

Part 44 Alberta Divorce Rules

Forms will be found in Schedule B

Definitions

561.1 In this Part,

- (a) “Act” means the *Divorce Act* (Canada) (RSC 1985, c3 (2nd) Supp.);
- (b) “divorce proceeding” means a divorce proceeding under the Act;
- (c) “former Act” means the *Divorce Act* (Canada) (c.D-8 RSC 1970);
- (c.1) “matrimonial property proceeding” means a proceeding under the *Matrimonial Property Act*;
- (d) repealed AR 243/96 s19;
- (e) “Provisional Order” means a provisional order made under the Act;
- (e.1) “Statement of Claim” means
 - (i) a statement of claim for a divorce pursuant to divorce proceedings, or
 - (ii) a statement of claim for both
 - (A) a divorce pursuant to divorce proceedings, and
 - (B) relief pursuant to matrimonial property proceedings;
- (f) “Variation Order” means a variation order made under the Act.
AR 117/86 s3;360/91;243/96

Application of Rules

562(1) This Part applies to proceedings under the Act and appeals from proceedings under the Act.

(2) Subject to this Part, the Act and any enactment, other Parts of these Rules apply to proceedings and appeals referred to in subrule (1).

AR 117/86 s3;360/91

Forms

562.1 Unless otherwise provided, a reference to a form in this Part is a reference to a form prescribed in Schedule B.

AR 117/86 s3;133/97

Previous rules

562.2 The rules that were in force immediately prior to the coming into force of the *Divorce Act, 1985* shall continue to apply to a divorce action commenced under the former Act.

AR 117/86 s3;360/91

Commencement

563(1) A divorce proceeding shall be commenced by the issuance by the clerk of a Statement of Claim for Divorce prepared in accordance with Form 1.

(2) Notwithstanding subrule (1), a proceeding that is both a divorce proceeding and a matrimonial property proceeding may be commenced by the issuance by the clerk of a Statement of Claim for Divorce and Division of Matrimonial Property prepared in accordance with Form 2.

(3) A Statement of Claim shall not be issued pursuant to subrule (2) unless the claim for relief under the divorce proceeding is set out separately from the relief claimed under the matrimonial property proceeding.

(4) Unless otherwise ordered, the plaintiff's spouse shall be the sole defendant in the proceedings taken under this Part.

AR 390/68 s563;117/86;360/91;243/96;133/97

Repealed

563.1 Repealed AR 133/97 s6.

Service on defendant

564(1) Unless otherwise ordered a true copy of the Statement of Claim and the Notice to the Defendant endorsed on or attached to the Statement of Claim shall be served personally on the defendant.

(2) Service of the Statement of Claim and the Notice to the Defendant shall be made by a person other than the plaintiff.

(3) Proof of the service of a Statement of Claim and the Notice to the Defendant shall be given in a manner that satisfies the Court that the party required to be served has been personally served.

AR 390/68 s564;117/86;243/96

Demand of Notice, Statement of Defence or Counterclaim

565(1) Where a defendant wishes to oppose a Statement of Claim, the defendant shall file with the clerk and serve a Statement of Defence prepared in accordance with Form 3.

(2) Where a defendant seeks relief in opposition to the relief that is claimed in the Statement of Claim, the defendant shall file with the clerk and serve a Statement of Defence and Counterclaim prepared in accordance with Form 4 or 5.

(2.1) Where a defendant seeks relief but does not oppose the relief that is claimed in the Statement of Claim, the defendant shall file with the clerk and serve a Demand of Notice and a Counterclaim prepared in accordance with Form 7 or 8.

(3) Where a defendant wishes to receive notice of any hearing, but does not oppose the divorce or seek relief, the defendant may file and serve a Demand of Notice prepared in accordance with Form 6.

AR 390/68 s565;63/70;117/86;360/91;243/96;133/97

Service of Statement of Defence, Counterclaim, or Demand of Notice

565.1(1) A Statement of Defence, Counterclaim or Demand of Notice shall be served

- (a) upon the plaintiff, or
- (b) where there is a solicitor of record, upon the plaintiff's solicitor and not upon the plaintiff.

(2) A Statement of Defence, Counterclaim or Demand of Notice shall be filed and served,

- (a) where the Statement of Claim has been served within Alberta, within 15 days from the date of service,
- (b) where the Statement of Claim is served elsewhere in Canada than Alberta, within 40 days from the date of service, or
- (c) in any case not referred to in clause (a) or (b), within such time as may be fixed by the Court in the order for service ex juris.

(3) Where a Statement of Claim is issued only for divorce proceedings, an order for service ex juris is required only if the Statement of Claim is served outside of Canada.

(4) Where a Statement of Claim is issued for both divorce proceedings and matrimonial property proceedings, an order for service ex juris is required if the Statement of Claim is served outside of Alberta.

(5) Where a single Statement of Claim that is issued for both a divorce proceeding and a matrimonial property proceeding has been served elsewhere in Canada than in Alberta, a Statement of Defence, Demand of Notice or any pleadings that include a Counterclaim with respect to both or either of those proceedings shall be filed and served within 40 days from the date of service of the Statement of Claim.

AR 390/68 s565;117/86;243/96;133/97

Adjournments

566(1) If, before hearing any oral evidence, a judge grants an adjournment of a divorce proceeding under section 10(2) of the Act, the application for

resumption of the divorce proceeding under section 10(3) of the Act shall be made to any judge presiding at the place where the adjournment was granted.

(1.1) Notwithstanding subrule (1), an application may be made under subrule (1) to a judge by means of a telephone if, at the time that the application is made, there is not a judge presiding at the place where the adjournment was granted.

(2) If, after hearing any oral evidence, a judge grants an adjournment of a divorce proceeding under section 10(2) of the Act, the application for resumption of the divorce proceeding under section 10(3) of the Act shall be made to the judge who granted the adjournment.

(3) Notwithstanding subrule (2), where the judge who granted the adjournment referred to in subrule (2) is not available to hear the application under subrule (2), the application may be made to another judge.

AR 390/68 s568;117/86;360/91

Her Majesty's Proctor

567(1) Where the Court considers it proper that Her Majesty's Proctor should be advised of a divorce proceeding, it may direct

- (a) that a divorce proceeding be adjourned to a time and place that the Court considers best,
- (b) that the clerk forthwith give to Her Majesty's Proctor
 - (i) notice of the divorce proceeding and its status,
 - (ii) the Court's reasons for giving that notice, and
 - (iii) as directed by the Court, any evidence adduced in the divorce proceeding,

and

- (c) that any one or more of the parties to the divorce proceeding deliver to Her Majesty's Proctor a copy of
 - (i) the pleadings, and
 - (ii) the transcripts of the examinations for discovery, if examinations for discovery were conducted.

(2) Where notice is given to Her Majesty's Proctor, he shall

- (a) appear before the Court, and
- (b) subject to any direction of the Attorney General, make his submissions and otherwise participate in the divorce proceeding as the Court may allow.

AR 390/68 ss568,573;117/86

Application by Her Majesty's Proctor

567.1(1) At any time before the judgment granting a divorce takes effect, Her Majesty's Proctor may, on the directions of the Attorney General, apply to the Court by Notice of Motion, with service upon all parties to the divorce proceeding, for leave to intervene for the purpose of showing why the divorce should not take effect.

(2) Where the Court grants leave to intervene, it shall give directions as to appearance and procedure with respect to Her Majesty's Proctor.

AR 390/68 s566;117/86

Divorce without appearance by parties or counsel

568(1) In this Rule a reference to "Counterclaim" includes a reference to

- (a) a Statement of Defence and Counterclaim for Divorce;
- (b) a Statement of Defence and Counterclaim for Divorce and Division of Matrimonial Property;
- (c) a Demand of Notice and Counterclaim for Divorce;
- (d) a Demand of Notice and Counterclaim for Divorce and Division of Matrimonial Property.

(1.1) When no Demand of Notice or Statement of Defence has been filed under Rule 565 and served under Rule 565.1, the plaintiff may

- (a) note the defendant in default in accordance with Rule 142, and
- (b) apply for a judgment of divorce with such corollary relief as is claimed in the Statement of Claim, or that has been consented to by the defendant or the defendant's solicitor, by filing the following with the clerk:
 - (i) a Request for Divorce prepared in accordance with Form 12 requesting the rendering of a judgment without an oral hearing being held;
 - (ii) an affidavit prepared in accordance with Rule 569;
 - (iii) 5 copies of the proposed judgment and order, if any, prepared in accordance with the appropriate form;
 - (iv) in the case where a party does not have a solicitor, a stamped envelope addressed to that party at the last known address shown in the affidavit filed under Rule 569.

(2) A party who has filed

- (a) a Statement of Claim, a Demand of Notice or a Statement of Defence,
or

(b) a Counterclaim,

may either personally or by the party's solicitor, consent to the Request for Divorce proceeding under this Rule.

(3) The personal consent of the party referred to in subrules (1.1)(b) and (2) shall be accompanied by an affidavit of execution.

(4) Where the clerk

- (a) has received the Request for Divorce referred to in subrule (1.1)(b)(i) and the affidavit referred to in subrule (1.1)(b)(ii), and
- (b) is satisfied that those documents referred to in clause (a) satisfy the requirements of these Rules and the practice of the Court,

the clerk shall place those documents before a judge for consideration, and the judge on considering those documents may do one or more of the following:

- (c) render any judgment to which the parties are entitled;
- (d) direct the parties or the solicitors for the parties to appear in chambers;
- (e) direct that further evidence be presented;
- (f) direct the plaintiff or defendant by counterclaim to enter the case for trial on oral evidence.

(5) Where the parties have agreed on or consented to corollary relief but no request for the corollary relief has been made in the Statement of Claim or Counterclaim, the judge may grant that relief.

(6) Where the defendant or the plaintiff defending against a Counterclaim

- (a) has filed a Demand of Notice, a Statement of Defence or a Counterclaim, and
- (b) has not given the consent required to have the divorce proceeding dealt with under this Rule,

the plaintiff or the defendant who commenced a counterclaim may apply in chambers by Notice of Motion for the matter to be dealt with under this Rule.

(7) A judge in chambers hearing an application under subrule (6) may

- (a) direct the plaintiff or the defendant who commenced a counterclaim to enter the case for trial on oral evidence, or
- (b) authorize the plaintiff or the defendant who commenced a counterclaim to proceed under subrule (1.1), without any further notice to the defendant or the plaintiff defending against the counterclaim, as the case may be.

(8) Where the plaintiff in the original action has not filed a statement of defence or demand of notice to a counterclaim, a judgment on the counterclaim under this Part may be obtained against the plaintiff only on motion with notice to the plaintiff.

AR 117/86 s3;360/91;35/95;243/96;133/97;200/2003

Contents of affidavit

569 The affidavit required under Rule 568 shall be prepared in accordance with Form 15, and shall

- (a) identify the parties to the divorce proceeding;
- (b) attest to the last known address of the defendant or the defendant by Counterclaim;
- (c) attest to the marriage and prove the marriage
 - (i) by attaching as an exhibit to the affidavit a certified copy of the marriage certificate, or
 - (ii) by solemn form when a certified copy of the marriage certificate cannot be obtained;
- (d) attest to ordinary residence in the Province of either spouse for at least one year immediately preceding the date of the Statement of Claim;
- (e) attest to the grounds for divorce;
- (f) deny collusion;
- (g) if the grounds for the divorce are those set out in section 8(2)(b) of the Act, provide a denial or explanation for condonation and connivance;
- (h) detail arrangements for child care and child support and set out any previous orders or agreements;
- (i) detail the financial circumstances of both parties if there are children of the marriage as defined by the Act;
- (j) deny the possibility of reconciliation;
- (k) where application is made to waive the waiting period, detail the circumstances that justify the waiver;
- (l) verify the accuracy or correct any inaccuracy in the allegations in the Statement of Claim.

AR 117/86 s3;360/91;243/96;133/97; 38/2003

Judge not seized with proceedings

570 A judge is not seized of any proceeding under this Part merely by exercising the powers contained in Rule 568(4)(b), (c) and (d).

AR 117/86 s3;360/91

Mailing out of Divorce Judgment

570.1 Upon a divorce judgment being rendered and entered, the clerk shall forthwith mail a copy of the Divorce Judgment to each person in respect of whom an envelope is supplied by the plaintiff under Rule 568(1.1).

AR 117/86 s3;243/96;200/2003

Certificate of Divorce

571(1) After a Divorce Judgment takes effect any person may file a Request For a Certificate of Divorce prepared in accordance with Form 13.

(2) Where a Request For a Certificate of Divorce is filed and the clerk is satisfied that no appeal from the Divorce Judgment is pending, the clerk shall issue a Certificate of Divorce prepared in accordance with Form 14.

(3) All Certificates of Divorce shall be entered forthwith by the clerk in the Office of the Clerk in which the divorce proceeding was commenced.

AR 117/86 s3;133/97

Central Divorce Registry

572 The clerk of the Court in which the divorce proceedings were commenced shall

- (a) complete the forms required by the regulations under the Act, and
- (b) forward the forms referred to in clause (a) to the Central Divorce Registry at Ottawa as required by the regulations.

AR 117/86 s3

Application for interim corollary relief

573 An application for interim corollary relief in a divorce proceeding shall be commenced by filing with the clerk a

- (a) notice of motion for interim corollary relief prepared in accordance with Form 9, and
- (b) a supporting affidavit.

AR 117/86 s3;133/97

Corollary relief after Divorce Judgment

574(1) Where the Court has rendered a Divorce Judgment, an application for, or to vary, rescind or suspend an order for, corollary relief shall be commenced by filing with the clerk

- (a) a notice of motion, and
- (b) a supporting affidavit.

(2) Service of the notice of motion referred to in subrule (1) shall

- (a) be made at least 7 days before the date set for the hearing of the application, and
- (b) be made upon the respondent and not upon the solicitor of record at the time the divorce judgment was made.

AR 117/86 s3

Order made by another court

574.1(1) An application to vary, rescind or suspend an order for corollary relief made by another court shall be commenced by filing with the clerk

- (a) an originating notice prepared in accordance with Form 10,
- (b) a supporting affidavit, and
- (c) copies of the original divorce pleadings and all corollary relief orders that have been made in respect of that proceeding.

(2) The affidavit in support of an application referred to in subrule (1) shall include statements setting out the following:

- (a) the current marital status of the parties;
- (b) the residential addresses of the parties;
- (c) the age, sex and residential address of any dependent children;
- (d) particulars of existing custody and access arrangements and of any proposed changes to be made in respect of those arrangements;
- (e) particulars of current support arrangements and of any proposed changes in respect of those arrangements;
- (f) the amount of arrears under any previous support order;
- (g) particulars of any change in circumstances involved to support the application.

(3) The originating notice referred to in subrule (1)(a) shall be served on the respondent at least 15 days before the date set for the hearing of the application.

AR 117/86 s3;133/97

Variation Order

575 Where the Court makes a Variation Order, other than a Provisional Order, varying a support order or custody order made by another court, the clerk shall, in addition to sending, under section 17(11) of the Act, a certified copy of the Variation Order to the court that made the original order that is being varied, also send a certified copy of the Variation Order to any other court that has varied the original order.

AR 117/86 s3

Form of orders for relief

575.1 Where the Court grants

- (a) a divorce judgment without hearing oral evidence and an order for corollary relief, the judgment and order may be in a form that is prepared in accordance with Form 17,
- (b) an order for corollary relief, the order may be in a form that is prepared in accordance with Form 18, or
- (c) a variation order, the order may be in a form prepared in accordance with Form 19.

AR 133/97 s14

Provisional Order

576(1) An application for a Provisional Order shall be accompanied by a statement of the applicant providing any available information respecting the identification, location, income, assets and liabilities of the respondent.

(2) Where the Court makes a Provisional Order and the Order is filed with the clerk, the clerk shall, on behalf of the Court, forward to the Attorney General

- (a) the material required to be forwarded under section 18(3) of the Act,
- (b) a copy of any material in support of the application for the Provisional Order that is not included in the material referred to in clause (a), and
- (c) where available, in addition to the information required under section 18(3)(a) of the Act, a statement of the liabilities of the respondent.

(3) Where a Provisional Order is remitted back to the Court under section 18(5) of the Act for further evidence, the clerk shall give notice to the applicant of the need to submit further evidence.

(4) Where further evidence is received under section 18(5) of the Act, the clerk, under section 18(6) of the Act shall, on behalf of the Court, forward back to the

remitting court the evidence and the documentation required or permitted under section 18(6) of the Act.

AR 117/86 s3;243/96;258/96

Confirmation hearing

577(1) Where the Court receives a Provisional Order for confirmation, the clerk shall cause to be served

- (a) on the respondent a copy of the documents received from the court that made the Provisional Order, and
- (b) on both the applicant and the respondent a Notice of Confirmation Hearing prepared in accordance with Form 11.

(2) Unless otherwise ordered, the clerk shall cause to be served on the applicant by ordinary mail

- (a) a notice to submit further evidence, and
- (b) a Notice of Confirmation Hearing.

(3) Unless otherwise ordered, the clerk shall cause to be served on the respondent personally

- (a) the Notice of Confirmation Hearing, and
- (b) the documents referred to in section 18(3) of the Act that are required to be served under section 19(2) of the Act.

(4) Where the Court makes an Order under section 19(7) of the Act the clerk shall, on behalf of the Court, send, in accordance with section 19(12) of the Act,

- (a) the copies of the Order, and
- (b) where the Court varies or refuses to confirm the Provisional Order, the reasons for so doing,

to the Attorney General and the courts entitled, under section 19(12) of the Act, to receive the copies of the Order and the reasons, if any.

(5) Where the Court makes an Order under section 19(7) of the Act confirming or varying the Provisional Order, the clerk shall, on behalf of the Court, file, in accordance with section 19(12)(b) of the Act, the Order in the Court.

AR 117/86 s3;133/97

Repealed

577A Repealed AR 117/86 s3.

Orders and proceedings of other courts

577.1(1) Where an order has been made under section 15, 16, 17 or 19(9) of the Act, the registration of that order shall be effected by filing with any clerk of the Court of Queen's Bench an exemplification or certified copy of the order and upon that being done the order shall be entered as an Order of that Court.

(2) Where proceedings are transferred from another court, the transfer shall be effected by filing with the clerk certified copies of all pleadings and orders made in the transferred proceedings and the transferred proceedings shall then be carried forward as if the proceedings had been commenced under these Rules.

AR 117/86 s3

Security for costs

577.2 The Court may at any time after a Statement of Claim has been served, and if necessary from time to time, make any order that it thinks fit for payment of or security for the costs of either spouse.

AR 117/86 s3;243/96;152/98

Appeals

577.3 Notwithstanding the provisions of Part 39,

- (a) no appeal lies from a judgment granting a divorce on or after the day on which the divorce takes effect, and
- (b) subject to the Court of Appeal or a judge thereof extending the time, no appeal lies from an order made in a divorce proceeding more than 30 days after the day on which the order was made.

AR 390/68 s577;117/86

Rules Relating to Matrimonial Causes Other than Divorce**Nullity**

578(1) Except as provided by this Rule, the general rules of procedure apply to matrimonial causes other than divorce.

(2) Unless the court otherwise directs, the only parties to the action shall be the husband and wife.

(3) No judgment for nullity or judicial separation shall be made whether or not there is a default in defence unless the court is satisfied of the truth and sufficiency of the facts on which the claim for such judgment is founded.

(4) At any time pending an action, and if necessary from time to time, the Court may make any order it thinks fit for payment of or security for the costs of either spouse.

AR 390/68 s578;244/69;34/89;152/98

Part 44.1

Protection Against Family Violence

Affidavit of evidence

578.1 Unless the Court orders otherwise, when an emergency protection order is scheduled for review by a justice of the Court of Queen's Bench, the claimant and respondent shall, if they intend to present evidence at the review,

- (a) file an affidavit of that evidence with the Clerk of the Court at the judicial centre where the emergency protection order is scheduled for review, and
- (b) serve the affidavit on the other party

not less than 24 hours before the time scheduled for the review.

Alternative to affidavit

578.2 An applicant for a Queen's Bench protection order under the *Protection Against Family Violence Act* may, instead of using an affidavit, use a completed questionnaire authorized by the Court and verified under oath or by statutory declaration.

Actual notice of a protection order

578.3 A respondent shall be considered to have actual notice of the provisions of a Queen's Bench protection order if

- (a) the respondent was served with a copy of the order,
- (b) the respondent was in attendance in person or by conference telephone call when the order was granted, or
- (c) there are any other circumstances which, in the opinion of the Court, would have provided the respondent with actual notice.

AR 101/99 s9

Repealed

579, 580 Repealed AR 34/89 s7

Part 44.2 Family Law Act Matters

Application of this Part

580.1(1) In this Part,

- (a) “Act” means the *Family Law Act*;
- (b) “Court” means the Court of Queen’s Bench;
- (c) “file” means to file with the clerk of the Court of Queen’s Bench;
- (d) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the Act.

(2) For the purposes of the Act and the regulations made under the Act and this Part, “party” means, in respect of an application under the Act, any one or more of the following:

- (a) a person named as an applicant or a respondent in the application;
- (b) a person identified in any enactment as a party to the application;
- (c) a public official, including the Director acting under Part 5 of the *Income and Employment Supports Act*, who pursuant to any enactment has the right to commence, defend, intervene in or take any step in respect of the application and exercises that right;
- (d) a person added as a party by the court hearing the application.

(3) Unless this Part, the Act, any enactment or an order of the Court indicates otherwise, other Parts of these Rules, except the requirements relating to discovery of records in Rules 186 to 199, apply to proceedings and appeals under the Act.

(4) A reference to the appropriate form in this Part is a reference to the form established by the Minister in accordance with the Family Law Act General Regulation made pursuant to the Act.

(5) Where the Minister has not established the form of statement or reply statement referred to in these Rules,

- (a) the party required to file that statement or reply statement must instead swear and file an affidavit containing the evidence to support that party’s application or response, as the case may be, and
- (b) a blank reply statement need not be served.

Initiating a claim

580.2(1) The applicant for an order described in Parts 1 to 4 of the Act must file a claim in the appropriate form that sets out the order being applied for.

(2) The applicant may ask the Court to grant more than one order, using only one claim form.

(3) The applicant must also swear and file a statement in the appropriate form for each of the orders applied for.

(4) The applicant may also swear and file a supplementary affidavit.

Service of claim documents

580.3(1) The applicant must serve each person named in the claim as a respondent, and each person who is required by the Act to be served, with

- (a) a copy of the documents filed under Rule 580.2,
- (b) a blank response in the appropriate form, and
- (c) a blank reply statement in the appropriate form for each of the orders applied for.

(2) The documents referred to in subrule (1) must be served at least 10 days before the date set out in the claim for the hearing of the applicant's application by the Court or within any other period the Court considers appropriate.

(3) When computing time for the purposes of this Rule, weekends and holidays are not to be included in the calculation.

Respondent's response

580.4(1) A respondent who wishes to respond to the applicant's claim must file the form referred to in Rule 580.3(1)(b) and must swear and file the form referred to in Rule 580.3(1)(c).

(2) The respondent may, in the response, ask the Court to grant one or more additional orders and, in that event, the respondent must swear and file a statement in the appropriate form for each additional order requested.

(3) The respondent may also swear and file a supplementary affidavit.

Service of response documents

580.5(1) The respondent must serve the applicant and any other party with

- (a) a copy of the documents filed under Rule 580.4, and
- (b) where the respondent has asked the Court to grant one or more additional orders, a blank reply statement in the appropriate form for each of the additional orders requested in the respondent's response.

(2) The documents referred to in subrule (1) must be served at least 5 days before the date set out in the claim for the hearing of the applicant's application by the Court or within any other period the Court considers appropriate.

(3) When computing time for the purposes of this Rule, weekends and holidays are not to be included in the calculation.

Response to respondent's request for additional order

580.6(1) Any party who wishes to respond to the respondent's request that the Court grant one or more additional orders must swear and file the reply statement referred to in Rule 580.5(1)(b).

(2) Any party who completes a reply statement under subrule (1) must serve the respondent and any other party with a copy of the reply statement at least 24 hours before the date set out in the claim for the hearing of the applicant's application by the Court.

Appearance before the Court

580.7 The Court may, whether or not the respondent has complied with Rules 580.4 and 580.5,

- (a) decide all or part of the matter,
- (b) adjourn all or part of the matter to a later date, or
- (c) set all or part of the matter down for a short oral hearing or trial,

and the Court may give any direction and grant any interim or procedural order the Court considers appropriate.

Hearing

580.8(1) The Court may set all or part of the matter down for a short oral hearing or trial by way of telecommunication.

(2) An oath may be administered by telecommunication.

Appeal of decision of Court of Queen's Bench sitting as an original court

580.81(1) Subject to subrule (2), a decision of the Court sitting as an original court made under the Act may be appealed to the Court of Appeal in accordance with Part 39.

- (2)** Notwithstanding Rule 506, the notice of appeal must be filed and served
- (a) within 30 days following the date on which the order being appealed was pronounced, or
 - (b) if the appellant is able to establish to the Court's satisfaction the date on which the appellant received notice of the order, within 30 days following that date.

Appeal of Provincial Court order to Court of Queen's Bench

580.82(1) To appeal an order of the Provincial Court to the Court of Queen's Bench pursuant to section 9 of the *Provincial Court Procedures (Family Law) Regulation*, a party shall

- (a) file a notice of appeal in the appropriate form with the clerk of the Court of Queen's Bench located in the judicial district where the order to be appealed was made, and
 - (b) serve a copy of the filed notice of appeal on the respondent
 - (i) personally,
 - (ii) by prepaid registered mail to the address for service, or
 - (iii) as directed by the Court of Queen's Bench.
- (2)** The notice of appeal must be filed and served
- (a) within 30 days following the date on which the order being appealed was pronounced, or
 - (b) if the appellant is able to establish to the Court's satisfaction the date on which the appellant received notice of the order, within 30 days following that date.

Notice of appeal

580.83 The notice of appeal must describe

- (a) the court that made the order being appealed, the location of that court and the name of the judge,
- (b) the date of the order,
- (c) a brief statement of the grounds on which the appeal is based,
- (d) the nature of the order or other relief that the appellant seeks, and
- (e) the address for service of the appellant.

Duty of clerks

580.84(1) The clerk of the Court must promptly give a copy of the notice of appeal to the clerk of the Provincial Court that made the order.

(2) Immediately on receipt of the notice of appeal, the clerk of the Provincial Court must forward the order, together with the filed documents relating to the order, including exhibits, to the clerk of the Court.

Transcript

580.85(1) The appellant must

- (a) order and pay for a transcript of the hearing before the Provincial Court, and
- (b) at the time of filing of the notice of appeal, provide to the clerk of the Court a copy of the requisition for the transcript and a receipt evidencing the ordering of the transcript.

(2) The appellant must file a copy of the transcript and serve a copy on the respondent not later than 3 months following the filing of the notice of appeal unless an order has been made by a judge of the Court prior to the expiration of the 3-month period extending the time for filing the transcript.

Non-compliance by appellant

580.86(1) If the appellant has not complied with Rule 580.85(2), the Court shall order that the appeal be dismissed, with or without costs, without further notice to the appellant.

(2) The Court may, on application, reinstate an appeal that has been dismissed under this Rule.

Filing of affidavits of service

580.87 The appellant must file a copy of the affidavits of service of the notice of appeal and the transcript of the hearing before the Provincial Court.

Scheduling appeal

580.88 On receiving all necessary documents, transcripts and affidavits of service, the clerk of the Court must

- (a) schedule the hearing of the appeal, and
- (b) send notice of the time and place to all parties by registered mail at least 30 days before the date fixed for the hearing of the appeal.

Evidence

580.89 The documents provided by the clerk of the Provincial Court pursuant to Rule 580.84(2) and the transcript of the hearing before the Provincial Court form the record for the hearing of the appeal, and no other evidence shall be considered by the Court unless otherwise ordered by the Court.

Appeal memoranda

580.9(1) The appellant must, not later than noon on the 14th day before the date scheduled for the hearing of the appeal, file and serve on the respondent an appeal memorandum setting out

- (a) the facts in brief,
- (b) the relief sought by the appellant,
- (c) the argument and authorities on which the appellant intends to rely in support of the grounds set out in the notice of appeal, and
- (d) particular references to the evidence to be discussed in relation to the grounds or arguments.

(2) The respondent must, not later than noon on the 7th day before the date scheduled for the hearing of the appeal, file and serve on the appellant an appeal memorandum setting out

- (a) the respondent's position on the relief sought by the appellant,
- (b) the relief, if any, sought by the respondent by way of cross-appeal,
- (c) the argument and authorities on which the respondent intends to rely, and
- (d) particular references to the evidence to be discussed in relation to the grounds or arguments.

Powers of Court on appeal

580.91 After hearing the appeal, the Court may do one or more of the following:

- (a) confirm the order of the Provincial Court;
- (b) set aside the order of the Provincial Court;
- (c) make any order that the Provincial Court could have made;
- (d) direct the Provincial Court to conduct a new hearing.

Appeal of decision of Court of Queen's Bench sitting as an appeal court

580.92(1) No appeal lies from a decision of the Court sitting as an appeal court for decisions made under the Act except to the Court of Appeal on a question of law or jurisdiction, or both, with leave of a judge of the Court of Appeal.

(2) Part 39 and subrule (3) apply in respect of the appeal.

(3) Notwithstanding Rule 506, the notice of appeal must be filed and served

- (a) within 30 days following the date on which the order being appealed was pronounced, or
- (b) if the appellant is able to establish to the Court's satisfaction the date on which the appellant received notice of the order, within 30 days following that date.

Duty of lawyer

580.93(1) Every lawyer who acts on behalf of a party in a proceeding under the Act must file a certificate in the appropriate form in accordance with section 5 of the Act.

(2) Subrule (1) does not apply where the lawyer is legal counsel for a director under an enactment.

Address for service

580.94(1) For the purposes of this Part, the address for service is,

- (a) for the applicant, the address provided in the claim filed under Rule 580.2 or as otherwise provided to the Court and all other parties in writing or on the record during a court appearance,
- (b) for the respondent, the address provided in the response filed under Rule 580.4 or as otherwise provided to the Court and all other parties in writing or on the record during a court appearance, and
- (c) for any other party, the address provided by the party to the Court and to all other parties in writing or on the record during a court appearance.

(2) Where any party is represented by a lawyer, that party's address for service is the lawyer's address, as provided in the certificate referred to in Rule 580.93 or as otherwise provided in writing.

Disclosure of financial information

580.95(1) Where a written request for financial information has been made under section 65(1) or (4) of the Act, that information shall be provided

- (a) within 30 days after the request is received where the party receiving the request resides in Canada or the United States, or
 - (b) within 60 days after the request is received where the party receiving the request resides outside Canada and the United States.
- (2)** The Court may provide in a practice direction a form of written request for financial information for the purposes of section 65(1) and (4) of the Act.

AR 146/2005

Part 45

Disposition of Infant's Property

Originating Notice

581 An application under *the Minors' Property Act* for the sale, mortgage, lease or other disposition of an infant's estate shall be made to the court by originating notice served upon the Public Trustee.

AR 390/68 s581;85/2002

Affidavits

582(1) The affidavits filed shall state

- (a) the nature and amount of the personal property to which the infant is entitled,
- (b) the necessity of resorting to the real estate,
- (c) its nature, value and the annual profits thereof, and
- (d) the occupation of the lands to be disposed of,

and shall state specifically the relief desired and circumstances sufficient to justify the order sought.

(2) Where an allowance for maintenance is desired, a case shall also be stated and made to justify such an order for the amount requested.

(3) If the appointment of a guardian is desired, a case shall be stated and made for the appointment of the person proposed.

AR 390/68 s582

Consent where infant over 14 years

583(1) The consent of all infants over 14 years of age shall be filed, verified by an affidavit of a solicitor, stating that the consent was read over by him to the infant and fully explained to him and apparently understood by the infant.

(2) When so directed by the court, the infant shall be produced before the court and examined apart as to his consent.

(3) Where the infant is out of Alberta, the court may direct inquiry as to the infant's consent in such manner as seems proper.

(4) Witnesses on the application may be examined viva voce before the court making the order.

AR 390/68 s583;