

TABLE OF CONTENTS

CHAPTER 1

PRELIMINARY MATTERS

1	Introduction.....	1-2
2	Initial Client Contact and First Interview	1-2
	2.1 Initial Client Contact.....	1-2
	2.2 Client Identification Obligations	1-2
	2.3 First Client Interview	1-3
3	Legal Research on Substantive and Procedural Law.....	1-5
4	Existence of Parties	1-6
5	Accrual of a Cause of Action	1-6
6	Bars to an Action.....	1-7
	6.1 Statutory Bars.....	1-7
	6.2 Contractual Bars	1-8
	6.3 <i>Res Judicata</i>	1-9
7	Limitations.....	1-9
	7.1 Statutory Limitations of Actions	1-10
	7.2 Special Considerations	1-11
	7.3 Expired Cause of Action	1-11
8	Procedural Limitations	1-12
9	Alberta Health: Third Party Liability.....	1-13
10	Conditions Precedent to Action.....	1-14
11	Planning and Diarizing the Litigation.....	1-16
12	Filing Documents	1-16

CHAPTER 2

THE PARTIES TO LITIGATION

1	Introduction.....	2-3
2	Litigation Representatives	2-3
	2.1 Automatic Litigation Representatives.....	2-4
	2.2 Self-appointed Litigation Representatives	2-5
	2.3 Court-appointed Litigation Representatives.....	2-5

	2.4	Termination or Replacement of a Litigation Representative	2-5
3		Minors.....	2-6
	3.1	Litigation Representatives Acting for Minors	2-6
4		Mentally Incompetent Adult Litigants.....	2-7
5		Deceased Litigants	2-7
	5.1	The <i>Fatal Accidents Act</i>	2-8
	5.2	The <i>Survival of Actions Act</i>	2-9
6		Bankrupt Litigants	2-9
	6.1	Introduction	2-9
	6.2	Bankrupts as Plaintiffs.....	2-10
	6.3	Insolvent Persons as Defendants	2-10
7		Bailees and Bailors.....	2-11
	7.1	Introduction	2-11
	7.2	Bailors as Plaintiffs	2-11
	7.3	Owners as Plaintiffs	2-12
	7.4	Insurers as Plaintiffs	2-12
	7.5	Bailees as Plaintiffs.....	2-12
8		Assignees	2-12
9		Corporations.....	2-13
	9.1	The Corporation as a “Real Person”	2-13
	9.2	The Plaintiff Corporation.....	2-13
	9.3	The Defendant Corporation	2-14
	9.4	Shareholders as Defendants.....	2-15
	9.5	Corporate Directors as Defendants	2-15
10		Partnerships.....	2-16
	10.1	Actions Involving Partnerships	2-16
	10.2	The Firm as a Defendant.....	2-17
	10.3	Individual Partners as Defendants	2-17
	10.4	Limited Partners as Plaintiffs	2-19
	10.5	Limited Partners as Defendants	2-19
11		Sole Proprietorships	2-20
	11.1	Actions Involving Sole Proprietorships.....	2-20
	11.2	Sole Proprietorships as Plaintiffs	2-20
	11.3	Sole Proprietorships as Defendants	2-20
12		Representative Suits (“Class Actions”).....	2-20

13	Unincorporated Associations	2-23
14	Societies	2-23
15	Trade Unions	2-23
	15.1 Registered Trade Unions	2-23
	15.2 Unregistered Trade Unions	2-24
16	Changes of Representation	2-24

CHAPTER 3

COURT ACTIONS

1	Pleadings Generally	3-3
	1.1 Non-Conforming Pleadings	3-4
	1.2 The Technical Rules	3-6
	1.3 Alternative Pleas and Other Contents	3-7
	1.4 Pleading Particulars	3-8
2	Prescribed Content and Filing of Pleadings	3-8
	2.1 Requirements for Filed Documents	3-8
	2.2 Endorsements on Pleadings	3-9
	2.3 Deviations from or Changes to Prescribed Forms	3-10
	2.4 Venue	3-10
	2.5 Service Outside Alberta	3-11
	2.6 Transfer of an Action	3-12
	2.7 Statement as to Residence or Location	3-12
3	Commencement Documents	3-12
	3.1 Originating Applications	3-13
	3.2 Statement of Claim	3-15
4	Defendant's Options	3-17
	4.1 Demand for Notice	3-17
	4.2 Statement of Defence	3-18
5	Third Party Claims and Claims Against Co-defendants	3-19
	5.1 Introduction	3-19
	5.2 Third Party Claims	3-19
	5.3 Claims Against Co-defendants	3-21
6	Failure to Defend	3-22
	6.1 Default Procedure	3-22

ALBERTA CIVIL PRACTICE MANUAL

6.2 Default Procedure in a Foreclosure Action..... 3-22

6.3 Default Procedure for a Liquidated Claim 3-23

6.4 Default Procedure for an Unliquidated Claim 3-24

6.5 Default Procedure Involving a Third Party 3-25

7 Counterclaims 3-25

7.1 Set-off 3-26

8 Particulars 3-26

8.1 Requesting Particulars..... 3-26

8.2 Court Application for Particulars 3-27

8.3 Responding to a Request for Particulars..... 3-27

9 Amending Pleadings with or without Leave 3-28

9.1 Amendment without Court Involvement..... 3-28

9.2 Court Permission to Amend..... 3-28

9.3 The Amended Pleading..... 3-29

9.4 Adding, Removing, or Substituting Parties or Correcting Party Names 3-30

10 Reply and Close of Pleadings..... 3-31

11 Joinder, Severance, and Consolidation of Actions 3-32

11.1 Policy Against Multiple Proceedings 3-32

11.2 Joinder 3-32

11.3 Severance..... 3-33

11.4 Consolidation of Actions 3-33

12 Appendix List..... 3-37

CHAPTER 4

MANAGING LITIGATION

1 Introduction..... 4-2

2 Categorizing the Case..... 4-2

2.1 Two Categories of Cases..... 4-2

2.2 Standard Cases..... 4-3

2.3 Complex Cases..... 4-4

3 Court Assistance in Litigation Management 4-4

3.1 Procedural Orders & Litigation Plans..... 4-5

3.2 Conference with the Court..... 4-6

3.3 Case Management..... 4-7

4	Alternative Dispute Resolution	4-8
4.1	The Requirement of Dispute Resolution	4-10
4.2	Mediation.....	4-12
4.3	Arbitration.....	4-13
4.4	Negotiation	4-15
4.5	Judicial Dispute Resolution	4-16
5	Formal Offers to Settle & Informal Offers to Settle	4-19
6	Security for Costs.....	4-21
7	Delay in Litigation	4-26
8	Discontinuances	4-27
8.1	Discontinuance of a Claim.....	4-27
8.2	Discontinuance of Defence	4-28
8.3	Consent Dismissal Order	4-28

CHAPTER 5

DISCLOSURE OF INFORMATION

1	Introduction.....	5-2
2	Affidavits of Records.....	5-2
2.1	Definition of “Record”	5-3
2.2	Time for Serving an Affidavit of Records	5-4
2.3	Disclosing “Relevant and Material” Records	5-5
2.4	Record Description, Inspection, and Production.....	5-6
2.5	Objection to Produce Documents	5-9
2.6	Privileged Records	5-10
2.7	Subsequent or Additional Disclosure.....	5-15
2.8	Consequences of Failing to Disclose Records	5-16
2.9	Obtaining Records in the Control of Non-parties	5-16
2.10	Deemed Admissions	5-17
2.11	Confidentiality of Disclosed Information.....	5-18
3	The Questioning Process.....	5-19
3.1	Who Can Be Questioned.....	5-19
3.2	The Mechanics of Questioning.....	5-22
3.3	Preparing for Questioning.....	5-25
3.4	Questioning an Opposing Party.....	5-26

3.5	The Questioning of Your Client.....	5-32
3.6	Undertakings	5-34
3.7	Use of Questioning Evidence at Trial or in Other Proceedings.....	5-35
4	Experts.....	5-39
4.1	Experts' Reports.....	5-39
4.2	Medical Examinations.....	5-40
5	Appendix List.....	5-40

CHAPTER 6

RESOLVING ISSUES AND PRESERVING RIGHTS

1	Introduction.....	6-2
2	Interlocutory Applications.....	6-2
3	Jurisdiction of an Applications Judge and Judge in Chambers.....	6-3
4	Procedural Orders.....	6-5
5	Bringing an Application.....	6-6
5.1	Notice of an Application.....	6-7
5.2	Proceedings in Chambers.....	6-8
5.3	Costs	6-14
6	Affidavits.....	6-15
6.1	Basis of Knowledge.....	6-16
6.2	Technical Rules	6-16
6.3	Exhibits	6-17
6.4	Special Needs Deponents	6-18
6.5	Irregularities	6-18
6.6	Questioning on Affidavits.....	6-19
7	Court Experts.....	6-23
8	Appeal from an Applications Judge's Decision	6-23
8.1	Procedure	6-23
8.2	Standard of Review.....	6-24
9	Extraordinary Remedies: Preservation of Rights Pending Litigation	6-25
9.1	Interlocutory Injunctions.....	6-25
9.2	Preserving Evidence and Obtaining Evidence Outside Alberta	6-33
9.3	Preservation, Protection, and Inspection of Property	6-34
9.4	Mareva Injunctions	6-35

	9.5	Receivers	6-36
	9.6	Replevin	6-37
	9.7	Interpleader	6-39
	9.8	Restricting Access to Court Proceedings	6-40
10		Notices to Admit.....	6-41
	10.1	Costs Consequences	6-41
	10.2	Amending or Withdrawing an Admission	6-42

CHAPTER 7

RESOLVING CLAIMS WITHOUT FULL TRIAL

1		Introduction.....	7-2
2		Trial of a Particular Question or Issue	7-2
	2.1	Rule 7.1	7-2
	2.2	Process for Conducting a Trial of an Issue	7-2
	2.3	Test for Securing a Trial of an Issue	7-3
	2.4	Application Process.....	7-4
	2.5	Potential Outcomes from a Trial of an Issue	7-4
	2.6	Appropriate Issues/Disputes for Trials of an Issue.....	7-5
3		Summary Judgment.....	7-6
	3.1	Test for Summary Judgment	7-6
	3.2	Legacy of <i>Hryniak v Mauldin</i> and Recent Uncertainty Over Summary Judgment....	7-8
	3.3	Dealing with Contested Evidence.....	7-9
	3.4	Timing and Process.....	7-10
	3.5	Proper Disputes for Summary Judgment/Summary Dismissal.....	7-11
	3.6	Standard of Review: Application Judges/Justices/Appellate Courts	7-12
	3.7	Potential Outcomes from Summary Judgment	7-13
	3.8	Closing Comments	7-14
4		Summary Trial	7-14
	4.1	Process for Summary Trials.....	7-14
	4.2	Two-stage versus One-stage.....	7-16
	4.3	Summary Trial versus Summary Judgment.....	7-16
	4.4	Test to Secure a Summary Trial	7-18
	4.5	Potential Outcomes for Summary Trial.....	7-19

CHAPTER 8

TRIAL

1	Introduction.....	8-3
2	Settlement.....	8-3
	2.1 Settlement Generally	8-3
	2.2 Settlement Using Court Process	8-4
3	Defence of Tender	8-7
4	Entry for Trial.....	8-8
	4.1 Application to the Clerk for a Trial Date.....	8-8
	4.2 Court Application for a Trial Date	8-9
	4.3 Confirming the Trial Date.....	8-9
	4.4 Adjourning or Abandoning a Trial Date	8-10
5	Trial Preparation	8-10
	5.1 Pre-trial Preparation Checklist	8-10
	5.2 Fee Arrangements and Retainers	8-10
	5.3 Review Pleadings	8-10
	5.4 Summary of Questioning Evidence	8-10
	5.5 Witnesses	8-11
	5.6 Expert Witnesses.....	8-12
	5.7 Documents and Records	8-13
	5.8 Notices to Admit and Admissions of Opinion	8-13
	5.9 Formal Offers to Settle.....	8-13
	5.10 Demonstrative Evidence.....	8-13
	5.11 Damages.....	8-14
	5.12 Compile Facts.....	8-14
	5.13 Summarize the Law	8-15
	5.14 Settlement Discussions	8-15
6	Trial Brief	8-15
	6.1 Transcripts.....	8-16
	6.2 Records.....	8-16
	6.3 Trial Outline	8-16
7	Witness Preparation	8-18
	7.1 Define the Scope of Evidence	8-19

ALBERTA CIVIL PRACTICE MANUAL

7.2 Review Relevant Material..... 8-19

7.3 Briefing..... 8-19

7.4 Cross-examination 8-19

7.5 Demeanour..... 8-20

8 Agreed Statement of Facts..... 8-20

9 Witnesses Outside the Jurisdiction..... 8-20

9.1 Letters of Request..... 8-21

10 Jury Trials..... 8-21

10.1 Right to a Civil Jury 8-21

10.2 Rules Relating to Jury Trials 8-23

10.3 Issues to Consider..... 8-23

11 Conduct of a Trial..... 8-24

11.1 Outline of the Trial Sequence..... 8-24

11.2 Trial Judge’s Entrance..... 8-25

11.3 Opening Motions and Other Preliminary Matters..... 8-25

11.4 Opening the Case..... 8-26

11.5 Presentation of Evidence..... 8-26

11.6 Use of Questioning Transcripts at Trial..... 8-34

11.7 Applications for Dismissal (Non-suit)..... 8-38

12 Appendix List..... 8-38

CHAPTER 9

JUDGMENTS AND ORDERS

1 Judgments Versus Orders 9-2

2 Drafting a Judgment 9-2

2.1 Introduction 9-2

2.2 The Form of Judgment..... 9-3

2.3 Preparing and Filing a Judgment or Order..... 9-3

3 Entry of Judgment..... 9-4

4 Amended Judgments..... 9-5

5 Satisfaction of Judgment..... 9-6

6 Limitations..... 9-6

7 Other Rules 9-7

CHAPTER 10

LAWYERS' CHARGES, RECOVERABLE COSTS OF LITIGATION, AND SANCTIONS

1	Introduction.....	10-2
2	Lawyers' Accounts	10-2
3	Retainer Agreements.....	10-4
	3.1 Written Retainer Agreements	10-4
	3.2 Terminating a Retainer	10-6
4	Contingency Agreements.....	10-7
5	Review of Accounts/Retainer Agreements	10-8
6	Appeal of the Review Officer's Decision.....	10-9
7	Costs.....	10-10
	7.1 Introduction	10-10
	7.2 Costs in Interlocutory Proceedings	10-12
	7.3 Costs in a Class Proceeding	10-13
	7.4 The Cost of Mistake	10-13
	7.5 Costs after Trial	10-14
	7.6 Basis of Calculation	10-14
	7.7 Disbursements	10-17
	7.8 Compromise Procedures	10-17
	7.9 Preparing a Bill of Costs.....	10-17
	7.10 Assessment of Costs.....	10-17
	7.11 Appeal of an Assessment	10-18
8	Sanctions.....	10-19

CHAPTER 11

SERVICE OF DOCUMENTS

1	Introduction.....	11-2
2	Service of Commencement Documents in Alberta.....	11-3
	2.1 Individual	11-4
	2.2 Corporations	11-4
	2.3 Partnerships and Trade Names	11-6
	2.4 Other Entities (Municipalities, Societies, and the Crown)	11-6
	2.5 Other Situations	11-8

ALBERTA CIVIL PRACTICE MANUAL

2.6	Contracts	11-10
3	Service of Non-commencement Documents in Alberta	11-10
3.1	Electronic Service.....	11-11
3.2	Service by Recorded Mail	11-12
4	Foreclosure Actions	11-13
5	Service of Documents Outside Alberta.....	11-13
5.1	Service Within Canada.....	11-14
5.2	Service Outside of Canada	11-14
5.3	Real and Substantial Connection to Alberta Requirement	11-15
6	Additional Rules for Service of Documents.....	11-15
6.1	Validating Service.....	11-15
6.2	Substitutional Service	11-16
6.3	Dispensing with Service.....	11-21
6.4	Proving Service.....	11-21
6.5	Setting Aside Service	11-22
7	Service of Foreign Process.....	11-23
8	Service in a Contracting State Under the Hague Convention	11-23
9	Service in Provincial Court	11-23
9.1	Service of Commencement Documents on Individuals.....	11-23
9.2	Service of Commencement Documents on Corporations	11-24
9.3	Service of Non-Commencement Documents	11-25
9.4	Other Service Rules and Requirements	11-25
10	Tips and Tricks	11-26
11	Appendix List.....	11-28

CHAPTER 12

APPEALS

1	Introduction.....	12-3
1.1	Application of the General <i>Rules of Court</i>	12-3
1.2	Court of Appeal Practice Directions and Other Resources.....	12-3
1.3	CAMS Generally.....	12-4
1.4	Overview of Electronic Filing Formatting Requirements.....	12-4
2	Jurisdiction of the Court of Appeal.....	12-5
2.1	General Jurisdiction and Powers of the Court.....	12-5

	2.2	Powers of the Court of Appeal Under the <i>Rules of Court</i>	12-6
3		When an Appeal Lies	12-7
	3.1	Appeals by Right.....	12-7
	3.2	Appeals by Permission.....	12-8
	3.3	Cross Appeals.....	12-10
4		Types of Appeal.....	12-10
	4.1	Fast Track Appeals.....	12-10
	4.2	Standard Appeals.....	12-11
5		Launching an Appeal or Cross Appeal.....	12-11
	5.1	Filing a Notice of Appeal	12-11
	5.2	Content and Format of a Notice of Appeal	12-12
6		Appeal Records	12-12
	6.1	Appeal Records Generally	12-12
	6.2	Appeal Record in Standard Appeals	12-12
	6.3	Appeal Record in Fast Track Appeals	12-13
7		Factums.....	12-13
	7.1	Factums Generally	12-13
	7.2	Content and Form of Factums.....	12-13
	7.3	Filing Factums in Standard Appeals	12-14
	7.4	Filing Factums in Fast Track Appeals	12-14
8		Extracts of Key Evidence	12-15
9		Books of Authorities	12-15
10		Scheduling an Appeal.....	12-15
11		Applications.....	12-16
	11.1	Applications to Case Management Officers	12-17
	11.2	Applications to Single Appeal Judges	12-18
	11.3	Applications to a Panel of the Court of Appeal.....	12-19
12		Judicial Dispute Resolution.....	12-20
13		Costs.....	12-20
	13.1	Formal Offers.....	12-20
14		Judgments and Orders	12-21