

Summary of the *Alberta Rules of Court Amendment Regulation*

Included in the *Alberta Rules of Court Amendment Regulation* (AR 140/2013), which became effective on July 25, 2013, are the following provisions:

- **Rule 2.13** [*Automatic litigation representative*] is amended clarify that it applies only in circumstances where the individual or estate is required to have a litigation representative as set out in rule 2.11 [*Litigation representative required*].
- **Rule 4.31** [*Application to deal with delay*] is amended to add a subrule which provides that a presumption of prejudice is created by inordinate and unexplained delay (similar to Rule 244(4) from the previous *Alberta Rules of Court*). Rule 4.31 currently states that if delay occurs in a court action, the Court may dismiss all or part of a claim (if the delay causes significant prejudice), or make a procedural order.
- **Rule 4.33** [*Dismissal for long delay*] is amended so that the Court, on application (and subject to certain exceptions), must dismiss the action as against the applicant if **3 or more years** has passed without a significant advance in the action. Currently the Court must do so if 2 or more years has passed after the last thing done that significantly advanced the action.

Rule 4.33 is also amended to:

- Add a deadline of 2 months in subrule (1)(c) for a defendant to provide a substantive response to a written proposal from the plaintiff for a stand-still agreement.
- Ensure the time for the defendant to file their statement of defence, and the time for the respondent to provide a written response to a standstill proposal is not counted towards the triggering of the drop dead rule.

Note: Rule 4.33 comes into force on November 1, 2013.

- **Rule 5.5(3)** [*When affidavit of records must be served*] is amended to increase the time within which the defendant must serve an affidavit of records on each of the other parties to 2 months (from the current 1 month) after the date the defendant is served with the plaintiff's affidavit of records.
- **Rule 5.15** [*Admissions of authenticity of records*] is amended to:
 - Increase the deadline to deny authenticity or transmittal of a record to 3 months (from the current 1 month) after the date on which the records are produced.
 - Add a provision giving the Court the authority to allow relief from a presumed admission under rule 5.15(2).

- **Rule 5.28(1)(c)** [*Written questions*] is amended to ensure that the party being questioned is responsible for serving the answers to the written questions on each of the other parties.
- **Rule 10.10(2)** [*Time limitation on reviewing retainer agreements and charges*] is amended to clarify that the 6 month limitation for reviewing a lawyer's account (that a lawyer's charges may not be reviewed if 6 months has passed after the date on which the account was sent to the client) applies both to reviews at the request of the client, and at the request of the lawyer.
- **Rules 10.13** [*Appointment for review*] **and 10.14** [*Client obtained appointment: lawyer's responsibility*] are amended to make it clear that the retainer agreement should be filed separately from the notice of appointment (not attached to it) and that the initiating party should file the retainer agreement in a sealed envelope so that the contents of the retainer agreement can remain confidential on an otherwise open court file.
- **Rule 10.15(a)** [*Retainer agreement confidentiality*] is amended to clarify that the court clerk and the review officer are restricted from disclosing the information contained in the retainer agreement, but not the mere existence of the agreement.
- **Rule 10.48** [*Recovery of goods and services tax*] is amended to remove the requirement for the party entitled to a costs award to swear an affidavit confirming they are entitled to recover GST on those costs. This requirement is replaced with a provision indicating no additional amount on account of GST is recoverable where the tax is refundable or rebateable under the *Excise Tax Act* (Canada).
- **Rule 11.27** [*Validating service*] is amended to ensure the Court has authority to validate service (including service governed by the Hague Convention) even though it has previously directed a specific method of service, so long as the Court is satisfied the method of service used brought (or likely brought) the document to be served to the attention of the person to be served.
- **Rule 15.4** [*Dismissal for long delay: bridging provision*] is amended ensure consistency with the revised wording of rule 4.33 during the transition period before rule 4.33 comes into force (on November 1, 2013).
- The forms set out in **Schedule A, Division 1** (Civil Forms) are amended as follows:
 - The following forms are amended to ensure the respondent is notified that, if the respondent wishes to give evidence in response to the application, they must file an affidavit (or other evidence) with the Court and serve a copy on the applicant a reasonable time before the application is to be heard:
 - Originating Application – Notice of Appeal/Reference (Form 5),
 - Originating Application (Form 7),
 - Application to Enforce Judgment Against Third Party Defendant (Form 19),

- Application (Form 27),
 - Application for Order Restricting Access (Form 32),
 - Originating Application for Interpleader Order (Form 34),
 - Application for Summary Trial (Form 36),
 - Application for Court to Set Trial Date (Form 38),
 - Application for an Order that a Judgment Has Been Satisfied (Form 41).
- **Form 42** [*Appointment for Review of Retainer Agreement / Lawyer's Charges*] is amended to remove any indication that the retainer agreement is to be attached to the notice of appointment.
 - **Form 44** [*Bill of Costs*] is amended to:
 - Remove the GST affidavit portion of the Bill of Costs.
 - Add a statement that in making a claim on account of goods and services tax, the party completing the Bill of Costs warrants that it is not entitled to a refund or rebate of GST under the *Excise Tax Act* (Canada).

These amendments to Form 44 are required as a consequence of the amendment to rule 10.48, which removes the requirement for the party entitled to a costs award to swear an affidavit confirming they are entitled to recover GST on those costs.

- The forms set out in **Schedule A, Division 2** (Family Law Forms) are amended as follows:
 - The following forms are amended to ensure the respondent is notified that, if the respondent wishes to give evidence in response to the application, they must file an affidavit (or other evidence) with the Court and serve a copy on the applicant a reasonable time before the application is to be heard:
 - Family Application (Form FL-18),
 - Notice of Confirmation Hearing (Form FL-20).
- **Appendix: Definitions** – A definition is added to clarify the interpretation of the phrase “outside Alberta”.