

Summary of the *Alberta Rules of Court Amendment Regulation*

Included in the *Alberta Rules of Court Amendment Regulation* (AR 36/2020), which became effective on March 17, 2020 (with some exceptions), are the following provisions:

- **Rule 2.23** [*Assistance before the Court*] is amended to clarify judicial discretion to allow a non-lawyer agent a right of audience in litigation involving other persons, subject to any limits imposed under the *Legal Profession Act*.
- **Rule 3.74(2)** [*Adding, removing or substituting parties after close of pleadings*] is amended to ensure both a party and a non-party may apply to add or substitute any other party, or to remove or correct the name of a party to the action.
- **Rule 4.16** [*Dispute resolution processes*] is amended to give case conference judges and case management judges the authority to order the parties to participate in an alternative dispute resolution (DR) process. Directions may be provided on any aspect of the dispute resolution process, including the neutral third party, the apportionment of the expense of the DR process, the particulars of when, where and how the process is to be conducted, and the consequences for failing to comply with the judge's direction.
- **Rule 5.8** [*Records for which there is an objection to produce*] is amended to clarify the method of disclosing in an affidavit of records a record for which privilege is being claimed, in a manner which will not undermine the privilege claimed.
- **Rule 5.18** [*Persons providing services to corporation*] is amended to ensure the rule also applies to partnerships.
- **Rule 8.5(2)** [*Trial date: scheduled by a trial judge*] is amended to ensure the authority of the Court to make any procedural order to expedite or facilitate the activities necessary to meet or to obtain a trial date despite either:
 - the signing of Form 37 [*Request to Schedule a Trial Date*] or Form 38 [*Application for Court to Set a Trial Date*] by the parties, or
 - the certification of the matters referred to in rule 8.4(3) [*Trial date: scheduled by the court clerk*].
- **Rule 10.10(2)** [*Time limitation on reviewing retainer agreements and charges*] is amended to increase the time limit for a review of lawyer's charges to one year (from the current 6 months) after the date on which the account was sent to the client.
- **Rule 10.13** [*Appointment for review*] is amended to provide that a notice of appointment must be filed, endorsed and served in the same manner as a commencement document.
- **Rule 10.15** [*Retainer agreement confidentiality*] is amended to ensure that any time records or other evidence filed with the court on a review of retainer agreement or lawyer's charges are to be maintained as confidential (as solicitor-client privilege attaches to those records). Rules 10.13(2)(b), 10.13(3)(b) and 10.14(1)(c) are also amended to remove the requirement to file the retainer agreement in a sealed envelope.

- **Rule 10.17** [*Review officer's authority*] is amended to give review officers the authority to determine the applicability of, and extend or shorten a time period specified in the rules relating to reviews of retainer agreements or lawyer's charges.
- **Rule 10.20(1)** [*Enforcement of review officer's decision*] is amended to provide that the court may, on application with notice to the other party, direct a decision of a review officer to be entered as a judgment or order.
- **Rule 10.33(2)** [*Court considerations in making costs awards*] is amended to add to the factors the court may consider in deciding whether to impose, deny or vary an amount in a costs award: "(h) any formal or informal offer of settlement made, including an offer that does not comply with Part 4, Division 5 [*Settlement Using Court Process*]".
- **Rule 11.2** [*Service not invalid*] is amended to clarify that this rule applies only to service by mail or recorded mail of a document other than a commencement document, or at the registered office of any person required by an enactment to have a registered office.
- **Part 11** [*Service*] is amended to add a new division (Division 8) establishing the rules to be followed when service of court documents is to be effected in a 'Contracting State' under the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* concluded at the Hague on November 15, 1965 (the Hague Service Convention).

This new division will implement the *Uniform Rules on Service in a Contracting State to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* adopted by the Uniform Law Conference of Canada (ULCC) in November 2015.

- **Rule 13.36(1)(b)** [*Fee waiver: legal aid*] – the definition of "document" is amended to include any document that may be filed for which a fee is payable under any of items 30 to 32.1 of Schedule B [*Court Fees and Witness and Other Allowances*]. This will ensure that the fees payable in Court of Appeal matters to file an application for permission to appeal, an application or written consent to restore an appeal, a notice of appeal, or an application in the course of an appeal will be waived for those with a subsisting certificate of coverage from Legal Aid Alberta.
- **Rule 14.28** [*Record before the Court*] is amended to replace the words "official part of the Appeal Record" with "official part of the record before the Court of Appeal".
- **Rule 14.47** [*Application to restore an appeal*] is amended to provide that an application to restore an appeal must be brought as soon as reasonably possible, and in any event no later than within 6 months for a standard appeal, and within 3 months for a fast track appeal, after the appeal was struck, dismissed or deemed abandoned.
- **Rule 14.54(a)** [*Format of memorandum*] is amended to ensure the appeal memorandum has the same format (font size, margins, and line spacing) as the factum.

- The forms set out in **Schedule A, Division 1** (Civil Forms) are amended as follows:
 - **Form 33** [*Notice to Admit Facts (or Written Opinions)*] is amended to add the instructions “(Indicate name(s) and status of Party(ies) receiving Notice to Admit)” after “NOTICE TO PARTY RECEIVING NOTICE TO ADMIT”.
 - **Form 42** [*Appointment for Review of Retainer Agreement/Lawyer’s Charges*] is amended so that:
 - the style of cause describing the parties and their status reads APPLICANT(S) / RESPONDENT(S), rather than CLIENT(S) / LAWYER(S).
 - The “Purpose of this appointment” clarifies which retainer agreements or lawyer’s accounts (by date) are to be the subject of review.
 - The “WARNING” box further clarifies what a respondent must do to respond to the application for review of the retainer agreement or lawyer’s charges, including that a respondent lawyer is required to file a copy of the time records kept for the services provided to the applicant client.
 - **Form 43** [*Notice of Appeal of Review Officer’s Decision*] is amended so that the style of cause describing the parties and their status in the appeal reads APPELLANT(S) / RESPONDENT(S), rather than CLIENT(S) / LAWYER(S).
 - **Form 44** [*Bill of Costs*] is amended to separate “Disbursements” into “Taxable Disbursements” and “Non-taxable Disbursements” throughout the form, and to add a signature line to the Certificate of Assessment Officer.
- The forms set out in **Schedule A, Division 2** (Family Law Forms) are amended as follows:
 - **Form FL-27** [*Corollary Relief Order*] is amended so that the annual financial disclosure clause in paragraph 10 provides that, unless the Court otherwise orders, if the party is a shareholder in a corporation, is self-employed, is a partner in a partnership, or is a beneficiary under a trust, the party must provide on an annual basis the information required by section 21(1)(d), (e), (f) and (g) of the *Federal Child Support Guidelines*, or the *Alberta Child Support Guidelines* (as applicable) for the preceding tax year.
 - **Form FL-42** [*Statement – Contact*] is amended to clarify that a guardian may apply for contact (i.e. time with a child) in relation to a non-guardian.
 - **Form FL-44** [*Statement – Permission from the Court (to apply for contact)*] is amended to ensure the applicant provides evidence regarding the applicant’s need for advance permission from the Court to apply for contact under section 35 of the *Family Law Act*, by confirming the applicant is not a parent or guardian of the child(ren), a person standing in place of a parent to the child(ren), or a grandparent whose contact with the child(ren) has been interrupted by the separation of the child(ren)’s parents or by the death of one of the parents of the child(ren).

- **Schedule C, Division 2** (Tariff of Recoverable Fees) is amended effective May 1, 2020 to:
 - Increase the individual tariff amounts by approximately 35%.
 - Add a tariff item for trial preparation costs.
 - Include a transitional provision stating that:
 - the new tariff amounts apply to all assessable items or steps, whether they happened before or after the effective date (subject to any agreement or court order which provides otherwise).
 - for the purpose of evaluating offers under rule 4.29 [*Costs consequences of formal offer to settle*], costs are to be calculated using the tariff amounts in force at the time the offer was made.
- **Appendix: Definitions** – The definition of “corporate witness” is amended to add “(d) an auditor or former auditor of a corporation, but not an auditor retained primarily for the litigation.”
- **Part 58** (Rules as to Practice and Procedure in Controverted Elections under the *Local Authorities Election Act*) of the *Alberta Rules of Court* (AR 390/68) is repealed.