

COURT OF APPEAL RULES

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COURT OF APPEAL RULES

PART I

Title and Interpretation

Title

- 1 These rules may be cited as *The Court of Appeal Rules*.

Interpretation

- 2 In these rules:

“**Act**” means *The Court of Appeal Act, 2000*;

“**application**” includes a motion;

“**court**” means the Court of Appeal;

“**court appealed from**” includes, where appropriate, a tribunal;

“**file**” means to file with the registrar and pay the prescribed fee, if any;

“**judge**” means, unless otherwise indicated, a judge of the Court of Appeal acting under section 20 of the *Act*;

“**judgment**” includes any judgment, order, decree or decision;

“**local registrar**” means a local registrar of the Court of Queen’s Bench;

“**registrar**” means the registrar of the Court of Appeal.

Amend. Gaz. 16 Nov. 2007.

PART II

Purpose and Application of the Rules

Purpose of rules

3 The purpose of these rules is to provide for the orderly and expeditious administration of justice in the court.

Application of the rules

4(1) Where it is in the interests of the proper administration of justice to do so, the court or a judge may waive compliance or relieve against non-compliance with these rules and direct the procedure to be followed.

(2) Non-compliance with these rules may subject the party in default to an order for costs.

Where no provision

5 Where the statute giving a right of appeal or a right to apply to the court or to a judge does not specify the procedure to be followed, these rules apply as far as may be practicable.

PART III

Initiating Appeals

Notice of appeal

6 Unless otherwise provided by statute, all appeals shall be initiated by notice of appeal or cross-appeal. (Forms 1a and 1b)

Style of cause in notice

7(1) The style of cause shall set out without abbreviation of names:

(a) the name of the appellant together with the designation “Appellant”, followed by the appellant’s status in the court appealed from;

(b) the name of each party against whose interest the appeal is taken, together with the designation “Respondent”, followed by the respondent’s status in the court appealed from;

(c) the name of each party against whose interest the appeal has not been taken, together with the designation “Non-party”, followed by the party’s status in the court appealed from.

(2) The status of the party in the court appealed from shall be in parentheses.

Contents of notice of appeal

8 A notice of appeal, in addition to identifying the judgment or order from which the appeal is taken, shall, in separate numbered paragraphs:

- (a) specify whether all or part of the judgment is being appealed and, if a part, which part;
- (b) identify the source of the right of appeal and the basis for the jurisdiction of the court to determine the appeal;
- (c) set forth the grounds of the appeal;
- (d) state precisely the relief sought;
- (e) provide the information required under Rule 65(1) (Address for service); and
- (f) contain a request that the appeal be set down for hearing in either Regina or Saskatoon.

PART IV**Serving and Filing Notice of Appeal****Serving notice of appeal**

9(1) The appellant shall serve the notice of appeal upon all parties against whose interest the appeal is taken.

(2) The notice of appeal shall be served within 30 days after the date of the judgment or order being appealed from, except where otherwise provided by these rules and subject to the provisions of any statute governing the appeal.

(3) Service shall be effected in accordance with Rule 67 (Service) or by serving the party's lawyer on record in the court appealed from.

(4) The court or a judge may direct the notice of appeal be served on any person not a party and may make such interim orders as the court or judge considers just.

Filing notice of appeal

10(1) The notice of appeal shall be filed, with proof of service, within 10 days after service upon the last of the parties to be served, and in cases where service is not required, the notice of appeal shall be filed within 30 days after the date of the judgment or order appealed from.

(2) A notice of appeal shall not be filed after the expiration of the time period prescribed in this rule without an order of a judge.

Filing judgment or order appealed against

10.1 Where an appeal is taken against a judgment or order of the Court of Queen's Bench, a copy of the judgment or order, as taken out in the Court of Queen's Bench, shall be filed contemporaneously with the notice of appeal.

New. Gaz. 16 Nov. 2007.

Appeals requiring leave

11(1) Subject to any statute governing the appeal, where leave to appeal is necessary, the application for leave shall be made within 15 days after the date of the judgment or order sought to be appealed from or within such time as ordered by the court or a judge.

(2) The notice of appeal shall be served within 10 days after the date of the order granting leave to appeal.

Appeals from incidental orders made at trial or chambers

12(1) Where an order is made or a decision is given during or after a trial, and such order or decision is only incidental to the trial, the time for appealing from such order or decision shall continue for 30 days after the date of the judgment at trial, and a party appealing from the trial judgment may also include in the notice of appeal an appeal from such incidental order or decision.

(2) Where an order is made or a decision is given during or after the hearing of an application in chambers and such order or decision is only incidental to the application and does not dispose of the matter in issue therein, the time for appealing from such order or decision shall continue for a period of 15 days after the date of the judgment on the matter in issue in such application, and a party appealing from the judgment may also include in the notice of appeal an appeal from such incidental order or decision.

Amendment to notice of appeal

13 A notice of appeal or cross-appeal may be amended at any time with leave of the court or a judge.

Date of judgment

14 In this Part, "**date**" of judgment or order means:

- (a) the date of filing with the registrar, local registrar or chambers clerk of the Court of Queen's Bench, as the case may be, of the written reasons for judgment or the written fiat; or
- (b) where the judgment or order has been pronounced in court or chambers with no provision for written reasons to follow, the date of the oral pronouncement.

PART V

Stay of Proceedings

Stay

15(1) Unless otherwise ordered by the judge appealed from or by a judge, the service and filing of a notice of appeal does not stay the execution of a judgment or an order awarding *mandamus*, an injunction, alimony, or maintenance for a spouse, child or dependant adult. Unless otherwise ordered by a judge, the service and filing of a notice of appeal stays the execution of any other judgment or order pending the disposition of the appeal. (Forms 5a and 5b)

(2) Where leave to appeal from an interlocutory order is granted, the judge hearing the application may give directions as to staying proceedings.

(3) Where a writ of execution has been issued but is stayed after being issued because of an appeal, the appellant is entitled to obtain a certificate from the registrar that the execution of the writ has been stayed pending the appeal. On the deposit of the certificate with the sheriff, the execution of the writ is stayed but the execution debtor shall pay the sheriff's fees, and the amount so paid shall be allowed to the execution debtor as part of the costs of the appeal.

(4) Where the execution of a judgment or order is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment and the taxation of costs under the judgment, are stayed unless otherwise ordered.

Amend. Gaz. 16 Nov. 2007.

PART VI

Cross-Appeal

Cross-appeal

16(1) If a respondent desires to contend that the judgment appealed from should be varied, the respondent shall:

- (a) within 15 days after being served with the notice of appeal, serve a notice of cross-appeal on all parties affected; and
- (b) within 10 days after service on all parties, file the notice of cross-appeal with proof of service.

- (2) A notice of cross-appeal shall:
- (a) identify the part of the judgment sought to be varied;
 - (b) specify the grounds for variation; and
 - (c) state precisely the relief sought.
- (3) The omission to serve a notice of cross-appeal does not necessarily preclude a party from seeking a variation of the judgment appealed from, as contemplated by Rule 58(c) (Powers of the court), but the omission may be grounds for an adjournment of the hearing of the appeal or for a special order as to costs.

PART VII

Intervention

Intervention

- 17(1)** Any person interested in any proceeding before the court may, by leave of the court, intervene in the proceeding on the terms and conditions the court may direct.
- (2) Any intervenor before the court appealed from shall be served with a notice of appeal and notice of cross-appeal, if any, but shall not have the status of an intervenor on appeal unless leave to intervene is first granted by the court.
- (3) An application to intervene shall be made to the court on notice to all parties and other intervenors in the proceeding.

PART VIII

Perfecting Appeal: Appeal Book and Factum

A. APPEAL BOOK

Appeal book required

- 18** An appeal book is required in every appeal, unless otherwise ordered.

Agreement as to transcript of evidence

- 19(1)** In every appeal from a judgment after hearing oral evidence, where the evidence has been recorded, each party is responsible for including in the appeal book a transcript of only those parts of the evidence that are relevant to the appeal.

- (2) The parties shall make every reasonable effort to reach a written agreement as to those parts of the transcript of evidence required for the appeal, within 30 days after the last party has been served with the notice of appeal.
- (3) The parties shall file any written agreement within the 30 day period mentioned in Subrule (2).
- (4) If the parties fail to agree, a transcript of the whole of the evidence is deemed to be required.
- (5) If the court is satisfied that the costs of the appeal have been increased unduly by the failure of a party to co-operate in reaching a written agreement, the court may take this into account when awarding costs.

Contents of transcript

20(1) The transcript shall contain:

- (a) those parts of the transcript of evidence required under Rule 19 (Agreement as to transcript of evidence);
 - (b) the reasons for the judgment appealed from, if delivered orally and recorded; and
 - (c) in the case of an appeal from judgment in a jury trial, the judge's charge to the jury, together with counsel's addresses to the jury.
- (2) Notwithstanding anything contained in this rule, a party may apply to a judge for an order dispensing with a transcript of evidence for the appeal.

Transcript

21(1) Where a transcript is required, the appellant shall, within 14 days of the expiration of the time period prescribed in Rule 19 (Agreement as to transcript of evidence), order a complete transcript of the proceedings, or a transcript of the parts of the proceedings that the parties agree are required, from Transcript Services or any other commercial court reporting service in the format for transcripts approved by the court.

(2) The appellant shall either:

- a) file an electronic copy of the transcript with the registrar immediately on the appellant's receipt of the transcript; or
- (b) make arrangements with Transcript Services or the commercial court reporting service, as the case may be, to file an electronic copy of the transcript with the registrar immediately after the transcript is completed and ready for filing.

Amend. Gaz. 4 Jly. 2014.

Agreement as to contents and completion of appeal book

22(1) Subject to Rule 43 (Expedited appeal), where an appeal book is required, the appellant shall serve on each respondent a draft agreement as to the contents of the appeal book and the date upon which the appeal book is to be completed.

- (2) The draft agreement shall be served within the following times:
 - (a) in the case of an appeal where a praecipe has been filed under Rule 21 (Praecipe for transcript), within 10 days after receipt of the registrar's notification that the transcript of evidence has been received;
 - (b) in the case of an appeal where no praecipe is required, within 10 days after the date the last respondent was served with the notice of appeal.
- (3) Within 10 days after the receipt of the draft agreement, each respondent shall return the draft agreement to the appellant, signed in approval, or, if not approved, accompanied by a memorandum of objections to it.
- (4) The parties shall make every reasonable effort to exclude irrelevant material from the appeal book, avoid duplication and otherwise confine the contents to that which is necessary for the purposes of the appeal.
- (5) If, within 30 days after the date the last respondent received the draft agreement, the parties do not agree upon the contents of the appeal book or the date upon which it is to be completed, the appellant shall apply to a judge to have the matter in dispute settled.

Contents of appeal book

23(1) The appeal book shall contain the following material in the following order:

- (a) a comprehensive index, including:
 - (i) a sub-index of exhibits, whether included in the appeal book or not, listing them with a reference to the page in the appeal book where each exhibit is reproduced and the page in the transcript where each is referred to in the evidence for the first time;
 - (ii) a sub-index of witnesses listing their names, by whom each was called, and whether the evidence of the witness was given in examination-in-chief, cross-examination, re-examination or examination by the court appealed from;
- (b) the pleadings, indicating by underlining where the pleadings have been amended and by appropriate note when the amendments were made, and any particulars of the pleadings;
- (c) the judgment or order of the court appealed from;
- (d) the reasons for the judgment or order appealed from, if any;
- (e) the notice of appeal;
- (f) the notice of cross appeal, if any;
- (g) the notice served under *The Constitutional Questions Act*, if any, and particulars of service;
- (h) the exhibits, clearly identified by letter and number appearing on each page of the exhibit; and
- (i) the transcript.

(2) The top of each page of the transcript of evidence shall state the name of the witness, by whom the witness was called and whether the evidence of the witness was given in examination-in-chief, cross-examination, re-examination or examination by the court appealed from.

(3) The pages of the appeal book shall be numbered consecutively as follows:

- (a) the index shall be numbered i, ii, and so on;
- (b) the pages preceding the transcript, except the index, shall be numbered 1a, 2a and so on;
- (c) the transcript shall be numbered 1, 2 and so on.

Form of appeal book

24(1) The style of cause shall appear only on the cover of each volume of the appeal book.

(2) The cover of the appeal book shall be blue.

(3) Where the appeal book exceeds 200 pages, it shall be bound in separate volumes of 200 pages or less.

(4) Where there is more than one volume:

- (a) the complete index shall appear at the beginning of each volume; and
- (b) the cover of each volume shall show the consecutive volume number and the numbers of the pages contained in that volume.

(5) Where there are three volumes or more, the spine of each volume shall show the consecutive volume number and the numbers of the pages contained in that volume.

(6) The contents of the appeal book shall be printed, typed or photocopied, and both sides of the page should be used where practicable.

(7) The book shall be bound in a manner satisfactory to the registrar.

Transmittal of file from court below

25 The appellant shall require the local registrar to transmit to the registrar the file in the court appealed from, including all exhibits in order that they may be received by the registrar before or at the time of the filing of the appeal book. The registrar shall not file any appeal book unless that file and those exhibits are in the registrar's custody.

Service and filing of appeal book

26 On or before the date agreed upon or fixed under Rule 22 (Agreement as to contents and completion of appeal book), the appellant shall:

- (a) serve a copy of the appeal book on each respondent and intervener; and
- (b) file proof of service in accordance with paragraph (a), together with four copies of the appeal book (being the original and three copies), or such other number as the registrar requires.

B. FACTUM

Factum required

27 Each of the parties to the appeal shall serve and file a factum in accordance with these rules.

Contents of factum

28(1) A factum shall, except where otherwise provided or otherwise ordered, consist of the following seven parts:

Part I. Introduction: The appellant and respondent shall each briefly summarize the context for the appeal.

Part II. Jurisdiction and Standard of Review: The appellant shall state the source of the right of appeal, the basis for the jurisdiction of the court to determine the appeal and the applicable standard of appellate review. The respondent shall state its position with respect to the same matters.

Part III. Summary of Facts: The appellant shall concisely state the facts. The respondent shall state its position taken with respect to the appellant's statement of facts and any facts it considers relevant.

Part IV. Points in Issue: The appellant shall concisely state the points in issue in the appeal. The respondent shall state its position in regard to the appellant's points which the respondent wishes to put in issue. If a respondent intends to contend that the judgment should be upheld, whether in whole or in part, for reasons not found in the judgment and not raised in the appellant's factum, it shall state that intention.

Part V. Argument: This part shall contain a statement of the argument, setting out concisely the points of law or fact to be argued and the basis for the argument, with a particular reference to the page and line of the appeal book and the authorities relied upon in support of each point. When a statute, regulation, rule, ordinance or bylaw is cited or relied upon, either as much of the statute, regulation, rule, ordinance or bylaw as may be necessary to the determination of the appeal shall be copied as an appendix to the factum or sufficient copies of the statute, regulation, rule, ordinance or bylaw may be filed.

Part VI. Relief: This part shall state the precise order the party desires the court to make, including any special disposition as to costs.

Part VII. Authorities: This part shall contain a table of authorities and statutes that the party has referred to, arranged alphabetically and citing the Supreme Court Reports where possible. Counsel citing decisions from electronic databases in factums and memorandums of authority must also provide the citation from traditional print sources.

Amend. Gaz. 16 Nov. 2007.

- (2) Parts I to VI of a factum shall not exceed 40 pages, unless otherwise ordered.
- (3) Each paragraph in Parts I to VI inclusive shall be numbered consecutively.

Form of Factum

- 29(1)** The colour of the cover of the appellant's factum shall be buff, the respondent's green, and the intervener's red.
- (2) A factum shall set out on its cover the style of cause and whether it is the factum of the appellant, respondent or intervener. Where there is more than one appellant, respondent or intervener, the name of the party shall also be given.
- (3) A factum shall be printed:
- (a) on one side of the paper only with the printed pages facing up on the left;
 - (b) in type of 12 point;
 - (c) with at least one and one-half line spacing, except for quotations from authorities, which shall be indented and single-spaced; and
 - (d) with margins of no less than 3.0 centimetres or one and one-half inches.
- (4) The factum shall include an index after which all pages shall be numbered consecutively and shall be bound in the sequence outlined in Rule 28 (Contents of factum).
- (5) The factum shall be signed by the lawyer responsible for its preparation.

Factum dealing with matrimonial property

30 In an appeal dealing with matrimonial property, where the distribution or valuation of the property is in issue, the factum shall contain:

- (a) a Schedule A listing, as determined at trial:
 - (i) each item of property;
 - (ii) the value of each item of property;
 - (iii) the distribution of each item of property, including exemptions; and
 - (iv) the liabilities of each party and their allocation; and
- (b) a Schedule B, specifying the precise relief the party desires the court to grant in relation to each item of property, including the valuations, exemptions, and distributions proposed by the party.

Factum dealing with foreclosure, judicial sale, bankruptcy, or insolvency

31 In an appeal dealing with a foreclosure, judicial sale, bankruptcy, or insolvency where the disposition or valuation of the property is in issue, the factum shall contain the schedules required under Rule 30 (Factum dealing with matrimonial property), adapted with any necessary modification.

Service and filing of factum

32(1) An appellant shall serve the appellant's factum at the same time and in the same manner as the appeal book is required to be served under Rule 26 (Service and filing of appeal book).

(2) An appellant shall also file the appellant's factum at the same time and in the same manner as the appeal book is required to be filed under Rule 26 (Service and filing of appeal book).

(3) A respondent or intervener shall serve and file its factum within 30 days after the receipt of the appeal book.

(4) All parties filing factums with proof of service shall give the registrar four copies (being the original and three copies), or more as the registrar may require.

New. Gaz. 16 Nov. 2007.

Factum in reply on Cross Appeal

33 Within 15 days after receipt of a respondent's factum dealing with a cross appeal, an appellant may serve and file a factum in reply.

New. Gaz. 16 Nov. 2007.

Factum in reply in other cases

33.1(1) Subject to Subrules (2), (3), and (4), an appellant may serve and file a factum in reply if the respondent's factum contends:

(a) that the judgment appealed from should be upheld whether in whole or in part, notwithstanding error in the reasons for the decision as contended for by the appellant; and

(b) that the judgment should be upheld for reasons not found in the decision.

(2) A factum in reply contemplated by Subrule (1) shall be served and filed within 15 days after receipt of the respondent's factum.

(3) Where the registrar is of the opinion:

(a) that the conditions requisite to serving and filing of a factum in reply under Subrule (1) do not exist; or

(b) that the factum in reply tendered for filing is excessive or otherwise offensive to the purpose of Subrule (1);

the registrar may refuse to file the factum in reply or, if filed, remove it from the file and return it to the appellant.

(4) Where any dispute arises out of the filing of a factum in reply, the registrar may refer the dispute to a judge for final resolution.

New. Gaz. 16 Nov. 2007.

Late filing of factum

34(1) A factum shall not be filed later than the time period prescribed by these rules without leave of a judge.

(2) If any party fails to file a factum within the time period prescribed by these rules, any other party may apply to a judge, on notice to the party in default, for directions, including a direction that the appeal be referred to the court for disposition in light of such failure.

Factum not required from unrepresented party

35 Notwithstanding any other rule, a party not represented by a lawyer, shall not be required to serve or file a factum but shall serve and file a written argument, not to exceed 15 pages, within the time period prescribed by these rules for the serving and filing of a factum.

Book of Authorities

36(1) A party may serve a book of authorities when serving that party's factum.

(2) Where a party has served a book of authorities along with its factum, that party shall, when filing its factum, file the book of authorities in triplicate, or in such numbers as the registrar requires.

(3) The parties may agree upon a common book of authorities and, where they so agree, they shall file the book in triplicate, or in such numbers as the registrar requires.

(4) A book of authorities shall contain an index and shall have the cases in it individually tabbed by number or letter. Where possible, Supreme Court Reports shall be used for decisions of that court.

(5) Where a book of authorities includes decisions from electronic databases, counsel must provide the citation from traditional print sources.

New. Gaz. 16 Nov. 2007.

Estimate of time for hearing

37 A party filing a factum shall give an estimate to the registrar of the length of time required to present that party's argument.

Raising additional arguments

38 A party intending to present arguments, raise points of law and cite authorities not mentioned in the factum may do so only with leave of the court.

PART IX**Entering an Appeal for Hearing****Entering and fixing time for hearing**

39(1) The registrar shall enter an appeal for hearing when the appeal is perfected as contemplated by Part VIII (Perfecting Appeal: Appeal Book and Factum).

(2) An appeal is perfected when the last factum required to be filed is filed.

- (3) Subject to direction by the Chief Justice, the registrar shall fix the time and place for the hearing of an appeal, and shall notify the parties.
- (4) Counsel for the appellant, or the appellant if self-represented, shall:
 - (a) serve on the respondent, if self-represented, notice of the time and place set for the hearing of the appeal; and
 - (b) file proof of service of the notice referred to in paragraph (a) at least 15 days before the appeal is set to be heard.
- (5) If Subrule (4) is not complied with:
 - (a) the hearing of the appeal may be adjourned; and
 - (b) the appellant may be ordered to pay costs.

Amend. Gaz. 16 Nov. 2007.

Adjournments

- 39.1(1)** All requests to adjourn the hearing of an appeal set down for hearing in accordance with the list of scheduled appeals shall be made to the registrar immediately upon receipt of the schedule and upon three days' notice to the other party.
- (2) In the event of an objection, the registrar:
 - (a) may adjourn or decline to adjourn the hearing, subject to consulting with the court when appropriate in the opinion of the registrar, and, if adjourned, set a new date for the hearing; or
 - (b) may refer the request to a judge in chambers.
 - (3) The decision of the registrar is final.

New. Gaz. 16 Nov. 2007.

Disposition without oral hearing

40 Where the parties agree, an appeal entered for hearing may be determined on the basis of factums.

PART X

Pre-hearing Conference

Pre-hearing conference

- 41(1)** A party may at any time apply to the registrar who, after consultation with the Chief Justice or the court, may direct the attendance of the parties at a pre-hearing conference.
- (2) The court may on its own initiative order a pre-hearing conference.

(3) The purpose of the pre-hearing conference shall be to consider matters that might expedite the hearing and determination of the appeal.

(4) A lawyer who represents the party at the pre-hearing conference shall represent the party on the hearing of the appeal, unless the lawyer obtains leave from the court to withdraw.

PART XI

Other Appeals

Appeals from divorce judgments

42(1) In an appeal from a judgment granting a divorce, the appellant shall file the notice of appeal not later than 30 days after the date of the judgment granting the divorce.

(2) Immediately upon the filing of the notice of appeal, or of an application to extend the time for appeal, the registrar shall inform the local registrar of the judicial centre in which the judgment was rendered of such filing and shall then send written confirmation to the local registrar.

Expedited appeal

43(1) In this rule, “**expedited appeal**” means one of the following appeals:

- (a) an appeal from a judgment in chambers;
- (b) an appeal from a judgment rendered after trial on an agreed statement of facts without additional oral evidence;
- (c) an appeal from a judgment relating to the custody of a child or dependent adult or to the appointment of a legal custodian or guardian of a child or dependent adult;
- (d) an appeal that the court or a judge orders to be treated as an expedited appeal because of its urgency.

(2) The regular procedure for appeals set forth in these rules applies to expedited appeals subject to the following variations:

- (a) no agreements as to the transcript of evidence or the contents of the appeal book are required;
- (b) the appellant shall serve and file the appeal book and factum with all appropriate copies:
 - (i) within 30 days after filing the notice of appeal; or
 - (ii) in the case of an appeal requiring a transcript, within 30 days after the registrar notifies the appellant that the transcript has been received;

(c) the respondent shall serve and file its factum with appropriate copies within 15 days after receipt by a respondent of the appellant's appeal book and factum.

(3) If a dispute arises over the contents of an appeal book on an expedited appeal, either party may apply to a judge to have the matter in dispute settled.

Amend. Gaz. 16 Nov. 2007.

Stated case

44(1) In every stated case where the applicable statute provides a time limit within which the court must rule on the case, the registrar shall, subject to direction by the Chief Justice, enter the case for hearing by the court on receipt of the case. The applicant may apply to a judge for directions as to the filing of or dispensing with a case book and factum.

(2) A stated case shall be treated in the manner of an expedited appeal.

PART XII

Abandonment and Dismissal for Want of Prosecution

Abandonment

45 A party intending to abandon an appeal, cross-appeal or application shall serve on all other parties a copy of the notice of abandonment and file the original with proof of service. The other parties shall be entitled to their taxable costs without order. (Form 8)

Dismissal for want of prosecution

46(1) An appellant shall diligently prosecute its appeal, perfecting the appeal within the time period prescribed by these rules. If an appellant fails to do so, a respondent may apply to a judge for an order requiring the appeal be perfected by a fixed date, failing which the appeal may be exposed to dismissal by the court for want of prosecution. (Forms 6 and 7)

(2) If an appeal has not been set down for hearing within one year after the notice of appeal has been filed, the registrar may, upon notice to the parties, refer the matter to the court to be dismissed as abandoned. Notice shall be given in Form 9, and the parties shall have 15 days to apply to the court to show cause why the appeal should not be dismissed.

PART XII.1

Prohibiting Vexatious Proceedings

46.1(1) On application by any party to an appeal, the court may make an order quashing an appeal on the ground:

- (a) it discloses no right of appeal;
- (b) it is frivolous or vexatious;
- (c) it is manifestly without merit; or
- (d) it is otherwise an abuse of the process of the court.

(2) Before an order is made under Subrule (1), the appellant shall be given an opportunity to be heard in accordance with Part XIV.

New. Gaz. 16 Nov. 2007.

46.2(1) If, on application of any person, the court or a judge is satisfied that a person has habitually, persistently, and without reasonable cause commenced frivolous or vexatious proceedings in the court, the court or a judge may make an order prohibiting the commencement of proceedings without leave of the court or a judge.

(2) Before an order is made under Subrule (1), the person against whom such an order may be made shall be given an opportunity to be heard in accordance with Part XIV.

New. Gaz. 16 Nov. 2007.

PART XIII

Re-hearing

Re-hearing

47(1) There shall be no re-hearing of an appeal except by order of the court as constituted on the hearing and determination of the appeal.

(2) An application requesting a re-hearing shall be by notice of motion, served and filed before the formal judgment is issued.

(3) The notice of motion shall state the grounds for the application and shall be supported by a memorandum of argument.

(4) The notice and memorandum shall be served on all other parties that appeared upon the appeal.

(5) Within 10 days after the service of the notice and memorandum, the other parties to the appeal may serve and file a memorandum in writing in response to the motion.

(6) The formal judgment shall not be issued until an application requesting a re-hearing has been disposed of.

PART XIV

Applications

Form of applications

- 48(1) Unless otherwise provided, an application to the court or a judge shall:
- (a) be by notice of motion in the form provided in the rules or in accordance with Subrule (2);
 - (b) have attached all material upon which the applicant relies to support the application; and
 - (c) be served and filed at least three clear days before the day set for hearing the application.
- (2) Where no form is provided by the rules for a particular motion, the notice shall:
- (a) state the basis for the motion;
 - (b) set forth the grounds upon which the motion is made; and
 - (c) state precisely the relief sought by the applicant.
- (3) An application to a judge shall be made returnable on a regular chambers date and the hearing of any application may, from time to time, be adjourned upon such terms, if any, as a judge shall think fit.
- (4) Regular chambers sittings are to be held:
- (a) in Regina on the second and fourth Wednesdays of each month; and
 - (b) in Saskatoon on the first day of each regular court sitting.
- (5) A party intending to oppose an application shall:
- (a) serve a copy of each affidavit upon which that party intends to rely at the hearing on every other party to the application; and
 - (b) file each affidavit with proof of service at least one clear day before the day set for hearing the application.
- (6) If a party files a brief of law with respect to an application, the brief:
- (a) must be concise and must address the legal aspects of the case; and
 - (b) must be served on every other party to the application and filed at least one clear day before the day set for hearing the application.
- (7) If a judge or the registrar is satisfied that the matter is urgent, the judge or registrar may arrange a special chambers sitting.
- (8) Where the parties agree, an application in chambers may be determined on the basis of written submissions.
- (9) Where the parties agree or the registrar directs, an application in chambers may be made by telephone conference.

Applications for leave to appeal

49 Where an application is made for leave to appeal, the applicant shall:

- (a) provide the registrar with the file of the court appealed from; and
- (b) file with the application:
 - (i) the judgment or order issued by the court appealed from;
 - (ii) the reasons for the judgment or order, if any;
 - (iii) a draft notice of appeal; and
 - (iv) a memorandum specifying the grounds for seeking leave. (Forms 4a and 4b)

Crown Practice applications

50(1) An application to the court for a prerogative writ of *mandamus*, for a writ of *certiorari* or order to quash proceedings without the actual issue of the writ, for a writ of *habeas corpus*, for prohibition, or for an information in the nature of a *quo warranto* shall be made by notice of motion, in accordance with the practice of this court.

(2) The court may grant *ex parte* an order for the immediate issue of a writ of *habeas corpus*.

(3) A party making an application under this rule shall file the address information required by Rule 65 (Address for service).

Queen's Bench Rules to apply

51 Subject to these rules, Subdivision 2 of Division 4 of Part 13 of *The Queen's Bench Rules* shall apply, with any necessary modification, to an application to the court or a judge.

Amend. Gaz. 4 Jly. 2014.

PART XV

Costs and Enforcement of Judgment

Costs

52 The court may make any order as to the costs of an appeal, cross-appeal or application to the court that it considers appropriate. A judge may make any order as to costs in a proceeding before the judge.

Security for costs

53(1) The court or a judge may in special circumstances order that security be given for the costs of an appeal.

(2) Where a judge makes an order under this rule and the order is not complied with, the party in whose favour the order was made may apply to the court on 10 days notice to have the appeal dismissed.

Taxation of costs

54(1) Unless otherwise ordered:

(a) the costs of an appeal or application shall be taxed as between party and party by the registrar in accordance with the fees set out in the appropriate column of the 'TARIFF OF COSTS IN THE COURT OF APPEAL' which is attached as Schedule 1 to these Rules; and

(b) Column 2 of Schedule 1 applies to the taxation of costs where non-monetary relief is involved.

Amend. Gaz. 16 Nov. 2007.

(2) The court or a judge may direct that the costs of an appeal or application be taxed as between solicitor and client.

(3) A party entitled to costs shall:

(a) take out a Notice of Appointment for Taxation of Costs in Form 11a by first obtaining a date and time for taxation from the registrar;

(b) prepare a proposed bill of costs in Form 11b;

(c) serve the Notice of Appointment for Taxation of Costs and proposed bill of costs on the party against whom costs were imposed; and

(d) file the Notice of Appointment for Taxation of Costs, proposed bill of costs and proof of service with the registrar.

(4) If a party entitled to costs fails or refuses to take out an appointment for taxation in Form 11c within a reasonable time, any party liable to pay costs, or any party whose costs depend on the determination of another party's costs, may obtain a notice to take out an appointment for taxation on filing proof of:

(a) a written demand for the taxation made to the party entitled to costs; and

(b) the failure or refusal to take out the appointment for taxation by the party entitled to costs.

(5) The party that obtains a notice to take out an appointment for taxation in Form 11c pursuant to Subrule (4) shall serve it on every party interested in the taxation.

(6) If the party entitled to costs fails to take out an appointment for taxation within 14 days after being served with the notice pursuant to Subrule (5), the registrar may proceed to tax the costs of that party in that party's absence.

(7) On a taxation, the registrar may do any of the following:

(a) take evidence by affidavit, administer oaths or affirmations and examine witnesses, as the registrar considers appropriate;

(b) require production of records;

- (c) require notice of the taxation to be given to all persons who may be interested in the taxation or in the fund or estate out of which costs are payable;
 - (d) give any directions and perform any duties that the registrar considers are necessary for the conduct of the taxation;
 - (e) refer a matter requiring direction to the court or a judge.
- (8) After a taxation, the registrar may do any of the following:
- (a) if parties are liable to pay costs to each other:
 - (i) adjust the costs by way of set-off; or
 - (ii) delay the allowance of costs a party is entitled to receive until that party has paid or tendered costs that the party is liable to pay;
 - (b) award the costs of a taxation to any party and fix those costs.
- (9) The registrar shall:
- (a) if a party specifically objects to items on the taxation before the registrar, note those objections in the certificate as to taxation of costs; and
 - (b) if requested to do so by a party interested in the taxation, provide written reasons for the decision.

Amend. Gaz. 4 Jly. 2014.

Review of taxation of costs

- 54.1(1)** A person with a pecuniary interest in the result of a taxation of costs who is dissatisfied with the taxation may apply to a judge for a review of the taxation of costs.
- (2) An application pursuant to Subrule (1) must be made within 14 days after the date of the certificate as to taxation of costs.
- (3) A review of a taxation of costs must be limited to items that have been objected to before the registrar and may include items with respect to which the registrar exercised discretion.

Amend. Gaz. 4 Jly. 2014.

Payment of costs by lawyer

- 55** The court or a judge may direct that costs be paid by a lawyer without recourse to the lawyer's client.

Set-off

- 56** The court may order a set-off of costs or of judgments, whether obtained in the court or in the court appealed from.

Enforcement of judgment

- 57** The formal judgment of the court, together with a certificate as to the taxation of costs in Form 11d, shall be filed with the local registrar of the court appealed from and shall upon filing become the judgment of that court and may be enforced in like manner.

Amend. Gaz. 4 Jly. 2014.

Taking out judgments and orders

57.1(1) The party responsible for taking out a judgment or order of the court, or an order of a judge of the court, shall before submitting the proposed judgment or order to the registrar serve a copy on the opposite party or parties at least three days in advance, so as to permit the other to raise with the registrar such concerns, if any, as that party may have as to the consistency of the judgment or order with the decision upon which it is based.

(2) The party responsible for taking out a judgment or order referred to in Subrule (1) shall, when submitting the proposed judgment or order to the registrar, file proof of service on the opposite party or parties.

(3) Failing proof of service, the registrar shall not settle or issue the judgment or order.

New. Gaz. 16 Nov. 2007.

PART XVI**Powers of the Court****Powers exercised by the court**

58 Consistent with the powers vested in it, the court may:

(a) order that a judgment appealed from be set aside, in whole or in part, and order a new trial or a new trial on any question without interfering with a finding or with the decision on any other question;

(b) decline to order a new trial on the ground of misdirection, the improper admission or rejection of evidence, or because the verdict of the jury was not taken on a question the trial judge was not asked to leave to them, if, in the opinion of the court, no substantial wrong or miscarriage of justice occurred. If, in the opinion of the court, a substantial wrong or miscarriage of justice occurred but affects only part of the matter in controversy, or only one or some of the parties, the court may give judgment as to the part of the controversy not affected and direct a new trial as to the affected part or as to the other party or parties;

(c) give any judgment or make any order that ought to have been made, or make any further order the case may require notwithstanding that the notice of appeal or the notice of cross-appeal sought to reverse or vary only part of the judgment appealed from.

Fresh evidence

59(1) A party desiring to adduce fresh evidence on appeal shall, in accordance with existing law, apply to the court for leave to do so by notice of motion returnable on the date fixed for hearing the appeal.

(2) The notice of motion shall be served on all parties and filed not later than 10 days before the date fixed for hearing the appeal.

PART XVII**General Rules****Powers of registrar**

60(1) The registrar may hear and determine applications under Rules 10(2) (Filing notice of appeal), 18 (Appeal book required), 22(5) (Agreement as to contents and completion of appeal book), 28(1) (Contents of factum), 34(1) (Late filing of factum), or 43(3) (Content of appeal book on expedited appeal).

(2) Any matter arising before the registrar may be referred by the registrar to a judge for a decision by the judge.

Amend. Gaz. 16 Nov. 2007.

Prescribing terms and conditions

61 Where these rules provide that the court, a judge, or the registrar may make an order or direction, the court, the judge or the registrar, as the case may be, may impose terms and conditions in the order or direction, as may be necessary.

Material to be legible and to comply with rules

62(1) All material to be filed shall be legible and on good quality paper measuring 28 centimetres or 11 inches by 21½ centimetres or 8½ inches.

(2) The registrar may refuse to receive for filing any material that does not substantially comply with these rules.

(3) Material that does not comply with these rules may be subject to an order of the court or a judge for costs.

Forms

63 The forms in the Appendix to these rules are to be used where applicable, with such variations as the circumstances require.

Style of cause

64(1) The style of cause shall be set out on:

- (a) the front page of a document commencing a proceeding before the court or a judge;
- (b) the cover of any other document required to be filed with the registrar.

(2) Where an intervenor has been added on appeal, the style of cause shall thereafter contain the name of the intervenor.

Address for service

- 65(1)** In every appeal, each party shall file the following address information:
- (a) if a party is represented by a lawyer, the name, address, telephone and fax numbers of the lawyer's law firm, and the name of the lawyer in charge of the file; or
 - (b) if a party is not represented by a lawyer, the full name, occupation, business or residential address, and telephone and fax numbers, if any, of the party.
- (2) The address filed under Subrule (1) shall be the party's address for service in Saskatchewan where any document may be served on the party.
- (3) The registrar shall not file any document unless the party seeking to file the document has filed the address information required under Subrule (1).
- (4) Except where otherwise provided by these rules or otherwise ordered, a party who fails to file address information shall not be entitled to notice of any subsequent proceeding.
- (5) Until the respondent files address information, the respondent's address for service is the address on record in the court appealed from.

Illusory or fictitious address information

- 66** If any address information is illusory or fictitious, any party may apply to the court for an order:
- (a) setting aside the filing or issuing of all documents filed or issued by the party in default; and
 - (b) dismissing the appeal, if the party in default is an appellant, or allowing the appeal, if the party in default is a respondent.

Service

- 67(1)** The provisions of Part 12 of *The Queen's Bench Rules* apply, with any necessary modification, to service required by these Rules.
- (2) In addition to proving service of a document in a manner permitted under Part 12 of *The Queen's Bench Rules*, counsel for a party or for an intervenor in a proceeding may prove service of a document for the purposes of these Rules by filing a Certificate of Service in Form 12, unless otherwise ordered by the court or a judge.

New. Gaz. 16 Nov. 2007; Amend. Gaz. 4 Jly. 2014.

Notification by registrar

- 68(1)** Where, in these rules, the registrar is required to notify the parties, the notification shall be sent by ordinary mail.
- (2) Where notification is sent by ordinary mail, it is deemed to have been received five days after the date the notice was mailed.

Receipt by fax

69(1) The registrar may accept a copy of a document transmitted by facsimile, provided that the party shall file the original document with the registrar immediately thereafter.

(2) If the original document is filed, the date of filing is deemed to have been the date the facsimile was received by the registrar.

Calculating time

70 Where the time for doing an act with respect to an appeal, a prospective appeal or any proceeding in the court is fixed by the Act or any other enactment, by these rules, or by an order of the court or a judge, the time shall be calculated in accordance with section 24 of *The Interpretation Act, 1995*.

Amend. Gaz. 4 Jly. 2014.

Extension of time

71 The court or a judge may enlarge or abridge the time periods fixed by these rules or by order on such terms as the case may require. The order enlarging or abridging the time may be made before or after the fixed time period has expired. (Forms 3a and 3b)

Representation by lawyer

72(1) Except as otherwise provided by these rules, Division 4 of Part 2 of *The Queen's Bench Rules* apply, with any necessary modification, to proceedings in the court or in chambers.

(2) A lawyer shall not cease to represent a party in a proceeding before this court after the contents of the appeal book have been settled, except with leave of the court.

(3) Where no agreement to settle the contents of the appeal book is required, a lawyer shall not cease to represent a party in a proceeding before the court in the 30 day period immediately preceding the hearing of an appeal or application, except with leave of the court or a judge, as the case may be.

Amend. Gaz. 4 Jly. 2014.

Mechanical recording devices

73 Except as otherwise provided by law, no person shall record by any device, machine, or system the proceedings in the court or in chambers without leave of the court or a judge, as the case may be.

New. Gaz. 16 Nov. 2007.

Practice directives

74 The court may issue practice directives from time to time, clarifying or supplementing the practice before the court.

PART XVIII

Repeal, Transitional and Coming into Force

Repeal

75 The rules of the court in force on the day preceding the day these rules come into force are repealed.

Transitional

76(1) Proceedings commenced prior to the coming into force of these rules and continued after their coming into force shall be governed by these rules without prejudice to anything lawfully done prior to the coming into force of these rules.

(2) Notwithstanding Subrule (1), the court or a judge may give directions respecting the application of these rules or an amendment to these rules to proceedings mentioned in Subrule (1).

Coming into force

77 These rules come into force on July 1, 1997.

SCHEDULE 1
TARIFF OF COSTS IN THE COURT OF APPEAL
(Effective April 1st, 2006)

Tariff Items	Fees			
	Column 1 not exceeding \$50,000	Column 2 \$50,000 to \$100,000	Column 3 \$100,000 to \$300,000	Column 4 \$300,000 or more
1. Motion for Leave to Appeal (including brief and argument)	\$1,000	\$1,500	\$2,000	\$2,500
2. Notice of Appeal (appellant or cross-appellant only)	300	400	500	600
3. Fee to Respondent on receipt of Notice of Appeal	100	125	150	200
4. Simple Motions	250	375	500	625
5. Complex Motions (a) opposed (b) unopposed	1,000 500	1,500 750	2,000 1,000	2,500 1,250
6. Agreement as to Contents of Appeal Book	100	200	300	400
7. Preparation of Appeal Book	250	500	750	1,250
8. Preparation of Factum	1,000	2,000	3,500	5,000
9. All Other Preparation for Hearing	500	750	1,000	1,250
10. Appearance to Present Argument on Appeal before Court of Appeal (for each ½ day)	300	400	500	600
Second Counsel (when allowed by the Court, for each ½ day)	150	200	250	300

Tariff Items	Fees			
	Column 1 not exceeding \$50,000	Column 2 \$50,000 to \$100,000	Column 3 100,000 to \$300,000	Column 4 300,000 or more
11. Preparing Formal Judgment or Order	100	200	300	400
12. Correspondence	100	200	300	400
13. Preparation of Bill of Costs	100	150	200	250
14. Taxation of Bill of Costs	50/hour	75/hour	100/hour	125/hour
15. For all other services, not otherwise provided for, the same fees as are authorized by the tariff of lawyers' fees in the Court from which the appeal is brought				
16. All necessary disbursements for which there are proper vouchers				

Amend. Gaz. 4 Jly. 2014.