

# **Foundational Rules and Interpretation of the Rules The Foundational Rules and Interpretation of the Rules of Court: Can We Get Along?**

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*The Rules of Court Interpreted*

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## **PART 1 - FOUNDATIONAL RULES**

### **INTRODUCTION**

On November 1, 2010, the Alberta Rules of Court (AR 390/68) were overwhelmingly repealed and replaced with new Rules of Court (AR 124/2010, as am. AR 143/2011). The new rules create a new regime with respect to the practise of civil litigation in Alberta.

Part 1 of the new Rules is the Foundational Rules, which are critical to the interpretation of the Rules. The Foundational Rules provide purpose, objective and intention statements, placing the onus on the parties to achieve those. The Rules are to be given a contextual and purposive interpretation. The Foundational Rules provide interpretation guidelines and guidance as to the scope of the relief and remedies the court can provide, including practice and procedural orders to make the Rules work as intended, and guidance as to how the court can deal with contraventions, noncompliance and irregularities, with an emphasis on forgiving slips and curing procedural defects.

### **DIVISION 1 - PURPOSE AND INTENTION OF THESE RULES**

#### **RULE 1.1**

##### **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.

##### **FORMER RULE(S)**

Application of rules

3. These Rules apply so far as may be practicable, unless otherwise specially provided, to all proceedings taken on or after that day in all actions and other proceedings then pending.

General rules apply

684. Except as provided in this Part or as may be ordered by the Court the general rules of practice and procedure apply to a foreclosure action.

## **MATERIAL CHANGES BETWEEN THE NEW RULE AND THE OLD RULE**

In accordance with the objectives of the steering committee that helped create the New Rules of Court, Rule 1.1 maximizes the clarity of former Rule 3 by simplifying complex language and revising unclear language. It states clearly that the Rule governs the practice and procedure in the Court of Queen's Bench and the Court of Appeal. Furthermore, former Rule 684 has been removed. New Rule 1.1(2) governs all those who come to court for the resolution of a claim, whether self-represented litigants or those represented by lawyers.

## **LEADING CASES**

### **Rozak (Estate), 2011 ABQB 239**

The Defendant doctors appealed the Decision of a Master, who had dismissed their Application to compel the Plaintiff to answer certain Undertakings from the Cross-Examination on the Plaintiff's Affidavit. The Appeal involved the scope of Questioning on an Affidavit (under the old Rules). As part of his analysis, Graesser J. made a broad reference to the Foundational Rules of the new Rules, indicating that the scope of permissible Questioning on an Affidavit has not changed under the new Rules:

Having regard to the foundational rules, I see no purpose or basis to change the scope of questioning on an affidavit in support of an application: questions relevant and material to the underlying application will be permitted and if refused, will be ordered to be answered...

### **Nowicki V Price, 2011 ABQB 133**

This was an Application to sever liability related to three Actions, all arising out of the same collision, as well as an Application to have the liability portion of all three Actions heard together. The Applicant argued that Rule 7.1 does away with the old "exceptional case" test from the former Rules of Court, in favour of a more lenient analysis. Moen J. addressed the application of Rule 7.1 and referred to *Envision Edmonton Opportunities Society v. Edmonton (City)*, 2011 ABQB 29. Moen J. followed the analysis set out in *Envision*, which provides that the Court must first look to Rule 7.1 and determine if the threshold is met for severance and then subsequently look at the case as a whole to determine whether the Foundational Rules for cost effectiveness and timeliness, among other things, would be met by the severance. Moen J. stipulated that, as in *Envision*, the test set out in Rule 7.1 is in three parts and those parts are disjunctive, meaning that there is a requirement that the Court find only one of them to move on to considering the impact of the Foundational Rules on a severance application.

Moen J. found that severing the liability issue would save expense, would dispose of all or part of the claim and would substantially shorten the Trial. Her Ladyship determined that the test for severance had been met. Moen J. then turned to the Foundational Rules, finding that severance of the liability portion of the three Actions would lead to the

quickest means of resolving the claim and would encourage settlement of the damages portions of the Actions. Rule 1.1 was not specifically addressed in this decision.

## **INTERPRETATION GUIDELINES**

### **(a) Alberta Law Reform Institute**

The following was stated in the *Alberta Law Reform Institute, Alberta Rules of Court Project: Commencement of Self-Represented Litigants, Consultation Memorandum No. 12.18* (Edmonton: The Institute, March 2005):

[58] Part 1.1 of The Rule governs “audience before the court.” It covers representation by a lawyer, self-representation, and representation by a non-lawyer agent. The provisions reflect three competing values and the ongoing tensions among them. The three values are: “the lay litigants’ right to effective access to justice; the court’s desire for administrative convenience; and the interests of regulated legal services providers.”

### **(b) Defined Terms in the Rule**

“lawyer” means a person entitled to practise law in Alberta;  
“person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person;  
“rules” includes the Schedules and this Appendix to these rules but does not include any information notes and other informational guides that may appear in an annotated version of these rules.

### **(c) Interpretation Act - New Rules**

“lawyer” means an active member of The Law Society of Alberta;  
“may” shall be construed as permissive and empowering.

## **LEADING CASES AND STATUTES - PRIOR RULES**

### **Former Rule 3 - The Test**

A key case in regards to Old Rule 3 is *St. Denis v Trumley*, 4 AR 212, where McDermid J.A considered the applicability of the Rules of Court to actions brought under the Maintenance and Recovery Act (Prior to January 1, 1991). The following was stated:

**15** It would appear to me that whether the view is taken that the Rules are applicable or that the Court must regulate its own procedure in the absence of the Minister making rules, the end result is the same. Once it is decided that the procedure is civil the Court should turn to the ordinary civil rules governing civil procedure, i.e. the Rules of Court.