

Part 27

Judgment

Numbered paragraphs

315 Judgments and orders shall be divided into convenient paragraphs numbered consecutively.

AR 390/68 s315

Application at any time

316 It is not necessary in any judgment or order to reserve liberty to apply, but any party may apply to the Court from time to time as he may be advised.

AR 390/68 s316

Date and name of judge

317 Every judgment or order shall show the day of the week, month and year on which it was made, the name of the officer, judge, or judges making it, and the date of entry.

AR 390/68 s317

Settled by Registrar or clerk

318(1) Judgments and orders of the Court of Appeal shall be settled by the Registrar at the place where the case is argued or the order made, or by the Court or a judge thereof.

(2) Judgments and orders of a judge of the Court of Queen's Bench shall be settled by the clerk of the court for the judicial district within which the judgment is pronounced or order made, or by the judge.

(3) The minutes of any judgment or order when settled by the clerk or Registrar may be varied by the Court which made the judgment on the application of either party.

AR 390/68 s318;338/83

Appointment to settle minutes

319(1) After the proposed minutes of the judgment or order have been prepared the Registrar or clerk may issue an appointment for settling minutes of the judgment or order.

(2) A copy of the proposed minutes shall be served with a copy of the appointment.

AR 390/68 s319

Settling minutes

320 At a hearing to settle minutes of a judgment or order the Registrar or clerk may

- (a) if either party does not attend pursuant to the appointment served, proceed ex parte to settle the minutes, or

- (b) adjourn the hearing from time to time on terms as to costs or otherwise.
AR 390/68 s320

Signing judgments and orders

321(1) Judgments and orders of the Court of Appeal shall be signed by the Registrar.

(2) Judgments and orders of the Court of Queen's Bench shall, unless otherwise ordered, be signed by the clerk of the Court in whose office the action was commenced.

(3) Orders made by a judge or master in chambers may be signed by the judge or master or by the chambers clerk or by the clerk of the court in whose office the action was commenced.

(4) Orders made by an officer sitting in chambers shall be signed by him.
AR 390/68 s321;338/83

Coming into force of orders and judgments

322(1) Every judgment and order is to be dated as of the day on which it is pronounced.

(2) Every judgment and order takes effect from

- (a) the date of pronouncement, or
- (b) if the Court gives leave for the judgment or order to come into force before or after the date of pronouncement, the judgment or order takes effect from the date so ordered.

(3) This Rule applies whether or not the judgment or order has been entered in accordance with these Rules.

AR 390/68 s322;101/99

Approval of judgment or order re Court of Appeal

323 If a judgment or an order of the Court of Appeal is not signed forthwith on the granting of the judgment or the order, that judgment or order may be signed subsequently in one or more of the following circumstances:

- (a) on notice to all parties;
- (b) in ex parte proceedings;
- (c) where the form of the judgment or order is approved by the opposing solicitor or party.

AR 390/68 s323;269/97

Approval of judgment or order re Court of Queen's Bench

323.1(1) In this Rule, “judge” means, in respect of a judgment or an order of the Court of Queen's Bench, the judge who granted the judgment or order and includes a master or other judicial officer who granted a judgment or an order.

(2) Neither a judgment nor an order of the Court of Queen's Bench that is not signed forthwith by the judge on the granting of the judgment or the order shall be subsequently signed except in accordance with this Rule.

(3) If a judgment or an order of the Court of Queen's Bench is not signed forthwith on the granting of the judgment or the order, that judgment or order may be signed subsequently by the judge in one or more of the following circumstances:

- (a) on notice to all parties;
- (b) in ex parte proceedings;
- (c) in proceedings where the opposing solicitor or party did not attend;
- (d) where the form of the judgment or order is approved by the opposing solicitor or party;
- (e) where the Court directs that the approval of the form of the judgment or order by the opposing solicitor or party pursuant to clause (d) is not required;
- (f) where the opposing solicitor or party waives the approval of the form of the judgment or order.

(4) Notwithstanding Rule 318(2), where a judgment or an order is to be signed pursuant to subrule (3), that judgment or order must

- (a) be presented for signing to the judge, accompanied by the clerk's notes that are relevant to that judgment or order, and
- (b) be signed by the judge on the judge's being satisfied that the judgment or order reflects the judgment or order that had been granted.

(5) For the purposes of subrule (4), a judgment or an order may be presented for signing

- (a) directly to the judge, or
- (b) to the judge through the clerk's office located in the judicial centre where the judgment or order was granted, in which case the clerk shall present the documentation in its original copy or, where appropriate, by telecopier to the judge for signing.

AR 269/97 s6;152/2000

Conditional upon affidavit

324 Where judgment may be signed upon the filing of any affidavit of production of any document, the officer shall examine the affidavit or document produced and if it is regular and contains all that is by law required, he shall sign judgment accordingly.

AR 390/68 s324

Signed pursuant to order

325 Where judgment may be signed pursuant to an order or certificate, the production of the order or certificate is a sufficient authority to the officer to sign judgment accordingly upon the condition, if any, specified by the order or certificate.

AR 390/68 s325

Filing

326(1) Every judgment or order shall be entered by filing it with the officer entering it, who shall make a note of the entry and the date thereof at the foot of the judgment or order, and a certified copy thereof under the seal of the court shall be received for all purposes as of the same force and effect as the original judgment or order.

(2) Upon the entry of a judgment or order the officer with whom it is entered shall, without additional charge, certify a copy thereof for the party entering it.

AR 390/68 s326

After one year

327 No judgment or order shall be entered more than one year after its pronouncement except by leave of the court, to be obtained upon notice.

AR 390/68 s327

Judgment or order conditional

328 Where a judgment or order is obtained upon a condition and the condition is not complied with the judgment or order shall be deemed to have been waived or abandoned as far as it is beneficial to the person obtaining it and unless the court otherwise directs, any person interested in the matter on the breach or non-performance of the condition may either take such proceedings as the judgment or order in such case warrants, or such proceedings as might have been taken if the judgment or order had not been made.

AR 390/68 s328

Judgment by consent

329(1) Where a defendant has filed a defence or demand of notice by a solicitor, no judgment or order shall be made by consent unless the consent of the defendant is given by his counsel or solicitor.

(2) Where a defendant

- (a) has not filed a defence or a demand of notice, or
- (b) has filed a defence or demand of notice in person or by a solicitor who has ceased to act for him

no judgment or order shall be made by consent unless the written consent of the defendant with an affidavit of execution thereof, is filed on the application for the judgment or order.

AR 390/68 s329

Further directions

330 If, after a judgment or order has been entered, it appears that further directions are necessary to ensure to any party the relief to which he is entitled, the court may make such further or other order and give such further or other relief as the nature of the case requires, if the further or other relief does not necessitate any variation of the original judgment or order as to any matter decided by it.

AR 390/68 s330

New judgment

331(1) Where a judgment or any part thereof remains unsatisfied, a judgment creditor, at any time before proceedings under the judgment would be barred by *The Limitation of Actions Act*, may serve upon the judgment debtor a notice of motion requiring him to appear before a judge in chambers and show cause why the judgment creditor should not have a new judgment for the amount remaining due and unpaid on the original judgment and the proceeding shall be deemed an action on a judgment or order of the court.

(2) Rule 548 does not apply to subrule (1).

(3) The notice of motion shall issue in the original cause or matter and shall be served upon the judgment debtor in the same manner as a statement of claim at least 15 days before its return date.

(4) If, upon the return of the motion, the judgment debtor does not appear and the court is satisfied

- (a) as to service of the notice of motion, and
- (b) as to the amount still due and unpaid under the original judgment

the court may order that the judgment creditor have leave to enter a new judgment for the amount so due and costs, if in the discretion of the court costs are allowed.

(5) If the judgment debtor appears and disputes the judgment creditor's claim in whole or in part, the court may give directions for the trial of an issue with or without pleadings as the circumstances of the case require, and give all necessary directions.

AR 390/68 s331

Account or inquiry directed

332(1) Where a judgment or order is made directing an account of debts, claims or liabilities or an inquiry for heirs, next of kin or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time fixed for that purpose by the court, shall be excluded from the benefit of the judgment or order.

(2) The court may direct that notice of the time so fixed be given by publication in a newspaper or newspapers to be specified by him and unless otherwise directed no other notice is required.

AR 390/68 s332

Satisfaction

333(1) A memorandum of satisfaction of judgment shall be entered by the clerk in the procedure book

- (a) on a consent to the satisfaction signed by the person entitled to the benefit of the judgment, with an affidavit of execution thereof, or signed by his solicitor on the record, or
- (b) on the order of the court.

(2) The order shall be obtained on notice and upon such proof of satisfaction as the court requires.

AR 390/68 s333

Application after accounts etc. directed

334(1) Where accounts, inquiries or issues have been directed or issues or questions of fact are to be determined, the plaintiff may apply, on notice, for judgment as soon as the issues or questions have been determined.

(2) If he does not so apply within 10 days after his right to do so has arisen, then any defendant may apply, on notice, for judgment.

AR 390/68 s334

Application where issues ordered

335 Where issues have been ordered to be tried or issues or questions of fact to be determined and some only of the issues or questions of fact have been tried or determined any party who considers that the result of the trial or determination

- (a) renders the trial or determination of the others of them unnecessary, or

- (b) renders it desirable that the trial or determination thereof should be postponed,

may apply, on notice, for judgment or for a postponement or for other directions.
AR 390/68 s335

Motion for judgment

336 Except where it is provided that judgment may be obtained in any other manner, judgment may be obtained by motion for judgment.

AR 390/68 s336

Inferences

337 Upon a motion for judgment the court may draw all inferences of fact not inconsistent with the finding of the jury and, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute or any of them or for awarding any relief sought may give judgment accordingly, or may, if it is of the opinion that it has not sufficient material before it to enable it to give judgment direct issues or questions to be tried or accounts and inquiries to be taken.

AR 390/68 s337

Fiats

338(1) All fiats made by a judge shall be filed in the office of the clerk and the clerk shall enter them in the procedure book.

(2) A fiat may be endorsed on any document already filed or required to be filed in court.

AR 390/68 s338

Corrections

339 Clerical mistakes in judgments or orders, or errors therein arising from any accident, slip or omission may at any time be corrected by the court on motion.

AR 390/68 s339

Part 28 Enforcement of Judgments and Orders

Division 1 General

Definitions

340 In this Part,

- (a) “judgment” includes an order of the Court;
- (b) “judgment creditor” means a person who is entitled to enforce a judgment;
- (c) “judgment debtor” means a person against whom a judgment may be enforced;
- (d) “related writ” means a related writ as defined in the *Civil Enforcement Act*.

AR 390/68 s340;277/95

How to proceed

340.1 An application under the *Civil Enforcement Act*

- (a) shall be made by way of an originating notice unless the application is made in respect of proceedings that have been commenced, and
- (b) shall not be made ex parte unless it is expressly authorized under the *Civil Enforcement Act* or Rule 387(1) to be made ex parte.

AR 243/96 s10

Stay of judgment

341(1) The Court may by order, at or after the time that a judgment is granted, stay the enforcement of the judgment or remove or extend any stay already granted in respect of the judgment.

(2) Where the Court by order grants or extends a stay in a proceeding under the *Civil Enforcement Act*,

- (a) the order may be registered in the Personal Property Registry, and
- (b) until the order is registered in the Personal Property Registry, the order does not affect any person who does not have actual knowledge of the order.

AR 277/95 s20

Enforcement

342 An order of the Court may be enforced against all persons bound by the order in the same manner as a judgment to the same effect may be enforced.

AR 390/68 s341;277/95

Payment into Court

343 Any judgment for the payment of money into Court may be enforced in any manner in which a judgment for the payment of money to a person may be enforced.

AR 390/68 s342;277/95

Minors, persons of unsound mind, classes

344(1) Where

- (a) money, other than for costs, is recovered
 - (i) by or on behalf of a minor or a person of unsound mind by that person's guardian, next friend or committee, or
 - (ii) on behalf of a class,
- and
- (b) no other provision is made by law,

that money must, unless otherwise ordered, be paid into Court subject to further order.

(2) A payment made to

- (a) the guardian, next friend or committee on account of money due to a minor or person of unsound mind, or
- (b) a person having the conduct of proceedings on behalf of a class,

otherwise than for the costs of the action, is not a valid discharge as against the minor or person of unsound mind or the class.

AR 390/68 s343;277/95

Relief subject to conditions

345 If under a judgment a party is entitled to relief subject to, or on the fulfilment of, a condition or contingency, that party may, on the fulfilment of the condition or contingency, apply to the Court for leave to issue a writ.

AR 390/68 s345;277/95

Persons who are not parties

346 Where a person is not a party to a cause or a matter but

- (a) that person obtains an order or an order is obtained in that person's favour in respect of that cause or matter, that person

may enforce the order in the same manner as if that person were a party to the cause or matter, or

- (b) that person is subject to an order or a judgment granted in respect of that cause or matter, the order or judgment may be enforced against that person in the same manner as if that person were a party to the cause or matter.

AR 390/68 s357;277/95

Duration

347 Unless otherwise provided for by an enactment, and except for the purposes of that enactment, a writ remains in force so long as the judgment in respect of which the writ was issued remains in force.

AR 390/68 s363;277/95

Amount owing

348 The amount owing at any time on a writ is the total of

- (a) the amount of the judgment in respect of which the writ was issued,
- (b) the taxable costs that are not included in the amount of the judgment, and
- (c) interest owing in respect of the judgment and taxable costs,

less the amounts, if any, paid to the judgment creditor on account of the judgment.

AR 277/95 s20

Changes of name

349 Where the name shown on a judgment or a writ of a person who is entitled to enforce the judgment or writ is incorrect or has changed, the clerk may, without an order of the Court, issue a writ or amend a writ that has already been issued so that the person is properly named in the writ.

AR 277/95 s20

Clerical errors

349.1 Where there is a clerical error on a writ, the clerk may, without an order of the Court, correct the error on the face of the writ.

AR 243/96 s11

Assignment

350(1) A person who is entitled to enforce a writ may, without an order of the Court, make a total or partial assignment of the writ to another person.

(2) The clerk, on being satisfied that all of the judgment creditor's rights under a writ have been assigned, may, without an order of the Court, amend the writ to show the name of the assignee.

(3) The clerk, on being satisfied that a portion of the judgment creditor's rights under a writ have been assigned, may, without an order of the Court, divide the writ and issue

- (a) a replacement writ to the judgment creditor indicating the amount that remains owing under the writ to the judgment creditor, and
- (b) a replacement writ to the assignee indicating the amount that is owing under the writ to the assignee.

(4) Where a replacement writ is issued under subrule (3), that writ

- (a) stands in the place of the writ that is being replaced, and
- (b) shall be dated with the same date as that shown on the writ that is being replaced.

AR 277/95 s20

Court order

351 A party claiming to be entitled to enforce a judgment may apply to the Court for an order directing one or more of the following:

- (a) that a writ be issued showing the proper name of the judgment debtor where the judgment debtor's name as shown on the judgment is not the judgment debtor's proper name;
- (b) that a change be made to a writ;
- (c) that a new writ be issued;
- (d) that any issue or question necessary to determine the rights of the parties be tried in any way in which a question in an action may be tried.

AR 277/95 s20

Separate writs

352 When a judgment is granted for the recovery of both land and money, whether for costs or otherwise, and a writ is to be issued,

- (a) a writ of possession may be used for the recovery of the land, and
- (b) a writ of enforcement may be used for the recovery of the money.

AR 390/68 s350;277/95

Service of documents

353(1) In this Rule and Rules 354 and 355, "document" means, in respect of a document or notice under the *Civil Enforcement Act* or in respect of matters coming under that Act, a document or notice that is issued or granted

- (a) subsequent to the granting of a judgment, or

(b) in respect of a claim made under Part 3 of that Act.

(2) Unless the *Civil Enforcement Act* or these Rules expressly require otherwise, a document that is to be served under the *Civil Enforcement Act* may be served or delivered as follows:

(a) on an individual, by leaving the document with the individual or by sending the document by registered mail addressed

(i) to the individual at the individual's residence, or

(ii) to the name and address of any business of the individual;

(b) on all members of a partnership,

(i) by leaving the document with

(A) one or more of the general partners, or

(B) a person having control or management of the partnership business,

or

(ii) by sending the document by registered mail addressed to

(A) the partnership,

(B) any one or more of the general partners, or

(C) any person having control or management of the partnership business,

at the address of the partnership business;

(c) on a corporation, other than a municipality,

(i) by leaving the document with an officer or director of the corporation or person in charge of any office or place of business of the corporation,

(ii) by leaving the document at, or by sending the document by registered mail addressed to, the registered or head office of the corporation, or

(iii) where the corporation has its registered or head office outside of Alberta, by leaving the document with, or by sending the document by registered mail addressed to, its attorney for service appointed under Part 21 of

the *Business Corporations Act*;

- (d) on a municipal corporation, by leaving the document with, or by sending the document by registered mail addressed to, the principal office of the corporation or the chief administrative officer of the corporation;
- (e) on an association,
 - (i) by leaving the document with an officer of the association, or
 - (ii) by sending the document by registered mail addressed to an officer of the association at the address of the officer.

(3) A document that is sent by registered mail is deemed to be served or delivered

- (a) when the addressee actually receives the document, or
- (b) on the expiry of 7 days from the day that the mail is sent by the sender,

whichever is earlier.

(4) If the Court is satisfied that

- (a) the addressee did not receive a document sent by registered mail within 7 days from the day that the document was sent by the sender,
- (b) the failure of the addressee to receive the document is not attributable to the addressee's own efforts to avoid receiving the document, and
- (c) the addressee would be prejudiced by the strict application of subrule (3)(b),

the Court may make any order that the Court considers appropriate in respect of any matter relating to the document.

(4.1) A statement of proposed distribution served by a distributing authority under section 101(1) of the *Civil Enforcement Act* may be served by ordinary mail.

(5) Notwithstanding anything in subrule (2), a holder of a related writ may be served by means of a telecopier if

- (a) a telecopier telephone number of the writ holder is shown on the writ, and

- (b) the document to be served is sent to the telecopier at that telephone number and receipt of the document is acknowledged.

(6) Notwithstanding anything in subrule (2), a distributing authority may serve by means of a telecopier a proposed distribution on any person who has an interest registered in the Personal Property Registry if

- (a) a telecopier telephone number for that person is shown in the Personal Property Registry on the registration for that interest, and
- (b) the document to be served is sent to the telecopier at that telephone number and receipt of the document is acknowledged.

(7) Unless a provision of the *Civil Enforcement Act* requiring service or delivery of a document expressly refers to the original or a certified copy of the document, it is sufficient to serve or deliver a copy of the document.

(8) Nothing in this Rule shall be construed so as to prohibit a document from being served in any other manner permitted under these Rules.

AR 277/95 s20;68/2000

Service on civil enforcement agency

354(1) If, under the *Civil Enforcement Act* or any other enactment, a document is required to be given to or served on a civil enforcement agency, the document may be given or served

- (a) by personal service on
 - (i) an officer of the civil enforcement agency, or
 - (ii) a bailiff who acts on behalf of the civil enforcement agency,
- (b) by registered mail sent to the address for service of the civil enforcement agency, or
- (c) by telecopier if the document is sent to a telecopier and receipt of the document is acknowledged.

(2) Nothing in this Rule shall be construed so as to prohibit a document from being served in any other manner permitted under these Rules.

AR 277/95 s20

Alternate method of service

355(1) Notwithstanding Rules 353 and 354, where a person consents in writing to being served with documents in respect of matters under the *Civil Enforcement Act* by a means other than those referred to in Rules 353 and 354, that person, subject to subrule (2), may be served with those documents by that means.

(2) If, in respect of proceedings under a judgment against an enforcement debtor, documents referred to in subrule (1) are to be served on the enforcement debtor, subrule (1) does apply to a consent referred to in subrule (1) that was given by the enforcement debtor prior to the date of that judgment.

AR 277/95 s20

Division 2 Writs of Enforcement

Definition

356 Any term used in this Division that is defined in the *Civil Enforcement Act* has the meaning given to it by that Act.

AR 277/95 s20

Issuing of writs

357(1) A judgment creditor may require the clerk in whose office the judgment has been entered to issue a writ of enforcement in respect of the judgment at any time that the judgment is in force.

(2) Notwithstanding subrule (1), if the judgment is for payment within a specified period, the clerk shall not issue the writ of enforcement until after the expiration of that period.

(3) A writ of enforcement shall be in Form F of Schedule A and may include an Addendum in Form F.1 of Schedule A.

AR 390/68 s346;277/95

Endorsement

358 If a writ of enforcement is issued for the purposes of enforcing the payment of money that is directed to be paid into Court, the judgment creditor or other person preparing the writ must, prior to the clerk's issuing the writ, state on the writ that all money paid under the writ, other than costs, must be paid into Court.

AR 390/68 s344;277/95

Fraudulent Preferences or Fraudulent Conveyances

359(1) Where a judgment creditor claims to be entitled to a right of relief either under the *Fraudulent Preferences Act* or under the *Fraudulent Conveyances Statute*, 13 Eliz. I, Chapter 5 (U.K.), the Court, on motion in the judgment creditor's action served

- (a) on the judgment debtor, and
- (b) on the persons to whom it is alleged the property was conveyed,

may order the property or part of the property to be sold to realize the amount to be levied under a writ of enforcement.

(2) Where a transfer or conveyance is made with the intention of defeating, defrauding or hindering the rights of a judgment creditor, the judgment

creditor, for the purposes of obtaining an order under subrule (1), need not have obtained judgment at the time of the impugned transfer or conveyance.

AR 390/68 s383;313/81;277/95

Identification of debtor

360(1) In this Rule,

- (a) “replying creditor” means an enforcement creditor;
- (b) “requesting creditor” means a creditor whose debtor is or may be a person against whom the replying creditor has a writ, and includes a representative of the creditor;
- (c) “written demand” means a written demand made under subrule (2).

(2) A requesting creditor may by a written demand served on a replying creditor inquire as to one or both of the following:

- (a) whether the replying creditor has a writ against the requesting creditor’s debtor;
- (b) the amount owing under the replying creditor’s writ.

(3) In a written demand, the requesting creditor must set out

- (a) an address to which the reply to the written demand may be made,
- (b) the nature of the inquiry being made under subrule (2), and
- (c) if an inquiry is being made pursuant to subrule (2)(a),
 - (i) the name of the requesting creditor’s debtor, and
 - (ii) the occupation, address and date of birth of the requesting creditor’s debtor where that information is known to the requesting creditor.

(4) A written demand may be served on a replying creditor

- (a) at the most recent address shown for the replying creditor on the registration of the replying creditor’s writ registered in the Personal Property Registry, or
- (b) in any other manner by which a document may be served under these Rules.

(5) Subject to subrule (7), a replying creditor must within 15 days from the day of being served with a written demand provide to the requesting creditor a written reply,

- (a) in the case of an inquiry being made pursuant to subrule (2)(a),
 - (i) stating whether or not the requesting creditor's debtor is the same person as the replying creditor's debtor, or
 - (ii) if the replying creditor does not know whether or not the requesting creditor's debtor is the same person as the replying creditor's debtor, stating that fact,
- and
- (b) in the case of an inquiry being made pursuant to subrule (2)(b), stating the amount that is owing under the replying creditor's writ.

(6) A distributing authority may exercise all the powers under this Rule of a requesting creditor in the same manner as if it were a requesting creditor.

(7) If a replying creditor fails, without reasonable excuse, to comply with a written demand, the requesting creditor, in addition to any other remedy provided by the *Civil Enforcement Act*, may apply to the Court for an order requiring the replying creditor to comply with the written demand.

(8) On an application made under subrule (7), the Court may make an order requiring the replying creditor to comply with the written demand, and may give any other order as the Court considers appropriate in the circumstances.

AR 277/95 s20

Division 3 Writs of Possession

Recovery of land

361(1) A judgment or order for the recovery or for the delivery of the possession of land may be enforced by a writ of possession.

(2) Where a judgment or order directs a person to deliver up possession of any land to some other person either

- (a) on a specified date, or
- (b) within a specified time after being served with the judgment or order,

the person in whose favour the judgment or order was made may, without any further order, require the clerk to issue a writ of possession by filing with the clerk an affidavit showing that

- (c) service of the judgment or order has been effected, and
- (d) the judgment or order has not been complied with.

(3) Except as provided for in subrule (2), a writ of possession shall not be issued except on order of the Court.

AR 390/68 s348;277/95

Effect of writ

362 A writ of possession has the effect of a writ of assistance.

AR 390/68 s349;277/95

Removal of goods

363(1) For the purpose of enforcing a writ of possession in respect of any premises, it is not necessary to remove any goods from the premises.

(2) Where a civil enforcement agency in its discretion removes and stores any goods in connection with the enforcement of a writ of possession, the owner of those goods may, on the written authorization of the civil enforcement agency, obtain the goods from storage on

- (a) paying to the civil enforcement agency the costs, including transportation and storage costs, that were paid by the civil enforcement agency or the person on whose behalf the writ was enforced, and
- (b) paying to the person storing the goods any further outstanding storage charges.

(3) If the owner of any goods referred to in subrule (2) does not redeem the goods within 30 days from the day that the goods were placed in storage, the person on whose behalf the writ was enforced may apply by a notice of motion to the Court for an order authorizing the goods to be sold and prescribing the manner of sale.

(4) Where goods are sold pursuant to an order made under subrule (3), the proceeds of the sale must be applied as follows:

- (a) first, to pay the costs of the sale;
- (b) 2nd, to pay storage, transportation and other costs incurred in removing and storing the goods and making the application for the order for sale;
- (c) 3rd, unless otherwise ordered by the Court, to pay the balance to the owner of the goods.

(5) If

- (a) goods were not removed from the premises at the time that a writ of possession was enforced, and
- (b) the owner does not remove the goods within 30 days from the day that the writ of possession was enforced,

the person on whose behalf the writ was enforced may apply by a notice of motion to the Court for directions as to the disposition of the goods remaining on the premises.

AR 277/95 s20

Division 4 Writs of Delivery and Sequestration

Writ of delivery

364(1) Where a judgment directs the recovery of specific property other than land or money, a writ of delivery may be issued by the clerk directing a civil enforcement agency to cause the property to be delivered in accordance with the judgment.

(2) If the specific property that is the subject of a judgment is not delivered in accordance with the writ of delivery, the Court may, to enforce compliance with the judgment, order

- (a) that the civil enforcement agency take possession of personal property of the judgment debtor that is valued to an amount not in excess of double the value of the property that is subject to the judgment, and
- (b) that the property taken by the civil enforcement agency be kept until further order of the Court.

AR 390/68 s351;277/95

Writ of sequestration

365(1) In addition to or in lieu of holding a party to a judgment referred to in Rule 364 in civil contempt, the judgment may, by leave of the Court, also be enforced by a writ of sequestration.

(2) A writ of sequestration must be directed to a civil enforcement agency.

AR 390/68 ss351(3),352;277/95

Disobedience by corporation

366 Where a judgment against a corporation is wilfully disobeyed, it may be enforced by any one or more of the following:

- (a) with the leave of the Court, by a writ of sequestration against the property of the corporation;
- (b) by an order of the Court holding all or any one or more of the directors or officers of the corporation in civil contempt;
- (c) with the leave of the Court, by a writ of sequestration against the property of all or any one or more of the directors or officers of the corporation.

AR 390/68 s353;277/95

Carrying out directions of Court**367(1)** If

- (a) a mandamus granted in an action or a mandatory order, injunction or judgment for the specific performance of a contract is not complied with, or
- (b) a judgment requires a person to do any act other than the payment of money and that person fails to do that act,

the Court, in addition to or in lieu of holding the disobedient party in civil contempt, may direct that the act required to be done may, so far as is practicable and at the cost of the disobedient party, be done by

- (c) the party by whom the judgment was obtained, or
- (d) some other person appointed by the Court.

(2) Where an act is carried out under subrule (1), the expenses incurred may be ascertained in such manner as the Court directs and a writ of enforcement may be issued for the amount so ascertained and the costs.

AR 390/68 s354;277/95

Division 5 Information Regarding Enforcement Debtors

Definition

368 Any term used in this Division that is defined in the *Civil Enforcement Act* has the meaning given to it by that Act.

AR 277/95 s20

Debtor to provide information

369 For the purposes of determining the ability of an enforcement debtor to satisfy the claims of enforcement creditors, an enforcement creditor may require the enforcement debtor to provide information in accordance with this Division.

AR 277/95 s20

Financial report of debtor

370(1) An enforcement creditor may, on written notice to an enforcement debtor, require the enforcement debtor to provide to the enforcement creditor a financial report of the enforcement debtor in Form I or I.1 of Schedule A, as the case may be, verified by statutory declaration.

(2) Within 15 days from the day of being served with a notice under subrule (1), the enforcement debtor must provide to the enforcement creditor the enforcement debtor's financial report.

(3) Once an enforcement debtor has provided a financial report to an

enforcement creditor under subrule (1), no enforcement creditor may, without an order of the Court, require the enforcement debtor to provide another financial report under subrule (1) until one year has expired from the day that the enforcement debtor provided the previous financial report.

(4) Where an enforcement creditor has been provided with a financial report under subrule (1), the enforcement creditor must, within 15 days from the day of being provided with the financial report, register in the Personal Property Registry a status report for the writ indicating that the enforcement debtor has provided the enforcement creditor with the financial report.

(5) An enforcement creditor who has been provided with a financial report of an enforcement debtor under subrule (1) must, on the written request made by any other enforcement creditor of that enforcement debtor and the tendering of a fee of \$25, provide to that other enforcement creditor a copy of that financial report.

AR 277/95 s20

Examination of debtor

371(1) On service of a written notice on an enforcement debtor by an enforcement creditor, the enforcement creditor may require the enforcement debtor to attend an examination and be examined under oath by the enforcement creditor with respect to matters referred to in Rule 372.

(2) A notice served on an enforcement debtor under subrule (1) must be served on the enforcement debtor at least 7 days before the day that the enforcement debtor is required to attend the examination for which the notice is served.

(3) Once an enforcement creditor has examined an enforcement debtor under subrule (1), that enforcement creditor may not, without an order of the Court, again examine that enforcement debtor under subrule (1) until one year has expired from the day of that previous examination.

AR 390/68 s372;277/95

Matters subject to examination

372(1) An enforcement debtor may be examined on matters touching the following:

- (a) the property and financial means that the enforcement debtor had when the liability to which the judgment relates was incurred or, if the judgment is for costs only, when the proceedings were commenced;
- (b) the property and financial means that the debtor presently has;
- (c) any disposal of property made by the debtor since incurring the liability or, if the judgment is for costs only, since the proceedings were commenced;
- (d) any matter relating to exemptions;

- (e) where the debtor is a corporation, the name and address of, and other pertinent information relating to, any director or officer or any former director or officer of the corporation.

(2) In addition to examining an enforcement debtor in respect of matters referred to in subrule (1), where an enforcement debtor has provided a financial report, the enforcement creditor may, in conducting an examination under Rule 371, examine the enforcement debtor on any matter touching the financial report.

AR 390/68 s372;277/95

Examination of employees

372.1 Where the enforcement debtor is not a corporation, an enforcement creditor may, on an order of the Court, examine under oath any employee of the enforcement debtor with respect to any matter about which the enforcement creditor may examine the enforcement debtor.

AR 243/96 s12

Examination of directors, officers and employees of a corporation

373(1) Where the enforcement debtor is a corporation, an enforcement creditor may, for the purposes of examining the enforcement debtor, examine under oath any director or officer of the corporation.

(2) On an order of the Court an enforcement creditor may examine under oath

- (a) an employee of a corporation, or
- (b) a former director, officer or employee of the corporation,

with respect to any matter about which the enforcement creditor may examine a director or officer of the corporation.

AR 390/68 s373;277/95;243/96

Examination of transferee

374(1) Where an enforcement debtor has transferred exigible property to another person

- (a) after the date when the liability or debt that was the subject of the action was incurred, or
- (b) if the judgment is for costs only, after the date of the commencement of the action,

the Court may by order direct that other person to attend before a person named in the order and be examined under oath.

(2) If the transferee referred to in subrule (1) is a corporation, the enforcement creditor may, on the order of the Court, examine any present or former director, officer or employee of the corporation.

(3) A person examined under this Rule may be examined on matters touching the following:

- (a) the property transferred;
- (b) the disposal of any property by the enforcement debtor after the dates referred to in subrule (1);
- (c) any debts owing by the transferee to the enforcement debtor;
- (d) any other matter specified in the order.

AR 390/68 s374;277/95

Person in possession of exigible property

375(1) Where the Court is satisfied that there are reasonable grounds for believing that another person is in possession of or has control over exigible property of an enforcement debtor, the Court may by order direct that other person to attend before a person named in the order and be examined under oath.

(2) If the other person in possession of the exigible personal property of the enforcement debtor is a corporation, the enforcement creditor may, on the order of the Court, examine any present or former director, officer or employee of the corporation.

(3) A person examined under this Rule may be examined on matters touching the following:

- (a) the exigible property that is in the possession or under the control of the other person referred to in subrule (1),
- (b) the means by which the exigible property came into the possession or under the control of the other person referred to in subrule (1), and
- (c) any other matter specified in the order.

AR 390/68 s375;277/95

Examination of non-party

376 Where a difficulty arises in the enforcement of a judgment, the Court may by order direct any person to attend before a person named in the order and be examined under oath regarding any matter specified in the order.

AR 390/68 s379;277/95

Enforcement of duties

377 If a person, who is required under this Division to provide a financial report, submit to an examination or provide a copy of a financial report, fails to do so or fails to answer a question that may properly be asked of that person, the Court may on application do one or more of the following:

- (a) direct that the person comply with the requirements under this

Division or answer the question, as the case may be;

- (b) hold the person in civil contempt;
- (c) make any other order that the Court considers appropriate in the circumstances.

AR 390/68 ss377,378;277/95

Costs

378 The costs of any examination or application made under this Division are in the discretion of the Court.

AR 390/68 s380;277/95

Rules for discovery apply

379 Unless a matter is otherwise provided for under this Division, the Rules relating to an examination for discovery apply, with any necessary modifications, to examinations under this Division.

AR 390/68 s382;277/95

Division 6 Sale and Disposal and Special Seizure Mechanisms under the Civil Enforcement Act

Definition

380 Any term used in this Division that is defined in the *Civil Enforcement Act* has the meaning given to it by that Act.

AR 277/95 s20

Sale and disposal of personal property

381(1) Where an application is made under the *Civil Enforcement Act* for authority to sell or dispose of any personal property of an enforcement debtor, the application must be initiated by a notice of motion.

(2) Unless otherwise directed or approved by the Court, an application referred to in subrule (1) must be made on 7 days' notice to the enforcement debtor.

AR 277/95 s20

Duties of transfer agent

382(1) For the purposes of Division 2 of Part 6 of the *Civil Enforcement Act*, service of a notice of seizure or other document on an issuer's transfer agent constitutes service on the issuer.

(2) On being served with a notice of seizure or other document, the transfer agent must

- (a) immediately send a copy of the document to the issuer, unless all duties of the issuer arising from service of the document will be carried out on behalf of the issuer by the transfer agent, and

- (b) pay to the civil enforcement agency any dividend or other payment in respect of the security that would otherwise be payable by the transfer agent to the enforcement debtor on behalf of the issuer.

AR 277/95 s20

Notice of seizure of securities

383 A notice of seizure that is to be served on an issuer or intermediary under section 57(1) or 58(1) of the *Civil Enforcement Act* must provide enough information to allow the issuer or intermediary to identify with reasonable certainty the securities to which the notice of seizure relates.

AR 277/95 s20

Grace period

383.1(1) An issuer or intermediary does not incur any liability under section 60 of the *Civil Enforcement Act* in respect of a transaction effected during the grace period determined in accordance with subrule (2) if the issuer or intermediary establishes to the satisfaction of the Court that

- (a) the issuer or intermediary attempted in good faith to discharge the duties imposed on it by section 58 or 59 of the *Civil Enforcement Act*, and
- (b) either
 - (i) the transaction was not authorized, permitted or effected by an officer, employee or agent of the issuer or intermediary who had actual knowledge of the seizure before the transaction was effected, or
 - (ii) it was not reasonably possible in the circumstances to prevent the transaction from being effected.

(2) For the purposes of subrule (1), the grace period begins when the notice of seizure is served on the issuer or intermediary and ends

- (a) at midnight on the day that the notice of seizure is served, if the notice of seizure is served on the office, branch or agent of the issuer or intermediary at which the enforcement debtor's interest in the relevant security is recorded, or
- (b) at midnight on the 7th day following the day that the notice of seizure is served, if service of the notice of seizure is effected otherwise than as stated under clause (a).

AR 277/95 s20

Part 29 Motions and Applications

Notice of motion

384(1) An application in an action or proceeding shall be made by motion and, unless the court otherwise orders, notice of the motion shall be given to all parties affected.

(2) A Notice of Motion must

- (a) state the relief sought,
- (b) state briefly the grounds and material or evidence intended to be relied on, including any reference to any statutory provision or Rule sought to be invoked, and
- (c) specify any irregularities complained of or objection relied on.

(3) The respondent to a Notice of Motion shall give reasonable notice to the applicant of any material that the respondent intends to rely on, including any material that has already been filed.

(4) Notice under subrule (3) must be given at least 24 hours before the day for hearing.

AR 390/68 s384;313/81;160/93;52/2001

Disposed in chambers

385 Except as otherwise provided, all motions, applications and hearings other than the trial of actions may be disposed of by a judge in chambers.

AR 390/68 s385

Application by conference telephone

385.1(1) In this Rule,

- (a) “office or residence” means, in respect of a participant, the participant’s office or residence, whichever is located the closest to the Queen’s Bench location at which an application is required to be brought;
- (b) “participant” means,
 - (i) in the case of a party represented by counsel, the counsel representing that party, and
 - (ii) in the case of a party not represented by counsel, that party;
- (c) “Queen’s Bench location” means the Court House at which the Court of Queen’s Bench sits in Peace River, Grande Prairie, St.

Paul, Edmonton, Hinton, Wetaskiwin, Red Deer, Drumheller, Calgary, Lethbridge, Medicine Hat and Fort McMurray.

(2) Where an application is proposed to be brought before a judge or a master, the application may be conducted by means of a conference telephone call if

- (a) the judge or the master, as the case may be, consents to the application being conducted by means of a conference telephone call,
- (b) all the participants to the application consent to the application being conducted by means of a conference telephone call, and
- (c) either
 - (i) the office or resident of the participant requesting to appear at the application by means of a conference telephone call is located more than 100 kilometres from the Queen's Bench location at which the application is required to be brought, or
 - (ii) there is not a resident judge or master, as the case may be, located at the Queen's Bench location at which the application is required to be brought and the Court is satisfied that the circumstances are sufficiently urgent and important to warrant that the application be heard prior to the time that the Court will next be sitting at that Queen's Bench location.

(3) If a participant

- (a) cannot obtain the consent of all the participants to conduct an application under this Rule, or
- (b) has reasonable grounds to believe that it would be impractical to obtain the consent of all the participants to conduct an application under this Rule,

the participant may, on notice to the other participants, apply by means of a conference telephone call for the Court's permission to have the application referred to in subrule (2) heard by conference telephone call.

(4) The application referred to in subrule (2) and the application made under subrule (3) may be dealt with in the same conference telephone call if permission is granted by the Court to do so.

(5) Unless otherwise directed by the Court, when participating in an application to which subrule (2)(c) applies,

- (a) if the location of the participant's office or residence is not greater than 100 kilometres from the Queen's Bench location at

which the application is to be brought, the participant must attend at the clerk's office located at that Queen's Bench location and participate in the conference telephone call from the clerk's office, or

- (b) if the location of the participant's office or residence is greater than 100 kilometres from the Queen's Bench location at which the application is to be brought, the participant may either
 - (i) participate in the conference telephone call in the same manner as that provided for under clause (a), or
 - (ii) participate in the conference telephone call from another location by means of a telephone that is connected by conference call with the Court and the other participants to the application and also with the clerk's office located at that Queen's Bench location.

(6) Where a judge or master makes an order with respect to an application under this Rule, the order is deemed to have been made at the Queen's Bench location at which the application is required to be brought.

(7) The judge or master who hears an application under this Rule may, where in the opinion of the judge or master it appears that personal attendance of a participant is desirable, direct that the application be heard or completed in chambers with the personal attendance of that participant.

(8) Where material is to be filed or issued in respect of an application that is to be conducted under this Rule,

- (a) that material shall be filed or issued by the clerk in the judicial district in which the action is carried on, and
- (b) if directed by the Court, a participant shall, before the application is heard, provide copies of the material to the Court by means of a telecopier or otherwise.

(9) Unless otherwise directed by the Court, the clerk located at the Queen's Bench location at which the application is to be brought

- (a) shall co-ordinate the conference call, and
- (b) may participate in the conference call.

(10) Unless otherwise directed by the Court, any costs resulting from an application being conducted by means of a conference telephone call shall be paid by the party or the party's counsel who requested that the application be conducted under this Rule.

(11) The Court may, if the Court is satisfied that circumstances warrant it, dispense with or alter any of the requirements or criteria established under this Rule for conducting an application by means of a conference telephone

call.

(12) Other than in respect of an application made under the *Reciprocal Enforcement of Maintenance Orders Act* or the *Divorce Act (Canada)*, a person is not eligible to participate as a participant in an application under this Rule from a location that is outside of Alberta.

AR 226/77 s2;170/81;462/87;40/88;34/89;361/94;277/95;269/97

Discretion re hearing other applications by conference telephone

385.2(1) Where the requirements or criteria established under Rule 385.1 are not met for an application to be conducted by means of a conference telephone call, a judge or master may nevertheless, on the motion of that judge or master, conduct the application by means of a conference telephone call.

(2) Except where otherwise directed by the Court, the provisions of Rule 385.1(1) to (11) apply to an application conducted under this Rule.

AR 269/97 s7

Two days' notice

386 Except where otherwise provided or unless leave is given, there shall be at least two days between the service of a motion in an action and the day for hearing.

AR 390/68 s386

Ex parte order

387(1) If satisfied that no notice is necessary or that the delay caused by proceeding by notice of motion might entail serious mischief, the court may make an order ex parte.

(2) Any order made ex parte by a judge may be varied or discharged by any judge on notice given to every person affected.

(3) Any order made ex parte by a master in chambers may be varied or discharged by any master in chambers or any judge on notice given to every person affected.

AR 390/68 s387; 116/2005

Multi-party actions

387.1(1) Where there are more than 2 parties to an action, a party to the action may, without giving notice of the application to all the other parties to the action, apply initially to the court for directions respecting the notice to be given or not given of a contemplated later motion.

(2) On hearing an application made under subrule (1), the court may give directions and set terms for the contemplated later motion, including giving directions doing one or more of the following:

- (a) dispensing with part or all notice of the contemplated later motion on some parties;

- (b) dispensing with service of some or all evidence or notices on some parties;
- (c) providing for confidentiality;
- (d) sealing evidence or other papers;
- (e) delaying notice;
- (f) setting out or otherwise providing for the times to apply;
- (g) preserving the rights of persons not notified.

(3) Except as provided under any other Rule or under a statute, the court shall not deprive a party to an action of notice of or evidence in a motion in which that party has or likely will have any legitimate interest.

(4) A judge who has been charged with or is to be charged with the general or ongoing supervision of the action in respect of which the application is made under subrule (1) shall not hear the application under subrule (1) nor the contemplated later motion.

(5) A judge who has heard the application under subrule (1) or has heard the contemplated later motion shall not preside over the trial of the action or any part of it.

(6) The operation of subrule (4) or (5), or both, may be dispensed with,

- (a) with the consent of all parties to the action,
- (b) if the court hearing the application under subrule (1) refused to dispense with notice and all parties got full notice of the contemplated later motion and its evidence, or
- (c) if the contemplated later motion was not brought and it otherwise appears appropriate to the court to dispense with the operation of the subrule.

AR 243/96 s14

Adjournment for notice

388 If on the hearing of a motion or other application it appears that any person to whom notice has not been given ought to have had notice, the court may either dismiss the motion or application or adjourn the hearing thereof in order that notice may be given.

AR 390/68 s388

Motion to rescind or vary order

389 A party who has failed to appear on an application through accident or mistake or insufficient notice thereof, may move to rescind or vary the order before any judge within seven days from the time the order has come to his notice

or within such further time as the court may allow and whether the order has been acted upon by the party issuing it or not.

AR 390/68 s389

Setting aside

390(1) Any order may be set aside, varied or discharged on notice by the judge who granted it.

(2) On consent of all parties interested the court may set aside, vary or discharge any order.

AR 390/68 s390

Death of judge

391 Where any application ought to be made to or any jurisdiction exercised by the judge by whom a cause or matter has been tried or before whom any motion has been made, if that judge dies or ceases to be a judge of the court or if for any other reason it is impossible or inconvenient that the judge should act in the matter, any other judge may hear the application or otherwise exercise jurisdiction.

AR 390/68 s391

Injunction

392(1) The plaintiff may, without leave, serve a notice of motion for an injunction and may, by leave of the court to be obtained ex parte, serve any other notice of motion upon any defendant with the statement of claim or at any time after the service of the statement of claim and before the time limited for defence of the defendant.

(2) Any notice of motion may be served on the plaintiff by the defendant at any time after the issue of the statement of claim and either before or after the defence.

AR 390/68 s392

Order to be carried out by officer of court

393 An order directing or giving leave for the doing of any act by an officer of the court other than a barrister or solicitor need not be entered unless the court so directs, but the production of a note or memorandum signed by a judge is sufficient authority for the act.

AR 390/68 s393

Part 30 Special Application to the Court

No procedure provided by an Act

394 This Part applies

- (a) where by a statute or regulation the court or a judge is designated as having authority to issue any certificate or make any direction or order (otherwise than in any action), and
- (b) no procedure for an application to the court or a judge is provided.

AR 390/68 s394

Ex parte

395(1) In any such case it is not necessary to file any document commencing proceedings, but the applicant shall, on an affidavit of the facts, apply ex parte to a judge, who may

- (a) proceed to determine the matter, ex parte, or
- (b) direct that the matter be set over for hearing on notice, in which case the judge shall designate what persons are to be served with notice, and may prescribe the nature of the notice, and the time for and mode of service.

(2) The directions given shall either be endorsed upon the affidavit of facts or set forth in an order.

(3) Subject to any such directions, the form and content of the notice and the procedure applicable shall be as provided in Part 33, *mutatis mutandis*.

(4) Upon the return of the application the court has all the powers that the court has on return of an originating notice under Part 33.

(5) All original affidavits, orders, or directions and copies of notices, shall be filed in the office of the clerk for the district in which the application is made.

(6) Affidavits for use in the proceedings under this Part may be sworn at any time.

(7) The costs of and incidental to any application under this Part are in the discretion of the court and subject thereto, Part 47 relating to costs applies.

AR 390/68 s395

Repealed

Part 31 Repealed AR 360/91 s2.

Part 32 Official Referees

Repealed

397, 398 Repealed AR 338/83 s10.

399, 400 Repealed AR 209/74 s3.

401, 402 Repealed AR 338/83 s10.

Official referee

403 The following are official referees for the purposes of references by the Court:

- (a) masters in chambers;
- (b) clerks;
- (c) persons appointed as official referees by the Lieutenant Governor in Council;
- (d) persons appointed as official referees by the Court with the consent of all parties to a lawsuit.

AR 390/68 s403;338/83;308/91

Part 33 Originating Notice

Originating notice

404 Where under any statute or regulation proceedings may be taken by originating summons, the proceedings may be taken by an originating notice as hereinafter set out.

AR 390/68 s404

Contents

405(1) An originating notice shall be in Form G modified in such manner as may be necessary having regard to the nature of the application.

(2) Every originating notice shall include a statement of the questions on which the applicant seeks the determination or direction of the court or, as the case may be, a concise statement of the nature of the claim made and of the relief or remedy claimed in the proceedings with sufficient particulars to identify the cause of action for which the applicant claims that relief or remedy.

AR 390/68 s405

Service

406 A copy of the originating notice and a copy of each affidavit in support shall be served 10 days before the day named in the notice for hearing of the application.

AR 390/68 s406

Oral evidence

407 The court may give such directions as seem necessary and upon the return of the motion may permit evidence to be given orally.

AR 390/68 s407

Directions as to service

408 Where necessary the court may give directions as to the persons to be served with the originating notice whether those persons are or are not parties.

AR 390/68 s408

Summary judgment or order

409 The court may summarily dispose of the questions arising on the application and make such order as the nature of the case requires or may give such directions as seem proper for the trial of any questions arising on the application.

AR 390/68 s409

Proceedings begun by originating notice

410 Proceedings may be commenced by originating notice in the following cases:

- (a) proceedings to recover possession of land;
 - (b) applications for the appointment of a new trustee with or without a vesting or other consequential order, or for a vesting or other consequential order on the appointment of a new trustee whether the appointment has been made in court or out of court;
 - (c) proceedings relating to land
 - (i) for the declaration of a beneficial interest in or a charge upon land and of the character and extent thereof, or
 - (ii) for a declaration settling the priority as between interests or charges, notwithstanding any entry in the register or the registration or filing of any instrument, or
 - (iii) for an order cancelling any certificate of title or making any title subject to an interest or charge;
 - (d) proceedings where, under any statute or these Rules, provision is made that the proceedings be taken by originating notice;
 - (e) proceedings for the determination of any question where there are no material facts in dispute and the rights of the parties depend upon the construction of
 - (i) a written instrument, or
 - (ii) a statute or order-in-council or a regulation,
- and for a declaration of the rights of the persons interested;
- (f) proceedings for the opinion, advice or direction of the court pursuant to *The Trustee Act*;
 - (g) proceedings to fix the compensation of a trustee;
 - (h) the approval of an arrangement for the variation of a trust;
 - (i) proceedings to compel partition of land;
 - (i.1) proceedings that may be brought before a court under the *Arbitration Act*;
 - (j) proceedings under Part 34.

AR 390/68 s410;166/94

Part 34

Administration and Similar Proceedings

Definition

411 In this Part an “administration proceeding” means a proceeding for the administration under the direction of the court of the estate of a deceased person or for the execution under the direction of the court of a trust.

AR 390/68 s411

Relief to be granted

412 A proceeding may be taken by originating notice for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration proceeding and a claim need not be made in the proceeding for the administration or execution under the direction of the court of the estate or trust in connection with which the question arises or the relief is sought.

AR 390/68 s412

Proceedings to be taken

413 Without prejudice to the generality of Rule 412, a proceeding may be taken by originating notice for the determination of any of the following questions:

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) Any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

AR 390/68 s413

Proceedings for relief

414 Without prejudice to the generality of Rule 412 proceedings may be brought by originating notice for any of the following reliefs:

- (a) an order requiring an executor, administrator, or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;

- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the court.

AR 390/68 s414

Parties and proceedings

415(1) When proceedings under this Part are taken all the executors or administrators of the estate or trustees of the trust, as the case may be, shall be parties to the proceedings and where the proceedings are brought by executors, administrators or trustees, any of them who do not consent to being joined as an applicant shall be made a respondent.

(2) Where in the proceedings for the administration of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the proceedings, no party other than the executors or administrators of the estate is entitled to appear in any proceedings relating to that claim without the leave of the court, but the court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on terms as to costs or otherwise.

(3) In an administration proceeding or a proceeding as referred to in Rule 414 the court may make any order and grant any relief to which the applicant may be entitled by reason of breach of trust, wilful default or other misconduct of the respondent notwithstanding that the proceeding was begun by originating notice.

(4) A judgment or order for the administration or execution under the direction of the court of an estate or trust need not be given or made unless in the opinion of the court the questions at issue between the parties cannot properly be determined otherwise than under such judgment or order.

(5) Where an administration proceeding is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the applicant alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the court may

- (a) order that the proceedings be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the applicant with proper accounts, and

- (b) if necessary to prevent proceedings by any other person claiming to be so entitled, give judgment or make an order for the administration of the estate to which the proceeding relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the court.

AR 390/68 s415

Conduct of sale

416 Where an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, unless the court otherwise orders, shall have the conduct of the sale.

AR 390/68 s416

Jurisdiction and powers of court

417(1) This Rule applies to a proceeding for

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property.

(2) The court may require any person to be made a party to the proceeding, may give the conduct of the proceeding, or any part thereof, to any party, and may make any necessary order to place any party on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

(3) The court may, when giving a judgment or order which affects the rights or interests of persons not parties to the proceedings or which directs an account to be taken or inquiry made, direct notice of the judgment or order to be served on any person interested in the estate or under the trust or in the property, as the case may be; and any person served with notice of a judgment or order in accordance with this Rule is, subject to the other subrules of this Rule, bound by the judgment or order to the same extent as he would have been if he had originally been made a party to the proceeding.

(4) The court may direct a notice of judgment or order, endorsed with a memorandum in Form H to be served personally or in such manner as it may specify on the person required to be served or if it appears to the court that it is impractical to serve the notice on any person it may dispense with service of the notice on such person.

(5) Where the court dispenses with service of notice of a judgment or order on any person, it may also order that that person is bound by the judgment or order to the same extent as if he has been served with notice thereof and he is bound accordingly except where the judgment or order has been obtained by fraud or nondisclosure of material facts.

(6) A person served with notice of a judgment or order may within 14 days after service apply to the court to discharge, vary or add to the judgment or order.

(7) A person served with a notice of a judgment or order may attend the proceedings under the judgment or order.

AR 390/68 s417

Part 35 Inquiries and Accounts

Accounts or inquiries

418 The court may at any stage in an action direct that necessary accounts or inquiries be taken or made.

AR 390/68 s418

Undue delay

419 If it appears to the court that there is undue delay in the prosecution of any accounts or inquiries, the court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

AR 390/68 s419

Accounts

Manner of account

420 Where the court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

AR 390/68 s420

Verifying account

421(1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the court.

(4) A copy of all affidavits filed and a copy of the account shall be furnished to the opposite party within five days of the filing of the documents.

(5) The court may direct that vouchers be produced at the office of the solicitor of the accounting party or at any other convenient place and the opposite party and his solicitor may examine and make copies of them.

AR 390/68 s421

Charge that account is incorrect

422 Any party seeking to charge an accounting party beyond what he has

by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof.

AR 390/68 s422

Allowances

423 In taking any account all just allowances shall be made without any direction to that effect.

AR 390/68 s423

Inquiries

Inquiry by referee

424 Where any question in an action is referred to a referee he may, subject to the order of the court, hold an inquiry at, or adjourn it to any convenient place, and have any inspection or view.

AR 390/68 s424

Conduct of proceedings

425 Proceedings before a referee shall, as nearly as circumstances admit, be conducted in like manner as the like proceedings before a judge.

AR 390/68 s425

Report

426(1) The report of the referee shall be made to the court and a copy thereof served on the parties to the reference.

(2) When the report of the referee has been made an application to accept or to vary the report or remit the whole or any part of the question may be made on 10 days' notice to all parties to the reference.

(3) On the return of the motion the court may

- (a) adopt the report in whole or in part, or
- (b) vary the report, or
- (c) require an explanation from the referee, or
- (d) remit the whole or any part of the question referred to the referee for further consideration by him or any other referee, or
- (e) decide the question referred to the referee on the evidence taken before him either with or without additional evidence.

AR 390/68 s426

