CRIMINAL RULES OF

THE PROVINCIAL COURT OF ALBERTA

RULE 1 – GENERAL

1.1 Definitions

In these Rules,

"agent" means a person qualified to act as an agent pursuant to the Code;

"appear/appearance: means to attend/an attendance before the Court either in person or remotely in accordance with local Practice Directions or as directed by the Court;

"application" means a request to the Court for an order, direction or ruling, or for the assignment of a trial, preliminary inquiry, pre-preliminary conference or pre-trial conference judge;

"Charter" means the *Canadian Charter of Rights and Freedoms*;

"Code" means the *Criminal Code*;

"Court" means The Provincial Court of Alberta and includes a judge of that Court and justice of the peace in a context where the Code allows a justice of the peace to act;

"hearing" includes a pre-trial conference, a pre-preliminary conference or any other meeting between a judge and the parties or their lawyers as provided for by the Code or these Rules;

"lawyer" means a person entitled to practise law in Alberta;

"party" includes multiple parties where more than one party is involved;

"Practice Direction" means a Practice Direction issued under Rule 5.1; and

"pre-trial conference" means a conference described in section 551.3 or section 625.1 of the Code that is held in accordance with Rule 4.2.

1.2 Application of Rules

These Rules apply to all adult criminal proceedings before the Court and to all lawyers, agents and litigants appearing in such proceedings before the Court.

RULE 1.2 Commentary

These Rules apply to adult criminal proceedings in The Provincial Court of Alberta. These Rules do not apply to provincial offence proceedings where a justice of the peace presides at a trial under provincial legislation.

When offences under provincial legislation have been transferred to the Criminal Court following the filing of a Charter Notice, for example, or are being heard in the Criminal Court for any other reason, the parties are required to follow these Rules.

1.3 **Fundamental objective and duties**

(1) The fundamental objective of these Rules is to ensure that criminal proceedings before the Court are dealt with in a fair, efficient, orderly and consistent manner by,

(a) ensuring that both the prosecution and the defence are dealt with fairly;

(b) recognizing the rights of the accused, including the right to be tried within a reasonable time,

(c) recognizing the interests of society in the prompt and efficient resolution of criminal proceedings before the Court ;

(d) recognizing the interests of witnesses; and

(e) scheduling Court time and deciding other matters in ways that take into account;

(i) the gravity of the offence;

(ii) the complexity of the issues;

(iii) the severity of the consequences for the accused and for others affected ; and

(iv) the requirements of other proceedings.

(2) Every person appearing before the Court in a criminal proceeding shall, in addition to fulfilling any professional obligations,

(a) act in accordance with the fundamental objective; and

(b) comply with these Rules, any orders made by the Court and any relevant Practice Directions.

(3) The Court shall take the fundamental objective into account when,

(a) exercising or declining to exercise any power under the Code or these Rules; or

(b) applying or interpreting any Rule or Practice Direction.

RULE 1.3 Commentary

Rule 1.3 reflects the crucial considerations that are to be borne in mind by the Court and by the parties at each stage of proceedings before the Court.

1.4 **Agents and identification of parties**

(1) All persons appearing before the Court shall identify themselves to the Court and state the capacity in which they appear.

(2) A person appearing before the Court as an agent shall provide sufficient information to allow the Court to determine that the person has standing to appear as an agent. This includes the name of the organization of which the person is part, if the person is part of an organization approved by the Lieutenant Governor in Council for Alberta pursuant to section 802.1 of the Code.

RULE 1.4 Commentary

Lawyers should always identify their clients to the Court and introduce themselves by name on the record, whether well-known to the Court or not.

A person appearing before the Court as the accused must identify him or herself as the accused.

In certain circumstances the Code permits accused persons to appear before the Court through the use of an agent who is not a lawyer or an articled student employed by a lawyer. This could include a person appearing to simply adjourn a matter, a person acting for a corporate entity or most commonly, a person who is part of an organization such as Student Legal Services or Native Counselling Services expressly identified under the *Legal Profession Act* pursuant to section 802.1 of the Code. The purpose of this Rule is to allow the Court record to be clear as to who is addressing the Court and to ensure a means of contacting the agent if the need arises.

RULE 2 – APPLICATIONS

2.1 **Starting an application – Form 1**

(1) Subject to Rule 2.2, an application must be started by filing with the Court a completed application in Form 1, along with any supporting materials.

(2) The application must include the following:

(a) a concise statement of the matter that is the subject of the application;

(b) a statement of the grounds to be argued at the hearing of the application;

(c) a detailed statement of the facts relied on in the application;

(d) the relief sought by the applicant; and

(e) legal citations of any cases intended at the time of filing to be relied on by the applicant at the hearing of the application.

(3) A copy of Form 1 and supporting materials must be served in accordance with Rule 3.

(4) This Rule does not apply to an application made under Rule 2.2 or to an application that arises unexpectedly during a trial or preliminary inquiry.

RULE 2.1 Commentary

Form 1 is the only document that the party bringing an application under these Rules must use. It is important that the application in Form 1 is filled out completely, as this will assist the Court and the other parties in understanding the relief sought, and the reasons in support of the application.

Additional materials, such as transcripts, affidavits or written memoranda are not mandatory. However, if facts are not agreed upon, any application must be supported by evidence at the hearing

2.2 **Informal applications**

(1) An application for a minor, brief, or uncontested matter may be brought as an informal application without filing Form 1, although the Court may direct that the application be brought in accordance with Rule 2.1.

(2) Unless the Court otherwise directs, an application to adjourn a matter or for a lawyer to withdraw from the record as counsel may be brought as an informal application. Such applications should be brought as soon as possible after the need for the application arises.

RULE 2.2 Commentary

Informal applications will generally be those matters that are not contentious or complicated and where the evidence generally comes through the representations of the lawyers. They might include applications at trial or preliminary inquiry such as applications for publication bans (noting, however that notice to the media might be required), applications for witnesses to be excluded, for a support person or a screen to be provided when a witness testifies, or similar types of applications. They might include applications in advance of a trial, such as applications to abridge or extend times for filing, uncontested applications for a person to be permitted to testify by video-link or for the appointment of counsel to cross-examine a witness. This is not intended to be an exhaustive list.

Applications for judicial interim release or detention can be contentious and complicated but they are not intended to be covered by the formal process set out in Rule 2.1.

Adjournment applications and applications dealing with conflict are specifically included in Rule 2.2 because such applications must be brought without delay as soon as the need for such an application arises.

2.3 **Response to an application – Form 2**

(1) A party responding to a Form 1 application shall file with the Court a completed response in Form 2, along with any supporting materials.

(2) The response must include the following:

(a) a detailed statement of any dispute with respect to the facts relied on by the applicant;

(b) a statement of the respondent's response to the application;

(c) a response to the relief sought by the applicant; and

(d) the legal citations of any cases intended at the time of filing to be relied on by the respondent at the hearing of the application.

(3) A copy of the filed Form 2 and any supporting materials must be served in accordance with Rule 3.

RULE 2.3 Commentary

The adversary system requires the participation of two or more informed parties. A timely and detailed response by the responding party is important. Otherwise, the appearance of fairly administered justice may be impaired.

A party responding to an application before the Court under these Rules must use Form 2 for their response. It is important that the response in Form 2 is filled out completely, as this will assist the Court and the other parties in understanding the position of the responding party, what is in issue and what is not.

2.4 **Supporting materials**

(1) Any materials supporting an application or a response, other than relevant case law, must be filed within the timelines specified by Rules 2.5 or 2.6, unless the other party consents or the Court grants leave to abridge or extend the timelines.

(2) The Court may direct that additional supporting materials be filed or may restrict the amount of supporting materials to be filed.

(3) If a party wishes to rely on a transcript in support of an application or a response,

(a) subject to Subrule (4), the party seeking to rely on the transcript shall order and obtain the transcript; and

(b) the party shall file the transcript with the Court and serve the transcript on the other party as soon as possible after obtaining the transcript.

(4) If a transcript has been ordered but not obtained by the time a party files Form 1 or Form 2, as the case may be, the party shall indicate on the form that the transcript has been ordered and state the date on which the transcript was ordered and the date by which the transcript is expected to be obtained.

RULE 2.4 Commentary

This Rule is designed to encourage parties to file and serve any materials intended to be relied upon at the same time that the applicable form is filed but it is recognized that this will not always be possible.

The Rule permits the filing of materials after the initial form is filed but late filing is not unfettered. It requires either consent of the opposing party or judicial approval, both of which will be governed by the fundamental objective set out in Rule 1.3.

Transcripts are addressed separately to clarify any confusion around who bears the onus to order transcripts when they are needed. Further, the requirement of consent or leave to file transcripts late is relaxed in recognition that transcripts take time to prepare and are less costly if not requested on a rush basis. The condition is that the transcript must be ordered by the time the form is filed and it must then be served promptly when obtained.

2.5 **Pre-trial applications**

(1) The following applications are pre-trial applications and are subject to this Rule, unless the Court otherwise directs:

(a) an application to sever counts or parties;

(b) an application to appoint a lawyer or amicus;

(c) an application to force removal of a lawyer due to conflict;

(d) an application to compel production of first party disclosure;

(e) an application to compel production of third party disclosure, but not including an application for records pursuant to section 278.3 of the Code;

(f) a section 11(b) Charter application to stay proceedings due to unreasonable delay;

(g) an application to appoint a lawyer to cross-examine a witness under section 486.3 of the Code;

(h) a contested application for leave to permit testimony by electronic means, including video-conference, under the enabling provisions of the Code;

(i) an application for leave to cross-examine on an affidavit or information to obtain; and

(j) any other application specified in a Practice Direction or determined by the Court to be a pre-trial application.

(2) A pre-trial application must be heard at least 60 days before the scheduled start date of the trial, unless the Court otherwise directs or a Practice Direction otherwise specifies.

(3) A party who starts a pre-trial application shall, at least 30 days before the scheduled date of the hearing of the pre-trial application,

(a) file with the Court a completed application in Form 1 and, subject to Rule 2.4, any supporting materials; and

(b) serve a copy of the filed Form 1 and any supporting materials on the other party in accordance with Rule 3.

(4) A party responding to a pre-trial application shall, within 15 days after being served with the application,

(a) file with the Court a completed response in Form 2 and, subject to Rule 2.4, any supporting materials; and

serve a copy of the filed Form 2 and any supporting materials on the other party in accordance with Rule 3.

(5) If a party seeks to abridge or extend the time requirements under this Rule, the party shall appear before the Court. If the parties cannot agree on the timing of an abridgement or extension application, then the responding party must be given at least 2 clear business days' notice of the abridgement or extension application.

(6) If a party wishes for any reason to bring an application described in Subrule (1) at trial, the party shall obtain leave of the Court to do so within the timelines prescribed in this Rule.

RULE 2.5 Commentary

This Rule identifies certain types of applications that, by their nature, should be brought in advance of the scheduled trial. As a general rule, these are applications for which the remedy is not based on substantive evidence expected to be called at trial. A culture of addressing such matters well in advance of the scheduled trial allows matters that should not proceed to be identified early and minimizes the risk of unnecessary delay.

If counsel meet the prescribed deadlines no judicial involvement in scheduling pre-trial applications is necessary. If the deadlines are missed or require extension, judicial oversight is necessary. Such oversight will permit all options flowing from the late filing to be considered before considering an adjournment of the trial or preliminary inquiry.

In some cases, a judge might be assigned in advance of a trial to hear the pre-trial application; in others, a judge might be assigned pursuant to section 551.1 of the Code to hear the application.

There will be circumstances where, despite everyone's best efforts, it may not be possible to schedule a pre-trial application until the trial date or shortly before. Under no circumstances, however, should counsel expect to bring what should be a pre-trial application, on the day of trial, without having sought leave in advance.

2.6 **Trial applications**

(1) The following applications are trial applications and are subject to this Rule unless the Court otherwise directs:

(a) an application for Charter relief based on evidence to be called at trial;

(b) a complex evidentiary application such as an application for the admission of similar fact evidence; and

(c) any other application specified in a Practice Direction or determined by the Court to be a trial application.

(2) A trial application may be heard at the time scheduled for trial unless the Court otherwise directs.

(3) A party starting a trial application shall, no later than 30 days before the scheduled start date of the trial,

(a) file with the Court a completed application in Form 1 and, subject to Rule 2.4, any supporting materials; and

(b) serve a copy of the filed Form 1 and any supporting materials on the other party in accordance with Rule 3.

(4) A party responding to a trial application shall, within 15 days after being served with the application,

(a) file with the Court a completed response in Form 2 and, subject to Rule 2.4, any supporting materials; and

(b) serve a copy of the filed Form 2 and any supporting materials on the other party in accordance with Rule 3.

(5) If a party seeks to abridge or extend the time requirements under this Rule, the party shall appear before the Court. If the parties cannot agree on the timing of an abridgement or extension application, then the responding party must be given at least 2 clear business days' notice of the abridgement or extension application, unless otherwise provided by the Court

RULE 2.6 Commentary

In the case of Charter applications, this Rule changes the practice that existed before these Rules in two ways: (a) there is now a standardized form for the Application (formerly referred to as a Charter Notice), and (b) the application must now be filed and served at least 30 days before the trial date instead of 14 days.

2.7 **Sexual offence trial applications**

(1) Notwithstanding Rules 2.5 and 2.6 above,

(a) any application under section 278.93 of the Code to determine:

i) admissibility of other sexual activity of a complainant as described in section 276(2) of the Code, or

ii) admissibility of records in possession of accused as described in section 278.92(2) of the Code; or

(b) any application under section 278.3 of the Code for records,

shall be subject to this Rule 2.7.

(2) Such applications must be scheduled for hearing at least 30 days before the scheduled start date of the trial, unless the Court otherwise directs or a Practice Direction otherwise specifies.

(3) A party who starts such an application shall, at least 30 days before the scheduled date of the hearing of an application under section 278.93, or at least 60 days before the scheduled date of the hearing of an application for records under section 278.3 of the Code,

(a) file with the Court a completed application in Form 1 and, subject to Rule 2.4, any supporting materials; and

(b) serve a copy of the filed Form 1 and any supporting materials on the other party in accordance with Rule 3.

(4) A party responding to such an application shall, within 15 days after being served with the application,

(a) file with the Court a completed response in Form 2 and, subject to Rule 2.4, any supporting materials; and

(b) serve a copy of the filed Form 2 and any supporting materials on the other party in accordance with Rule 3.

(5) If a party seeks to abridge or extend the time requirements under this Rule, the party shall appear before the Court. If the parties cannot agree on the timing of an abridgement or extension application, then the responding party must be given at least 2 clear business days' notice of the abridgement or extension application.

(6) When the Crown is served with an application to which this Rule relates, the Crown shall, as soon as practicable, advise any party who is the subject of the application of their right to be represented by a lawyer if the Code provides such a right.

RULE 2.7 Commentary

This Rule 2.7 governs the practice and form of notices for three types of applications specific to trials involving a sexual offence: applications to determine the admissibility of alleged sexual activity of the complainant (section 276(2) of the Code), applications to determine the admissibility of records relating to a complainant that are in possession of the accused (section 278.92(2) of the Code), and applications to gain access to records of a complainant or witness (section 278.3 of the Code). In each of these applications, the complainant or record holder has a right to be represented by a lawyer so if these applications are not commenced well in advance of the scheduled trial, there would be a high likelihood that the trial would have to be adjourned.

This Rule is intended to mitigate this risk as much as possible. The Rule further expresses the practical reality that although the Code requires the Court to advise certain complainants or witnesses of their right to be represented by a lawyer, the Crown will be in a much better position to do so in a more timely manner.

2.8 **Other applications**

Unless the Court otherwise directs, any application not covered by Rules 2.5 to 2.7 including an application by media or a witness shall be filed and served on the other party at least 30 days before the scheduled trial or preliminary inquiry, to be heard at a time determined by the Court at the time of filing.

2.9 **Consent resolutions after application filed**

A party may abandon or resolve an application started under these Rules by filing a completed consent in Form 3 with the Court, but if a party is not represented by a lawyer, the consent must be confirmed before a judge in open court before it is filed.

RULE 2.9 Commentary

This Rule is included so that once the formal application process has been engaged, it is clear on the court record when and how the application has concluded. This is an alternative to appearing in court on the scheduled hearing date. The Rule is designed to ensure that when an accused or other party such as a witness who has been given standing is not represented by a lawyer, there is judicial oversight on the record regarding the resolution or abandonment of rights.

RULE 3 – SERVICE AND FILING

3.1 Service when an accused is represented by a lawyer or an agent

(1) This Rule applies if an accused is represented by a lawyer or an agent.

(2) Any forms or materials required to be served on the accused must be served on the accused's lawyer or agent.

(3) If a specific Crown prosecutor has been assigned to an accused's file, any forms or materials to be served on the Crown must be served on that Crown prosecutor.

(4) If an accused's lawyer or agent does not know whether a specific Crown prosecutor has been assigned to the accused's file, any forms or materials to be served on the Crown must be served,

(a) in the manner specified in writing by the relevant Crown office;

(b) in accordance with a Practice Direction; or

(c) in a manner directed by the Court.

(5) Any forms or materials to be served on a party under these Rules may be served in electronic form, by fax or in hard copy form.

3.2 Service on an unrepresented party

(1) If an accused or other party is not represented by a lawyer or an agent, any forms or materials to be served on the accused must be served in person or as directed by the Court.

(2) If an accused or other party is not represented by a lawyer or an agent, any forms or materials to be served on that party under these Rules must be served on the party in hard copy form, unless the party to be served agrees to receive the forms or materials by fax or in electronic form.

(3) Rules 3.1(3) to 3.1(5) apply to the service of forms or materials upon the Crown by an accused or other party who is not represented by a lawyer or an agent.

3.3 Filing with the Court

All forms and materials filed with the Court shall be in electronic format unless otherwise permitted by the Court or by a Practice Direction.

3.4 **Proof of service**

A party is not required to file proof of service under these Rules, but the party serving forms or materials may be required to satisfy the Court that the party to be served received the forms or materials if service is disputed or if the Court so requires.

RULE 3 Commentary

These provisions aim to ensure that the materials intended to be relied upon in the courtroom reach the specific lawyer appearing in Court.

The time-consuming and formal process of an affidavit of service is not required as a matter of course. However, all parties must govern themselves by the expectation that if service is challenged, the party asserting service must be in a position to demonstrate it. In most cases, this will be readily demonstrable by either pointing to an electronic record, a confirming conversation, a confirming phone call, an email record or a text.

If a party has any doubt about whether their form or materials were received by the other party, they should check. A simple phone call, email or text will ensure that service is a non-issue.

This Rule recognizes that in the case of service upon Crown prosecutors, the distribution of files to individual prosecutors is different in different parts of the province. In some areas, most files tend to be assigned to specific prosecutors; in other areas they are not. Sometimes the prosecutor handling the matter will not be known in advance. This is why Rule 3.1(4) provides for specific Practice Directions to govern service locally.

With regard to filing forms and materials with the Court, an electronic copy is the default position as of the time the Rules take effect, but each geographic area is expected to have a Practice Direction that addresses procedures and format. It should be consulted before filing.

RULE 4 – CASE MANAGEMENT

4.1 **Hearing and trial management**

When conducting a hearing or trial, the Court may make any order or direction within its jurisdiction to ensure that the hearing or trial is conducted according to the fundamental objective set out in Rule 1.3.

RULE 4.1 Commentary

Trial judges of The Provincial Court of Alberta possess and are duty bound to exercise their trial management powers in order to ensure that the proceedings before them are conducted in a timely fashion, fairly, and in accordance with the interests of justice. A trial judge is not a mere observer who sits by impassively allowing counsel to conduct the proceedings in any manner they choose. As confirmed by the Supreme Court of Canada, for our justice system to operate effectively, trial judges must, in the public interest, and in accordance with the fundamental objective of these Rules, control the course of the proceedings over which they preside and conclude matters as soon as reasonably possible.

4.2 **Pre-trial conference**

(1) Either before or after a matter has been scheduled for trial, the Court may direct that the parties appear before a pre-trial conference judge for a pre-trial conference.

(2) The pre-trial conference may take place in open court or in chambers either by in person attendance or by remote appearance by teleconference, but if a party is not represented by a lawyer, or if the lawyer of an accused or the Crown prosecutor requests that the accused be present, the pre-trial conference must take place in open court.

(3) The lawyer of record for each party or, if an accused is not represented by a lawyer, the accused, shall attend the pre-trial conference. A lawyer of record may informally apply to the pre-trial conference judge to have another lawyer attend the pre-trial conference in the lawyer of record's place on at least 2 clear business days' notice of the application to the party.

(4) Before the pre-trial conference, if an accused is represented by a lawyer,

(a) the lawyers for all parties shall review their files; and

(b) the lawyers for all parties shall discuss with each other the issues set out in Subrule (5).

(5) The following matters may be considered at the pre-trial conference and the parties shall come prepared with authority to make representations on,

(a) the adequacy of disclosure;

(b) proposed pre-trial or trial applications, including, pre-trial and trial applications referred to in Rules 2.5 to 2.7 above

(c) any admissions the parties are willing to make;

(d) the legal issues that are expected to be dealt with in the trial;

(e) an estimate of the time needed to complete the trial and the reasons for the estimate;

(f) any resolution of the matter, if appropriate.

RULE 4.2 Commentary

Pre-trial conferences are an important mechanism to provide the parties and the public with speedy trials that focus upon the matters in issue. Prior to the introduction of the Rules, pre-trial practices were informal and pre-trial judges lacked the capacity to make binding decisions on the parties. This section of the Rules provides judges with that authority. Rule 4.2 is intended to establish a uniform pre-trial conference practice that reflects the Code's provisions including the judicial powers authorized by Parliament. The Rule further entrenches the expectation that these pre-trial conferences be meaningful and productive, with all parties prepared to make consequential decisions.

In advance of the judicial pre-trial conference, if all parties are represented by a lawyer, lawyers are expected to explore possible resolution, to focus the areas of agreements and admissions and to determine the particular matters in issue.

Not all matters will require a pre-trial conference. The criteria used for determining when pre-trial conferences are necessary may be defined from time to time through Practice Directions.

(6) Unless otherwise directed by the Pre-Trial conference Judge or a Practice Direction, the pre-trial conference may be held by telephone or another form of communications technology.

(7) After hearing from the parties during the pre-trial conference, the pre-trial conference judge may,

(a) make any ruling a case management judge acting under section 551.3 of the Code may make, except a ruling under sections 551.3(1)(e) or 551.3(1)(g) of the Code;

(b) if the parties consent, set a date and, if necessary, a procedure for the matters identified in sections 551.3(1)(e) or 551.3(1)(g) of the Code to be determined;

(c) confirm or amend the estimates of the time required to hear the trial;

(d) establish case-management schedules and impose deadlines on the parties with respect to the production of documents or evidence and for the filing and service of legal briefs or other materials; and

(e) set a date for a further pre-trial conference, if required.

RULE 4.2(7) Commentary

The effective management of a trial or preliminary inquiry proceeding requires the cooperation of all parties. Failure to fully and accurately advise the Court of relevant information and issues at the judicial pre-trial conference, or to provide proper notice of the matters referenced under Rule 4.2(5) has the effect of inconveniencing the public, the parties and the Court. To avoid difficulties or delay, and to ensure an orderly process, it may be necessary for the pre-trial conference judge to set timelines and to make certain pre-trial rulings or orders that are binding on the parties. Failure to comply with such timelines for the exchange of material and submissions, or to obey any pre-trial rulings or decisions that are made, may, among other possible consequences, result in an application being dismissed or the matter not proceeding on the court date.

An accused has the right to be present for his or her trial. This is why the powers of a case management judge under sections 551.3(1)(e) or 551.3(1)(g) of the Code are excluded from the case management process which will often be held in the absence of the accused. The other reasons for excluding these powers are that these provisions deal with the subjects of sentencing or with matters that are covered in the list of pre-trial applications, thus likely better addressed under Rule 2.5. If a lawyer wishes to have the pre-trial conference judge exercise such powers, the lawyer would have to advise in advance, the accused would have to be present, and all parties would have to consent.

(8) At the conclusion of the pre-trial conference,

(a) any agreements entered into or admissions made by the parties, and

(b) any rulings made by the pre-trial conference judge

shall be reduced to writing or otherwise recorded, attached to the Information for the assistance of the trial judge, and distributed to the parties in attendance at the pre-trial conference.

(9) A ruling that results from the exercise of the powers referred to in (7) and (8) is binding on the parties for the remainder of the trial unless the trial judge is satisfied that it would not be in the interests of justice because, among other considerations, fresh evidence has been adduced.

4.3 Preliminary inquiries

If an accused represented by a lawyer has requested a preliminary inquiry, the accused's lawyer shall, on or before the date of requesting the preliminary inquiry, unless otherwise directed by the Court or a Practice Direction,

(a) file with the Court a completed statement of issues in Form 4 identifying the issues to be raised at the preliminary inquiry and the witnesses to be examined; and

(b) serve a copy of the filed Form 4 on the Crown prosecutor and any lawyers for other parties in accordance with Rule 3.

RULE 4.3 Commentary

Although the time of requesting the preliminary inquiry marks the deadline for serving a filed Form 4, the lawyers are encouraged to discuss the issues in advance in order to properly estimate the time required for the preliminary inquiry.

4.4 Pre-preliminary conferences

(1) If an accused chooses to have a preliminary inquiry, a pre-preliminary conference may be scheduled before a judge, either in open court or in chambers, and either in person or by remote appearance, to consider matters to promote a fair and expeditious preliminary inquiry.

(2) If a pre-preliminary conference has been scheduled or if the Court otherwise directs, the Crown prosecutor shall, in advance of the pre-preliminary conference, file with the Court a completed statement of the Crown position with respect to the preliminary inquiry in Form 5.

(3) Rules 4.2(2) to 4.2(6) apply to pre-preliminary conferences.

(4) Any matter that may be addressed at a hearing under section 536.4 of the Code may be addressed at a pre-preliminary conference, including,

(a) the identification of issues on which evidence will be given at the preliminary inquiry;

(b) the identification of witnesses to be heard at the preliminary inquiry; and

(c) any other matter that would promote a fair and expeditious preliminary inquiry.

(5) Any agreements, other than resolution discussions, reached by the parties at the pre-preliminary conference may be reduced to writing by the pre-preliminary conference judge and filed with the Court.

(6) If the pre-preliminary conference judge determines that a hearing under section 536.4 of the Code is necessary, the pre-preliminary conference judge may recommend that a judge be assigned to conduct a hearing under section 536.4.

RULE 4.4 Commentary

Alberta has a history of conducting informal pre-preliminary conferences to help streamline and focus the conduct of preliminary inquiries. These Rules maintain that traditional approach, reserving a formal focus hearing for those cases in which procedural matters cannot be adequately resolved informally. The benefit of an informal pre-preliminary inquiry conference is that matters can be dealt with more promptly if pre-preliminary discussions can be conducted by a judge who is not necessarily seized with the conduct of the preliminary inquiry.

If the parties cannot agree on the witnesses to be called or the manner of receiving their testimony, then the judge conducting the conference can arrange to have a preliminary inquiry judge appointed and, if appropriate, a hearing on the record can be scheduled under section 540 of the Code before the preliminary inquiry judge which may result in the judge making binding orders for the conduct of the inquiry.

RULE 5 – PRACTICE DIRECTIONS, FORMS AND NON-COMPLIANCE

5.1 Power to issue Practice Directions

(1) The Chief Judge or a delegate of the Chief Judge may issue Practice Directions that supplement, amend, qualify or repeal any of these Rules.

(2) A Practice Direction may apply to the whole of the Province, to one or more of the geographic divisions of the Court or to one or more of the sitting points within those divisions.

(3) A Practice Direction does not have effect until it is published electronically on the Court's website.

RULE 5.1 Commentary

Practice Directions can address the practice and court culture of our regions and local courts. They can also fill in procedural or practice details that apply provincially or locally that are not covered by these rules.

5.2 **Forms**

(1) The Chief Judge or a delegate of the Chief Judge may,

(a) amend a form referred to in the Rules; and

(b) establish forms in addition to those referred to in these Rules and require the use of those forms.

(2) A form may apply to the whole of the Province, to one or more of the geographic divisions of the Court or to one or more of the sitting points within those divisions.

(3) A requirement to use a form does not have effect until the form is published electronically on the Court's website.

5.3 **Power of Court to excuse non-compliance**

The Court may excuse non-compliance or authorize non-compliance with any Rule except Rule 1.3 at any time to the extent necessary to ensure that the fundamental objective set out in Rule 1.3 is met.

5.4 **Jurisdiction to manage proceedings**

Nothing in the Rules restricts the power of the Court to impose a sanction or remedy as a result of unexcused or unauthorized non-compliance with the Rules.

RULES 5.3 and 5.4 Commentary

It is expected that the parties will be familiar with the Rules and will comply with them. It is a lawyer's professional obligation to do so. However, there may be circumstances that prevent compliance. The Court in its discretion may excuse non-compliance with the Rules to the extent required to ensure a fair hearing in accordance with the fundamental objective set out in Rule 1.3. However, consequences may result from non-compliance that has not been excused or authorized, including dismissal of the application without a hearing on the merits.

5.5 **Significance of commentaries**

The commentaries are not to be considered a part of the Rules and in the case of any conflict between the Rules and the commentaries, the Rules prevail. The commentaries are included for interpretation only.

5.6 **Paramountcy of conflicting legislative provisions**

(1) If any timeline or other provision in the Rules conflicts with the Code or other applicable legislation, the legislative provision prevails.

(2) Notwithstanding subsection (1), these Rules prevail over the Alberta Constitutional Notice Regulation 102/99 enacted pursuant to the Provincial Court Act, relating to notice of Charter applications.

5.7 **Coming into force**

These Rules apply to any matter respecting which the scheduling of the trial or preliminary inquiry occurs after September 1, 2021.