



Province of Alberta

## PROVINCIAL COURT ACT

# PROVINCIAL COURT CIVIL PROCEDURE REGULATION

### **Alberta Regulation 176/2018**

With amendments up to and including Alberta Regulation 205/2018

Current as of November 27, 2018

### Office Consolidation

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(Consolidated up to 205/2018)

**ALBERTA REGULATION 176/2018**

**Provincial Court Act**

**PROVINCIAL COURT CIVIL  
PROCEDURE REGULATION**

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**Definitions**

**1(1)** In this Regulation,

- (a) “Act” means the *Provincial Court Act*;
- (b) “civil claim” means the document that commences an action under Part 4 of the Act;
- (c) “file” means to present a document to a clerk and obtain an acknowledgment from the clerk that the document is part of the Court record;
- (d) “prescribed form” means in the form prescribed by the Minister under section 9(2)(h) of the Act;
- (e) “trial” includes a simplified trial under Part 8 unless the context requires otherwise.

**(2)** For the purposes of section 24.2 of the Act, “defend a claim” means file a dispute note, dispute note to counterclaim or dispute note to third party claim, as the case may be.

**(3)** For the purposes of the Act and this Regulation, “pleading” means a civil claim, dispute note with or without a counterclaim, counterclaim, dispute note to counterclaim, third party claim and dispute note to third party claim.

**Monetary limit**

**2** For the purposes of section 9.6(1)(a)(i) of the Act, \$50 000 is prescribed as the amount in respect of which the Court has jurisdiction to hear and adjudicate on any claim or counterclaim referred to in section 9.6(1)(a)(i) of the Act.

## **Part 1 Pleadings**

**Civil claim**

**3(1)** A person may make a claim by filing a civil claim in the prescribed form.

**(2)** A civil claim must clearly state

- (a) the particulars of the plaintiff’s claim,
- (b) the remedy sought by the plaintiff, and
- (c) the plaintiff’s address for service of documents.

(3) The civil claim and a blank copy of the prescribed form of dispute note shall be served on the defendant by the plaintiff in accordance with Division 1 of Part 12.

(4) A civil claim and a blank copy of the prescribed form of dispute note may be served outside Alberta without an order of the Court.

#### **Time for service of civil claim**

**4(1)** A civil claim shall be served on the defendant within one year after the date that the civil claim is filed unless the Court, on application filed before the one-year time limit expires, grants an extension of time for service.

(2) An extension of time for service under this section shall not exceed 3 months.

(3) If a civil claim is served within an extension of time for service granted under subsection (1), the civil claim that is served must be accompanied with

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

(4) If a civil claim is not served on a defendant within the time or extended time for service set out in this section, no further proceedings may be taken in the action against a defendant who was not served in time.

(5) A civil claim served on any defendant within the time or extended time for service set out in this section is not affected by the failure to serve any other defendant in time.

#### **Dispute note and counterclaim**

**5(1)** A defendant may

- (a) satisfy the civil claim, or
- (b) defend the civil claim by filing a dispute note in the prescribed form,
  - (i) if the defendant is served in Alberta, within 20 days from the date of service of the civil claim, or
  - (ii) if the defendant is served outside Alberta, within 30 days from the date of service of the civil claim.

(2) A dispute note must clearly state

- (a) the nature or grounds of the defendant's defence,
- (b) where the claim is disputed in part only, which parts or items are disputed,
- (c) where the claim is admitted in part, which parts or items are admitted,
- (d) the particulars of the defendant's claim for set-off, if any,
- (e) the particulars of the defendant's counterclaim, if any, and
- (f) the defendant's address for service of documents.

**(3)** A defendant may file a dispute note after the expiry of the applicable time in subsection (1) unless the defendant has been noted in default or a default judgment has been entered.

**(4)** On the filing of a dispute note under this section, the clerk shall send a copy of the dispute note to all parties other than the party who filed the dispute note and any new party added in a counterclaim included in the dispute note.

**(5)** For the purposes of subsection (4),

- (a) a copy of a dispute note may be sent to a party at
  - (i) the party's address for service, or
  - (ii) the party's last known address, if the party has not yet provided an address for service,

and

- (b) despite section 46, the sending of a dispute note to a party in accordance with clause (a) constitutes service of the dispute note and any included counterclaim.

**(6)** Where a dispute note includes a counterclaim adding a new party, the defendant shall serve the dispute note and counterclaim, accompanied with a blank copy of the prescribed form of dispute note to counterclaim, on the new party

- (a) in accordance with Division 1 of Part 12 as if the dispute note were a commencement document, and
- (b) within 30 days after the filing of the dispute note and counterclaim, unless the Court orders otherwise.

**(7)** Except when the context or this Regulation otherwise provides, a provision that applies to or in respect of

- (a) a plaintiff applies equally to or in respect of a plaintiff by counterclaim,
- (b) a defendant applies equally to or in respect of a defendant by counterclaim, and
- (c) a pleading related to a claim made by a civil claim applies equally to or in respect of a pleading related to a counterclaim.

**Failure to file dispute note to civil claim**

**6(1)** If a defendant has not filed a dispute note to the civil claim and the time for doing so under section 5 has expired, on filing proof of service of the civil claim and a blank copy of the prescribed form of dispute note on the defendant, the plaintiff may file

- (a) a request to enter default judgment in the prescribed form against the defendant for the full amount of the claim, if the claim is for a debt or liquidated demand, or
- (b) a request to note the defendant in default in the prescribed form, if the claim is not for a debt or liquidated demand.

**(2)** Where a defendant is noted in default under this section, the plaintiff may, without notice to the defendant, apply to the Court for judgment against the defendant, and on proof of the plaintiff's claim, the Court may do one or more of the following:

- (a) enter judgment;
- (b) make any necessary order;
- (c) direct an assessment of damages, with or without notice to the defendant or other parties;
- (d) adjourn the application and order additional evidence to be provided;
- (e) dismiss the civil claim or a part of it;
- (f) direct that the civil claim proceed to trial and that notice be served on every other defendant;
- (g) make a costs award in favour of the plaintiff.

**(3)** An application for judgment under subsection (2) may proceed without the attendance of the plaintiff, if the plaintiff has filed an affidavit in the prescribed form in support of the application.

(4) If the Court has directed an assessment of damages under subsection (2)(c) with notice to the defendant or other parties, at least 7 days before the date of the assessment hearing the plaintiff shall serve notice of the time, date and location of the assessment hearing on

- (a) the defendant in accordance with Division 1 of Part 12 as if the notice were a commencement document, and
- (b) all other parties to the action in accordance with Division 2 of Part 12.

(5) If judgment is entered under this section against some but not all defendants, the plaintiff may continue the claim in respect of any defendant against whom judgment is not entered.

**Dispute note to counterclaim**

**7(1)** Despite subsections (2) to (5), a defendant by counterclaim who is not a new party to the action is not required to file a dispute note to counterclaim, unless the Court orders otherwise.

(2) Where a dispute note includes a counterclaim, the defendant by counterclaim shall

- (a) satisfy the counterclaim, or
- (b) defend the counterclaim by filing a dispute note to counterclaim in the prescribed form.

(3) A dispute note to counterclaim under this section shall be filed

- (a) in the case referred to in subsection (2)(b),
  - (i) within 20 days from the date of service of the dispute note and counterclaim, if the party was served in Alberta, or
  - (ii) within 30 days from the date of service of the dispute note and counterclaim, if the party was served outside Alberta,

or

- (b) in the case of a dispute note to counterclaim filed under an order referred to in subsection (1), within the time directed by the Court.

(4) A dispute note to counterclaim must clearly state

- (a) the nature or grounds of the party's defence to the counterclaim,

- (b) where the counterclaim is disputed in part only, which parts or items are disputed,
  - (c) where the counterclaim is admitted in part, which parts or items are admitted, and
  - (d) the party's address for service of documents.
- (5) The clerk shall send a copy of the dispute note to counterclaim to all parties at their addresses for service.

**Failure to file dispute note to counterclaim**

- 8(1)** If a defendant by counterclaim who is required under section 7 to file a dispute note to counterclaim has failed to do so, the plaintiff by counterclaim may file a request to note the defendant by counterclaim in default in the prescribed form.
- (2)** If a defendant by counterclaim has been noted in default under subsection (1), no further proceedings may be taken on the counterclaim except with the permission of the Court.

**Third party claim**

- 9(1)** A defendant or third party defendant may file a third party claim in the prescribed form against another person who
- (a) is or might be liable to the party filing the third party claim for all or part of the claim against that party,
  - (b) is or might be liable to the party filing the third party claim for an independent claim arising out of
    - (i) a transaction or occurrence or series of transactions or occurrences involved in the action between the plaintiff and the defendant, or
    - (ii) a related transaction or occurrence or series of related transactions or occurrences,
- or
- (c) should be bound by a decision respecting an issue between the plaintiff and the defendant.
- (2)** A third party claim shall be filed and served by the third party plaintiff on the third party defendant, the plaintiff and the other defendants
- (a) within 30 days, or another time permitted by the Court, after the dispute note is filed, and

- (b) before judgment is entered against the defendant or the defendant is noted in default.

**(3)** The third party claim shall be served on the third party defendant in accordance with Division 1 of Part 12, accompanied with

- (a) a copy of any filed civil claim,
- (b) a copy of any filed dispute note, and
- (c) a blank copy of the prescribed form of dispute note to third party claim.

**(4)** The third party claim shall be served on the plaintiff and defendants other than the third party defendant in accordance with Division 2 of Part 12.

**(5)** Except when the context or this Regulation otherwise provides, a provision that applies to or in respect of

- (a) a plaintiff applies equally to or in respect of a third party plaintiff,
- (b) a defendant applies equally to or in respect of a third party defendant, and
- (c) a pleading related to a claim made by a civil claim applies equally to or in respect of a pleading related to a third party claim.

**Dispute note to third party claim**

**10(1)** A dispute note to third party claim in the prescribed form shall be filed

- (a) within 20 days from the date of service of the third party claim, if the third party defendant is served in Alberta, or
- (b) within 30 days from the date of service of the third party claim, if the third party defendant is served outside Alberta.

**(2)** On the filing of a dispute note to third party claim, the clerk shall send a copy of the dispute note to third party claim to all parties at their addresses for service, other than the third party defendant that filed the dispute note to third party claim.

**Failure to file dispute note to third party claim**

**11(1)** If a third party defendant fails to file a dispute note to third party claim under section 10, the third party plaintiff may file a request to note the third party defendant in default in the prescribed form.

**(2)** If a third party defendant has been noted in default under subsection (1), no further proceedings may be taken on the third party claim except with the permission of the Court.

**Amendments to pleadings**

**12(1)** A party may amend the party's pleadings at any time before the action has been scheduled for a mediation, pre-trial conference, binding judicial dispute resolution proceeding or trial.

**(2)** After an action is scheduled for a mediation, pre-trial conference, binding judicial dispute resolution proceeding or trial, a party may not amend the party's pleadings unless

- (a) all parties have agreed in writing to the amendment, and this agreement has been filed, or
- (b) the party, on application, has obtained the permission of the Court.

**(3)** If the Court gives permission referred to in subsection (2)(b), the Court shall specify the time period within which the amended pleading shall be filed.

**(4)** A party who amends a pleading under this section shall file a copy of the amended pleading and shall ensure

- (a) the copy is marked "Amended", and
- (b) any changes to the last filed copy of the pleading are identified in the copy.

**(5)** On the filing of an amended pleading, other than the amended pleadings referred to in subsection (6), the clerk shall send a copy of the amended pleading to all parties who have provided an address for service.

**(6)** If a party files

- (a) an amended civil claim,
- (b) an amended third party claim, or
- (c) an amended pleading adding a new party,

the party shall serve a copy of the amended pleading on each of the other parties to the action in accordance with Division 1 of Part 12.

**(7)** An amended pleading that is required to be served under subsection (6) must be served on each of the other parties

- (a) within 10 days after the date on which it is filed,
- (b) if the pleading is a civil claim that has not yet been served, within the time or extended time for service of a civil claim set out in section 4, or
- (c) if the pleading is a third party claim that has not yet been served, within the time for service of a third party claim set out in section 9(2).

**(8)** A party who is served with an amended pleading is not required to amend that party's own pleadings.

#### **Parties confined to pleadings**

**13** At a trial, unless the Court is satisfied that sufficient cause is shown, and permits otherwise, the parties are confined to the particulars set out in their pleadings.

## **Part 2 Scheduling a Pre-trial Conference, Simplified Trial or Trial**

#### **Resolution tracks**

**14(1)** On the filing of a dispute note under section 5, the Court shall, subject to sections 64.1 and 65 of the Act and having regard to section 36.1 of the Act, direct that the action be set for

- (a) a pre-trial conference,
- (b) a simplified trial under Part 8, or
- (c) a trial.

**(2)** Notwithstanding that a direction has been made under subsection (1) that an action be set for a simplified trial or a trial, the Court may at any time, on its own motion or an application by a party, direct that the action instead proceed by way of the other proceeding.

**(3)** The Court may at any time advise the parties to consider participating in a binding judicial dispute resolution proceeding.

- (4) If the Court makes a direction under subsection (1), the clerk shall
- (a) set the time, date and location of the pre-trial conference, simplified trial or trial, and
  - (b) send to all parties at their addresses for service a notice of the time, date and location set for the pre-trial conference, simplified trial or trial.
- (5) A proceeding referred to in this section is not invalid by reason only that it was held at a time, date or location other than the time, date or location set out in the notice referred to in subsection (4)(b).

#### **Disclosure of records and documents**

**15** The parties shall comply with any direction or notice given by the Court to produce records and documents in the possession or power of the parties that relate to the issues in the action.

#### **Location of pre-trial conference, simplified trial or trial**

**16(1)** For the purposes of section 14(4), the clerk shall set the pre-trial conference, simplified trial or trial at the location where the Court holds regular sittings that is closest to the place where

- (a) the defendant resided or carried on business at the time that the civil claim was filed, or
- (b) the cause of action arose.

(2) Despite subsection (1), the parties may agree to have the pre-trial conference, simplified trial or trial held at a location other than as provided for in subsection (1).

#### **Change of location**

**17** The Court may, on its own motion or on application by a party, order that a pre-trial conference, simplified trial or trial be held at a time, date or location other than that set out in the notice referred to in section 14(4)(b) or at a location other than that agreed to by the parties under section 16(2).

#### **Adjournment**

**18** The Court may adjourn a pre-trial conference, simplified trial or trial to another date

- (a) on the application of a party, on notice to the other parties,
- (b) on the failure of a party to attend,

- (c) if insufficient time is allotted to complete the pre-trial conference, simplified trial or trial, or
- (d) on the Court's own motion.

### **Part 3**

## **Payment into Court, Admission of Liability and Withdrawal or Consent Judgment**

#### **Payment into Court**

**19(1)** A party may at any time before the date of the trial pay into Court a sum of money to satisfy, as the case may be,

- (a) the plaintiff's claim, including interest and costs, or
- (b) the defendant's counterclaim, including interest and costs.

**(2)** When a party makes a payment under subsection (1), the clerk shall send to the other party, at that party's address for service, a notice setting out the date payment was made, and the amount paid in respect of the claim or counterclaim, including interest and costs.

**(3)** If a party accepts in writing the payment made under subsection (1) in full satisfaction of the claim or counterclaim, including interest and costs, the clerk shall pay the money to that party.

**(4)** If a party has not accepted payment within 30 days of the sending of the notice referred to in subsection (2) or has refused the payment, the payment into Court is considered to be rejected, and the money shall be returned to the party who paid the money into Court.

**(5)** If a party proceeds with the claim or counterclaim, as the case may be, after receiving the notice referred to in subsection (2) and is not awarded a sum greater than the amount paid into the Court, that party is liable to the other party for those costs incurred after the payment into Court, unless the Court otherwise orders.

**(6)** Despite subsection (4), the Court may, at any time, make an order with respect to the disposition of the money paid into Court under subsection (1).

**(7)** No interest accrues to money paid into Court under subsection (1).

**Admission of indebtedness or liability**

**20(1)** A party may admit the party's indebtedness or liability in whole or in part by including the admission in the dispute note or the dispute note to counterclaim or by filing a notice to that effect.

**(2)** When a party admits indebtedness or liability in whole under subsection (1), the Court may order that judgment be entered with respect to the claim or counterclaim.

**(3)** When a party admits indebtedness or liability in part under subsection (1), the Court may

- (a) order that a partial judgment be entered with respect to the claim or counterclaim, as the case may be, in an amount based on the extent of the admission, and
- (b) direct a hearing to address the balance of the claim or counterclaim.

**Withdrawal of claim or consent judgment**

**21(1)** At any time,

- (a) a party may withdraw the party's claim or counterclaim, as the case may be, by filing a notice to that effect, or
- (b) the parties may consent to a judgment being entered.

**(2)** When a party files a notice under subsection (1)(a), the clerk shall send all other parties a copy of the notice at their addresses for service.

**(3)** Within 30 days after the notice of the withdrawal of the claim or counterclaim is sent by the clerk to the other parties to the claim or counterclaim, each of the other parties may apply to the Court for costs.

**(4)** When a consent judgment under subsection (1)(b) is entered, the clerk shall send all other parties a copy of the judgment at their addresses for service.

## **Part 4 Electronic Hearing**

**Electronic hearing**

**22(1)** In this section, "electronic hearing" means an application, proceeding or trial conducted, in whole or in part, by electronic means in which all the participants in a hearing and the Court can hear each other, whether or not all or some of the participants and the Court can see each other or are in each other's presence.

- (2) An electronic hearing may be held if
- (a) the parties agree and the Court so permits, or
  - (b) on application, the Court orders an electronic hearing.
- (3) The Court may
- (a) direct that an application for an electronic hearing be heard by electronic hearing,
  - (b) direct that an application, proceeding or trial be heard in whole or in part by electronic hearing,
  - (c) give directions about arrangements, including any expenses, for the electronic hearing,
  - (d) give directions about the distribution of records and documents and the practice and procedure for the electronic hearing, or
  - (e) order that an electronic hearing be completed in person.
- (4) The clerk shall participate in an electronic hearing unless the Court directs otherwise.

## **Part 5 Binding Judicial Dispute Resolution Proceeding**

### **Binding judicial dispute resolution proceeding**

**23(1)** The written agreement of the parties to participate in a binding judicial dispute resolution proceeding under section 64.1 of the Act must include an acknowledgment that

- (a) the process is confidential,
- (b) no record will be kept of the proceeding,
- (c) the judge is not bound by the laws of evidence applicable to judicial proceedings,
- (d) the judge may meet privately with a party in order to facilitate settlement,
- (e) after hearing from all parties, if the action does not settle, the judge may give a final and binding judgment that may include costs, and
- (f) a judgment referred to in clause (e) cannot be appealed.

- (2)** If, under section 64.1 of the Act, the Court is to conduct a binding judicial dispute resolution proceeding, the clerk shall
- (a) set the time, date and location of the binding judicial dispute resolution proceeding, and
  - (b) send to all parties at their addresses for service a notice of the time, date and location set for the binding judicial dispute resolution proceeding.
- (3)** Notwithstanding that an action has been set for a binding judicial dispute resolution proceeding, and despite the written agreement of the parties, at any time before, during or at the conclusion of the binding judicial dispute resolution proceeding, the judge may
- (a) give direction regarding the practice or procedure for the binding judicial dispute resolution proceeding,
  - (b) adjourn the binding judicial dispute resolution proceeding, or
  - (c) terminate the binding judicial dispute resolution proceeding and direct the parties to a pre-trial conference or trial.
- (4)** A party shall comply with any direction or notice given by the Court to produce records and documents that are in the party's possession or power that relate to the issues in the action.
- (5)** If a party fails to comply with a direction or notice provided under subsection (3)(a) or (4), the judge may
- (a) provide further direction to the party who failed to comply, and reschedule the binding judicial dispute resolution proceeding to a future date,
  - (b) proceed with the binding judicial dispute resolution proceeding and give a final and binding judgment based on the information before the judge, or
  - (c) terminate the binding judicial dispute resolution proceeding and direct the parties to proceed to a pre-trial conference or trial.
- (6)** If a party fails to appear at the binding judicial dispute resolution proceeding, the judge may
- (a) terminate the binding judicial dispute resolution proceeding and direct the parties to proceed to a pre-trial conference or trial, or

(b) strike out pleadings and enter judgment.

(7) The judge who directs parties to proceed to a trial under this section shall not conduct the trial of the action unless all the parties to the action give their consent for the judge to do so.

## **Part 6**

### **Applications to the Court**

#### **Application to the Court**

**24(1)** Unless this Regulation or an enactment otherwise provides or the Court otherwise permits, an application to the Court may be filed only during an action or after judgment is entered.

(2) Unless the Court otherwise permits, an application to the Court must

- (a) be in the prescribed form,
- (b) state briefly the reasons for making the application,
- (c) state the remedy claimed or sought, and
- (d) be accompanied with an affidavit in the prescribed form in support of the application.

(3) Unless this Regulation or another enactment otherwise provides or the Court otherwise permits, the applicant shall

- (a) file the application, the affidavit and any other evidence in support of the application, and
- (b) serve the application, affidavit and any other evidence in support of the application on all parties and every other person affected by the application, at least 7 days before the application is scheduled to be heard or considered.

(4) If a respondent to an application intends to rely on an affidavit or other evidence when the application is heard or considered, the respondent shall file an affidavit in the prescribed form or other evidence and serve a copy on the applicant a reasonable time before the date the application is scheduled to be heard or considered.

#### **Applications without notice**

**25** Despite section 24 or any other provision to the contrary, the applicant is not required to serve the application on a party if

- (a) an enactment provides that service of an application is not required,
- (b) an enactment permits an application to be made without notice, and the party meets any requirements in the enactment to do so, or
- (c) the Court is satisfied that
  - (i) no notice is necessary, or
  - (ii) serving the application might cause undue prejudice to the applicant.

#### **How the Court considers applications**

**26** The Court may consider an application in one or more of the following ways:

- (a) in person, with one, some or all of the parties present;
- (b) by means of an electronic hearing if an electronic hearing is permitted under section 22;
- (c) by a process involving documents only.

## **Part 7 Witnesses**

#### **Notice to attend as witness**

**27(1)** A party may file a notice to attend as a witness in the prescribed form in respect of a person who may be a witness at a trial.

**(2)** A party who files a notice to attend as a witness shall serve the person with the notice to attend as a witness, accompanied with the allowance prescribed in section 28,

- (a) at least 21 days prior to the trial, or
- (b) as directed by the Court.

**(3)** Unless otherwise directed by the Court, service under subsection (2) shall be effected

- (a) by leaving the notice to attend as a witness and the allowance with the person, or
- (b) by sending the notice to attend as a witness and the allowance by recorded mail addressed to the person.

- (4) Service under this section is effected
- (a) under subsection (3)(a), on the date the notice to attend as a witness and the allowance are left with the person, or
  - (b) under subsection (3)(b), on the date the acknowledgment of receipt is signed by the person to whom it is addressed.
- (5) A person served with a notice to attend as a witness and the allowance shall attend the trial in accordance with the terms set out in the notice.
- (6) A notice to attend as a witness has the same effect as a notice to attend given in a proceeding in the Court of Queen's Bench and is enforceable in the same manner.

**Witness allowance**

- 28(1)** Unless the Court orders otherwise, the allowance payable to a person who attends a trial as a witness is prescribed as the allowance determined in accordance with the Schedule.
- (2) If an amount payable under this section is disputed or uncertain, the amount may be estimated and may be adjusted by the Court after completion of the attendance.

## Part 8 Simplified Trial

**Court direction**

- 29** If the Court has directed an action to be heard by way of a simplified trial, the Court may provide further directions in accordance with section 36.1 of the Act in the notice sent to the parties under section 14.

**Trial statement**

- 30(1)** If an action has been directed to be heard by way of a simplified trial, each party shall file a trial statement in the prescribed form and serve the trial statement on each of the other parties.
- (2) A trial statement must include or attach
- (a) a summary of the facts and evidence the party intends to present to the Court at the simplified trial,
  - (b) the amount the party is claiming, disputing or counterclaiming, and, if applicable, how that amount is calculated,

- (c) a list of witnesses intended to provide evidence at the simplified trial, and a summary of the evidence the party believes each witness will provide,
- (d) copies of all relevant documents and records,
- (e) an acknowledgment by the party that the party
  - (i) is aware of the date of the simplified trial and is ready to proceed,
  - (ii) will provide all relevant documents and records to the other parties in accordance with subsection (4),
  - (iii) has read the notice of simplified trial,
  - (iv) knows the scheduled length of the simplified trial and that the party is expected to present the party's case in no more than half of the scheduled time, and
  - (v) may attempt to settle the action with the other parties before the simplified trial,

and

- (f) a certification by the party of the accuracy of the trial statement.

**(3)** Each party shall file a trial statement at least 14 days before the date set for the simplified trial.

**(4)** Each party shall serve a copy of the filed trial statement on each of the other parties in accordance with Division 2 of Part 12 at least 7 days before the date set for the simplified trial.

**(5)** If a party fails to file and serve a trial statement in accordance with subsections (3) and (4), the Court may award costs to the other parties and may

- (a) strike that party's pleadings and enter judgment,
- (b) adjourn the simplified trial, or
- (c) proceed in the absence of the trial statement.

## Part 9

### Failure to Appear at Pre-trial Conference or Trial

#### Failure to appear

**31(1)** If a defendant fails to appear on the date set for a pre-trial conference or a trial in respect of a claim or counterclaim, the Court may

- (a) where the claim is for a debt or liquidated demand, enter judgment on the claim,
- (b) where the claim requires the assessment of damages, proceed to assess the damages or adjourn the action to a subsequent date for assessment of damages,
- (c) where the claim is for a remedy, other than a remedy referred to in clause (a) or (b), that is within the jurisdiction of the Court, grant the remedy to the extent that the Court considers appropriate in the circumstances, or adjourn the action to a subsequent date for the determination and granting of the remedy, or
- (d) dismiss the counterclaim of the defendant.

**(2)** If a plaintiff fails to appear on the date set for a pre-trial conference or trial in respect of a claim or counterclaim, the Court may

- (a) dismiss the claim of the plaintiff,
- (b) where the counterclaim is for a debt or liquidated demand, enter judgment on the counterclaim,
- (c) where the counterclaim requires the assessment of damages, proceed to assess the damages or adjourn the action to a subsequent date for assessment of damages, or
- (d) where the counterclaim is for a remedy, other than a remedy referred to in clause (b) or (c), that is within the jurisdiction of the Court, grant the remedy to the extent that the Court considers appropriate in the circumstances, or adjourn the action to a subsequent date for the determination and granting of the remedy.

## Part 10 Judgment

### Setting aside or varying judgment or dismissal

**32(1)** The Court may, on any terms it considers proper, set aside or vary

- (a) a noting in default under section 6, 8 or 11,
- (b) a judgment on a claim or counterclaim entered under section 6, 23, 30 or 31, or
- (c) a dismissal of a claim or counterclaim under section 31.

**(2)** The person in whose favour an order under subsection (1) is made may file a certified copy of the order in the Court of Queen's Bench, and once the certified copy of the order is filed,

- (a) the judgment or the dismissal referred to in subsection (1), as the case may be, is set aside or varied, as the order provides, and
- (b) any enforcement proceeding taken or garnishee summons issued pursuant to the judgment is stayed subject to the order of the Court of Queen's Bench.

### Counterclaim

**33(1)** Subject to this section, a counterclaim may, to the extent it is established, be applied in satisfaction of a plaintiff's claim established by the Court.

**(2)** If a counterclaim is established that

- (a) exceeds the amount of the plaintiff's established claim, the Court may enter judgment in favour of the defendant in the amount of the difference, or
- (b) is less than the amount of the plaintiff's established claim, the Court may enter judgment in favour of the plaintiff in the amount of the difference.

**(3)** In the event that both a claim and a counterclaim are established, the Court may, if it awards costs for and against both the plaintiff and the defendant, make an order for a net amount of costs in favour of the party entitled to them.

### Costs and interest

**34** Where judgment is entered under Part 4 of the Act, the judgment amount includes costs and prejudgment interest.

**Payment hearings**

**35** Unless the Court proceeds on its own motion, a payment hearing under section 44.2 of the Act shall be

- (a) on an application in the prescribed form, accompanied with an affidavit in the prescribed form that includes evidence of the applicant's income, expenses, assets and liabilities, and
- (b) on notice to the party in whose favour judgment has been entered.

**Filing of judgment at the Court of Queen's Bench**

**36** Any judgment under Part 4 of the Act that is to be filed with the Court of Queen's Bench shall be filed at the judicial centre that is, by road, closest to the court at which the judgment was entered.

**Notice of appeal**

**37** Where a judgment is to be appealed under section 46 of the Act, the notice of appeal shall be filed with the Court of Queen's Bench at the judicial centre that is, by road, closest to the court at which the judgment was entered.

## **Part 11 Costs**

**General rule for payment of litigation costs**

**38** A successful party to an application, proceeding or action is entitled to a costs award as against the unsuccessful party, subject to

- (a) the Court's general discretion under section 37.1 of the Act, and
- (b) provisions in this Regulation or any other enactment governing who is to pay costs in particular circumstances.

**Litigation expenses recoverable as costs**

**39(1)** The litigation expenses recoverable as costs between the parties are as follows:

- (a) for fees paid to the clerk under section 1(a) to (d) of the *Provincial Court Fees Regulation* (AR 18/91), the amount of the fees actually paid;
- (b) for service of a civil claim

- (i) by a private process server, the actual cost, for all activities necessary for effecting service, including
    - (A) searches of any registry maintained by the Government of Canada, the Government of Alberta or a local authority,
    - (B) service attempts by the process server, and
    - (C) travel by private vehicle, in accordance with any directive issued by the Treasury Board respecting travel, meal and hospitality expenses, as though the private process server were an employee as defined in the *Public Service Act*,
  - (ii) by a method of mailing as designated in the *Provincial Court Act* or this Regulation, the actual cost, and
  - (iii) by a method directed by the Court, the amount as fixed by the Court;
- (c) for the search of any registry maintained by the Government of Canada, the Government of Alberta or a local authority, the actual cost of the search;
  - (d) for the preparation by an expert witness of an expert witness's report, or for the preparation by an expert witness for a trial, and for the expert witness's attendance at the trial, the amount as fixed by the Court;
  - (e) for the attendance of a witness at a trial, the amount of the allowance prescribed under section 28 actually paid or reimbursed, as the case may be, to the witness to travel to, attend at and return from the location of the trial;
  - (f) for a default judgment entered under section 6, the amounts set out in clauses (a) to (c).
- (2) Despite subsection (1)(d) and (e), the Court may, in its discretion, reduce or disallow the costs claimed for a witness if the Court is of the opinion that
- (a) the witness did not present evidence that advanced the claim or defence, or
  - (b) a proposed expert witness
    - (i) was not qualified by the Court as an expert witness, or

- (ii) gave opinion evidence that duplicated opinion evidence given by another expert witness at the hearing.

(3) The Court may, in its discretion, award costs for additional classes of litigation expenses not specified in subsection (1).

## **Part 12**

### **Service**

#### **Definition of commencement document**

**40** In this Part, “commencement document” means a civil claim, a counterclaim in which a new party is added, a third party claim, and any of these documents as amended.

### **Division 1**

#### **Service of Commencement Documents**

#### **Service of commencement documents on individual**

**41(1)** Service of a commencement document on an individual may be made

- (a) by leaving a copy with the individual,
- (b) by leaving a copy for the individual at the individual’s most usual place of residence with someone residing at the residence who is apparently 16 years of age or older,
- (c) by sending a copy by recorded mail addressed to the individual, or
- (d) as directed by the Court.

(2) Service under this section is effected

- (a) under subsection (1)(a), on the date that the commencement document is left with the individual,
- (b) under subsection (1)(b), on the date that the commencement document is left with an individual at the residence,
- (c) under subsection (1)(c), on the date that the acknowledgment of receipt is signed by the individual to whom the document is addressed, or by another individual on behalf of the individual to whom the document is addressed, or
- (d) under subsection (1)(d), on the date specified in the order.

**Service of commencement documents on corporation**

**42(1)** Service of a commencement document on a corporation, other than a local authority, may be made

- (a) by serving it, using a method of service set out in section 41(1), on a director of the corporation,
- (b) by serving it, using a method of service set out in section 41(1), on an individual who appears to have management or control responsibilities in respect of the corporation at its principal place of business or activity in Alberta, or at its place of business or activity in Alberta where the claim arose,
- (c) by leaving it at or sending it by recorded mail to the registered office of the corporation, or
- (d) if the corporation is an extra-provincial corporation, by serving it in accordance with section 288(7) of the *Business Corporations Act*.

**(2)** Service under this section is effected

- (a) if the document is served in accordance with subsection (1)(a) or (b), on the applicable date provided for in section 41(2),
- (b) if the document is left at the registered office of the corporation, on the date the document is left,
- (c) if the document is sent by recorded mail to the registered office of the corporation, on the date the acknowledgment of receipt is signed, or
- (d) if the document is served in accordance with subsection (1)(d), on the date the document is delivered or is deemed to be received under section 288(7) or (8) of the *Business Corporations Act*, as applicable.

**Service of commencement documents on partnership**

**43(1)** Service of a commencement document on a partnership may be made by serving it on one of the partners of the partnership, using a method of service set out in section 41(1) or section 42(1), as applicable.

**(2)** Service under this section is effected

- (a) if the document is served using a method of service set out in section 41(1), on the applicable date provided for in section 41(2), or

- (b) if the document is served using a method of service set out in section 42(1), on the applicable date provided for in section 42(2).

**Service of commencement documents on local authority**

**44(1)** Service of a commencement document on a local authority may be made by serving it on

- (a) the chief elected official or chief administrative officer,
- (b) in the case of an improvement district, the Minister responsible for the *Municipal Government Act*,
- (c) in the case of a special area, the Minister responsible for the *Special Areas Act*, or
- (d) in the case of a Metis settlement, the settlement chair or settlement administrator,

using a method of service set out in section 41(1).

**(2)** Service under this section is effected on the date provided for in section 41(2).

**Service of commencement documents on party providing address for service**

**45(1)** Where a party has provided an address for service on a document filed in the action, a commencement document may be served

- (a) by leaving a copy, addressed to the party, at that address, or
- (b) by sending a copy by recorded mail, addressed to the party at that address.

**(2)** Service is effected under subsection (1)

- (a) if the document is left at the address, on the date it is left, or
- (b) if the document is sent by recorded mail, on the date the acknowledgment of receipt is signed.

## Division 2 Service of Documents Other Than Commencement Documents

### Service of documents other than commencement documents

**46(1)** Service of a document, other than a commencement document, on a party may be made

- (a) by any method set out in Division 1, as applicable,
- (b) by leaving a copy, addressed to the party, at the address for service provided in the most recently filed document in the action,
- (c) by sending a copy to the party by ordinary mail addressed to the party at the address for service provided in the most recently filed document in the action, or
- (d) by an electronic method, if
  - (i) the party has provided an electronic address as an address for service to which information or data in respect of an action may be transmitted, and
  - (ii) the document is sent to the party at the specified address and in a format that is usable for subsequent reference.

**(2)** Service is effected

- (a) under subsection (1)(a) on the applicable date provided for in Division 1,
- (b) under subsection (1)(b) on the date the document is left at the party's address for service,
- (c) under subsection (1)(c)
  - (i) 7 days after the date on which the mail is sent to an address in Alberta, or
  - (ii) 14 days after the date on which the mail is sent to an address outside Alberta,

or

- (d) under subsection (1)(d)
  - (i) on the date confirmation is received or obtained that the transmission to the address for service of the party to be served was successfully completed, or

- (ii) if no confirmation referred to in subclause (i) is received or obtained, on the date the document was sent by the electronic method, unless there are reasonable grounds for believing that the party did not receive the document at that time.

### **Division 3**

#### **Proving, Validating or Dispensing with Service, and Substitutional Service**

##### **Proof of service**

**47(1)** Service of a document may be proved

- (a) by an affidavit of service proving the service, or
- (b) by the oral testimony of the person serving it.

**(2)** In the case of service by recorded mail, the affidavit of service must attach as an exhibit the acknowledgment of receipt of that mail signed

- (a) by the person to be served, or
- (b) by the person who signed the acknowledgment of receipt on behalf of the person to be served.

**(3)** In the case of service on a corporation, the affidavit of service must attach as an exhibit

- (a) a corporate registry search result for the corporation, and
- (b) if service is effected by recorded mail, the acknowledgment of receipt signed on behalf of the corporation.

**(4)** In the case of service by electronic method, the affidavit of service must attach as an exhibit

- (a) a copy of the transmission sent to the address for service of the party to be served, and
- (b) a copy of the confirmation received or obtained that the transmission to the address for service of the party to be served was successfully completed, if available.

##### **Validating or dispensing with service**

**48(1)** Notwithstanding that service of a document does not comply with this Part, the Court may, on application, if it is satisfied that

the document has come or is likely to have come to the attention of the party being served, deem the service to be valid.

(2) On application, the Court may shorten the applicable time for service of any document if satisfied that sufficient cause is shown.

(3) On application, the Court may dispense with service of any document if satisfied that sufficient cause is shown.

#### **Substitutional service**

**49(1)** If service of a document, inside or outside Alberta, in accordance with other provisions in this Part is impractical, the Court may, on application, make an order for substitutional service.

(2) The application must be supported by an affidavit

- (a) setting out why service in accordance with other provisions in this Part is impractical,
- (b) proposing an alternative method of service, and
- (c) stating why the alternative method of service is likely to bring the document to the attention of the person to be served.

(3) Unless otherwise ordered, an order for substitutional service of a document shall be served with the document except where substitutional service is by advertisement, in which case the advertisement must contain a reference to the order.

(4) If a document is served in accordance with an order for substitutional service, service is effected on the date specified in the order.

### **Division 4 Address for Service**

#### **Address for service**

**50(1)** On each document that is filed, the party filing the document shall provide that party's address for service of documents.

(2) A party shall

- (a) notify the Court in writing of any change to the party's address for service, and
- (b) send a copy of the written notification to all other parties at their address for service.

## **Part 13**

### **Transitional Provisions, Consequential Amendment, Repeal and Coming into Force**

#### **Definition**

**51** In this Part, “existing proceeding” means a court proceeding under Part 4 of the *Provincial Court Act* commenced but not concluded before the coming into force of this Regulation.

#### **Regulation applies to existing proceedings**

**52(1)** Except as otherwise provided by this Part or by an order under section 53, this Regulation applies to every existing proceeding.

**(2)** Every order or judgment made in an existing proceeding before the coming into force of this Regulation and everything done in the course of an existing proceeding is to be considered to have been done under this Regulation and has the same effect under this Regulation as it had before the coming into force of this Regulation.

#### **Resolution of difficulty or doubt**

**53** If there is doubt about the application or operation of this Regulation to an existing proceeding or if any difficulty, injustice or impossibility arises as a result of this Part, a party may apply to the Court for directions or an order, or the Court may make an order, with respect to any matter it considers appropriate in the circumstances, including:

- (a) suspending the operation of any provision and substituting one or more provisions that were in effect before the coming into force of this Regulation, with or without modification, for particular purposes or proceedings or any aspect of them;
- (b) modifying the application or operation of this Regulation in particular circumstances or for particular purposes.

#### **Time limits**

**54(1)** Where under this Regulation a time limit is provided for doing anything, other than the serving of a notice or other document in advance of some event, that is longer than the time limit that applied before the coming into force of this Regulation, the time limit provided in this Regulation prevails, despite that the action or proceeding to which the time limit applies was commenced before the coming into force of this Regulation.

(2) Where under this Regulation a time limit is provided for doing anything, other than the serving of a notice or other document in advance of some event, that is shorter than the time limit that applied before the coming into force of this Regulation, a person who commenced the action or proceeding must comply with

- (a) the time limit that applied before the coming into force of this Regulation, or
- (b) the time limit under this Regulation, calculated from the date on which this Regulation comes into force,

whichever occurs first.

(3) Where this Regulation imposes a time limit for doing anything for which no time limit was provided before the coming into force of this Regulation, and on the coming into force of this Regulation the thing has not yet been done, the time limit under this Regulation applies to the doing of that thing and is calculated from the date on which this Regulation comes into force.

(4) Where the time limit provided by this Regulation for doing anything runs from a different event than the equivalent time limit that applied before the coming into force of this Regulation, and on the coming into force of this Regulation the thing has not yet been done, the time limit provided by this Regulation applies, calculated either

- (a) from the event specified in this Regulation, or
- (b) from the coming into force of this Regulation,

whichever occurs later.

(5) Service of a document or notice that was effected before the coming into force of this Regulation remains valid despite any change to the relevant time limit imposed as a result of the coming into force of this Regulation.

#### **New test or criteria**

**55** Where this Regulation imposes a new test, provides new criteria or provides an additional ground for making an application in an existing proceeding, this Regulation applies in respect of the application if the application was made but has not been heard prior to the coming into force of this Regulation.

#### **Consequential amendment**

**56** *The Provincial Court Fees and Costs Regulation (AR 18/91)* is amended

(a) by repealing the title and substituting the following:

**PROVINCIAL COURT FEES REGULATION**

(b) by repealing sections 1.2 and 2.

AR 176/2018 s56;205/2018

**Repeal**

**57** The *Provincial Court Civil Division Regulation (AR 329/89)* is repealed.

**Coming into force**

**58** This Regulation comes into force on the coming into force of section 6(2), (3), (4)(a)(i) to (iv), (vi) and (vii), (b) and (c) and (5) to (17) of the *Statutes Amendment Act, 2015*.

**Schedule  
Witness Allowance  
(Section 28)**

- 1** The allowance payable to a person who is served a notice to attend as a witness at a trial, except a person paid in accordance with section 5 of this Schedule, for each day or part of a day necessarily spent by the witness in travelling to, staying as long as is reasonably necessary to give evidence at and travelling back from the location of the trial, is \$25.
- 2** The allowance payable to a person for travel to attend as a witness at, and return from, the location of the trial is
- (a) for travel by private vehicle, the business kilometre rate for private vehicles for each kilometre necessarily travelled, and for parking charges, in accordance with any directive issued by the Treasury Board respecting travel, meal and hospitality expenses, as though the person were an employee as defined in the *Public Service Act*,
  - (b) for travel by train, bus or other public ground transportation, the reasonable fare for that travel, and
  - (c) for travel by a regularly scheduled air carrier of a required distance of over 200 kilometres, the reasonable airfare for that travel.
- 3** If a person who attends a trial as a witness does not reside within reasonable commuting distance of the place of the trial, the allowance payable is the amount paid for accommodation in accordance with any directive issued by the Treasury Board

respecting travel, meal and hospitality expenses, as though the person were an employee as defined in the *Public Service Act*.

**4** The allowance payable to a person who attends a trial as a witness for necessary meals is an amount in accordance with any directive issued by the Treasury Board respecting travel, meal and hospitality expenses, as though the person were an employee as defined in the *Public Service Act*.

**5** If a witness is not a party to the action and is called to give evidence as an expert witness, for each day or part of a day necessarily spent by the expert witness in travelling to, staying as long as required to give evidence, and travelling back from the location of the trial, the witness, except a witness paid in accordance with section 1 of this Schedule, is entitled to

- (a) an allowance of \$50, and
- (b) the allowance that a witness is entitled to under sections 2, 3 and 4 of this Schedule.







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