cross-examination.

AR 277/95 s17

**Judgment at or after trial**

**256** A judge may adjourn a case for further consideration and at or after trial may direct judgment to be entered without a motion for judgment.

AR 390/68 s256

**Nonappearance - setting aside judgment**

**257** A verdict or judgment obtained when a party does not appear at the trial may be set aside by a judge upon such terms as may seem just upon an application made within 15 days after the trial.

AR 390/68 s257

**Disagreement of jury**

**258** Where the jury disagrees, the action may be retried at the same sittings or at any subsequent sittings as may be directed.

AR 390/68 s258

**Jury's answers conflicting**

**259(1)** Where a jury is directed to answer questions and answers some but not all, or where the answers are conflicting so that judgment cannot be entered upon those findings, the action shall be re-tried as in the case of a disagreement.

**(2)** If the answers entitle either party to judgment as to some but not all the

causes of action, the judge may direct judgment to be entered on the causes of action as to which the answers are sufficient, and the issues upon the remaining causes of action shall then be re-tried as upon a disagreement.

AR 390/68 s259

**Motion for dismissal at close of plaintiff's case**

**260** At the close of the plaintiff's case, the defendant may, without being called upon to elect whether he will call evidence, move for dismissal of the action on the ground that upon the facts and the law no case has been made out.

AR 390/68 s260

## Part 26 Evidence

### Oral examination in court

**261(1)** In the absence of an agreement between the parties and subject to these Rules and *The Evidence Act* and any other enactment relating to evidence, any fact required to be proved at the trial of an action by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

### Proof by affidavit

**(2)** The court may, at or before the trial, order

- (a) that any fact or facts may be proven by affidavit, or
- (b) that the affidavit of any witness may be read at the trial, or
- (c) that any witnesses whose attendance, for some sufficient cause, ought to be dispensed with, be examined before an examiner to be appointed by the court,

but where the other party bona fide desires the production of a witness for cross-examination and the witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit.

**(3)** In any case or matter begun by originating notice or petition and upon any application or motion evidence may be given by affidavit unless these Rules otherwise provide or the court otherwise directs.

AR 390/68 s261

### Evidence by telephone, audio-visually or otherwise

**261.1** On application to the Court and on showing good reason for doing so, the Court may permit evidence to be admitted by telephone, audio-visually or by other means satisfactory to the Court.

AR 152/98 s11

### Evidence in subsequent hearings

**262** Any evidence taken at the trial may be used in any subsequent proceedings in that cause or matter.

AR 390/68 s262

### Read former evidence

**263** An order to read evidence taken in another cause or matter is not necessary; but that evidence may, with all just exceptions, be read

- (a) on ex parte applications by leave of the court to be obtained at the time of making the application, and

- (b) in any other case, upon the party desiring to use such evidence, giving two days' previous notice to the other parties of his intention to read the evidence.

AR 390/68 s263

**Copies of filed documents**

**264** Whenever any person wishes to produce to the court any pleading or other proceeding filed in any office of the court he may produce a copy certified by the officer in whose custody the pleading or other proceeding is, and the copy is admissible in evidence to the same extent as the original would be admissible.

AR 390/68 s264

**Certificate of money paid into bank**

**265** Where money is directed to be paid into a bank, the certificate of the manager, agent, accountant or other like officer of the bank at the place where the money is made payable of the payment or default in making the payment is sufficient proof of the payment or default.

AR 390/68 s265;160/93

**Examination of witness by officer**

**266** A party to an action or proceeding may by service of an appointment issued by an officer having jurisdiction in the judicial district where the witness resides to issue appointments for the examination of parties for discovery, require the attendance of a witness to be examined before that officer for the purpose of using his evidence upon any motion, petition or other proceeding before the court or any judge or judicial officer in chambers; and his attendance may be procured and his examination conducted in the same manner as those of a witness at the trial.

AR 390/68 s266

**Evidence on motion**

**267(1)** For the purpose of a motion, the court may order documents to be produced and witnesses to appear and be examined orally before the court or before any other person and at any place.

**(2)** No person shall be compelled to produce under the order any writing or other document which he could not be compelled to produce at the hearing or trial.

AR 390/68 s267

**Examination as in trial**

**268** The examination shall, unless otherwise ordered, be conducted in accordance with the practice at trials so far as it is applicable.

AR 390/68 s268

**Order may be varied**

**269** An order made under this Part may, on sufficient cause being shown, be revoked or varied by a subsequent order made at or before the trial.

AR 390/68 s269

## Evidence Taken Out of Court

### Commission

**270(1)** The court may, in any cause or matter where it appears necessary for the purposes of justice, order a person to be examined upon oath before an officer of the court, or any other person, and at any place whether within or without the jurisdiction.

**(2)** Where the testimony of a person who is resident outside of Alberta is required, the court may order the issue of a commission for the examination of the person.

**(3)** The examination shall, unless otherwise ordered, be conducted in accordance with the practice upon examination of witnesses at the trial, so far as it is applicable.

AR 390/68 s270

### Report of examiner

**271** The person taking the examination of a witness under this Part may, and if necessary shall, make a special report to the court regarding the examination and the conduct or absence of any witness or other person thereon, and the court may direct such proceedings and make such order as upon the report it thinks just.

AR 390/68 s271

### Witness refusing to attend

**272** If a witness resident within the jurisdiction, or a party, wherever resident, for whose examination an order has been made or a commission has issued, wilfully refuses to attend before the examiner or commissioner, or if, having attended, he refuses to be sworn or to affirm, or to answer any lawful question, the party requiring the attendance of the person may, upon proof of the refusal by the certificate of the examiner, apply to the court for an order directing the person to attend or be sworn or answer any question.

AR 390/68 s272

### Notice of intention to take evidence

**273(1)** Notice of intention to proceed to take the examination shall be given to the opposite party if, within the time prescribed by the order, he gives the name and the address of a person resident within five miles of the place where the examination is to be held, on whom the notice may be served.

**(2)** If no agent is named, or the name or address given proves to be illusory or fictitious, or if the party so notified fails to attend pursuant to the notice, a commission or order may be carried out ex parte.

AR 390/68 s273

### Oath or affirmation

**274** The witnesses shall be examined on oath in accordance with their religion, but if a person objects to taking an oath, or is objected to as

incompetent to take an oath, then the commissioner or examiner may require the witness to make an affirmation and declaration instead of taking an oath.

AR 390/68 s274

#### **Examination reduced into writing**

**275** Unless otherwise directed by the order or commission the examination of witnesses shall be by oral questions and the oral questions and the answers thereto shall be reduced into writing and returned with the order or commission.

AR 390/68 s275

#### **Interrogatories**

**276** Where the examination is to take place upon written interrogatories,

- (a) the interrogatories in chief shall be delivered to the opposite party, unless otherwise ordered, at least eight days before the dispatch of the order or commission, and
- (b) the cross-interrogatories shall be delivered to the opposite party, unless otherwise ordered, within four days after the receipt of the interrogatories in chief,

and in default of cross-interrogatories being delivered the opposite party may dispatch the order or commission without cross-interrogatories.

AR 390/68 s276

#### **Interpreter**

**277** Where a witness does not understand the English language, the order or commission shall, unless otherwise ordered, be carried out with the aid of an interpreter nominated by the examiner or commissioner, and sworn by him to interpret truly the questions to be put to the witness and the answers thereto, and the examination shall be taken in English.

AR 390/68 s277

#### **Copy of documents**

**278** If a witness produces a book, paper or document and refuses for good cause, (to be stated in his deposition) to part with the original, then a copy or extract certified by the examiner or commissioner to be a true and correct copy or extract, shall be annexed to the deposition of the witness.

AR 390/68 s278

#### **Shorthand**

**279** The depositions shall be taken in shorthand unless otherwise provided by the order or commission or unless the parties otherwise agree.

AR 390/68 s279

#### **Reporter**

**280** If the examination is to be taken in shorthand, the examiner or commissioner may take the same in shorthand or employ a shorthand writer

who shall be sworn.

AR 390/68 s280

### **Video recording**

**280.1(1)** Notwithstanding Rule 279, if permitted or otherwise directed by the court, an examination may, in addition to or in substitution for taking depositions in shorthand, be audio-visually recorded by means of a video recording device.

**(2)** Where an examination is recorded pursuant to this Rule, the person operating the video recording device that is recording the examination shall give a certificate certifying

- (a) the date, time and place at which the examination took place,
- (b) the name of the person being examined and of the person carrying out the examination,
- (c) whether the audio-visual recording is of the entire examination or only a portion of the examination, and
- (d) any other matter directed by the court.

**(3)** An examination that is audio-visually recorded under this Rule shall be treated by the court in the same manner as if the examination was taken down in shorthand under Rule 279, but if in the opinion of the court the technical quality of the audio-visual recording is not adequate, the court may direct that the recording not be used or give any other direction that the court considers appropriate in the circumstances.

AR 243/96 s8

### **Witness shall sign deposition**

**281(1)** Unless the examination is taken in shorthand, the deposition shall be signed by the witness and by the examiner or commissioner; but if the witness refuses to sign the deposition, the commissioner or examiner shall sign it.

**(2)** When taken in shorthand, it is not necessary that the depositions or the transcript thereof be read over and signed by the person examined, but the transcript thereof shall be read over to him if any of the parties so desire.

**(3)** A copy of the deposition or transcript certified by the examiner or commissioner shall for all purposes have the same effect as the original deposition.

AR 390/68 s281

### **Return of commission**

**282(1)** The depositions and any interrogatories and cross-interrogatories and any exhibits or certified copies thereof or extracts therefrom shall be sent to the proper officer on or before such day as may be ordered.

(2) Unless the court otherwise orders, when the examination is taken pursuant to a commission, the examination or certified copies thereof shall be given in evidence, saving all just exceptions.

(3) Unless the court otherwise orders, when the examination is taken pursuant to Rule 270(1), the examination or certified copies thereof may be given in evidence upon proof of the unavailability of the witness examined, or upon any other just cause being shown.

AR 390/68 s282

### Costs

**283** Where by an order or commission the opposite party is also entitled to join in the commission and examine witnesses on his own behalf, each party shall, in the first instance, pay the costs of the commission consequent upon the examination of his witnesses.

AR 390/68 s283

### Objections

**284(1)** If any objection is taken to any question put to a witness,

- (a) the question so put, and the objection thereto, shall be recorded by the examiner or commissioner, and transmitted by him to the proper officer, and
- (b) the validity of the objection shall be decided by the court, and the examination as to the evidence objected to stands adjourned until the validity is determined

but the examination may continue as to any other evidence.

(2) Notwithstanding subrule (1) the parties may agree that any such question shall be answered by the witness and the validity of the objection and the admissibility of the answer decided by the court.

AR 390/68 s284

### Oath of commissioner

**285** The commissioner or examiner shall, unless otherwise ordered, take his oath of office before some person authorized to take affidavits outside Alberta for use within Alberta.

AR 390/68 s285

### Conduct money

**286** Any person required to attend for the purpose of being examined or producing any document is entitled to collect conduct money in payment for expenses and loss of time as upon attendance at a trial in court.

AR 390/68 s286

### Oath of Witness

**287** Any officer of the court, or other person directed to take the examination of any witness or person, may administer the oath, or take an

affirmation and declaration.

AR 390/68 s287

#### **Rules to be sent to examiner**

**288** Every order for examination or for a commission shall be read as if it contained the particulars set forth in Rules 273 to 287 and need not set them forth but may contain any variations therefrom, and any other directions which the court sees fit to make, and a copy of those Rules shall be delivered to the examiner or commissioner with the order or commission.

AR 390/68 s288

#### **Opening of Commission**

**289** An order for examination or a commission when returned shall be opened at the trial, or before the trial at the instance of any party, without order by the officer to whom it is returned, on two clear days' notice to parties interested.

AR 390/68 s289

#### **Request in lieu**

**290** If in any case the court so orders there shall be issued a request to examine witnesses in lieu of a commission.

AR 390/68 s290

#### **Form of commission**

**291** A commission to examine witnesses shall be in Form E, with such variations as the circumstances require.

AR 390/68 s291

### **Compelling Attendance of Witnesses**

#### **Other party**

**292** A party who desires to call as a witness at the trial an opposite party may give him or his solicitor at least five days' notice of the intention to examine him as a witness in the cause, paying at the same time the amount proper for conduct money, and, if the opposite party does not attend on the notice, judgment may be pronounced against him or the trial of the action may be postponed.

AR 390/68 s292

#### **Witness**

**293** Whenever a party desires to call any person as a witness at the hearing or trial of any action or proceeding he may serve him with a notice requiring him to attend thereon, stating the time and place at which he is required to attend and the documents, if any, which he is required to produce, but the notice is not effective unless at the time of service or prior thereto or within a reasonable time prior to the time at which he is required to attend, he is paid the proper amount of conduct money.

AR 390/68 s293

**Failure to attend**

**294(1)** Where the Court is satisfied that

- (a) a notice to attend has been served on a witness,
- (b) the witness has failed to attend or remain in attendance in accordance with the notice,
- (c) the witness has been paid the proper conduct money or the proper conduct money has been tendered to the witness, and
- (d) the presence of the witness is material to the ends of justice,

the Court may by its warrant direct any peace officer to cause the witness to be apprehended from any place in Alberta.

**(2)** In issuing a warrant under subrule (1), the Court may direct any one or more of the following:

- (a) that the witness be brought forthwith before the Court;
- (b) that the witness be detained in custody as the Court may order until the presence of the witness is no longer required by the Court;
- (c) that the witness be released on a recognizance, with or without sureties, on the condition of the appearance of the witness to give evidence.

**(3)** The service on a witness of the notice and the payment or tendering to the witness of conduct money may be proved by an affidavit.

AR 390/68 s294;277/95

**Conduct money**

**295** Any person required to attend for the purpose of being examined or of producing any document is entitled to the like conduct money as upon attendance at a trial in court.

AR 390/68 s295

**Order to produce prisoner**

**296** The court may order the gaoler or other officer having the custody of any prisoner to produce him for any examination authorized by these Rules.

AR 390/68 s296;277/95

**Notice of persons not to be called**

**296.1(1)** When, in law, an adverse inference might be drawn from the failure of a party to call a witness, that party may serve on any other party a notice of persons not to be called.

- (2) A notice under this Rule shall be served not less than 30 days before the trial commences.
- (3) The party on whom the notice is served shall, within 15 days of service of the notice, serve on the other party a statement setting out any objection to the intention not to call a person.
- (4) If the party on whom the notice is served does not respond to the notice of intention not to call a person, the failure to call that person is not to be found to be adverse to the case of the party serving the notice.
- (5) When a party objects to the intention not to call a person, the cost of calling that person shall be paid by the party who objected, whatever the result of the cause, matter or issue, unless the Court determines that the objection was reasonable.
- (6) Rule 548 does not apply so as to allow the Court to abridge the time mentioned in subrules (2) and (3).

AR 152/98 s12

### **Perpetuating Testimony**

#### **Entitlement upon future event**

- 297(1)** Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of that event, may apply to the court by originating notice for an order to perpetuate any testimony which may be material for establishing his right or claim.
- (2) The originating notice shall be served on such parties as the court on ex parte application directs.
- (3) The evidence shall be taken in such manner as the court orders and then filed with the clerk.

AR 390/68 s297

### **Affidavits**

#### **Formal contents**

- 298(1)** An affidavit must
- (a) be titled in a cause or matter or in an intended action,
  - (b) be drawn up in the first person stating the deponent's name in full, and the deponent's occupation and place of abode, and
  - (c) have the name of the deponent and the date it was sworn stated at the top of the front page and the backer.

**(2)** An affidavit referred to in subrule (1) is not invalid or otherwise improper by reason only that it was sworn before the cause or matter commenced.

AR 390/68 s298;87/92;166/94;52/2001

#### **Execution**

**299** An affidavit shall be signed by the deponent and the jurat shall be signed by the person before whom it was sworn and may be sworn before the solicitor who prepared the affidavit or by any person in his office authorized to administer oaths.

AR 390/68 s299;124/73

#### **Date and place**

**300** The date when and the place where the affidavit is taken shall be expressed in the jurat.

AR 390/68 s300

#### **More than one deponent**

**301** In an affidavit made by two or more deponents the names of the persons making the affidavit shall be inserted in the jurat, but if the affidavit of all the deponents is taken at one time by the same officer, it is sufficient to state that it was sworn by both, or all, of the “above named” deponents.

AR 390/68 s301

#### **Blind or illiterate deponent**

**302** Where it appears to the officer administering the oath that the deponent is illiterate or blind, he shall certify in the jurat that,

- (a) the affidavit was read in his presence to the deponent,
- (b) the deponent seemed perfectly to understand it, and
- (c) the deponent made his signature or mark in his presence,

and the affidavit shall not be used in evidence without such a certificate unless the court is otherwise satisfied it was read to and appeared to be perfectly understood by the deponent.

AR 390/68 s302

#### **Interpreter**

**303** Where it appears to the officer taking the affidavit that the deponent does not understand the English language,

- (a) the contents of the affidavit before being sworn shall be interpreted to the deponent by some person competent so to interpret and who before interpreting shall by the officer be sworn to well and truly interpret the affidavit and oath, and
- (b) the officer shall in the jurat certify that the affidavit was in his belief interpreted to the deponent by the sworn interpreter.

AR 390/68 s303

**Numbers**

**304(1)** Every affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

**(2)** Dates, sums and other numbers may be expressed in figures and not in words.  
AR 390/68 s304

**Facts and belief**

**305(1)** Affidavits shall be confined to the statement of facts within the knowledge of the deponent.

**(2)** In an action or proceeding to which a corporation is a party any affidavit required by these Rules to be made by a party may be made by an officer, servant or agent of the corporation having knowledge of the facts required to be deposed to, who shall state therein that he has that knowledge.

**(3)** On interlocutory motions affidavits containing statements as to the belief of the deponent with the source and grounds thereof may be admitted.  
AR 390/68 s305

**Irregularity of form**

**306** An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.  
AR 390/68 s306

**Striking out matters**

**307** The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.  
AR 390/68 s307

**Alteration**

**308** An affidavit having in the jurat or body thereof an interlineation, alteration or erasure, shall not be used without leave unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit.  
AR 390/68 s308

**Officers empowered to swear**

**309** Affidavits sworn in Alberta to be used in Court or in chambers shall be sworn before a judge, clerk of the court, deputy clerk, notary public, justice of the peace or commissioner empowered to administer oaths.  
AR 390/68 s309

**Filing and service**

**310** Affidavits upon which an application is founded shall be filed before the service of the notice of motion or petition and shall be served with the notice of motion or petition.

AR 390/68 s310

**Exhibits**

**311(1)** Any document to be used in conjunction with an affidavit shall be an exhibit to the affidavit.

(2) An exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn.

(3) Exhibits to an affidavit must be legible.

(4) If the total number of pages for an affidavit and exhibits exceeds 25 pages and if the exhibits are attached to the affidavit,

- (a) the exhibit must be separated by tabs, and the pages within each tab must be numbered consecutively, or
- (b) the pages of the affidavit and all exhibits must be consecutively numbered using a single series of numbers.

AR 390/68 s311;52/2001

**Filing of exhibits**

**312** Where a properly marked exhibit is referred to in an affidavit filed and is not annexed thereto, the exhibit need not be filed and shall be handed out on the disposal of the motion, unless otherwise ordered.

AR 390/68 s312

**Use after filing**

**313** Any affidavit which has been made and filed in any cause or matter may be referred to and used at any stage of the proceedings in any application in chambers.

AR 390/68 s313

**Examinations on affidavit**

**314(1)** A person who has made an affidavit, including an affidavit of documents, filed in any action or proceedings, may be cross-examined on the affidavit without order.

(2) The deponent may be required to attend in the same manner as a party being examined for discovery and the procedure on his examination is subject to the same Rules, so far as they are applicable, as the Rules that apply to the examination for discovery of a party.

(3) The party conducting the cross-examination shall cause a transcript of

the cross-examination to be filed unless dispensed with by the Court.

(4) Upon application by the party seeking the cross-examination, the Court may dispense with the tender of conduct money and require that the party filing the affidavit produce the deponent for cross-examination.

(5) For the purpose of requiring the attendance of the deponent at the cross-examination, the party filing the affidavit is entitled to serve a copy of the Appointment upon the person to be examined and upon payment of proper conduct money the person to be examined shall attend and submit to examination.

AR 390/68 s314;313/81

**Time to file and serve**

**314.1(1)** Where an affidavit is to be used at a hearing in opposition to a motion or application or in reply, that affidavit shall be filed with the clerk at the location at which the motion or application is to be heard and served on the other parties to the motion or application,

- (a) no later than 24 hours prior to the time that the hearing of the motion or application is to be held, in the case of a motion or application that is made in respect of proceedings that have been commenced, and
- (b) no later than 3 days prior to the day that the hearing of the motion or application is to be held, in the case of a motion or application that is not made in respect of proceedings that have been commenced.

(2) The Court may on application extend the time for filing and serving an affidavit under subrule (1) subject to any terms or conditions, including costs, as the Court may direct.

AR 390/68 s314.1;243/96