White Paper on Amendments to the *Court of Appeal Act* and the *Court of Appeal Rules*

Purpose

This White Paper provides British Columbians with advance notice of government's intention to propose amendments to the *Court of Appeal Act* ("Act") and *Court of Appeal Rules* ("Rules"). The Ministry welcomes comments and feedback from interested groups and individuals on the proposed changes.

Background

The Ministry of Attorney General is proposing amendments to the *Court of Appeal Act* and the *Court of Appeal Rules.* The most recent revision of the Act and Rules occurred in 1996 and, as a result, modernization of the Act and Rules is needed. The proposed changes are intended to clarify and create efficiencies by simplifying procedures and improving access to justice for litigants in the B.C. Court of Appeal.

Over the years, several amendments have been made to the Act and Rules. New provisions have been added, some existing provisions have been repealed and replaced, many practice directives and practice notes have been issued, and modifications have been made to some civil court forms. These changes have affected the organization of the Act and the Rules, such that court processes are encoded in several different places and do not reflect current drafting standards. This is an opportunity to ensure that the Act and Rules are clarified for litigants in the court.

Proposed Changes

The proposed changes to the Act and Rules include:

- Reorganizing the content of the *Court of Appeal Act* and the *Court of Appeal Rules* so that general powers reside in the Act and all aspects of procedure are found in the Rules:
    - Arranging the Act to contain the general powers, continuation provisions, jurisdiction, and sections on judicial administration;
    - Outlining in the Rules how these powers are exercised; and
    - Harmonizing the language used in the Act and the Rules.

- Simplifying instructions and procedures for all court users:

    - Adding clarity to sections or procedures that were not articulated or were consistently misunderstood;
    - Giving profile to rules that have been used frequently; and
    - Incorporating practice directives into the Rules and reducing the number of places to look for procedural information.

- Redesigning Civil Forms:

    - Providing readable instructions using plain language on prescribed forms;
    - Regrouping information fields and inserting headings to visually delineate the different sections;
    - Providing consistent versions of prescribed forms for all users; and
    - Preparing for future integration of electronic filing options.

Providing Input

The Ministry is seeking input on the proposed changes to the Act and Rules in the attached appendices. Stakeholders and the public are invited to provide comments, concerns and opinions on the proposed amendments and the sample package of the redesigned court forms. Additionally, transitional provisions will be added to the new Rules. The Court proposes to continue to apply the current Rules to appeals filed before the new Rules come into effect rather than applying the new Rules immediately to all existing and new appeals. Feedback on the proposal is welcome. When the consultation period ends, feedback will be reviewed and considered.

Please provide feedback to the Policy, Legislation, and Planning team, Court Services Branch, by electronic mail at PLPConsultation@gov.bc.ca.

Feedback will be accepted **until 4 pm on Friday, December 06, 2019**.

Appendix 1 – Proposed New *Court of Appeal Act*

COURT OF APPEAL ACT

Contents

PART 1 – INTERPRETATION

Definitions

1 In this Act:

"appellant" means a person

(a) bringing an appeal, or

(b) applying for leave to appeal;

"chief justice" means the Chief Justice of British Columbia;

"court" means the Court of Appeal for British Columbia;

"court appealed from" means the court, or tribunal, from which an appeal is brought;

"justice" means a Justice of Appeal of the court;

"leave to appeal" means permission from the court or a justice to appeal an order;

"limited appeal order" means an order, prescribed in the rules as a limited appeal order, that requires leave to appeal;

"order" includes

(a) a judgment,

(b) a decree, and

(c) an opinion, advice, direction, determination, decision or declaration that is specifically authorized or required under an enactment to be given or made;

"party", in relation to an appeal, means

(a) the appellant, or

(b) a respondent who, in accordance with the rules, is a participant in the appeal;

"registrar" means a person appointed under section 10 (a) or (b) as

(a) the registrar,

(b) the associate registrar, or

(c) a deputy registrar;

"respondent" means either of the following:

(a) a person, other than the appellant,

(i) who was a party to the proceedings in the court appealed from, and

(ii) whose interests are affected by the relief requested by the appellant in an appeal;

(b) a person who is added, under the rules, as a respondent to an appeal;

"rules" means rules made under the *Court Rules Act* governing practice or procedure of the court;

"tribunal" includes a commission, board or panel.

PART 2 – COMPOSITION OF COURT

Division 1 – Court

Continuation of the court

2 (1) The court is continued as a superior court of record having civil and criminal jurisdiction.

(2) The seal of the court must be of a design approved by the Lieutenant Governor in Council.

Constitution of the court

3 (1) The court consists of

(a) the chief justice, and

(b) 14 other justices.

(2) An office of supernumerary justice of the court is established for each office of justice under subsection (1) (a) or (b).

(3) Each of the persons holding an office under this section is a justice.

Quorum and divisions of the court

4 (1) The court may sit in one or more divisions, each composed of not fewer than 3 justices.

(2) Three justices constitute a quorum of the court.

(3) The court must not hear an appeal with an even number of justices sitting.

(4) The judgment of the court is the judgment given by the majority of a division.

(5) Despite subsections (1) to (3), if a justice in a division becomes unable to act after the division commences the hearing of an appeal, the remaining justices in the division may continue to hear the appeal.

(6) On the conclusion of the hearing of an appeal under subsection (5),

(a) the remaining justices may give a judgment on the appeal if justices constituting a majority of the division, as it was composed when the hearing commenced, agree on what the judgment should be, or

(b) if it appears that no majority judgment is possible, the remaining justices must order a new hearing.

Location of court

5 The court may sit or conduct its business at any place in British Columbia directed by the chief justice.

Division 2 – Justices

Chief justice

6 (1) The chief justice is the presiding justice and administrative head of the court.

(2) The chief justice has all the powers, rights and responsibilities of a justice.

(3) The powers of the chief justice must be exercised by the next senior justice holding office under section 3 (1) (b) who is able to act in place of the chief justice, if the chief justice

(a) is absent from British Columbia,

(b) is unable to act for any reason, or

(c) requests it.

(4) With the approval of the chief justice, a justice may attend in the capacity of a justice at any meeting, conference or seminar outside of court that is held for a purpose relating to the administration of justice.

Judicial rank

7 (1) The chief justice has rank and precedence over all other judges of the courts of British Columbia.

(2) The justices holding office under section 3 (1) (b) and (2) have rank and precedence

(a) over all other judges of the courts of British Columbia, other than

(i) the chief justice,

(ii) the Chief Justice of the Supreme Court, and

(iii) the Associate Chief Justice of the Supreme Court, and

(b) among themselves according to the seniority of their appointment to the court.

Oath of office

8 Each justice must take the following oath before entering on the duties of the office:

I, ..., do swear [or solemnly affirm] that I will truly and faithfully, according to my skill and knowledge, execute the duties, powers and trusts placed in me as a justice of the Court of Appeal for British Columbia [or as the Chief Justice of British Columbia] and that I will be faithful and bear true allegiance to the Crown.

Continuing jurisdiction after leaving office

9 (1) Subsection (2) applies to a justice who ceases to hold office as a result of

(a) resigning,

(b) being appointed to another court, or

(c) section 99 (2) of the *Constitution Act, 1867*.

(2) Within six months of ceasing to hold office, a justice referred to in subsection (1) may give judgment in respect of a matter the justice heard while holding office, and the judgment is effective as though the justice still held office.

(3) A justice referred to in subsection (1) (b) may continue the hearing of any matter of which the justice was seized, and the jurisdiction to hear the matter and give judgment is effective as though the justice still held office.

Division 3 – Court Administration

Registrar

10 (1) The following persons may be appointed under the *Public Service Act*:

(a) a registrar;

(b) an associate registrar;

(c) one or more deputy registrars.

(2) If a person appointed under subsection (1) is temporarily absent, because of illness or another reason, the chief justice may appoint another person to act in that person's place during the period of absence.

(3) Each person appointed under this section is an officer of the court.

Administrators of court services

11 (1) The following persons may be appointed under the *Public Service Act*:

(a) a chief administrator of court services for the court;

(b) a deputy chief administrator of court services for the court;

(c) an administrator of court services for each registry of the court;

(d) other persons necessary to carry out the purposes of this Act and the rules.

(2) The chief administrator of court services must direct and supervise facilities, registries and administrative services for the court, subject to direction of

(a) the chief justice for matters of judicial administration, and

(b) the Attorney General for other matters.

Registries

12 After consulting with the chief justice, the Attorney General may establish registries of the court at any place in British Columbia.

PART 3 – APPEALS

Appellate jurisdiction

13 (1) An appeal may be brought to the court

(a) from an order of

(i) the Supreme Court, or

(ii) a judge of the Supreme Court, or

(b) in any matter for which jurisdiction is given to the court under an enactment of British Columbia or Canada.

(2) Despite subsection (1), an appeal may not be brought to the court

(a) from a limited appeal order, unless leave to appeal is granted by a justice,

(b) from an order of a master of the Supreme Court, or

(c) if another enactment of British Columbia or Canada provides that there is no appeal or a limited right of appeal.

(3) If leave to appeal is granted for a limited appeal order under subsection (2) (a), the appeal is deemed, for all purposes, to have been brought on the date leave is granted.

Cross appeal

14 (1) A respondent may bring a cross appeal to request that the court vary any part of an order being appealed.

(2) Subject to the rules, a cross appeal must be treated as an appeal for all purposes of this Act.

Time limit for commencing appeal

15 A person must commence an appeal or application for leave to appeal within the following time limit:

(a) unless paragraph (b) applies, within the time limit specified in the rules;

(b) if another enactment specifies a time limit in relation to the appeal, within the time limit specified in that other enactment.

Appeals from tribunals

16 If an appeal is from an order of a tribunal,

(a) this Act and the rules apply as though the tribunal was the Supreme Court, and

(b) the tribunal must ensure that an official of the tribunal exercises the powers and performs the duties in relation to the appeal that the Registrar of the Supreme Court would exercise and perform in relation to an appeal from the Supreme Court.

PART 4 – CONDUCT OF APPEALS

Division 1 – General Conduct of Appeals

Proceedings related to appeal must be in court

17 Subject to any other enactment, if an appeal or application for leave to appeal is brought, all proceedings in respect of matters relating to the appeal must be in the court.

Appeals must be conducted in accordance with Act and rules

18 (1) An appeal or application for leave to appeal must be brought and conducted in accordance with this Act and the rules.

(2) If a matter of practice or procedure is not addressed in this Act or the rules, the practice and procedure of the court is to be regulated by analogy

(a) to this Act and the rules, or

(b) if there is no appropriate analogy to this Act or the rules, to the *Supreme Court Act* and the Rules of Court governing civil or family practice or procedure in the Supreme Court.

No appeal to be defeated by irregularities

19 (1) An appeal is not defeated by an irregularity or procedural error in the conduct of the appeal.

(2) If an irregularity or procedural error in the conduct of an appeal has occurred, a justice may do one or more of the following:

(a) validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the irregularity or procedural error;

(b) impose terms and conditions, including the granting of an adjournment or the payment of costs;

(c) make any other order the justice considers appropriate to address the irregularity or procedural error.

Division 2 – Special Procedural Matters

Preliminary objections

20 (1) On application, the court or a justice may

(a) quash an appeal, or

(b) subject to subsection (2), make any order the court or justice considers appropriate to give effect to a preliminary objection.

(2) Only the court may dismiss an appeal under subsection (1) (b) for the purposes of giving effect to a preliminary objection.

Referral to court for summary determination

21 (1) A justice or the registrar may refer an appeal to the court for summary determination if the justice or registrar considers that the appeal

(a) is frivolous, vexatious or significantly irregular, or

(b) can otherwise be dismissed on a summary basis.

(2) On a referral under subsection (1), the court may dismiss all or part of the appeal if the court considers that the appeal meets the criteria set out in subsection (1) (a) or (b).

(3) Before making an order under subsection (2), the court must give the appellant an opportunity to make written submissions or otherwise be heard.

Vexatious proceedings

22 (1) If the court or a justice is satisfied that a person has habitually, persistently and without reasonable cause commenced or continued vexatious proceedings in any of the courts of British Columbia, the court or justice may order that the person must not bring or continue an appeal or application for leave to appeal in the court without leave of the court or a justice.

(2) The court or a justice may make an order under subsection (1)

(a) on application by any person or on the court or justice's own initiative, and

(b) only if the person has been given an opportunity to make written submissions or otherwise be heard.

(3) In making an order under subsection (1), the court may dismiss an appeal or application for leave to appeal previously brought to the court by the person.

(4) If a justice makes an order under subsection (1),

(a) the justice may refer the matter to the court, and

(b) the court may, without receiving further written submissions or holding a further hearing, dismiss an appeal or application for leave to appeal previously brought to the court by the person.

(5) In dismissing an appeal or application for leave to appeal under subsection (3) or (4), the court may impose terms and conditions, including the payment of costs.

Appeals or applications for leave to appeal dismissed as abandoned

23 (1) An appeal or application for leave to appeal is dismissed as abandoned if it remains inactive as a result of circumstances, and to the extent, set out in the rules.

(2) An appeal or application for leave to appeal that has been dismissed as abandoned under subsection (1) may be reinstated in accordance with the rules.

PART 5 – POWERS ON AN APPEAL

Division 1 – Powers of the Court

General powers of the court

24 (1) On an appeal, the court may

(a) make any order that the court appealed from could have made,

(b) impose reasonable terms and conditions in an order, and

(c) make any additional order that it considers just.

(2) The court may

(a) draw inferences of fact,

(b) exercise the powers of the Supreme Court in relation to matters of contempt of court, and

(c) exercise any original jurisdiction that may be necessary or incidental to the hearing and determination of an appeal.

(3) The court may exercise its powers

(a) even though only part of an order is being appealed, and

(b) in favour of any person, whether or not the person is a party to the appeal.

Court has power of court appealed from

25 The court has the power, authority and jurisdiction vested in the court appealed from

(a) for all purposes of and incidental to

(i) the hearing and determination of any matter, and

(ii) the amendment, execution and enforcement of any order, and

(b) for the purpose of every other authority expressly or impliedly given to the court.

Limiting hearings and requiring preparation of written arguments

26 (1) Before or during the hearing of a matter that is to be decided by the court, the court may do one or more of the following, either generally or in relation to a particular issue:

(a) order that the hearing be conducted in writing;

(b) order that the matter be decided without a hearing;

(c) limit the time of the hearing;

(d) limit the time for the hearing of an argument by any person.

(2) Before, during or after the hearing of a matter that is to be decided by the court, the court may order a party to prepare written argument on any issue, whether or not the issue has been previously addressed by the party.

Ordering a new trial or hearing

27 (1) On the hearing of an appeal, if the court determines that a matter under appeal should have a new trial or hearing, the court may

(a) set aside a verdict, finding or order, and

(b) direct a new trial or hearing.

(2) If the court considers that a new trial or hearing should be limited, the court may

(a) give final judgment to only part of the matter under appeal or as to only some of the parties, and

(b) direct a new trial or hearing for the remaining part or parties.

Power of a justice exercised by the court

28 The court may exercise a power given to a justice by this Act or the rules.

Varying orders of a justice

29 (1) On application, the court may vary or cancel any order made by a justice.

(2) Subsection (1) does not apply to

(a) an order under section 31 granting leave to appeal, or

(b) an order prescribed by the rules as an order that may not be varied.

Division 2 – Powers of a Justice

General powers of a justice

30 In an appeal or other matter before the court, a justice may do one or more of the following:

(a) make orders incidental to the appeal or to a matter not involving a decision of the appeal on its merits;

(b) make orders or give directions for the purposes of managing the conduct of the appeal or other matter;

(c) make interim orders to prevent prejudice to any person;

(d) exercise the powers referred to in

(i) section 24 (2) (a) and (b) *[general powers of the court]*, and

(ii) section 26 *[limiting hearings and requiring preparation of written arguments]*, for the purposes of a matter that is to be decided by a justice;

(e) exercise the powers given to the registrar by this Act or the rules;

(f) grant leave to intervene;

(g) refer any application to the court;

(h) make any order with the consent of all parties to the appeal;

(i) in making any order, impose terms and conditions, and give directions, the justice considers just.

Leave to appeal

31 (1) A justice may grant or refuse leave to appeal.

(2) In granting leave to appeal under this Act or any other enactment, a justice may limit the grounds of appeal.

Dispensing with rules and varying time limits

32 (1) A justice may dispense with a requirement of the rules.

(2) A justice may extend or shorten a time limit provided in this Act or the rules for doing an act, including the time limit for commencing an appeal or application for leave to appeal.

(3) Subsection (2) applies to an extension of a time limit even if the time limit for doing an act expires before

(a) a person applies for the extension, or

(b) the justice orders the extension.

Stays of proceedings

33 (1) After an appeal or application for leave to appeal is brought, a justice may, on terms and conditions the justice considers appropriate, order a stay of

all or part of proceedings, including execution, in the cause or matter from which the appeal is brought.

(2) After an appeal has been decided, a justice may, on terms and conditions the justice considers appropriate, do one or both of the following:

(a) make an order under subsection (1);

(b) make any other order to preserve the rights of the parties pending further proceedings.

(3) Without limiting subsection (1) or (2), a justice may order one or more of the following:

(a) that documents be delivered;

(b) that possession of land or personal property be given;

(c) that property be placed in the custody of a person specified by the justice;

(d) that an instrument be executed;

(e) that perishable property be sold and the proceeds paid into the court or the court appealed from;

(f) that a direction be given to a sheriff or poundage be disallowed;

(g) that a person be paid money received by a sheriff under an execution;

(h) that security be given for any purpose in a form and manner directed by the justice.

Payment of security

34 (1) A justice may order that an appellant pay into court security for one or more of the following:

(a) costs of the appeal;

(b) costs of proceedings in the court appealed from, in relation to the order being appealed;

(c) an amount under the order being appealed.

(2) A payment or deposit under subsection (1) must be in the amount and form determined by the justice.

(3) This section does not apply to an appeal brought by or on behalf of the government.

Varying orders of a justice or the registrar

35 (1) A justice may vary an order of a justice that was made

(a) without notice,

(b) under section 32 (2) *[varying time limits]* other than an order extending or shortening the time limit for commencing an appeal or application for leave to appeal, or

(c) under section 33 *[stays of proceedings]* to stay execution or under section 34 *[payment of security]*, if there has been a material change in circumstances.

(2) A justice may vary or cancel an order or direction of the registrar.

Failure to comply

36 A justice may do one or more of the following if a party fails to comply with this Act or the rules or an order or direction of the court, a justice or the registrar:

(a) refuse to hear the party;

(b) impose terms and conditions, including the payment or disallowance of costs;

(c) if the party is an appellant, dismiss the appeal as abandoned.

Division 3 – Powers of the Registrar

General powers of the registrar

37 (1) The registrar may exercise the powers granted to the registrar

(a) by the rules, or

(b) by the chief justice, under this section.

(2) The chief justice may

(a) authorize the registrar to exercise powers in relation to the management of the conduct of an appeal or other matter before the court, and

(b) impose limits or conditions on the exercise of a power granted under paragraph (a).

(3) If there is an inconsistency between an authorization under subsection (2) and the rules, the rules prevail to the extent of the inconsistency.

(4) An authorization under subsection (2) that grants powers to the registrar in addition to those granted by the rules is not, for that reason alone, inconsistent with the rules.

Directives in relation to filing

38 (1) Subject to the rules, the registrar may issue directives respecting the filing of documents in the court's registries, including directives that specify

(a) the form and manner in which documents must be filed,

(b) the number of copies of a document that must be filed, and

(c) instructions for the completion of documents.

(2) The registrar may refuse to accept a document for filing if it is filed contrary to a directive issued under subsection (1).

(3) The registrar must make accessible to the public any directive issued under subsection (1).

PART 6 – ORDERS AND JUDGMENTS

Pronouncement of orders

39 (1) The chief justice may establish practices and procedures for the court respecting the pronouncement of orders.

(2) An order takes effect on the date the order is pronounced, unless otherwise specified in the order.

Delivery of judgment

40 (1) A judgment of the court must be pronounced by a justice

(a) in open court, or

(b) in a manner specified by the chief justice under section 39 (1).

(2) If a division's judgment on appeal has been reserved and any of the following apply, the division must give a judgment:

(a) all the justices who heard the appeal have reached an opinion on the appeal;

(b) justices constituting a majority of the division, as it was composed when the hearing commenced,

(i) agree that delivery of the judgment should no longer be delayed, and

(ii) agree on what the judgment should be;

(c) a justice in the division is incapacitated from giving an opinion on the appeal, and the remaining justices

(i) constitute a majority of the division, as it was composed when the hearing commenced, and

(ii) agree on what the judgment should be.

(3) The registrar must give reasonable notice to all parties of the time when and place where a judgment that has been reserved will be pronounced.

(4) If the court chooses to give a written opinion respecting the outcome of an appeal, an opinion must be provided to the registrar by

(a) each justice who heard the appeal, or

(b) if subsection (2) (c) applies, the remaining justices referred to in that subsection.

(5) An opinion of a justice is effective even if the justice ceases to hold office after the opinion is provided to the registrar under subsection (4).

Proceedings on a judgment

41 (1) After a judgment of the court has been entered in a registry of the court, a certified copy of the judgment may be filed in the court appealed from.

(2) A judgment filed under this section has the same force and effect, and all proceedings may be taken on it, as if it were an order of the court appealed from.

Decision of a justice

42 (1) Unless the chief justice specifies otherwise under section 39 (1), a decision of a justice may be pronounced in the manner, and at the time and place, determined by the justice.

(2) A decision of a justice that has been reserved may be pronounced by another justice.

Amending orders

43 (1) A division of the court may, on application or on the division's own initiative, amend an order made by the division to provide for any matter that should have been but was not adjudicated by the division.

(2) A justice may, on application or on the justice's own initiative, amend an order made by the justice to provide for any matter that should have been but was not adjudicated by the justice.

(3) A justice or the registrar may, on application or on the justice or registrar's own initiative, correct an error in an order that arose from

(a) a clerical mistake, or

(b) any other accidental slip or omission.

PART 7 – COSTS

Costs

44 (1) Unless the court or a justice orders otherwise, a party who is successful on an appeal is entitled to costs of the appeal, including the costs of all applications made in the appeal.

(2) Costs must be assessed

(a) in accordance with the rules, or

(b) in the manner directed by the court or a justice.

Powers of the court or a justice in relation to costs

45 (1) Subject to the rules, the court or a justice may make any order or give any direction in relation to costs that the justice considers appropriate.

(2) An order or direction under subsection (1) may be limited to any part of an appeal or application for leave to appeal.

Powers of the registrar in relation to costs

46 (1) The registrar may

(a) assess costs, and

(b) in accordance with the rules, if any, issue a certificate specifying the amount of costs payable by a party.

(2) The registrar must issue a certificate under subsection (1) (b) if required by the rules.

(3) A certificate of costs issued by the registrar under subsection (1) (b) may be filed in the Supreme Court, and proceedings may be taken on the filed certificate as though it were a judgment of the Supreme Court for the recovery of debt.

PART 8 – TRANSITIONAL PROVISIONS, REPEALS AND CONSEQUENTIAL AMENDMENTS

Transitional Provisions

Definitions

47 In this section and sections 48 to 50:

"effective date" means the day on which this section comes into force;

"former Act" means the *Court of Appeal Act*, R.S.B.C. 1996, c. 77;

"former rules" means the Court of Appeal Rules, B.C. Reg. 297/2001.

Transition – continuation of previous orders, directions and judgments

48 An order, direction or judgment of the court, a justice or the registrar that was made or given under the former Act or former rules and was in force immediately before the effective date

(a) is deemed to have been made or given under this Act and the rules, and

(b) has the same effect under this Act and the rules as it had under the former Act and former rules.

Transition – continuation of inactive appeal list

49 (1) Subject to subsection (2) and despite the repeal of the former Act, section 25 of the former Act, as it read immediately before the effective date, continues to apply to an appeal or application for leave to appeal that was on the inactive appeal list under that section immediately before the effective date.

(2) The Lieutenant Governor in Council may, under section 1 of the *Court Rules Act*, makes rules the Lieutenant Governor in Council considers necessary and advisable for the orderly transition of the inactive appeal list under section 25 of the former Act to this Act and the rules.

Transition – transitional orders and directions

50 A justice may make any order or give any direction the justice considers appropriate to address any matter that arises as a result of the transition of an appeal or application for leave to appeal from the former Act and former rules to this Act and the rules.

Repeal

51 The Court of Appeal Act, R.S.B.C. 1996, c. 77, is repealed.

Consequential Amendments

Class Proceedings Act

52 ***Section 36 (2) of the Class Proceedings Act, R.S.B.C. 1996, c. 50, is amended by striking out "***section 14 (1) (a) of the *Court of Appeal Act"* ***and substituting "***section 15 (a) of the *Court of Appeal Act".***

Health Care Costs Recovery Act

53 ***Section 19 of the Health Care Costs Recovery Act, S.B.C. 2008, c. 27, is amended by striking out "***section 14 of the *Court of Appeal Act"* ***and substituting "***section 15 of the *Court of Appeal Act".***

Interjurisdictional Support Orders Act

54 ***Section 36 (5) of the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29, is amended by striking out "***Despite section 14 of the *Court of Appeal Act"* ***and substituting "***Despite section 15 of the *Court of Appeal Act".***

Supreme Court Act

55 ***Section 4 of the Supreme Court Act, R.S.B.C. 1996, c. 443, is repealed and the following substituted:***

(1) The Chief Justice has rank and precedence over all other judges of the courts of British Columbia, other than the Chief Justice of British Columbia under the *Court of Appeal Act*, and the Associate Chief Justice has rank and precedence immediately after the Chief Justice.

Appendix 2 – Proposed New *Court of Appeal Rules*

COURT OF APPEAL RULES

Contents

PART 1 – INTERPRETATION

Definitions and interpretation

1 (1) In these rules:

"Act" means the *Court of Appeal Act*;

"business day" means a day other than Saturday, Sunday or another holiday listed in the definition of "holiday" in the *Interpretation Act*;

"document" includes the following:

(a) a photograph, film or sound recording;

(b) any record of a permanent or semi-permanent character;

(c) any information recorded or stored by means of any device;

"file", in relation to filing a document, means to file the document with the registrar in a registry of the court in accordance with any directives of the registrar issued under section 38 *[directives in relation to filing]* of the Act;

"hearing date" means the date set for a hearing;

"inactive appeal list" means the list of inactive appeals maintained by the registrar under rule 47 (1) *[inactive appeal list]*;

"intervener" means a person who has been granted leave under rule 58 *[intervener status]* to intervene in an appeal;

"ordinary costs tariff" means the ordinary costs tariff set out in Schedule 1;

"serve", in relation to serving a document, means to serve the document in accordance with rule 80 *[permitted methods of service]*;

"supporting affidavit" means an affidavit that sets out any facts that a party intends to rely on at a hearing;

"written argument" means a written argument that a party intends to rely on at a hearing.

(2) In these rules, words and expressions that are not defined have the same meanings as in the Act.

(3) Unless a contrary intention appears in these rules,

(a) a reference in these rules to a Part, Division, rule, schedule or form is a reference to a Part, Division, rule, schedule or form of these rules, and

(b) a reference in these rules to a subrule, paragraph, subparagraph or clause is a reference to a subrule, paragraph, subparagraph or clause of the rule, subrule, paragraph or subparagraph in which the reference occurs.

Timing

2 If the time for doing an act under these rules falls or expires on a day other than a business day, the time is extended to the next business day.

PART 2 – STEPS AT THE START OF AN APPEAL

Division 1 – Bringing and Responding to an Appeal

How to bring an appeal

3 (1) To bring an appeal, a person must do the following within the time limit set out in subrule (2):

(a) file a notice of appeal in Form 8 that names as a respondent each person

(i) who was a party to the proceedings in the court appealed from, and

(ii) whose interests could be affected by the relief requested in the notice;

(b) serve, in accordance with rule 80 (3) *[permitted methods of service]*, on each respondent named in the notice of appeal a copy of the filed notice of appeal.

(2) The time limit for filing and serving a notice of appeal from an order is one of the following:

(a) unless paragraph (b) applies, 30 days, starting on the day after the order is pronounced;

(b) if another enactment specifies a time limit within which the appeal must be commenced, the time limit specified in that other enactment.

How to respond to a notice of appeal

4 (1) A respondent who is served a notice of appeal and who wishes to participate in the appeal must, within 10 days of being served the notice of appeal,

(a) file a notice of appearance in Form 2, and

(b) serve on the appellant a copy of the filed notice of appearance.

(2) If a respondent who has been served a notice of appeal does not file a notice of appearance under this rule,

(a) the respondent is presumed to take no position on the appeal, and

(b) a party is not required to serve on the respondent any further documents related to the appeal, unless the court or a justice orders otherwise.

Division 2 – Bringing and Responding to a Cross Appeal

How to bring a cross appeal

5 (1) A respondent may file a notice of cross appeal only if the respondent

(a) has filed a notice of appearance,

(b) is seeking to vary the order being appealed, and

(c) is seeking relief from the court that is different from the relief sought by the appellant, as described in the notice of appeal.

(2) To bring a cross appeal, a respondent must do the following within 15 days of being served a notice of appeal:

(a) file a notice of cross appeal in Form 8;

(b) serve a copy of the filed notice of cross appeal

(i) on each party, and

(ii) on any other respondent named in the notice of cross appeal.

How to respond to a notice of cross appeal

6 (1) This rule applies to a respondent who is

(a) served a notice of cross appeal, and

(b) not yet a party to the appeal to which the notice of cross appeal relates.

(2) Within 10 days of being served a notice of cross appeal, a respondent referred to in subrule (1) who wishes to participate in the cross appeal must

(a) file a notice of appearance in Form 2, and

(b) serve on each party a copy of the filed notice of appearance.

(3) If a respondent referred to in subrule (1) does not file a notice of appearance under this rule,

(a) the respondent is presumed to take no position on the cross appeal, and

(b) a party is not required to serve on the respondent any further documents related to the cross appeal, unless the court or a justice orders otherwise.

Division 3 – Bringing and Responding to Applications for Leave to Appeal

Limited appeal orders

7 For the purposes of the definition of “limited appeal order” in section 1 of the Act, the following orders are prescribed as limited appeal orders:

(a) an order granting or refusing relief for which provision is made under any of the following Parts or rules of the Supreme Court Civil Rules, B.C. Reg. 168/2009:

(i) Rule 3-7 (22) *[Order for particulars]*;

(ii) Part 5 *[Case Planning]*;

(iii) Part 7 *[Procedures for Ascertaining Facts]*, other than Rule 7-7 (6) *[application for order on admissions]*;

(iv) Rule 9-7 (11), (12), (17) or (18) *[adjournment or dismissal, preliminary orders, orders and right to vary or set aside order]*;

(v) Part 10 *[Property and Injunctions]*;

(vi) Part 11 *[Experts]*;

(vii) Rule 12-2 *[Trial Management Conference]*;

(viii) Rule 18-1 *[Inquiries, Assessments and Accounts]*;

(ix) Rule 21-7 *[Foreclosure and Cancellation]*;

(x) Rule 22-1 (4) *[Evidence on an application]*;

(b) an order granting or refusing relief for which provision is made under any of the following Parts or rules of the Supreme Court Family Rules, B.C. Reg. 169/2009:

(i) Rule 4-6 (3) *[Order for particulars]*;

(ii) Part 5 *[Financial Disclosure]*, other than Rule 5-1 (28) (b) and (c) *[relief]*;

(iii) Rule 7-1 *[Judicial Case Conference]*;

(iv) Part 9 *[Procedures for Obtaining Information and Documents]*, other than Rule 9-6 (6) *[application for order on admissions]*;

(v) Rule 10-3 (4) *[Evidence on an application]*;

(vi) Rule 11-3 (11), (12), (17) or (18) *[adjournment or dismissal, preliminary orders, orders and right to vary or set aside order]*;

(vii) Part 12 *[Property and Injunctions]*;

(viii) Part 13 *[Court Ordered Reports and Expert Witnesses]*;

(ix) Rule 14-3 *[Trial Management Conference]*;

(x) Rule 18-1 *[Inquiries, Assessments and Accounts]*;

(c) an order granting or refusing interim relief under the *Family Law Act* or *Divorce Act* (Canada);

(d) an order, granting or refusing an investigation into a family matter, made under section 211 of the *Family Law Act*;

(e) an order granting or refusing an adjournment or an extension or a shortening of time;

(f) an order in respect of costs or security for costs, if the only matter being appealed is in respect of costs or security for costs;

(g) an order of a Supreme Court judge granting or refusing an appeal from any order referred to in paragraphs (a) to (f).

When an application for leave to appeal is required

8 A party bringing an appeal or cross appeal must apply for leave to appeal if any of the following apply:

(a) the order being appealed is a limited appeal order;

(b) an enactment, other than the Act, requires leave from the court or a justice to appeal the order being appealed;

(c) the party bringing the appeal or cross appeal does not know whether leave of the court is required to bring the appeal or cross appeal.

How to apply for leave to appeal

9 To bring an application for leave to appeal, a party must

(a) file the following materials within 30 days of filing the related notice of appeal or notice of cross appeal, as applicable:

(i) a notice of application for leave to appeal;

(ii) an application book for leave to appeal in Form 4, and

(b) serve on each party a copy of the filed application book for leave to appeal by the earlier of the following dates:

(i) the date that is 30 days after the related notice of appeal or notice of cross appeal was filed, as applicable, and

(ii) the date that is 10 business days before the application hearing date.

How to respond to an application for leave to appeal

10 A party who wishes to respond to an application for leave to appeal must, at least 5 business days before the application hearing date,

(a) file a response book for leave to appeal in Form 5, and

(b) serve on each party a copy of the filed response book for leave to appeal.

Applications for leave that must be heard concurrently

11 Unless a justice or the registrar orders otherwise, if the appellant and a respondent both apply for leave to appeal in relation to the same order, those applications must be heard at the same time.

Use of application book in remainder of appeal

12 A justice may, by order, allow an application book for leave to appeal to stand as a factum or appeal book, or both, in an appeal.

Division 4 – Appealing Subsequent Related Orders

How to appeal a subsequent related order after an appeal is brought

13 (1) This rule applies if

(a) the hearing of an appeal has not commenced, and

(b) the court appealed from makes a subsequent order in the same cause or proceeding being appealed, including a subsequent order for costs.

(2) In the circumstances referred to in subrule (1), a party to the appeal who wishes to appeal the subsequent order must do the following, as applicable:

(a) if the party is an appellant, file an amended notice of appeal that addresses the subsequent order;

(b) subject to subrule (3), either

(i) address the subsequent order in the party's factum, or

(ii) if the party has already filed the party's factum, file an amended factum that addresses the subsequent order;

(c) serve on each party

(i) a copy of the filed amended notice of appeal, and

(ii) a copy of the filed amended factum.

(3) If a notice of hearing has been filed in relation to an appeal, a party to the appeal may file an amended factum under subrule (2) (b) (ii) only if permission is given by the court, a justice or the registrar.

(4) To apply for permission under subrule (3) to file an amended factum, a party must submit a written request to the registrar.

(5) Rule 77 (1) does not apply to an amended notice of appeal or amended factum that is filed under this rule.

Division 5 – Adding Additional Respondents to an Appeal

Justice may add respondents to an appeal

14 (1) A justice may make an order under subrule (2), if

(a) a person was not named as a respondent in a notice of appeal or notice of cross appeal, and

(b) the justice determines that the person has interests that could be affected by the relief sought in the appeal.

(2) On application by a person referred to in subrule (1), a justice, in the circumstances referred to in that subrule, may order that

(a) the person be added as respondent to the appeal,

(b) the notice of appeal or notice of cross appeal, as applicable, be amended to name the person as a respondent, and

(c) the person be served with the amended notice of appeal or notice of cross appeal, as applicable.

Division 6 –Stays of Proceedings or Execution

Definition

15 In this Division, **"stay application"** means an application for a stay of proceedings or a stay of execution referred to in rule 16 (1).

Applying for a stay of proceedings or execution

16 (1) A party may apply for a stay of proceedings or a stay of execution to put on hold a proceeding or a process of execution pending the outcome of an appeal.

(2) A party may join a stay application with the party's application for leave to appeal.

(3) To bring a stay application that is not joined with an application for leave to appeal, a party must

(a) obtain an application hearing date from the registrar, and

(b) do the following at least 5 business days before the application hearing date:

(i) file the following materials:

(A) a notice of application in Form 6;

(B) an application book in Form 4;

(ii) serve on each party

(A) a copy of the filed notice of application, and

(B) a copy of the filed application book.

(4) To bring a stay application that is joined with an application for leave to appeal, a party must do the following instead of bringing an application for leave to appeal under rule 9:

(a) file an application book for leave to appeal and stay in Form X that includes a copy of a notice of application for leave to appeal;

(b) serve on each party a copy of the filed application book for leave to appeal and stay by the earlier of the following dates:

(i) the date that is 30 days after the related notice of appeal or notice of cross appeal was filed, as applicable, and

(ii) the date that is 10 business days before the application hearing date.

Responding to stay applications

17 (1) A party who wishes to respond to a stay application that is not joined with an application for leave to appeal must, at least 2 business days before the application hearing date,

(a) file a response book in Form 5, and

(b) serve on each party a copy of the filed response book.

(2) A party who wishes to respond to a stay application that is joined with an application for leave to appeal must, at least 5 business days before the application hearing date,

(a) file a response book for leave to appeal and stay in Form X, and

(b) serve on each party a copy of the filed response book for leave to appeal and stay.

PART 3 – STEPS AFTER AN APPEAL IS BROUGHT

Division 1 – Appeals That Have Been Brought

When an appeal is brought

18 An appeal is brought for the purposes of these rules as follows:

(a) if leave to appeal is not required, when the appellant

(i) files the notice of appeal, and

(ii) serves a copy of the filed notice of appeal on each respondent named in the notice of appeal;

(b) if leave to appeal is required, when leave to appeal is granted.

Division 2 –Documents Filed to Ready an Appeal for Hearing

Appeal record

19 Within 60 days of filing a notice of appeal or, if leave to appeal is required, within 60 days of leave to appeal being granted, an appellant must

(a) file an appeal record in Form 9, and

(b) serve on each party a copy of the filed appeal record.

Transcripts of proceedings in court appealed from

20 (1) In this rule:

"oral testimony" means oral testimony given in the court appealed from during proceedings related to the order being appealed;

"other recorded proceedings" means proceedings related to the order being appealed, not including the giving of oral testimony, that were recorded in the court appealed from;

"transcript" means a transcript that meets the requirements set out in subrule (4).

(2) Within 60 days of bringing an appeal or, if leave to appeal is required, within 60 days of leave to appeal being granted, an appellant

(a) must file and serve transcripts of oral testimony given in the court appealed from, if any, and

(b) may file and serve transcripts of other recorded proceedings in the court appealed from if

(i) the transcripts are necessary to resolve the issues on appeal, or

(ii) a justice or the registrar permits or directs the appellant to file and serve the transcripts.

(3) To file and serve the transcripts referred to in subrule (2), an appellant must do the following:

(a) file a book of transcripts containing

(i) the transcripts that the appellant must file under subrule (2) (a), and

(ii) the transcripts that the appellant wishes to file under subrule (2) (b);

(b) serve on each party a copy of the filed book of transcripts.

(4) Transcripts that are filed in the court must be prepared

(a) by an official reporter from the official record of the court appealed from, and

(b) in accordance with the British Columbia Court Transcription Manual.

(5) An appellant may exclude from a transcript any portion agreed to by all the parties.

Factums

21 (1) An appellant must, within 30 days of filing the appeal record,

(a) file an appellant's factum in Form 10(a), not exceeding 30 pages, and

(b) serve on each party a copy of the filed appellant's factum.

(2) A respondent must, within 30 days of being served an appellant's factum,

(a) file a respondent's factum in Form 10(b), not exceeding 30 pages, and

(b) serve on each party a copy of the filed respondent's factum.

(3) An appellant may reply to a respondent's factum by doing the following within 7 days of being served the respondent's factum:

(a) filing an appellant's reply in Form 11(a), not exceeding 5 pages;

(b) serving on each party a copy of the filed appellant's reply.

Appeal book

22 (1) In this rule,

"appeal book" means a record that

(a) contains the evidence referred to in a party's factum, and

(b) meets the requirements set out in subrule (5);

"joint appeal book" means an appeal book prepared jointly by all the parties to an appeal.

(2) An appeal book must be filed and served

(a) by the appellant if the appellant's factum refers to evidence, and

(b) by the respondent if

(i) the respondent's factum refers to evidence, and

(ii) that evidence is not included in the appellant's appeal book.

(3) To file and serve an appeal book, a party must do the following when the party files and serves the party's factum:

(a) file the appeal book in Form 12;

(b) serve on each party a copy of the filed appeal book.

(4) Despite subrules (2) and (3),

(a) the parties may, within 30 days of the respondent filing the respondent's factum, file a joint appeal book in Form 12, and

(b) filing a joint appeal book under paragraph (a) satisfies the requirement of a party to file and serve an appeal book.

(5) Unless a justice or the registrar permits otherwise under subrule (6), an appeal book must include only as much evidence as is necessary to resolve the issues on appeal.

(6) A justice or the registrar may permit a party to include in an appeal book materials in addition to the evidence described in subrule (5) if the justice or registrar believes that the materials are necessary to resolve the issues on appeal.

(7) If the costs of an appeal are increased unduly by a party's failure to comply with subrule (5), a justice or the registrar may consider the party's failure to comply when awarding or assessing costs.

Transcript extract book

23 (1) In this rule, **"transcript extract book"** means a book that

(a) contains extracts of transcripts of proceedings from the court appealed from that are referred to in a party's factum, and

(b) meets the requirements set out in subrule (3).

(2) If a party's factum refers to transcripts of proceedings from the court appealed from, the party must do the following when the party files and serves the party's factum:

(a) file a transcript extract book in Form 13;

(b) serve on each party a copy of the filed transcript extract book.

(3) A transcript extract book must contain only the portion of a transcript necessary to explain the reference to the transcript in a party's factum.

Book of authorities

24 (1) In this rule,

"book of authorities" means a document that includes, subject to subrule (6),

(a) each authority referred to in a party's factum, and

(b) each authority that a party intends to refer the court to at the hearing of an appeal;

"joint book of authorities" means a book of authorities prepared jointly by all the parties to an appeal.

(2) A party must file and serve a book of authorities if

(a) the party's factum refers to an authority, or

(b) the party intends to refer the court to an authority at the hearing of the appeal.

(3) To file and serve a book of authorities, a party must do the following at least 30 days before an appeal hearing date:

(a) file the book of authorities in Form 21;

(b) serve on each party a copy of the filed book of authorities.

(4) Despite subrules (2) and (3) and subject to subrule (5),

(a) the parties to an appeal may file a joint book of authorities in Form 21 at least 30 days before an appeal hearing date, and

(b) filing a joint book of authorities under paragraph (a) satisfies the requirement of a party to file and serve a book of authorities.

(5) The parties to an appeal must file a joint book of authorities under subrule (4) if

(a) more than one party is required to file a book of authorities under subrule (2), and

(b) it is practicable for the parties to file a joint book of authorities.

(6) If the registrar publishes a list of authorities, a party is not required to include an authority on that list within a book of authorities or joint book of authorities, unless the court or a justice will be asked to depart from or distinguish that authority.

Settling the contents of a document

25 (1) A party may apply to the registrar to settle the contents of one or more of the following:

(a) an appeal record;

(b) a transcript;

(c) an appeal book;

(d) a transcript extract book.

(2) On application under subrule (1), the registrar may do one or more of the following in relation to a document referred to in that subrule:

(a) settle or limit the contents of the document;

(b) direct that a party add or remove materials from the document;

(c) direct that the document not be used in the appeal.

(3) The registrar may take an action under subrule (2) whether or not all parties attend the time set for hearing the application.

Division 3 – Additional Documents Filed to Ready a Cross Appeal for Hearing

Factums on cross appeal

26 (1) A respondent who has brought a cross appeal must do the following within 30 days of being served an appellant's factum:

(a) file a respondent's cross appeal factum in Form 10(b), not exceeding 40 pages, instead of a respondent's factum under rule 21 (2) *[factums]*;

(b) serve on each party a copy of the filed respondent's cross appeal factum.

(2) If an appellant is served a respondent's cross appeal factum, the appellant must do the following within 14 days of being served:

(a) file an appellant's cross appeal response factum in Form 11, not exceeding 30 pages;

(b) serve on each party a copy of the filed appellant's cross appeal response factum.

(3) A respondent referred to in subrule (1) may reply to an appellant's cross appeal response factum by doing the following within 7 days of being served the appellant's cross appeal response factum:

(a) filing a respondent's cross appeal reply in Form 11(b), not exceeding 5 pages;

(b) serving on each party a copy of the filed respondent's cross appeal reply.

(4) A party must not unnecessarily repeat in a factum for a cross appeal any matters contained in a factum for the main appeal.

Appeal books on cross appeal

27 If a respondent's cross appeal factum refers to evidence and that evidence is not included in the appellant's appeal book, the respondent

(a) must file and serve an appeal book in accordance with rule 22 (3) and (5), or

(b) may, instead of filing and serving an appeal book under paragraph (a), file a joint appeal book with the other parties, in accordance with rule 22 (4) and (5), within 30 days of filing the respondent's cross appeal factum.

Division 4 – Expediting Appeals

Expediting appeals

28 (1) A party may request to expedite an appeal by

(a) filing a written request that meets the requirements set out in subrule (2), and

(b) serving on each party a copy of the filed written request.

(2) A written request to expedite an appeal must succinctly state

(a) the nature of the appeal,

(b) the reasons for the request,

(c) whether the other parties consent to expediting the appeal,

(d) the proposed terms for expediting the hearing of the appeal, including

(i) a schedule for the steps required to bring the appeal to hearing, and

(ii) an estimate of the time required for the hearing of the appeal, and

(e) a list of proposed dates for the hearing of the appeal.

(3) Within 2 business days of being served a written request to expedite an appeal, a party may oppose the written request by

(a) filing a written response stating the reasons why the appeal should not be expedited, and

(b) serving on each party a copy of the written response.

PART 4 – STEPS AFTER AN APPEAL IS READY FOR HEARING

Division 1 – Appeals That Are Ready for Hearing

When an appeal is ready for hearing

29 An appeal is ready for hearing on the following date:

(a) unless paragraph (b) applies, the date when the appellant has filed

(i) the appellant's factum, and

(ii) a copy of each order being appealed, in the form that the order was entered in the court appealed from;

(b) a date specified by a justice or the registrar as the date when the appeal is ready for hearing.

Division 2 – Obtaining an Appeal Hearing Date

Appellant must obtain appeal hearing date

30 (1) Within 10 days after an appeal is ready for hearing, an appellant must

(a) obtain from the registrar a hearing date for the appeal, and

(b) inform the registrar if the parties disagree on the length of time required for the hearing of the appeal.

(2) Within 5 days of obtaining a hearing date under subrule (1), the appellant must

(a) file a notice of hearing in Form 34 that has attached a copy of each order being appealed, in the form that the order was entered in the court appealed from, and

(b) serve on each party a copy of the filed notice of hearing and each attached order.

Respondent may obtain appeal hearing date

31 (1) A respondent may obtain from the registrar a hearing date for an appeal if

(a) the respondent has filed a respondent's factum or respondent's cross appeal factum, and

(b) the appellant has not complied with rule 30 (1) or (2).

(2) If a respondent obtains a hearing date under subrule (1), the respondent must file and serve a notice of hearing, in accordance with rule 30 (2) (a) and (b), within 5 days of obtaining the hearing date.

Registrar may set appeal hearing date

32 (1) The registrar may set the time and place for the hearing of an appeal, subject to the directions of the chief justice.

(2) On the request of the registrar, a party must promptly provide to the registrar an estimate of the time required for the hearing of an appeal.

Division 3 – Additional Documents to be Filed Before Appeal Hearing Date

Condensed book of authorities

33 (1) In this rule, **"condensed book of authorities"** means a book that contains excerpts of authorities

(a) that are included in the party's filed book of authorities, and

(b) that the party intends to refer the court to during the hearing of an appeal.

(2) A party may submit a condensed book of authorities to the court by doing the following at least 2 business days before the appeal hearing date:

(a) filing the condensed book of authorities;

(b) serving on each party a copy of the filed condensed book of authorities.

PART 5 – STEPS AT THE HEARING OF AN APPEAL

Points of law and authorities not cited in factum

34 The court, on terms it considers just, may permit a party to use arguments, raise points of law or cite authorities that were not used, raised or cited in the party's factum filed under Part 3 *[Steps After an Appeal is Brought]*.

Condensed book of evidence

35 (1) In this rule, **"condensed book of evidence"** means a book that

(a) contains materials previously filed in an appeal that a party intends to refer the court to during the hearing of the appeal, and

(b) meets the requirements set out in subrules (3) and (4).

(2) A party may submit a condensed book of evidence to the court at the hearing of an appeal by providing a copy of it to each of the following persons at the commencement of the hearing:

(a) each justice in the division of the court hearing the appeal;

(b) each party at the hearing of the appeal.

(3) A condensed book of evidence

(a) must be in Form X, and

(b) subject to subrule (4), may only include the following materials filed in the appeal:

(i) extracts of a transcript;

(ii) documents from the appeal record or appeal book.

(4) Any extracts or documents included in a condensed book of evidence may include only as much material as is necessary to understand the context of the key portions of the extract or document.

PART 6 – STEPS AFTER AN APPEAL HAS BEEN HEARD

Drawing up and entering the judgment of the court

36 After judgment on appeal has been given, the judgment of the court must be drawn up and entered in accordance with rule 63.

Applying to registrar for assessment of costs

37 (1) After judgment on appeal has been given, a party who is entitled to costs may apply to the registrar for an assessment of costs under Division 1 of Part 10.

(2) In addition to complying with the requirements under rules 51 *[application hearing date must be obtained]* and 52 *[notice of application]*, a party bringing an application under subrule (1) must attach to the notice of application a bill of costs in Form 30.

(3) The registrar may order a party to give notice of an assessment of costs to a person whose interests could be affected by the assessment, including a person who has an interest in a fund or an estate.

Applying to court for directions on costs

38 (1) After judgment on appeal has been given, a party may apply to the court for directions under section 45 *[powers of the court or a justice in relation*

to costs] of the Act if the parties to the appeal disagree on matters in relation to costs.

(2) To bring an application under subrule (1), a party must

(a) submit a written request to the registrar that includes

(i) a summary of the disagreement and the party's position on the disagreement, and

(ii) a proposed schedule for submissions by the parties or a request for the registrar to arrange a timetable for submissions by the parties, and

(b) provide a copy of the written request to each party.

PART 7 – MANAGING THE APPEAL PROCESS

Division 1 – General

Dispensing with a rule or extending a time limit

39 A person may apply to a justice to do one or more of the following under section 32 *[dispensing with rules and varying time limits]* of the Act:

(a) dispense with any requirement of these rules;

(b) extend the time limit provided in these rules for doing an act.

Attendance through telecommunications

40 (1) The court, a justice or the registrar may allow a party to attend a hearing or case management

(a) by telephone or video conference, or

(b) if permitted by the chief justice, using another means of telecommunication.

(2) A party who wishes to attend a hearing or case management through a means of telecommunication set out in subrule (1) must do the following at least 2 business days before the date set for the hearing or case management:

(a) submit to the registrar a written request explaining the party's reason for requesting to attend remotely;

(b) serve on each party a copy of the written request.

Having appeal heard by more than 3 justices

41 (1) A party may request that an appeal be heard by more than 3 justices by doing the following at least 6 weeks before the appeal hearing date:

(a) submitting a written request to the registrar;

(b) serving a copy of the written request on each party.

(2) A party may oppose a written request under subrule (1) by doing the following within 5 days of being served the written request:

(a) submitting a written response to the registrar;

(b) serving on each party a copy of the written response.

Cross examination on affidavits

42 (1) A party to an appeal may apply to the court or a justice to cross-examine a deponent of an affidavit filed in relation to the appeal by another party or an intervener.

(2) On an application under subrule (1), the court or a justice may order that the deponent attend for cross-examination before a commissioner for taking affidavits specified by the court or justice.

(3) A cross-examination of a deponent must occur before the hearing of the appeal or application for which the deponent's affidavit was filed.

Adjourning an appeal

43 (1) A party must notify the registrar immediately if, after a hearing date has been set for an appeal or application,

(a) the party wishes to adjourn the appeal, or

(b) all the parties agree that the appeal should be adjourned.

(2) A party who wishes to adjourn an appeal within 3 weeks before the appeal hearing date must submit to the registrar a written request for the adjournment.

Abandoning an appeal or application for leave to appeal

44 If an appeal or application for leave to appeal is abandoned, because of settlement or for any other reason, the appellant must immediately

(a) file a notice of abandonment in Form 22, and

(b) serve on each party a copy of the filed notice of abandonment.

Division 2 – Case Management

Case management

45 (1) A party may request that an appeal be referred to case management by

(a) submitting a written request to the registrar, and

(b) serving on each party a copy of the written request.

(2) A justice or the registrar may, on request of a party or on the justice's or registrar's own initiative, do one or both of the following:

(a) direct that the parties attend case management before a justice or the registrar, either

(i) in person, or

(ii) by telecommunication, as referred to in rule 40 (1) *[attendance through telecommunications]*;

(b) direct that case management be conducted in writing.

(3) A party must participate in case management as directed under subrule (2).

(4) Despite subrule (3), a party is not required to attend case management before a justice or the registrar if the party's lawyer attends.

Powers of a justice on case management

46 (1) During case management for an appeal, a justice may make orders or give directions, with or without a party making an application, for the purposes of managing the conduct of the appeal, including the following:

(a) simplifying or isolating issues on appeal;

(b) setting the time for the hearing of the appeal;

(c) setting a schedule for the steps required to bring the appeal to hearing;

(d) requiring that 2 or more appeals be heard together;

(e) permitting substitutional service;

(f) allowing a factum to include additional pages;

(g) requiring that monies be paid in and out of court;

(h) amending, in any manner, any materials filed in the court;

(i) granting permission to hear an application on shorter notice than otherwise required under these rules;

(j) granting cross-examination on an affidavit;

(k) settling the contents of an appeal record, appeal book, transcript or transcript extract.

(2) During case management, a justice or the registrar may refer a matter to be heard by the court or a justice in chambers if the justice or registrar considers it to be in the interests of justice.

Division 3 – Inactive Appeals

Inactive appeal list

47 (1) The registrar must, in accordance with this Division, maintain a list of appeals that are inactive.

(2) If the registrar places an appeal on, or removes an appeal from, the inactive appeal list, any application for leave to appeal that relates to the appeal is also placed on or removed from the inactive appeal list, respectively.

(3) An appellant may not file any document in relation to an appeal or application for leave to appeal that is on the inactive appeal list unless the document relates to an application for leave to proceed with the appeal.

Managing inactive appeal list

48 (1) The registrar must place an appeal on the inactive appeal list if any of the following occur:

(a) a notice of hearing for the appeal is not filed, in accordance with these rules, within

(i) one year after the notice of appeal was filed for the appeal, or

(ii) 60 days after the appeal is ready for hearing;

(b) the appeal, or an application for leave to appeal that relates to the appeal, stands adjourned generally for 180 consecutive days.

(2) The registrar must remove an appeal from the inactive appeal list if a justice grants leave to proceed with the appeal.

(3) The registrar must return an appeal to the inactive appeal list if either of the following occurs:

(a) a party fails to comply with the terms or conditions imposed, or directions given, by a justice in an order granting leave to proceed under subrule (2);

(b) a notice of hearing in relation to the appeal is not filed within 180 days of a justice granting leave to proceed under subrule (2).

(4) If the registrar places an appeal on, or returns an appeal to, the inactive appeal list, the registrar must provide notice to each party to the appeal who has provided an address for service.

Division 4 – Dismissal of Appeals as Abandoned

Appeals that are dismissed as abandoned

49 (1) For the purposes of section 23 of the Act, an appeal or application for leave to appeal is dismissed as abandoned if it remains on the inactive appeal list for 180 consecutive days.

(2) Unless a justice orders otherwise, an appeal that is dismissed as abandoned under subrule (1) may not be reinstated.

PART 8 – APPLICATIONS

Division 1 – General Requirements for Bringing and Responding to Applications

Application of general requirements in this Division

50 (1) Subject to subrule (2), the requirements in this Division apply to every application made to the court, a justice or the registrar.

(2) The requirements in this Division do not apply to the following applications:

(a) an application for leave to appeal under rule 9 *[how to apply for leave to appeal]*;

(b) an application for a stay of proceedings or stay of execution under rule 16 *[party may apply for stay of proceedings or execution]*;

(c) an application referred to in Division 2 of this Part.

Application hearing date must be obtained

51 Before filing a notice of application or any other document for the purposes of commencing an application, a party who wishes to bring an application must obtain an application hearing date from the registrar.

Notice of application

52 A party who wishes to bring an application must, at least 5 business days before the application hearing date,

(a) file the following materials:

(i) a notice of application in Form 6;

(ii) the party's supporting affidavits, if any, in Form X;

(iii) the party's written argument, if any, and

(b) serve on each party

(i) a copy of the filed notice of application, and

(ii) if applicable, a copy of each filed affidavit and the filed written argument.

Responding to applications

53 A party who is served a notice of application may respond to the notice by doing the following at least 2 business days before the application hearing date:

(a) filing the following materials:

(i) an affidavit in opposition in Form X;

(ii) the party's supporting affidavits, if any, in Form X;

(iii) the party's written argument, if any;

(b) serving on each party a copy of each filed affidavit and the filed written argument, as applicable.

Division 2 – Specific Requirements for Bringing and Responding to Certain Applications

Urgent applications

54 (1) In this rule, **"short notice application"** means an application made under subrule (2) for permission to bring another application on shorter notice.

(2) In case of urgency, a person may apply for permission to bring an application on shorter notice than otherwise required under these rules by

(a) obtaining an application hearing date from the registrar, and

(b) filing a short notice application in Form X.

(3) On a short notice application, a justice or the registrar may do one or more of the following:

(a) order that an application be heard on shorter notice than otherwise required under these rules, including

(i) setting the date for hearing the application, and

(ii) setting the date by which a document in relation to the application must be filed and served;

(b) impose conditions or give directions related to the short notice application, including that notice be given to another party.

(4) If an order is made under subrule (3), the party who brought the short notice application must serve notice of the order on each party.

Payment of security

55 (1) A party who wishes to apply for an order for payment into court of security under section 34 *[payment of security]* of the Act must

(a) obtain an application hearing date from the registrar, and

(b) do the following at least 5 business days before the application hearing date:

(i) file the following materials:

(A) a notice of application in Form 6;

(B) an application book in Form X;

(C) the party's supporting affidavits, if any, in Form X;

(D) the party's written argument, if any;

(ii) serve on each party

(A) a copy of the filed notice of application,

(B) a copy of the filed application book, and

(C) if applicable, a copy of each filed affidavit and the filed written argument.

(2) A party who is served a notice of application referred to in subrule (1) may reply to the application by doing the following at least 2 business days before the application hearing date:

(a) filing the following materials:

(i) a response book in Form 17;

(ii) the party's supporting affidavits, if any, in Form X;

(iii) the party's written argument, if any;

(b) serving on each party

(i) a copy the filed response book, and

(ii) if applicable, a copy of each filed affidavit and the filed written argument.

Adducing fresh or new evidence

56 (1) A party who wishes to apply for leave to adduce evidence that was not before the court appealed from must do the following at least 30 days before the appeal hearing date:

(a) if the party intends for the application to be heard before the time of the hearing of the appeal, obtain an application hearing date from the registrar;

(b) file the following materials:

(i) a notice of application in Form 6;

(ii) a supporting affidavit, in Form X, that includes the evidence that the party is seeking to adduce;

(iii) the party's other supporting affidavits, if any, in Form X;

(iv) the party's written argument, if any;

(c) serve on each party

(i) a copy of the filed notice of application,

(ii) a copy of each filed affidavit, and

(iii) if applicable, a copy of the filed written argument.

(2) A party who is served an application for leave to adduce evidence may respond to the application by doing the following at least 7 business days before the application hearing date:

(a) filing the materials described in rule 53 (a) *[responding to applications]*;

(b) serving, in accordance with rule 53 (b), a copy of those filed materials.

(3) Unless a justice or the registrar orders otherwise, an application brought under this rule must be heard at the time of the hearing of the appeal.

Quashing an appeal or raising a preliminary objection

57 (1) This rule applies to an application to do one or more of the following:

(a) strike part of a factum;

(b) raise a preliminary objection to an appeal;

(c) quash an appeal before it is heard.

(2) A party who wishes to apply to do anything referred to in subrule (1) must do the following at least 7 days before the application hearing date:

(a) obtain an application hearing date from the registrar;

(b) file a notice of application and other materials described in rule 52 (a) *[notice of application]*;

(c) serve, in accordance with rule 52 (b), a copy of the filed notice of application and other filed materials.

(3) A party who is served an application referred to in subrule (2) may respond to the application by doing the following at least 2 business days before the application hearing date:

(a) filing the materials described in rule 53 (a) *[responding to applications]*;

(b) serving, in accordance with rule 53 (b), a copy of those filed materials.

(4) Unless a justice or the registrar orders otherwise, an application under this rule must be heard at the time of the hearing of the appeal.

Intervener status

58 (1) A person, other than a party, interested in an appeal may apply to a justice for leave to intervene in the appeal.

(2) To apply for leave to intervene in an appeal, a person must do the following no later than 14 days after the appellant files the appellant's factum:

(a) obtain an application hearing date from the registrar;

(b) file the following materials:

(i) a notice of application in Form 6;

(ii) a memorandum of argument in Form 10, not exceeding 10 pages;

(c) serve on each party

(i) a copy of the filed notice of application, and

(ii) a copy of the filed memorandum of argument.

(3) In making an order granting leave to intervene, a justice

(a) must specify the date on which the intervener's factum is due, and

(b) may make any other order the justice considers appropriate to accommodate the intervener's participation in an appeal, including

(i) limiting the issues on which the intervener may intervene,

(ii) requiring the parties to serve documents on the intervener as though the intervener was a party, and

(iii) requiring the intervener to pay additional costs incurred by any party as a result of the intervention.

(4) Unless a justice orders otherwise, an intervener's factum

(a) must be filed in Form 10(e), and

(b) must not exceed 10 pages.

(5) An intervener may not present oral argument during the hearing of an appeal, unless a justice orders otherwise.

Vary an order of a justice

59 (1) A party who wishes to apply to have the court, under section 29 *[varying orders of a justice]* of the Act, vary an order made by a justice must do the following within 7 days after the order is made:

(a) obtain an application hearing date from the registrar;

(b) file the following materials:

(i) a notice of application to vary an order of a justice in Form 15;

(ii) the party's supporting affidavits, if any, in Form X;

(iii) the party's written argument, if any;

(c) serve on each party

(i) a copy of the filed notice of application to review an order of a justice, and

(ii) if applicable, a copy of each filed affidavit and the filed written argument.

(2) A party who files a notice of application under subrule (1) must, within 14 days after filing the notice of application,

(a) file an application book in Form 16, and

(b) serve on each party a copy of the filed application book.

(3) A party who wishes to respond to an application book under subrule (2) must do the following within 7 days of being served the application book:

(a) file the following materials:

(i) a response book in Form 17;

(ii) the party's supporting affidavits, if any, in Form X;

(iii) the party's written argument, if any;

(b) serve on each party

(i) a copy of the filed response book, and

(ii) if applicable, a copy of each filed affidavit and the filed written argument.

(4) The date and time for the hearing of an application under this rule must be a date and time set by the registrar.

Varying or cancelling an order of the registrar

60 (1) In this rule, **"order"** includes a certificate of costs issued by the registrar.

(2) A party who wishes to apply to have a justice, under section 35 *[varying orders of the registrar]* of the Act, vary or cancel an order or direction of the registrar must do the following within 7 days after the order was made or direction given:

(a) obtain an application hearing date from the registrar;

(b) file the notice of application and other materials described in rule 52 (a) *[notice of application]*;

(c) serve, in accordance with rule 52 (b), a copy of the filed notice of application and other filed materials.

(3) A party who is served a notice of application referred to in subrule (2) may respond to the application by doing the following at least 2 business days before the application hearing date:

(a) filing the materials described in rule 53 (a) *[responding to applications]*;

(b) serving, in accordance with rule 53 (b), a copy of those filed materials.

Division 3 – Application Hearings

Attendance at application hearings

61 (1) Each party to an application must attend the hearing of the application,

(a) in person, or

(b) if permitted under rule 40 *[attendance through telecommunications]*, by telecommunication.

(2) Despite subrule (1), a party is not required to attend the hearing of an application if the party's lawyer attends.

Adjourning applications before hearing date

62 (1) Before the hearing date of an application,

(a) the party bringing the application may seek to adjourn the hearing by filing a requisition in accordance with this rule, or

(b) with the consent of the party bringing the application, a party responding to the application may seek to adjourn the hearing by filing a requisition in accordance with this rule.

(2) A requisition referred to in subrule (1) must be

(a) completed in Form X, and

(b) filed before 2 p.m. of the business day before the application hearing date.

(3) Unless a justice or the registrar directs otherwise, an application stands adjourned if a requisition in respect of the application is filed in accordance with subrule (1) and (2).

(4) For certainty, if an application does not stand adjourned under subrule (3),

(a) the parties must attend the hearing of the application, and

(b) a party may request an adjournment at that hearing.

(5) If the hearing of an application is adjourned under this rule without setting a new application hearing date, the party bringing the application may set a new application hearing date by

(a) filing a requisition in Form X setting out the date and time of the hearing, and

(b) serving on each party to the application, at least 5 business days before the application hearing date, a copy of the filed requisition.

PART 9 – ORDERS

General requirements for orders

63 (1) An order of the court or a justice must be

(a) drawn in the form required under subrule (3),

(b) dated as of the date the order is pronounced,

(c) approved in writing by each party or lawyer of record, unless the court, a justice or the registrar directs otherwise, and

(d) submitted to the court and entered after it is completed and approved in accordance with paragraphs (a) to (c).

(2) For the purpose of subrule (1) (a), an order may be drawn by

(a) a party, or

(b) the registrar, if and as directed by the court or a justice.

(3) An order must be in the following form:

(a) in the case of an order of a justice, Form 25;

(b) in the case of an order resulting from a decision made by 3 or more justices, Form 23;

(c) in the case of an order resulting from an application to review an order of a justice, Form 25.1.

(4) The registrar must keep all entered orders, in accordance with any directions given by the chief justice.

Consent orders

64 (1) A consent order must not be entered unless the consent of each party affected by the order is demonstrated by the party or the party's lawyer

(a) orally before the court, a justice or the registrar, or

(b) in writing.

(2) A party seeking one of the following consent orders must file a draft of the order in the following form:

(a) in the case of an order to extend the time to file a document, Form 26;

(b) in the case of an order to remove from the inactive appeal list an appeal that has not already been removed from the inactive appeal list, Form 27;

(c) in the case of any other consent order, Form 28.

Settling the content of orders

65 (1) If the parties to an appeal do not agree on the form or content of an order, the parties must apply to the registrar to settle the order.

(2) On application under subrule (1), the registrar may settle the form or content of an order, with or without a hearing and whether or not all parties attend the time set for hearing the application.

(3) The registrar may refer a draft order to the division of the court or the justice who made the order.

PART 10 – COSTS

Division 1 – Assessment of Costs

Assessment of ordinary costs

66 (1) In this rule, **"unit"** is a number representing an amount of time that would ordinarily be spent on a matter, as set out in the ordinary costs tariff.

(2) Ordinary costs payable to a party must be assessed in accordance with this rule, regardless of whether those costs are payable

(a) by another party,

(b) out of a fund of other parties, or

(c) out of a fund in which the party whose costs are being assessed has a common interest with other persons.

(3) If a maximum and minimum number of units are provided in an item in the ordinary costs tariff, the registrar may allow a number of units within that range of units.

(4) In making an allowance under subrule (3), the registrar must have regard to the following principles:

(a) the minimum number of units in a range of units is for matters on which little time should ordinarily be spent;

(b) the maximum number of units in a range of units is for matters on which a great deal of time should ordinarily be spent.

(5) The value for each unit allowed on an assessment of ordinary costs is as follows:

(a) in the case of scale A, $110 for each unit;

(b) in the case of scale B, $170 for each unit.

(6) Ordinary costs must be assessed under scale A, unless a justice orders that ordinary costs be assessed under scale B.

(7) In fixing the scale of ordinary costs, a justice

(a) must consider the following principles:

(i) scale A is for matters of ordinary complexity;

(ii) scale B is for matters of unusual complexity or importance, and

(b) may consider the following:

(i) whether a difficult issue of law, fact or construction is involved;

(ii) whether an issue is of importance to a class or body of persons, or is of general interest.

Assessment of increased costs

67 (1) At any time before the costs of an appeal are assessed, a justice may order costs to be assessed as increased costs if the justice determines

that assessment under the ordinary cost tariff would create an unjust result.

(2) If costs are ordered to be assessed as increased costs, the registrar must

(a) fix the fees that would have been allowed if an order for special costs had been made under rule 68 (1), and

(b) allow as costs

(i) half of those fees, or

(ii) a different proportion of those fees, as ordered by the court or a justice.

Assessment of special costs

68 (1) A justice may order that costs be assessed as special costs.

(2) If costs are ordered to be assessed as special costs, the registrar must allow each fee that the registrar determines was proper or reasonably necessary to conduct the proceeding to which the fee relates.

(3) In making a determination under subrule (2), the registrar must consider all of the circumstances, including the following:

(a) the complexity of the proceeding;

(b) the difficulty or novelty of the matters involved;

(c) the amount involved in the proceeding;

(d) the time reasonably spent in conducting the proceeding;

(e) the importance of the proceeding, or of the result obtained, to the party whose costs are being assessed;

(f) the benefit, to the party whose costs are being assessed, of the services rendered by the party's lawyer;

(g) the skill, specialized knowledge and responsibility required of the lawyer of the party whose costs are being assessed;

(h) any party's conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding.

(4) A party may render a bill for special costs as a lump sum.

(5) A bill for special costs rendered as a lump sum must include the following information in sufficient detail for a lawyer to advise a client about the reasonableness of the charges made:

(a) a description of the nature of the services rendered;

(b) a description of the matters involved.

(6) A party to an assessment of a bill for special costs, or a review of a lump sum bill for special costs, may submit as evidence an opinion of a lawyer respecting

(a) the nature and importance of the services rendered,

(b) the matters involved, and

(c) the reasonableness of the charges made.

(7) A party must not submit the opinions of more than 2 lawyers under subrule (6).

(8) The registrar may require a lawyer giving an opinion under subrule (6) to attend at an assessment for examination or cross-examination.

Assessment of fees, disbursements and expenses

69 (1) The registrar must allow the following on an assessment of fees, disbursements and expenses for a proceeding:

(a) court fees, paid under rule 85 *[payment of court fees]*, that were proper or reasonably necessary to conduct a proceeding;

(b) a reasonable amount for expenses and disbursements that were necessarily or properly incurred in the conduct of a proceeding.

(2) If tax is payable by a party in respect of legal services, the tax must be included in the total of any assessed fees or disbursements.

Costs for preparation for activities that do not take place

70 The registrar may allow units set out in the ordinary costs tariff, up to the maximum number allowable, for the following:

(a) preparation of materials that are not ultimately used in a proceeding;

(b) preparation for an application, conference or hearing that does not ultimately take place or is adjourned.

Costs owing between multiple parties

71 (1) If a party is entitled to receive costs from and liable to pay costs to another party, the registrar may do one or more of the following:

(a) assess the costs each party is liable to pay;

(b) adjusts the costs by way of reduction or set-off;

(c) delay the allowance of the costs that the party is entitled to receive until the party has paid or tendered the costs that the party is liable to pay.

(2) If the costs claimed by a party against a second party ought to be paid by a third party, the registrar may do one or more of the following:

(a) order that payment be made to the first party directly by the third party;

(b) order the second party to pay the costs to the first party and allow the second party to claim that payment as a disbursement against the third party;

(c) make any other order the registrar considers appropriate to reapportion costs between the parties.

Combining costs of multiple appeals

72 (1) The registrar may take action under subrule (2) if

(a) 2 or more appeals have, by order, been heard at the same time or one after another, and

(b) no order has been made to apportion costs of the appeals.

(2) In the circumstances referred to in subrule (1), the registrar may do one or more of the following:

(a) assess 2 or more bills of costs as a single bill of costs;

(b) allow an item in a bill of costs more than once;

(c) apportion the costs of an item in a bill of costs, or the entire bill of costs, between the appeals.

Division 2 – Offers to Settle Costs

Offers to settle costs

73 (1) Before the registrar makes an assessment of costs, a party may serve on another party, in Form 32, an offer to settle the amount of a bill of costs.

(2) At the conclusion of a hearing on the assessment of costs, a party may submit to the registrar an offer to settle that was served under subrule (1).

(3) The registrar may do one or more of the following if the registrar determines that an offer to settle should have been accepted:

(a) if the offer to settle was made by the party whose costs were assessed, allow twice the value of an item in the ordinary costs tariff, or of a fee, that relates to the assessment;

(b) if the offer to settle was rejected by the party whose costs were assessed,

(i) disallow to that party an item in the ordinary costs tariff, or a disbursement, that relates to the assessment, or

(ii) allow by way of set-off, to the party who made the offer to settle, an item in the ordinary costs tariff, or a disbursement, that relates to the assessment;

(c) fix an amount of costs that the registrar considers fair in the circumstances.

Division 3 – Certificates of Costs

Certificates of costs

74 For the purposes of section 46 (2) *[powers of the registrar in relation to costs]* of the Act, the registrar must issue a certificate of costs in Form 31

(a) on the conclusion of an assessment of costs, or

(b) if the party liable to pay costs has consented to the assessed amount.

Division 4 – Costs Orders Against Lawyers

Costs orders against lawyers

75 (1) If a justice determines that a party's lawyer caused costs to be incurred without reasonable cause or to be wasted through delay, neglect or some other fault, the justice may do one or more of the following:

(a) disallow any fees and disbursements between the lawyer and the party;

(b) if fees or disbursements have been paid by the party to the lawyer, order the lawyer to repay all or part of them to the party;

(c) order the lawyer to indemnify the party for all or part of any costs that the party has been ordered to pay to another party;

(d) make any other order that the justice considers appropriate.

(3) If a justice makes an order under subrule (2), the justice may

(a) direct the registrar to conduct an inquiry and file a report with recommendations as to the amount of costs, or

(b) fix the costs, with or without reference to the ordinary costs tariff.

(4) A justice may not make an order under this rule against a lawyer unless the lawyer is present or has been given notice.

(5) A lawyer against whom an order has been made under this rule must promptly deliver a copy of the order to the party represented by the lawyer, whether or not the lawyer continues to represent the party.

PART 11 – COURT DOCUMENTS

Division 1 – General

Required form of documents

76 (1) In this rule, **"court form"** means a document described in column 1 of the table in Schedule 2.

(2) All documents filed in, or otherwise submitted to, the court must be

(a) in English, and

(b) if the document is in paper form, legibly printed or typewritten on durable white paper having dimensions of 21.5 cm by 28 cm.

(3) A court form must be

(a) prepared and filed using the type of form set out opposite the court form in column 2 of the table in Schedule 2, and

(b) completed in accordance with any instructions included on the court form.

(4) Unless otherwise provided in these rules or in a court form,

(a) handwritten signatures are not required on documents filed with or submitted to the court, and

(b) documents submitted for filing must contain the name of the person who completed the document.

(5) The registrar may refuse to accept a document for filing if the document does not comply with these rules.

Amending filed documents

77 (1) Subject to subrules (2), (3) and (4), a document that has been filed with the court may be amended by a person only with the permission of the court or a justice.

(2) An appellant may amend the appellant's notice of appeal without permission of the court or a justice as follows:

(a) an appellant who is not required to apply for leave to appeal may amend a notice of appeal before filing the appellant's factum;

(b) an appellant who is required to apply for leave to appeal may amend a notice of appeal before filing, as applicable,

(i) the related application book for leave to appeal, or

(ii) the related application book for leave to appeal and stay.

(3) A respondent may amend the respondent's notice of cross appeal without permission of the court or a justice as follows:

(a) a respondent who is not required to apply for leave to appeal may amend a notice of cross appeal before filing the respondent's cross appeal factum;

(b) a respondent who is required to apply for leave to appeal may file a notice of cross appeal before filing, as applicable,

(i) the related application book for leave to appeal, or

(ii) the related application book for leave to appeal and stay.

(4) A party may, no later than 4 weeks before the appeal hearing date, file an amended factum without permission of the court or a justice if

(a) the party changes lawyers or discharges a lawyer in order to act on the party's own behalf, and all the parties consent to the amended factum being filed, or

(b) the registrar permits the amended factum to be filed.

Registrar directives – manner of filing documents

78 (1) For the purposes of section 38 *[directives in relation to filing]* of the Act and without limiting the generality of that section, the registrar may issue directives requiring that any document under these rules be filed

(a) in either paper or electronic form, or

(b) in both paper and electronic form.

(2) If a directive of the registrar under section 38 of the Act specifies the number of copies of a document that must be filed, the number specified in the directive applies regardless of whether these rules

(a) specify a different number of copies that must be filed, or

(b) are silent on the number of copies that must be filed.

Division 2 – Service of Documents

Parties must have address for service

79 (1) Each party must have, and must include on each document that is filed by or on behalf of the party, at least one address for service in British Columbia that is one of following:

(a) the office address of the party's lawyer of record;

(b) a residential address or business address within British Columbia, other than a post office box;

(c) if permitted by a justice or the registrar, a residential address or business address outside of British Columbia, other than a post office box;

(d) an e-mail address for service.

(2) To apply for permission under subrule (1) (c) to use a residential address or business address for service outside of British Columbia, a party must submit a written request to the registrar.

Permitted methods of service

80 (1) Any document, other than a notice of appeal or notice of application for leave to appeal, may be served on a party by

(a) serving the party personally,

(b) serving the party's lawyer of record on an appeal,

(c) if the party has filed a document containing an address of service,

(i) delivering the document to the party's address for service,

(ii) sending the document to the party's email address for service, or

(iii) faxing the document to the fax number included in the party's address for service, provided that the fax includes a cover memo in Form 20, or

(d) serving the party in any other manner directed by a justice or the registrar.

(2) In addition to the methods of service described in subrule (1), a notice of cross appeal may be served on an appellant by serving it on the lawyer who filed the notice of appeal to which the cross appeal relates.

(3) A notice of appeal or notice of application for leave to appeal must be served on a respondent by

(a) serving the respondent personally,

(b) serving the respondent's lawyer of record in the court appealed from, or

(c) serving the respondent in any other manner directed by a justice or the registrar.

(4) A document transmitted for service by email or fax is deemed to be served as follows:

(a) if the document is transmitted at or before 4 p.m. on a business day, the document is deemed to be served on that day;

(b) if the document is transmitted at either of the following times, the document is deemed to be served on the next business day:

(i) after 4 p.m. on a business day;

(ii) on a day other than a business day.

Party may show service ineffective

81 (1) This rule applies to the following applications:

(a) an application to set aside the consequences of default;

(b) an application for an extension of time;

(c) an application in support of a request for an adjournment.

(2) Even though a document has been served in accordance with rule 80, a person may show, on an application referred to in subrule (1), that

(a) the document did not come to the person's notice,

(b) the document did come to the person's notice, but later than when it was served or effectively served, or

(c) the document was incomplete or illegible.

Division 3 – Electronic Filing

Interpretation and application

82 (1) In this Division:

"electronic document" means a document that has been transmitted for filing electronically;

"electronic services agreement" means an agreement, with the Court Services Branch of the Ministry of Attorney General, that governs the terms and conditions under which a document may be filed electronically with, and accessed electronically from, a registry of the court.

(2) The following Rules of Court apply to an affidavit filed under this Division:

(a) Rule 22-2 of the Supreme Court Civil Rules, B.C. Reg. 168/2009;

(b) Rule 10-4 of the Supreme Court Family Rules, B.C. Reg. 169/2009.

(3) This Division applies in the event of a conflict between this Division and

(a) another rule in these rules, or

(b) a rule referred to in subrule (2).

Filing electronic documents

83 (1) A person who is a party to an electronic services agreement may electronically transmit a document to a registry for filing if

(a) the document is accompanied by payment of the applicable filing fees,

(b) the document is submitted for filing in accordance with the terms and conditions of the person's electronic services agreement, and

(c) a directive of the registrar under section 38 *[directive in relation to filing]* of the Act provides that the document may be filed electronically.

(2) A person who transmits for filing electronically an affidavit or other signed document for evidentiary purposes must

(a) clearly identify the signatory of the affidavit or signed document, and

(b) submit with the affidavit or signed document an electronic filing statement in Form 33 completed by the person or, if the person is represented by a lawyer, the lawyer of the person.

(3) For the purposes of these rules, other than subrule (2), a document submitted for electronic filing under an electronic services agreement is deemed to have been originally signed if it has been electronically authenticated in accordance with the electronic services agreement.

(4) A document accepted by the registrar for electronic filing is deemed to have been filed on the following date:

(a) if the document was received by the registry at or before 4 p.m. on a day that the registry is open for business, that day;

(b) if the document was received by the registry after 4 p.m. or on a day that the registry is not open for business, the next day that the registry is open for business.

PART 12 – GENERAL

Division 1 – Registry Administration

Registry hours

84 The court registry must be kept open to the public

(a) between 9 a.m. and 4 p.m. on each business day, and

(b) any additional time or day, as directed by the registrar.

Division 2 – Court Fees

Payment of court fees

85 (1) In this rule, **"table of fees"** means

(a) the table in Schedule 3, as enacted or most recently amended by the Lieutenant Governor in Council, or

(b) if an amended table is published by the Registrar of Regulations under Division 2 of Schedule 3 after the table in Schedule 3 is enacted or amended by the Lieutenant Governor in Council, the most recently published amended table.

(2) For any matter described in Column 1 of the table of fees, the fee set out opposite in Column 2 must be paid to government.

(3) The fees in the table of fees must be recalculated at the frequency set out in, and in accordance with, Schedule 2.

Order that no fees payable

86 (1) On application by a party, a justice may order that the party is relieved from paying fees under rule 85 in relation to an appeal or application for leave to appeal if the justice determines that the party cannot afford to pay those fees without undue hardship.

(2) In addition to complying with the requirements under rules 51 *[application hearing date must be obtained]* and 52 *[notice of application]*, a party bringing an application under subrule (1) must do the following when the party files and serves a notice of application under Rule 52:

(a) file an affidavit for no fees payable in Form 19 in support of the application;

(b) serve on each party a copy of each filed affidavit.

(3) A justice may make an order under subrule (1) before or after a notice of appeal or application for leave to appeal is filed.

(4) A justice must not make an order under subrule (1) if the justice determines that the appeal or application for leave to appeal

(a) lacks merit,

(b) is scandalous, frivolous or vexatious, or

(c) is otherwise an abuse of the process of the court.

Division 3 – Appointing and Changing Lawyers

Party appointing or changing lawyer

87 (1) A party who is not represented by a lawyer in an appeal may engage a lawyer to act for the party by filing a notice of appointment or change of lawyer in Form X.

(2) A party who is represented by a lawyer in an appeal may

(a) change to a different lawyer by filing a notice of appointment or change of lawyer in Form X, or

(b) discharge the lawyer and act on the party's own behalf by filing a notice of intention to act in person in Form X.

Lawyer withdrawals

88 (1) If a lawyer ceases to act for a party in an appeal, and the party fails to file a notice described in rule 87 (2), the lawyer may withdraw from the appeal by

(a) filing a notice of intention to withdraw in Form X, and

(b) serving on each party a copy of the notice of intention to withdraw.

(2) A party who is served a notice of intention to withdraw under subrule (1) (b) may object to the withdrawal by doing the following within 7 days after being served:

(a) filing an objection in Form X;

(b) serving a copy of the filed objection on the lawyer who filed the notice of intention to withdraw.

(3) If no party files an objection to a withdrawal under subrule (2) (a), the lawyer who filed the notice of intention to withdraw may file and serve a notice of withdraw of lawyer by doing the following:

(a) filing a notice of withdraw of lawyer in Form X;

(b) serving on each party a copy of the filed notice of withdraw of lawyer.

(4) If a party files an objection to a notice of intention to withdraw under subrule (2) (a), the lawyer who filed the notice of intention to withdrawal may apply for an order that the lawyer cease to act for the party to whom the notice of intention to withdraw relates.

(5) A lawyer who brings an application under subrule (4) must serve notice of the application on each party who filed the objection.

When a lawyer is the lawyer of record

89 (1) A lawyer appointed by a party under rule 87 (1) or (2) (a) is deemed to be the party's lawyer of record for a proceeding, unless the notice of appointment or change of lawyer indicates that the lawyer is acting in a limited scope.

(2) For the purposes of these rules, a lawyer ceases to be a party's lawyer of record when any of the following occurs:

(a) the party files

(i) a notice of appointment or change of lawyer under rule 87 (2) (a), for the purposes of changing to a different lawyer, or

(ii) a notice of intention to act in person under rule 87 (2) (b);

(b) the lawyer serves a notice of withdraw of lawyer under rule 89 (3) on each party to the appeal;

(c) an order is made under rule 89 (4) that the lawyer ceases to act for the party.

(3) Until a lawyer ceases to be a party's lawyer of record under subrule (2), another party may continue to serve documents on the lawyer as though the lawyer continues to be the party's lawyer of record.

Division 4 – Practice Directives

Practice directives

90 The court may issue practice directives to regulate and control its procedure.

SCHEDULE 1 – ORDINARY COSTS TARIFF

Item	Column 1 **Description**	Column 2 **Units**
1	Advising appellant or respondent on bringing appeal, application for leave to appeal or cross-appeal.	Minimum 5 Maximum 20
2	Preparation of appeal record	2
3	Preparation of appeal book(s):	
	(a) 1 – 5 volumes;	5
	(b) 6 – 10 volumes;	7
	(c) 11 or more volumes:	10
4	Preparation of motion book including written argument.	5
5	Preparation of factum.	Minimum 10 Maximum 50
6	Preparation of written argument if specifically ordered by the court or a justice or directed by the registrar.	5
7	Preparation of any application before the court, a justice or the registrar, except where otherwise provided.	5
8	Attendance at any application before the court, a justice or registrar, except where otherwise provided.	5
9	Preparation for hearing of appeal, per half day.	Minimum 10 Maximum 30
10	Attendance at hearing of appeal, per half day.	10
11	Preparation of bill of costs, except where settled by the registrar.	2
12	Preparation and entry of each order, including each application to settle an order before the registrar.	2

SCHEDULE 2 – COURT FORMS

This Schedule is intentionally left blank for the purposes of this document.

SCHEDULE 3 – COURT FEES

Division 1 – Fee Table

Item	Column 1 **Description**	Column 2 **Fee ($)**
1	For filing a notice of appeal	200
2	For filing an application to be heard by a justice excluding an application for leave to appeal, but including an application to review the decision of a justice denying an application for an order that no fees are payable	80
3	For filing an application to be heard by 3 or more justices if the application is not returnable to the hearing of the appeal, including an application to review the decision of a justice denying an application for an order that no fees are payable	80
4	For filing a notice of hearing	200
5	For each half day spent in whole or in part on the hearing of an appeal, excluding the first half day, unless the hearing is for judgment only, payable by the party who files the certificate of readiness, unless the court orders payment by another party	250
6	For filing any application for a hearing before a registrar	80
7	For taking or swearing an affidavit for use in the court unless (a) the deponent swears the affidavit in the course of the deponent's duties as a peace officer or as an agent or officer of the Province, (b) the affidavit is sworn for the purpose of enforcing a maintenance or support order, or (c) provision is made elsewhere for a fee for that service	40
8	For a search of a record, other than (a) an electronic search conducted from outside the registry, or (b) a search of a record of a proceeding by (i) a party to that proceeding, (ii) a party's lawyer, or (iii) an official reporter who, or a representative of a transcription firm that, is retained by a party to produce a transcript of the proceeding	8
9	For returning by mail, fax or email the results of a search of a record	10
10	For accessing from outside the registry, including, without limitation, viewing, printing or downloading, any record that is found by or created in response to an electronic search or request, including, without limitation, an index of cases produced in response to a search query	6
11	For accessing any document referred to in item 10 and purchasing that document	10

Division 2 – Fee Table Recalculations

Recalculating court fees

1 (1) In this Schedule:

"base CPI" means the number recorded as the "All-items Index" for British Columbia in the publication prepared for April 2010 under the *Statistics Act* by the director;

"base fee", in relation to an item in the table of fees, means the amount set out in column 2 of the item;

"current CPI", in relation to any year in which fees are recalculated under subsection (2), means the number recorded as the "All-items Index" for British Columbia for April of that year in the publication prepared for that year under the *Statistics Act* by the director;

"director" means the director as defined in the *Statistics Act*;

"table of fees" means the table in Division 1 of this Schedule, as enacted or most recently amended by the Lieutenant Governor in Council.

(2) In 2020, and in every second year after that, the chief administrator of court services must recalculate, or cause to be recalculated, each fee in column 2 of each item in the table of fees as follows:

(a) first, a preliminary fee for each item must be determined in accordance with the following formula:

preliminary fee = base fee x (current CPI/base CPI)

(b) then, a recalculated fee for each item must be determined in accordance with the following:

(i) if the base fee for the item is $10 or less, the recalculated fee for the item is the preliminary fee for the item rounded to the nearest $1;

(ii) if the base fee for the item is more than $10 and less than $100, the recalculated fee for the item is the preliminary fee for the item rounded to the nearest $5;

(iii) if the base fee for the item is $100 or more, the recalculated fee for the item is the preliminary fee for the item rounded to the nearest $10.

(3) If the amount of a recalculated fee for an item under subsection (2) (b) is different from the fee for the item in the table of fees,

(a) the minister may notify the Registrar of Regulations of the different amount, and

(b) the Registrar of Regulations may

(i) amend the table of fees to substitute the different amount, and

(ii) publish the amended table in Part 2 of the Gazette.

(4) An amendment to the table of fees made under subsection (3) comes into effect 7 days after the amended table is published under that subsection.