



ALBERTA

RULES OF COURT

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Part 1: Foundational Rules

Division 1 Purpose and Intention of These Rules

What these rules do

1.1(1) These rules govern the practice and procedure in

- (a) the Court of Queen's Bench of Alberta, and
- (b) the Court of Appeal of Alberta.

(2) These rules also govern all persons who come to the Court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer.

Purpose and intention of these rules

1.2(1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.

(2) In particular, these rules are intended to be used

- (a) to identify the real issues in dispute,
- (b) to facilitate the quickest means of resolving a claim at the least expense,
- (c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as practicable,
- (d) to oblige the parties to communicate honestly, openly and in a timely way, and
- (e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of these rules the parties must, jointly and individually during an action,

- (a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense,
- (b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court,
- (c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules, and
- (d) when using publicly funded Court resources, use them effectively.

(4) The intention of these rules is that the Court, when exercising a discretion to grant a remedy or impose a sanction, will grant or impose a remedy or sanction proportional to the reason for granting or imposing it.

Division 2 Authority of the Court

General authority of the Court to provide remedies

1.3(1) The Court may do either or both of the following:

- (a) give any relief or remedy described or referred to in the *Judicature Act*;
- (b) give any relief or remedy described or referred to in or under these rules or any enactment.

(2) A remedy may be granted by the Court whether or not it is claimed or sought in an action.

Procedural orders

1.4(1) To implement and advance the purpose and intention of these rules described in rule 1.2 [*Purpose and intention of these rules*] the Court may, subject to any specific provision of these rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court.

(2) Without limiting subrule (1), and in addition to any specific authority the Court has under these rules, the Court may, unless specifically limited by these rules, do one or more of the following:

- (a) grant, refuse or dismiss an application or proceeding;
- (b) set aside any process exercised or purportedly exercised under these rules that is
 - (i) contrary to law,
 - (ii) an abuse of process, or
 - (iii) for an improper purpose;
- (c) give orders or directions or make a ruling with respect to an action, application or proceeding, or a related matter;
- (d) make a ruling with respect to how or if these rules apply in particular circumstances or to the operation, practice or procedure under these rules;
- (e) impose terms, conditions and time limits;
- (f) give consent, permission or approval;
- (g) give advice, including making proposals, providing guidance, making suggestions and making recommendations;

(h) adjourn or stay all or any part of an action, application or proceeding, extend the time for doing anything in the proceeding, or stay the effect of a judgment or order;

- (i) determine whether a judge is or is not seized with an action, application or proceeding;
- (j) include any information in a judgment or order that the Court considers necessary.

(3) A decision of the Court affecting practice or procedure in an action, application or proceeding that is not a written order, direction or ruling must be

- (a) recorded in the court file of the action by the court clerk, or
- (b) endorsed by the court clerk on a commencement document, filed pleading or filed document or on a document to be filed.

Rule contravention, non-compliance and irregularities

1.5(1) If a person contravenes or does not comply with any procedural requirement, or if there is an irregularity in a commencement document, pleading, document, affidavit or prescribed form, a party may apply to the Court

- (a) to cure the contravention, non-compliance or irregularity, or
- (b) to set aside an act, application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

(2) An application under this rule must be filed within a reasonable time after the applicant becomes aware of the contravention, non-compliance or irregularity.

(3) An application under this rule may not be filed by a party who alleges prejudice as a result of the contravention, non-compliance or irregularity if that party has taken a further step in the action knowing of the prejudice.

(4) The Court must not cure any contravention, non-compliance or irregularity unless

- (a) to do so will cause no irreparable harm to any party,
- (b) in doing so the Court imposes terms or conditions that will
 - (i) eliminate or ameliorate any reparable harm, or
 - (ii) prevent the recurrence of the contravention, non-compliance or irregularity,
- (c) in doing so the Court imposes a suitable sanction, if any, for the contravention, non-compliance or irregularity, and
- (d) it is in the overall interests of justice to cure the contravention, non-compliance or irregularity.

- (a) a reply is filed and served by a plaintiff, plaintiff-by-counterclaim or third party plaintiff, as the case may be, or
- (b) the time for filing and serving a reply expires,

whichever is earlier.

(3) The close of pleadings against one party represents the close of pleadings against all parties to that pleading.

Information note

The time for filing and service of a reply is covered in earlier rules in this Part. For example, rule 3.33 *[Reply to a defence]* requires the plaintiff's reply to be filed and served on the defendant within 10 days after service of the statement of defence on the plaintiff. See also rule 3.54(2) *[Plaintiff's reply to third party defence]*.

Division 5 Significant Deficiencies in Claims

Court options to deal with significant deficiencies

3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:

- (a) that all or any part of a claim or defence be struck out;
- (b) that a commencement document or pleading be amended or set aside;
- (c) that judgment or an order be entered;
- (d) that an action, an application or a proceeding be stayed.

(2) The conditions for the order are one or more of the following:

- (a) the Court has no jurisdiction;
- (b) a commencement document or pleading discloses no reasonable claim or defence to a claim;
- (c) a commencement document or pleading is frivolous, irrelevant or improper;
- (d) a commencement document or pleading constitutes an abuse of process;
- (e) an irregularity in a commencement document or pleading is so prejudicial to the claim that it is sufficient to defeat the claim.

(3) No evidence may be submitted on an application made on the basis of the condition set out in subrule (2)(b).

(4) The Court may

- (a) strike out all or part of an affidavit that contains frivolous, irrelevant or improper information;

- (b) strike out all or any pleadings if a party without sufficient cause does not
 - (i) serve an affidavit of records in accordance with rule 5.5 [*When an affidavit of records must be served*],
 - (ii) comply with rule 5.10 [*Subsequent disclosure of records*], or
 - (iii) comply with an order under rule 5.11 [*Order for a record to be produced*].

Division 6

Refining Claims and Changing Parties

Subdivision 1

Joining and Separating Claims and Parties

Joining claims

3.69(1) A party may join 2 or more claims in an action unless the Court otherwise orders.

(2) A party may sue or be sued in different capacities in the same action.

(3) If there is more than one defendant or respondent, it is not necessary for each to have an interest

- (a) in all the remedies claimed or sought, or
- (b) in each claim included in the action.

Information note

This rule and the following rules of this Division apply to all actions, whether started by statement of claim or by originating application.

Parties joining to bring action

3.70(1) Two or more parties may join to bring an action, and a plaintiff or originating applicant may make a claim against 2 or more persons as defendants or respondents in an action, if

- (a) the claim arises out of the same transaction or occurrence or series of transactions or occurrences,
- (b) a question of law or fact common to the parties is likely to arise, or
- (c) the Court permits.

(2) This rule applies irrespective of the remedy claimed by the plaintiff or originating applicant and whether or not 2 or more plaintiffs or originating applicants seek the same remedy.

Part 7: Resolving Claims Without Full Trial

Division 1 Trial of Particular Questions or Issues

Application to resolve particular questions or issues

7.1(1) On application, the Court may

- (a) order a question or an issue to be heard or tried before, at or after a trial for the purpose of
 - (i) disposing of all or part of a claim,
 - (ii) substantially shortening a trial, or
 - (iii) saving expense,
- (b) in the order or in a subsequent order
 - (i) define the question or issue, or
 - (ii) in the case of a question of law, approve or modify the issue agreed by the parties,
- (c) stay any other application or proceeding until the question or issue has been decided, or
- (d) direct that different questions of fact in an action be tried by different modes.

(2) If the question is a question of law, the parties may agree

- (a) on the question of law for the Court to decide,
- (b) on the remedy resulting from the Court's opinion on the question of law, or
- (c) on the facts or that the facts are not in issue.

(3) If the Court is satisfied that its determination of a question or issue substantially disposes of a claim or makes the trial of the issue unnecessary, it may

- (a) strike out a claim or order a commencement document or pleading to be amended,
- (b) give judgment on all or part of a claim and make any order it considers necessary,
- (c) make a determination on a question of law, or
- (d) make a finding of fact.

(4) Part 5 *[Disclosure of Information]* Division 2 *[Experts and Expert Reports]* applies to an application under this rule unless the parties otherwise agree or the Court otherwise orders.

Information note

Rule 8.1 [*Trial without a jury*] requires the mode of trial of an action to be by judge alone unless otherwise ordered.

**Division 2
Summary Judgment****Application for judgment**

7.2 On application, the Court may at any time in an action give judgment or an order to which an applicant is entitled when

- (a) admissions of fact are made in a pleading or otherwise, or
- (b) the only evidence consists of records and an affidavit is sufficient to prove the authenticity of the records in which the evidence is contained.

Application and decision

7.3(1) A party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

- (a) there is no defence to a claim or part of it;
- (b) there is no merit to a claim or part of it;
- (c) the only real issue is the amount to be awarded.

(2) The application must be supported by an affidavit swearing positively that one or more of the grounds described in subrule (1) have been met or by other evidence to the effect that the grounds have been met.

(3) If the application is successful the Court may, with respect to all or part of a claim, and whether or not the claim is for a single and undivided debt, do one or more of the following:

- (a) dismiss one or more claims in the action or give judgment for or in respect of all or part of the claim or for a lesser amount;
- (b) if the only real issue to be tried is the amount of the award, determine the amount or refer the amount for determination by a referee;
- (c) if judgment is given for part of a claim, refer the balance of the claim to trial or for determination by a referee, as the circumstances require.

Information note

A respondent to an application under rule 7.3 may file a response to the application under rule 6.6 [*Response and reply to applications*].

If the amount of an award is referred for determination by a referee, rules 6.44 to 6.46 [*Referees*] apply.

Subdivision 2

Form and Contents of Affidavits and Exhibits

Types of affidavit

13.18(1) An affidavit may be sworn

- (a) on the basis of personal knowledge, or
- (b) on the basis of information known to the person swearing the affidavit and that person's belief.

(2) If an affidavit is sworn on the basis of information and belief, the source of the information must be disclosed in the affidavit.

(3) If an affidavit is used in support of an application that may dispose of all or part of a claim, the affidavit must be sworn on the basis of the personal knowledge of the person swearing the affidavit.

Information note

Under section 28(1)(II) of the *Interpretation Act*, references to affidavits and to sworn statements permit a person to make a solemn affirmation or solemn declaration instead of an affidavit.

Requirements for affidavits

13.19(1) In addition to complying with rule 13.13 [*Requirements for all filed documents*], an affidavit under these rules must comply with all of the following:

- (a) be in Form 49,
- (b) state, on the front page, the full name of the person swearing the affidavit and the date the affidavit was sworn,
- (c) state the place of residence of the person swearing the affidavit,
- (d) be written in the first person,
- (e) be divided into consecutively numbered paragraphs, with dates and numbers expressed in numerals unless words or a combination of words and numerals makes the meaning clearer,
- (f) be signed or acknowledged and sworn before a person empowered to administer oaths, whether that person prepared the affidavit or not,
- (g) contain a statement of when, where and before whom the affidavit was sworn, and
- (h) be signed by the person administering the oath.

(2) An affidavit is not invalid or otherwise improper just because it was sworn before a commencement document was filed.

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Information note

The place of residence referred to in subrule (1)(c) could be an address or the municipality in which the person swearing the affidavit resides.

Changes in affidavits

13.20 An affidavit with an insertion, alteration or erasure must not be used without the Court's permission unless the insertion, alteration or erasure is authenticated by the initials of the person administering the oath.

Requirements for exhibits to affidavit

13.21(1) A record to be used with an affidavit must be

- (a) an exhibit to the affidavit, and
- (b) identified by a certificate of the person administering the oath.

(2) If the total number of pages of an affidavit and attached exhibits is 25 or more,

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

(3) An exhibit to an affidavit must be attached or appended to the affidavit when the affidavit is filed unless

- (a) the exhibit is unduly large or bulky and can be adequately identified,
- (b) the exhibit has already been filed and is identified, or
- (c) the Court otherwise orders.

Affidavits by visually impaired or those unable to read

13.22(1) If it seems to the person administering the oath that the person swearing the affidavit is visually impaired or unable to read, the person administering the oath must read the affidavit to the person swearing the affidavit and certify that

- (a) the affidavit was read to the person,
- (b) the person seemed to understand it, and
- (c) the person signed the affidavit or made the person's mark in the presence of the person administering the oath.

(2) The affidavit must not be used in evidence without the certification referred to in subrule (1) unless the Court is satisfied that the affidavit was read to, and appeared to be understood by, the person swearing it.