

RULE 62
APPEALS TO THE TRIAL DIVISION

PROCEDURE ON APPEAL

Application of Rule

- 62.01** (1) Subrules (2) to (9) apply to an appeal that is made to a judge,
- (a) from an interlocutory order of the prothonotary;
 - (b) from a certificate of assessment of costs; or
 - (c) under any other statute, unless the statute or a rule provides for another procedure.

Time for Appeal

- (2) An appeal shall be commenced by serving a notice of appeal (Form 62A) on all parties whose interests may be affected by the appeal, within seven days after the date of the order or certificate appealed from.

Hearing Date

- (3) The notice of appeal shall name the first available hearing date that is not less than seven days after the date of service of the notice of appeal, and Rule 37.05 (hearing date for motions) applies, with necessary modifications.

Notice of Appeal

- (4) The notice of appeal (Form 62A) shall state the relief sought and the grounds of appeal, and no grounds other than those stated in the notice may be relied on at the hearing, except with leave of the judge hearing the appeal.
- (5) The notice of appeal shall be filed in the court office where the appeal is to be heard, with proof of service, not later than three days before the hearing date.

Appeal Record

- (6) The appellant shall, not later than five days before the hearing, serve on every other party and file, with proof of service, in the court office, an appeal record containing, in consecutively numbered pages arranged in the following order,
 - (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) a copy of the notice of appeal;
 - (c) a copy of the order or certificate appealed from, as signed and entered and the reasons, if any, as well as a further typed or printed copy of the reasons if they are handwritten; and
 - (d) such other material that was before the judge or officer appealed from as is necessary for the hearing of the appeal, and a factum consisting of a concise statement, without argument, of the facts and law relied on by the appellant.
- (7) The respondent shall, not later than noon on the day before the hearing, serve on every other party and file with proof of service, in the court office where the appeal is to be heard,
- (a) any further material that was before the judge or officer appealed from and is necessary for the hearing of the appeal; and
 - (b) a factum consisting of a concise statement, without argument, of the facts and law relied on by the respondent.
- (8) A judge before or at the hearing of the appeal, may dispense with compliance with subrules (6) and (7) in whole or in part.

Abandoned Appeals

- (9) Rule 61.12 applies, with necessary modifications, to the abandonment of an appeal under this rule.

DISMISSAL FOR DELAY

Motion by Respondent

- 62.02** (1) Where an appellant has not perfected the appeal within one year after filing the notice of appeal or within any extension of time granted by a judge of the Trial Division, the respondent may make a motion to the Registrar, on ten days' notice to the appellant, to have the appeal dismissed for delay.

Notice by Registrar

- (2) Where the appellant has not perfected the appeal within one year after filing the notice of appeal, the Registrar may serve notice on the appellant that the appeal will be dismissed for delay unless it is perfected within ten days after service of the notice.

Registrar to Dismiss Where Default not Cured

- (3) Where the appellant does not cure the default,
 - (a) in the case of a motion under subrule (1), before the hearing of the motion; or
 - (b) in the case of a notice under subrule (2), within ten days after service of the notice or within such longer period as a judge of the Trial Division allows, the Registrar shall make an order (Form 62B) dismissing the appeal for delay, with costs and shall serve the order on the respondent.

Clark v. Simmonds (1999), 171 Nfld. & P.E.I. R. 70 (P.E.I.S.C.-T.D.)

On the facts of this case the party affected by the *ex parte* order of the prothonotary could either file an appeal from the order pursuant to Rule 62 or make a motion pursuant to Rule 37.14(1).

Clark v. Simmonds (1999), 174 Nfld. & P.E.I.R. 21 (P.E.I.S.C.-T.D.)

The appeal pursuant to Rule 62.01(1)(a) is from a formal order and not the written reasons of the prothonotary. Where the applicant had not obtained a formal order it could not be said the applicant had a *bona fide* intention to appeal, and thus the application for an extension of time to file an appeal was denied.