

CHECKLIST FOR RULE 61 – APPEALS TO AN APPEAL DIVISION

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Checklist for Rule 61 - Appeals to the Appeal Division - CIVIL

LEAVE TO APPEAL

- 61.02(1) Do you need leave to appeal? Leave is required in only a few cases: 1) Appeal from a Consent Order; 2) Appeal of costs' order based on a claim the judge wrongly exercised his discretion; 3) Appeal under the *Workers Compensation Act* R.S.P.E.I. 1988, Cap. W-7 (repealed)[the 'old Act']; 4) **Under Rule 61.05(3), leave is required in order for the respondent to pursue the cross-appeal where the respondent has not delivered a cross-appeal within the time frame noted in 61.05.** If your case falls into one of the foregoing categories, prepare a notice of motion [Form 37A] and serve it within 15 days after the order/decision from which leave to appeal is sought (unless a statute provides otherwise). File proof of service within five days after service.
- 61.02(2) The motion record, factum and transcripts, plus three copies of listed documentation, must be filed within 30 days after filing notice of motion for leave to appeal.
- 61.02(3) Responding party must follow this rule and file documentation within 15 days after service of moving party's documentation.
- 61.02(4) Moving party's notice of motion and factum shall contain the specific questions the court will be asked to answer if leave to appeal is granted.
- 61.02(5) Registrar will set date after moving party's documents are filed.
- 61.02(6) Where leave is granted, the notice of appeal shall be delivered within seven days after the granting of leave.

COMMENCEMENT OF APPEALS

61.03(1) to (4) apply.

- (1) An appeal to the Appeal Division shall be commenced by serving a notice of appeal (Form 61A) together with the certificate required by subrule 61.04(1) on every party whose interest may be affected by the appeal, other than,
- (a) a defendant who was noted in default; or
 - (b) a respondent who has not delivered a notice of appearance, unless he or she was heard at the hearing with leave,
- and on any person entitled by statute to be heard on the appeal, within thirty days after the date of the filing of the order appealed from, unless a statute or these

rules provide otherwise.

Title of Proceeding

- (2) The title of the proceeding in an appeal shall be in accordance with Form 61B.

Notice of Appeal

- (3) The notice of appeal (Form 61A) shall state the relief sought, the grounds of appeal, **the basis for the appellate court's jurisdiction including reference to any statute or regulation establishing jurisdiction, whether the order appealed from is final or interlocutory; whether leave is necessary and if so whether it has been granted; and any other relevant facts establishing jurisdiction.**
- (4) The notice of appeal, with proof of service, shall be filed in the office of the registrar within ten days after service.

CERTIFICATE OR AGREEMENT RESPECTING EVIDENCE

Appellant's Certificate Respecting Evidence

- 61.04 (1) In order to minimize the number of documents and the length of the transcript required for an appeal, the appellant shall serve with the notice of appeal an appellant's certificate respecting evidence (Form 61C) setting out those portions of the evidence that, in his or her opinion, are required for the appeal.

Respondent's Certificate Respecting Evidence

- (2) Within fifteen days after service of the appellant's certificate, the respondent shall serve on the appellant a respondent's certificate respecting evidence (Form 61D), confirming the appellant's certificate or setting out any additions to or deletions from it.
- (3) A respondent who fails to serve a respondent's certificate within the prescribed time shall be deemed to have confirmed the appellant's certificate.

Agreement Respecting Evidence

- (4) Instead of complying with subrules (1) to (3), the parties may, within thirty days after service of the notice of appeal, make an agreement respecting the documents to be included in the appeal books and the transcript required for the appeal.

Requesting Transcripts

- (5) The appellant shall within thirty days after filing the notice of appeal file proof that the appellant has,
- (a) requested a transcript of all oral evidence that the parties have not agreed to omit, subject to any direction under subrule 61.07(4) (relief from compliance);

- (b) provided the transcriber with a list of the names and addresses of all parties to the appeal; and
 - (c) informed the transcriber of the responsibilities of the transcriber under subrule 61.04(7).
- (6) A party who has previously requested a transcript of oral evidence shall forthwith modify his or her order in writing to comply with the certificates or agreement.
- (7) When the evidence has been transcribed, the transcriber shall forthwith give written notice to all parties and to the registrar.

Costs Sanctions for Unnecessary Evidence

- (8) The court may impose costs sanctions where evidence is transcribed or exhibits are reproduced unnecessarily.

CROSS-APPEALS

- 61.05 (1) A respondent who,
- (a) seeks to set aside or vary the order appealed from; or
 - (b) will seek, if the appeal is allowed in whole or in part, other relief or a different disposition than the order appealed from,
 - (c) will contend that the order appealed from should be affirmed on grounds other than those relied upon in the court or tribunal appealed from,
- shall, within fifteen days after service of the notice of appeal, serve a notice of cross-appeal (Form 61E) on all parties whose interests may be affected by the cross-appeal and on any person entitled by statute to be heard on the appeal, stating the relief sought and the grounds of the cross-appeal,
- (2) The notice of cross-appeal, with proof of service, shall be filed in the office of the registrar within ten days after service.
- (3) Where a respondent has not delivered a notice of cross-appeal, no cross-appeal may be heard except with leave of the court hearing the appeal.

AMENDMENT OF NOTICE OF APPEAL OR CROSS-APPEAL

Supplementary Notice to be Served and Filed

- 61.06 (1) The notice of appeal or cross-appeal may be amended without leave, before the appeal is perfected, by serving on each of the parties on whom the notice was served a supplementary notice of appeal or cross-appeal (Form 61 F) and filing it with proof of service.

Argument Limited to Grounds Stated

- (2) No grounds other than those stated in the notice of appeal or cross-appeal or supplementary notice may be relied on at the hearing, except with leave of the court hearing the appeal.

PERFECTING APPEALS (“Perfecting the appeal” means filing all necessary documents, i.e. Appeal Book, Factum (your written argument), and case law that you will be presenting to the Appeal Court on the hearing.)

Time -

61.07(1)(a) If no transcript is required, you have 60 days after the notice of appeal is filed to perfect the appeal.

61.07(1)(b) If a transcript is required for the appeal, you have 60 days after **receiving notice that** the transcript of evidence has been transcribed to perfect the appeal.

Record and Exhibits

61.07(2) The appellant shall cause to be forwarded to the registrar the record and the original exhibits from the court or tribunal from which the appeal is taken.

Material to be Served and Filed

61.07(3) As the appellant you must

- (a) serve on every other party to the appeal and any person entitled by statute or an order under Rule 13.03 (intervention in appeal) to be heard on the appeal,
 - (i) the appeal book referred to in Rule 61.08,
 - (ii) the transcript of evidence, and
 - (iii) the appellant's factum referred to in Rule 61.09;
- (b) file with the registrar, with proof of service four copies of the documents served under clause (a); and
- (c) file with the registrar a certificate of perfection stating that the record, exhibits, appeal book, transcript and appellant's factum have been filed, and setting out the name, address and telephone number of the solicitor for,
 - (i) every party to the appeal, and
 - (ii) any person entitled by statute or an order under Rule 13.03 (intervention in appeal) to be heard on the appeal, or, where a party or person acts in person, his or her name, address for service and telephone number.

Relief from Compliance

- (4) Where compliance with the rules governing appeal books or transcripts of evidence would cause undue expense or delay, a judge of the Appeal Division may give special directions. (You must file a notice of motion requesting special directions.)

Notice of Listing for Hearing

61.07(5) Once the above is filed, the Registrar will list the appeal to be heard and send a notice of the hearing to everyone listed in the certificate of perfection.

Early Hearing of Appeals

- (6) Any party to an appeal may make a motion and the Appeal Division or a judge thereof may, in special circumstances, order an early hearing of an appeal and may give any necessary directions.**

APPEAL BOOK

- 61.08(1) This rule lists what the Appeal Book shall contain.
Your appeal book must contain, in consecutively numbered pages arranged in the following order, a copy of,
- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
 - (b) the notice of appeal and any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
 - (c) the order or decision appealed from, assigned and entered;
 - (d) the reasons of the court or tribunal appealed from with a further typed or printed copy if the reasons are handwritten;
 - (e) the pleadings or notice of application or any other document that initiated the proceeding or defines the issues in it;
 - (f) any affidavit evidence, including exhibits, that the parties have not agreed to omit;
 - (g) all documentary exhibits filed at a hearing or marked on an examination that the parties have not agreed to omit, arranged in order by date and not by exhibit number or, where there are documents having common characteristics, arranged in separate groups in order by date;
 - (h) the certificates or agreement respecting evidence referred to in Rule 61.04;
 - (i) any order made in respect of the conduct of the appeal;
 - (j) any other document relevant to the hearing of the appeal; and
 - (k) a certificate (Form 61H) signed by the appellant, the appellant's solicitor, or on the solicitor's behalf by someone he or she has specifically authorized, stating that the contents of the appeal book are complete and legible.

NOTE: The registrar may refuse to accept an appeal book if it does not comply with these rules or is not legible.

APPELLANT'S FACTUM (Your Written Argument)

- 61.09** You must sign your written argument (Appellant's Factum) and it must contain
- (a) Part I, a statement identifying the appellant and the court or tribunal appealed from and stating the result in that court or tribunal;
 - (b) Part II, a concise summary of the facts relevant to the issues on the appeal, with such reference to the evidence by page and line as is necessary;

- (c) Part III, a statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- (d) Part IV, a statement of the order that the Appeal Division will be asked to make, including any order for costs;
- (e) Schedule A, a list of the authorities referred to; and
- (f) Schedule B, the text of all relevant provisions of statutes, regulations and by-laws,

in paragraphs numbered consecutively throughout the factum.

RESPONDENT'S FACTUM

This rule gives information on filing and service, time for delivery and the contents of the Respondent's factum.

Filing and Service

- 61.10 (1) Four copies of the respondent's factum (written argument) shall be filed with the registrar, with proof of service on all other parties to the appeal.

Time for Delivery

- (2) The respondent's factum must be delivered within thirty days after service of the appeal book, transcript of evidence and appellant's factum.

Contents

- (3) You must sign your factum and it must contain the following:
- (a) Part I, a statement of the facts in the appellant's summary of relevant facts that the respondent accepts as correct and those facts with which the respondent disagrees, and a concise summary of any additional facts relied on, with such reference to the evidence by page and line as is necessary;
 - (b) Part II, the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise statement of the law and the authorities relating to that issue;
 - (c) Part III, a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities relating to that issue;
 - (d) Part IV, a statement of the order that the Appeal Division will be asked to make, including any order for costs;
 - (e) Schedule A, a list of the authorities referred to; and
 - (f) Schedule B, the text of all relevant provisions of statutes, regulations and by-laws that are not included in Schedule B to the appellant's factum, in paragraphs numbered consecutively throughout the factum.

Cross-Appeal If there is a cross-appeal, see Rule 61.10(4).

- (4) (a) If the respondent has served a notice of cross-appeal under Rule 61.05, the respondent must prepare a factum (written argument) as an appellant by cross-appeal and deliver it with or incorporate it into the respondent's written argument.
- (b) If you are the appellant on appeal, you must prepare a factum (written argument) on the cross-appeal as the respondent (responding party), serve and file it within ten days after service of the respondent's factum.

DISMISSAL FOR DELAY/ABANDONMENT

61.11(1) A party may abandon his or her or its appeal or cross-appeal by delivering a notice of abandonment (Form 61K).

Deemed Abandonment

- (2) A party who
 - (a) serves a notice of appeal or cross-appeal and does not file it within ten days after service; or
 - (b) being an appellant, has not filed proof that a transcript of the evidence that the parties have not agreed to omit was requested within the time prescribed by Rule 61.04(5); or
 - (c) being an appellant, has not perfected the appeal within the time prescribed by Rule 61.07(1) or by an order of the Appeal Division or a judge thereof; or
 - (d) being a respondent who has served a notice of cross-appeal, has not delivered a factum in the cross-appeal within thirty days after service of the appeal book, transcript of the evidence and appellant's factumshall be deemed to have abandoned the appeal or cross-appeal **and a notice of abandonment or deemed abandonment shall be sent to the appellant and respondent by the registrar.**

Effect of Abandonment

- (3) Where an appeal or cross-appeal is abandoned or is deemed to have been abandoned, the appeal or cross-appeal is at an end, and the respondent or appellant is entitled to costs of the appeal or cross-appeal unless a judge of the Appeal Division orders otherwise.

CROSS-APPEAL WHERE APPEAL ABANDONED OR DEEMED ABANDONED

- 61.12 (1) Where an appeal has been abandoned or deemed abandoned, the registrar shall serve notice of such abandonment or deemed abandonment on a respondent who has cross-appealed.
- (2) A respondent who has been served with a notice under subrule (1) may,

- (a) within fifteen days thereafter, deliver a notice of election to proceed (Form 61L); and
 - (b) make a motion to a judge of the Appeal Division for directions in respect of the cross-appeal.
- (3) Where the respondent does not deliver a notice of election to proceed within fifteen days, the cross-appeal shall be deemed to be abandoned without costs unless a judge of the Appeal Division orders otherwise.

MOTIONS IN APPEAL DIVISION

Rule 37 Applies Generally

- 61.13 (1) Rule 37, except Rules 37.02 to 37.05 (jurisdiction to hear motions, place of hearing, to whom to be made, hearing date), and 37.17 (motion before commencement of proceeding), applies to motions in the Appeal Division with necessary modifications.

Motion to Receive Evidence

- (2) A motion to have the Appeal Division receive further evidence shall be made to the panel hearing the appeal.

Motion to be Heard by More than One Judge

- (3) Where a motion in the Appeal Division is to be heard by more than one judge, the notice of motion shall state that the motion will be heard on a date to be fixed by the registrar.

Motion Record and Factum

- (4) On a motion referred to in subrule (3),
- (a) the moving party
 - (i) shall serve a motion record that contains the documents referred to in subrule 37.10(2) and a factum consisting of a concise argument **stating the facts and law relied on by the moving party**, and
 - (ii) shall file three copies of the moving party's motion record and factum, **with proof of service, within 30 days after filing the notice of motion**;
 - (b) the responding party,
 - (i) may, where he or she is of the opinion that the **moving party's** motion record is incomplete, serve a motion record that contains the documents referred to in subrule 37.10(3), and
 - (ii) shall serve a factum consisting of a concise statement argument **stating the facts and law relied on by the responding party**, and
 - (iii) shall file three copies of the responding party's motion record and factum, with proof of service, **within 25 days after service of the moving party's motion record and factum**; and

- (c) a party who intends to refer to a transcript of evidence at the hearing shall ensure that **it is included in the motion record.**

Review of Single Judge's Order

- (5) A person who moves to set aside or vary the order of a judge of the Appeal Division under subsection 16(2) of the *Supreme Court Act* shall do so by notice of motion that is served within ten days after the order is made and states that the application will be heard on a date to be fixed by the registrar.

Motions for Leave to Appeal to the Supreme Court of Canada

- (6) A motion to the Appeal Division for leave to appeal to the Supreme Court of Canada from an order or decision of the Appeal Division may be made by notice of motion.

Registrar to Dismiss for Delay

- (7) **If the moving party has not served and filed the motion record and other documents in accordance with subrule (4),**
 - (a) **The responding party may make a motion to the Registrar, on ten days notice to the moving party, to have the motion dismissed for delay;**
 - (b) **The Registrar may serve notice on the moving party that the motion will be dismissed for delay unless the motion record and other documents are served and filed with ten days after service of the notice.**
- (8) **The Registrar shall make an order in Form 61J.1 dismissing the motion for delay, with costs, if the moving party,**
 - (a) **in the case of a motion under clause (7)(a), does not serve and file the motion record and other documents before the hearing of that motion, or within such longer period as a judge of the appellate court allows;**
 - (b) **in the case of a notice under clause (7)(b), does not serve and file the motion record and other documents within ten days after the notice is served, or within such longer period as a judge of the appellate court allows.**

Security for Costs of Appeal

- 61.14 (1) **In an appeal where it appears that,**
 - (a) **there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Prince Edward Island to pay the costs of appeal;**
 - (b) **an order for security for costs could be made against the appellant under Rule 56.01; or**
 - (c) **for other good reason, security for costs should be ordered, a judge of the Appeal Division, on motion by the respondent, may make such**

other for security for costs of the proceeding and of the appeal as is just.

- (2) If an order is made under subrule (1), Rules 56.04, 56.05, 56.07 and 56.08 apply, with necessary modifications.**
- (3) If an appellant fails to comply with an order under subrule (1), a judge of the Appeal Division on motion may dismiss the appeal.**

Application of Other Rules

61.15 The other provisions of these rules, when, and to the extent not inconsistent with this rule, apply, with any necessary modifications, to any proceeding on appeals or motions for leave to appeal in the Appeal Division .