



ALBERTA RULES OF COURT PROJECT

Public Consultation Paper and Questionnaire

The Alberta Law Reform Institute invites Albertans to provide feedback on the Alberta Rules of Court and the operation of the Court of Queen's Bench and the Court of Appeal.

Your views are very important and will be used to evaluate and improve Alberta's justice system.

Please provide us with your views by filling out this questionnaire and returning it in the attached self-addressed stamped envelope. The questionnaire is also available online at www.law.ualberta.ca/alri/

The information gathered in this study is for the use of the Alberta Rules of Court Project only and all responses will remain **confidential and anonymous**.

Thank you for your participation in this important study.

Alberta Law Reform Institute
402 Law Centre
University of Alberta
Edmonton AB T6G 2H5

INTRODUCTION

This consultation paper and questionnaire provides an overview of some of the issues that the Alberta Rules of Court Project (the Rules Project) will be addressing. The following provides some background on the project and the need for your participation in the study.

What is a civil action?

A civil action is any lawsuit that is not a criminal action. Examples of civil actions are claims for debt, damages arising from motor vehicle accidents, family law proceedings, foreclosures and administrations of estates following death.

What courts deal with civil actions?

There are 3 levels of court in Alberta - the Provincial Court, the Court of Queen's Bench and the Court of Appeal. When a civil action goes to trial, the trial will be heard in the Provincial Court or the Court of Queen's Bench, depending on the amount involved and the subject matter of the dispute (the Provincial Court deals with claims of \$7500 or less as well as residential tenancy matters and certain family law matters). The Court of Appeal hears appeals of trial decisions.

What are the Alberta Rules of Court?

The Alberta Rules of Court (the Rules) govern practice and procedure in civil actions in the Court of Queen's Bench and the Court of Appeal. They also apply to the Provincial Court when no other practice or procedure is applicable.

Why was the Rules Project initiated?

The Rules have not been comprehensively revised since 1968. As a result, some of the Rules are out of date, some of the language legalistic and some of the practices overly complex.

The Rules Project is a 3-year project that will undertake a major review of the Rules. The overall purpose of the Rules Project is to provide recommendations for a new set of Rules by mid-2004. The objectives of the project are to:

- 1) Make the rules clearer, more effective and more user-friendly.
- 2) Promote fairness, accessibility, timeliness and cost effectiveness of practice and procedure in civil actions.

The Rules Project is funded by the Alberta Law Reform Institute (ALRI), the Alberta Department of Justice, the Law Society of Alberta and the Alberta Law Foundation, and is managed by ALRI.

How do I participate?

Each section of this consultation paper is followed by questions seeking the input of Albertans. Please write legibly in the space provided. There is also a space at the end of the paper for general comments or discussion of specific issues.

If you prefer, you can read this paper and fill out the questions online at our website (www.law.ualberta.ca/alri/). You may also send us your comments in a letter, fax or e-mail.

You can contact us at:

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RE: Alberta Rules of Court Project
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University of Alberta
Edmonton AB T6G 2H5
Phone: (780) 492-5291
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The issues and the questions in this paper are not intended to limit your contributions. **All comments are welcome.**

Don't wait to participate! The sooner you participate the better in order to ensure that the Rules Project is properly informed about your views.

All submissions must be received by June 30, 2002. Please send your completed questionnaire in the self-addressed stamped envelope attached.

We recognize that in conducting this study, information of a sensitive nature will be gathered. All comments are **confidential and anonymous.**

Once again, thank you for your interest and time in completing this questionnaire.

PROCEDURE IN THE COURT

There are three stages to civil actions in the Court of Queen's Bench: (1) the filing and serving of the pleadings; (2) the discovery process; and (3) the trial process.

Pleadings

Pleadings are the formal written claims and defences used to start and defend a lawsuit. Pleadings are intended to set out the issues in dispute and any defences to a claim. The opposing parties in a lawsuit exchange a statement of claim, a defence and, occasionally, a reply.

The process of preparing, filing and exchanging pleadings is time consuming and expensive. Further, the parties may attack each other's pleadings and require a hearing and a decision by a judge in what is known as an "interlocutory" hearing. These hearings are often costly and time consuming.

Discovery

Discovery is a process where each side in a lawsuit must provide the other party with access to all documents relevant to the lawsuit. In addition, each party and selected other persons are required to answer relevant questions under oath. This question and answer session is called "examination for discovery".

Discovery allows the opposing parties to assess the strength of their own and the other party's case. They are then in a better position to decide if it is worth going to trial or if a settlement should be offered out of court.

The discovery of documents begins with the creation by each party in the lawsuit of a list of relevant documents. In some cases this process can be very time consuming and expensive. Examination for discovery can also be time consuming and expensive.

Trial

Trials are a fundamental part of the civil justice system and must be available in appropriate cases. However, trials are time consuming and expensive. Sometimes there are alternative methods by which judges may resolve civil actions without a full trial. For example, in a "summary trial" a judge reviews the pleadings and written evidence, and enters judgment. These alternatives are less costly and time consuming compared to full trials.

QUESTIONS

1. Using a scale of 1 to 5, where 1 means you were “very satisfied” and 5 means you were “not at all satisfied”, please circle the response that best describes your level of satisfaction with the following aspects of practice and procedure in the Court of Queen’s Bench.

(For each question please circle one response only)

How satisfied were you with:	Very satisfied	Neutral			Not at all satisfied	Don’t know	No Experience /not applicable
a) the overall process	1	2	3	4	5	DK	N/A
b) the pleadings stage	1	2	3	4	5	DK	N/A
c) interlocutory hearing/s	1	2	3	4	5	DK	N/A
d) the discovery stage	1	2	3	4	5	DK	N/A
e) the trial	1	2	3	4	5	DK	N/A
f) alternatives to a full trial (e.g. summary trial)	1	2	3	4	5	DK	N/A
g) court forms	1	2	3	4	5	DK	N/A
h) level of formality	1	2	3	4	5	DK	N/A
i) documentation required	1	2	3	4	5	DK	N/A
j) time to resolve the matter	1	2	3	4	5	DK	N/A
k) cost	1	2	3	4	5	DK	N/A
l) ease of understanding the process	1	2	3	4	5	DK	N/A
m) assistance available through the court	1	2	3	4	5	DK	N/A
n) information available through the court	1	2	3	4	5	DK	N/A

3. What changes would you make to improve practice and procedure in the Court of Queen’s Bench?

4. Do you have any other comments regarding practice and procedure in the Court of Queen’s Bench?

ALTERNATIVE DISPUTE RESOLUTION

“Alternative dispute resolution” or ADR refers to ways of resolving a dispute other than bringing it before a judge to make a binding decision. Mediation and early neutral evaluation are among the ADR techniques that are commonly practised in Alberta.

- **Mediation** is a process where a neutral third person, called a mediator, helps the opposing parties discuss and try to resolve the dispute. The mediator does not have the power to make a decision for the parties, but can help the parties find a solution that is mutually acceptable.

→ **Early neutral evaluation** is a process where a lawsuit is referred to a senior lawyer or a judge (not the trial judge) who assesses each side's strengths and weaknesses and provides an evaluation of the likely outcome at trial. This evaluation may assist the parties in assessing their case and may encourage them to settle their dispute out of court.

People involved in disputes may prefer settlements achieved through ADR for various reasons:

- the ability to have a more active role in resolving the dispute (in a lawsuit, the decision is totally in the hands of the judge and his or her decision is binding);
- confidentiality (in a lawsuit, all of the documents and the decision of the judge are normally available to the public);
- the ability to select who will help resolve the dispute (rather than having it assigned randomly to a judge); and
- perhaps, a faster and cheaper resolution than can be achieved in court.

QUESTIONS

5. If you have been in a lawsuit, were you encouraged to use ADR?
Discouraged from using ADR?

- Encouraged
- Discouraged
- Was not aware of ADR → *Go to Question 7*
- Don't recall → *Go to Question 7*

6. If encouraged, in what ways were you encouraged to use ADR? If discouraged, in what ways were you discouraged?

7. In your opinion, should people involved in a lawsuit be encouraged or required to use ADR?

- Encouraged to use ADR
- Required to use ADR
- Depends – please specify _____

Don't know

8. Who should carry out these alternative forms of dispute resolution?
(check all that apply)

- Judges (outside of the court)
- Lawyers
- Other court personnel
- Specialized ADR practitioners
- Don't know

9. Using a scale of 1 to 5, where 1 means you were “very satisfied” and 5 means you were “not at all satisfied”, please circle the response that best describes your level of satisfaction with the ADR services available to you.

- 1 (very satisfied)
- 2
- 3 (neutral)
- 4
- 5 (not at all satisfied)
- Don't know
- No experience/not applicable

10. Do you have any other comments about ADR?

SELF-REPRESENTED PARTIES

Parties without lawyers pose special challenges for the justice system. The issues in a lawsuit can be legally complex and the court procedures complicated. A party's lack of familiarity with law and legal procedures may cause delay and may result in injustice.

QUESTIONS

11. What are the biggest hurdles to representing oneself in court? (check all that apply)

- Complexity of court procedures generally
- Difficulty with particular procedures - please specify

-
- Lack of understanding of the law
 - Difficulty articulating one's case
 - Other – please specify _____
-

12. What changes would you make to the justice system to deal with self-represented parties?

APPEALS

The right to appeal to the Court of Appeal is an established feature of our justice system. Appeals can significantly extend the time until there is a final resolution of a lawsuit. Additionally, appeals may be started without realistic prospects of success.

QUESTIONS

13. Should there be a right to appeal in every case?

- Yes → *Go to Question 15*
- No
- Don't know → *Go to Question 15*

14. In what circumstances should there be no right to appeal a decision?

- When the monetary claim is below a particular amount
 - When the decision is interlocutory (i.e., it is not the final decision in a case)
 - When there is a limited prospect of success
 - Other – please specify _____
-

15. Do you have any other comments regarding the appeals process?

LEGAL FEES

Legal fees are determined by agreement between the client and the lawyer. They may be charged by the hour worked, or they may be "contingency fees" in which the lawyer receives a percentage of the client's award if the lawsuit is successful. The court can review contingency agreements and lawyers' bills and can make changes if the fees are not reasonable.

Generally, at the conclusion of a lawsuit, the losing party is ordered to pay a portion of the legal fees of the winning party. In special circumstances, a court can order that the losing party pay a higher amount or even all of the winning party's legal fees.

QUESTIONS

16. Does review by the court provide adequate protection to ensure the reasonableness of contingency fee agreements and lawyers' bills?

- Yes
- No
- Don't know

17. Is the losing party required to pay a sufficient proportion of the winning party's legal fees?

- Yes
- No
- Don't know

18. Do you have any other comments regarding legal fees?

TECHNOLOGY

Sophisticated audio and video technology now allows people to meet “face to face” without having to be in the same room (creating the possibility of a “virtual” court). Additionally, documents can now be prepared and exchanged electronically. Currently, all court documents are produced on paper, exchanged between the parties and filed at the Court.

QUESTIONS

19. Should a “virtual” court be used in some circumstances?

- Yes
- No → *Go to Question 21*
- Don't know

20. In what situations or circumstances might a virtual court be appropriate? (check all that apply)

- When the parties reside in different cities
 - When physical disabilities prevent or impede travelling to a court
 - When 1 or more of the parties does not reside close to a court
 - Whenever convenient
 - Other – please specify _____
-

- Don't know
-

21. Should an electronic system for filing and service of court documents be developed?

- Yes
- No
- Don't know

25. In what capacity have you been involved in a civil action? (check all that apply)

- As a party (a person suing or being sued) in a personal matter
 - As a party (a person suing or being sued) in a business matter
 - As a lawyer¹
 - As a non-lawyer service provider (someone who provides assistance to a party in court)
 - Other (e.g., relative or friend of a party; witness; juror) – please specify _____
-

26. If you have been a party in a civil action (either in a personal or business matter) were you represented: (check all that apply)

- By a lawyer?
 - By a non-lawyer service provider?
 - Other – please specify _____
-
- You represented yourself (you had no one helping you)

27. With which court or courts have you been involved? (check all that apply)

- Provincial Court
- Court of Queen's Bench
- Court of Appeal

¹ Lawyers may prefer to respond to the *Issues Paper for the Legal Community* available at www.law.ualberta.ca/alri/.

28. Are you a....

- Lawyer?
- Non-lawyer service provider?
- Legal education provider?
- Member of the public?
- Other - please specify _____

29. Where did you access this consultation paper?

- the court
 - MLA's office
 - Legal Aid office
 - lawyer's office
 - online
 - Other – please specify _____
- _____

ADDITIONAL COMMENTS

We welcome any additional general comments or discussion of specific issues about which you may be concerned.

FOCUS GROUP DISCUSSIONS

As part of the public consultation process, the Rules Project may invite people like you to participate in a group discussion regarding the Alberta Rules of Court. If you may be interested in participating in one of these sessions please provide the following contact information. All information will be kept strictly **confidential**.

Name: _____

City: _____

Telephone number: (day) _____

(evenings/weekends) _____

Thank you for your participation in this study.