

White Paper on Amendments to the Court of Appeal Rules

Purpose

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

Background

In 2019, the Ministry of Attorney General consulted on proposed amendments to the *Court of Appeal Act* ("Act") and Court of Appeal Rules ("Rules"). Feedback from the public consultation was incorporated into the *Court of Appeal Act*, S.B.C. 2021, c – 6 (the "New Act"). The 2019 consultation also informed changes to the proposed amendments to the Rules. The new Act will come into force when the Rules are finalized.

The Ministry is now conducting further engagement on proposed amendments to the Rules and forms. The proposed amendments are intended to clarify existing procedures, create efficiencies, and improve access to justice.

Over the years, amendments have been made to the 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 New provisions have been added, some existing provisions have been repealed and replaced, many practice directives and practice notes have been issued, and modifications have been made to some civil court forms.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 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 Rules are clarified.

Proposed Changes

The proposed changes to the Rules include:

- Reorganizing the content of the Court of Appeal Rules so that all aspects of procedure are found in the Rules:
 - Outlining in the Rules how the powers in the New Act are exercised;
 - Harmonizing the language used in the New Act and the Rules;
 - Simplifying instructions and procedures for all court users; and
 - Incorporating practice directives to reduce the number of places litigants need 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 Rules and forms outlined in the attached appendices. Stakeholders and the public are invited to provide comments, concerns and opinions on the proposed amendments and the package of redesigned court forms. In particular, the Ministry invites comments on newly proposed changes to the Rules for condensed books, no fee applications, and ordinary costs:

- Eliminating the requirement to file separate transcript extract books; parties must prepare condensed books [Rule 37 – Condensed book of evidence and condensed book of authorities],
- Simplifying and streamlining the no fee application process [Rule 85 – Order that no fees payable, and accompanying Form 22 (Application for Order that No Fees are Payable)], and
- Simplifying ordinary costs to two scales, adjusting the tariff of costs to align with the Supreme Court's tariffs, and updating the Tariff of Costs table [Rule 69 - Assessment of ordinary costs; Schedule 1 – Ordinary Costs Tariff]

A full package of revised court forms is included for comment, however the most significant changes are found in revised Form 1 (Notice of Appeal), Form 3 (Notice of Cross Appeal), Form 4 (Notice of Application) and in Forms 18, 19 and 20, which relate to the revised lawyer withdrawal process. Note that all forms will be formatted to permit text entry. See this example in Form 1. When the engagement 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, August 6, 2021**.

Court of Appeal COVID-19 Recovery - Survey

The Court of Appeal has opened a separate **public survey seeking feedback on court operations post-pandemic**. This survey identifies changes implemented as a

result of the COVID-19 pandemic and requests feedback on how court operations should be modified post-pandemic. You can respond to the survey at [BCCourts.ca](https://bccourts.ca) until **4 pm on Friday, July 30, 2021.**

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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 day listed in the definition of “holiday” in the *Interpretation Act*;
 - “**Completion Instructions**” means the instructions for completion of documents issued by the registrar;
 - “**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 a document, means to file the document with the registrar in a registry of the court in accordance with the requirements under these rules or 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 49 (1) [*inactive appeal list*];
 - “**intervener**” means a person who has been granted leave under rule 61 [*intervener status*] to intervene in an appeal;
 - “**ordinary costs tariff**” means the tariff of ordinary costs set out in Schedule 1;
 - “**serve**”, in relation to a document, means to serve the document in accordance with these rules;
 - “**supporting affidavit**” means an affidavit that sets out any facts 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.

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Interpretation – 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 – HOW TO FILE AND SERVE DOCUMENTS

General requirements for filing and serving documents

- 3** Unless a contrary intention appears, if a rule under these rules requires a person to file and serve a document that relates to an appeal, the person must
- (a) file the document, and
 - (b) serve on each party to the appeal a copy of the filed version of the document.

Permitted methods of service

- 4** (1) A notice of 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.
- (2) Any document, other than a notice of 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 for 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, or
 - (d) serving the party in any other manner directed by a justice or the registrar.
- (3) 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) anytime on a day other than a business day.

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Registrar directives – manner of filing documents

- 5** For the purposes of section 38 [*directives in relation to filing*] of the Act and, without limiting the authority of the registrar under that section, the registrar may issue directives
- (a) requiring that any document under these rules be filed
 - (i) in either paper or electronic form, or
 - (ii) in both paper and electronic form, and
 - (b) setting out the number of copies of a document that must be filed.

PART 3 – STEPS AT THE START OF AN APPEAL

Division 1 – Bringing and Responding to an Appeal

How to bring an appeal

- 6** (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 1 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 4 (2) [*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, not more than 30 days 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

- 7** (1) A respondent who is served a notice of appeal and who wishes to participate in the appeal must, not more than 10 days after being served the notice of appeal, file and serve a notice of appearance in Form 2.
- (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

When to bring a cross appeal

- 8** A respondent may only file a notice of cross appeal if the respondent
- (a) has filed a notice of appearance in Form 2,
 - (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.

How to bring a cross appeal

- 9** To bring a cross appeal, a respondent must do the following not more than 15 days after being served a notice of appeal:
- (a) file a notice of cross appeal in Form 3;
 - (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

- 10** (1) To respond to a notice of cross appeal, a respondent to a cross appeal who is not yet a party to the appeal must file and serve a notice of appearance in Form 2 not more than 10 days after being served the notice of cross appeal.
- (2) 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

- 11** 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*];

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- (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 the *Divorce Act* (Canada);
- (d) an order granting or refusing an investigation into a family matter made under section 211 [*orders respecting reports*] 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

- 12** 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;

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- (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

- 13** A party who wishes to bring an application for leave to appeal must
- (a) file and serve a notice of application in Form 4 and an application book for leave to appeal prepared in accordance with the Completion Instructions not more than 30 days after filing the related notice of appeal or notice of cross appeal, as applicable, and
 - (b) obtain an application hearing date that is at least 10 business days after the application for leave to appeal is filed and served.

How to respond to an application for leave to appeal

- 14** (1) A party who wishes to respond to an application for leave to appeal must file and serve a response book for leave to appeal at least 5 business days before the application hearing date.
- (2) A response book for leave to appeal must be prepared in accordance with the Completion Instructions.

Applications for leave that must be heard concurrently

- 15** 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 for leave to appeal
in remainder of appeal**

- 16** A justice may allow an application book for leave to appeal to stand as a substitute for one or more documents that may be filed on an appeal.

Division 4 – Appealing Subsequent Related Orders

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

- 17** (1) In this rule:
- “**party**” means an appellant or an appellant on a cross appeal;
 - “**subsequent related order**” means an order that
 - (a) is made after the order that is under appeal, and
 - (b) involves the same parties and the same cause or matter.
- (2) Subject to subrule (4), if a party has brought an appeal of an order and the court appealed from makes a subsequent related order, the party may bring an appeal of the subsequent related order by taking the steps set out in subrule (3).
- (3) If a party wishes to bring an appeal of a subsequent related order, the party must

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- (a) file an amended notice of appeal, and
- (b) either
 - (i) address the subsequent related order in the party's factum, or
 - (ii) if the factum has already been filed, file and serve an amended factum that addresses the subsequent related order.
- (4) Unless otherwise directed by a justice or the registrar, if a party is filing an amended factum or an amended response factum under this rule,
 - (a) the amended factum must be filed before the filing of a notice of hearing, and
 - (b) the amended response factum must be filed not more than 15 days after being served the amended factum.
- (5) If a notice of hearing has been filed for the appeal of an order, a party may not bring an appeal of a subsequent related order under this rule and must instead appeal the subsequent related order by taking the steps set out in rule 6 *[how to bring an appeal]*.
- (6) Rule 82 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

- 18** (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), 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

- 19** In this Division, “**stay application**” means an application for a stay of proceedings or a stay of execution referred to in rule 20 (1).

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Applying for a stay of proceedings or execution

- 20** (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 in accordance with subrule (4).
- (3) To bring a stay application, a party must file and serve a notice of application in Form 4 and an application book prepared in accordance with the Completion Instructions at least 5 days before the application hearing date.
- (4) To join a stay application with an application for leave to appeal, a party must, instead of bringing an application for leave to appeal under rule 13, file and serve a notice of application in Form 4 and an application book for leave to appeal and stay prepared in accordance with the Completion Instructions
- (a) at least 10 days before the application hearing date, and
 - (b) not more than 30 days after filing the notice of application.

Responding to stay applications

- 21** (1) A party who wishes to respond to a stay application must do one of the following:
- (a) in the case of a stay application that is not joined with an application for leave to appeal, file and serve a response book at least 2 business days before the application hearing date;
 - (b) in the case of a stay application that is joined with an application for leave to appeal, file and serve a response book for leave to appeal and stay at least 5 business days before the application hearing date.
- (2) A response book under this rule must be prepared in accordance with the Completion Instructions for response books.

PART 4 – STEPS AFTER AN APPEAL IS BROUGHT

Division 1 – Appeals That Have Been Brought

When an appeal is brought

- 22** 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

- 23** (1) An appellant must file and serve an appeal record
- (a) not more than 60 days after filing a notice of appeal, or
 - (b) if leave to appeal is required, not more than 60 days after leave to appeal is granted.
- (2) An appeal record must be prepared in accordance with the Completion Instructions for appeal books.

Transcripts of proceedings in court appealed from

- 24** (1) In this rule, “**book of transcripts**” means a book of transcripts that
- (a) includes the transcripts required under subrule (3), and
 - (b) meets the requirements for transcripts set out in subrule (4).
- (2) An appellant must file and serve a book of transcripts
- (a) not more than 60 days after filing a notice of appeal, or
 - (b) if leave to appeal is required, not more than 60 days after leave to appeal is granted.
- (3) Unless a justice or the registrar otherwise orders, a book of transcripts must contain the following transcripts from the proceedings under appeal:
- (a) transcripts of all oral testimony, if any was given;
 - (b) transcripts other than testimony if they are necessary to resolve the issues under appeal.
- (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) The registrar may dispense with a requirement under subrule (4).
- (6) Despite subrule (3), an appellant may exclude any portion of a transcript from a book of transcripts with the agreement of the other parties.

Factums

- 25** (1) An appellant must file and serve an appellant’s factum not more than 30 days after filing the appeal record.
- (2) A respondent must file and serve a respondent’s factum not more than 30 days after being served an appellant’s factum.
- (3) An appellant may reply to a respondent’s factum by filing and serving an appellant’s reply not more than 7 days after being served the respondent’s factum.
- (4) Documents filed under this rule must be prepared in accordance with the Completion Instructions for factums and as follows:

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- (a) an appellant's factum must not exceed 30 pages;
- (b) a respondent's factum must not exceed 30 pages;
- (c) an appellant's reply must not exceed 5 pages.

Appeal book

- 26** (1) In this rule:
- “appeal book”** means a book 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) If the appellant's factum refers to evidence, the appellant must file and serve an appeal book when the appellant files and serves the appellant's factum.
- (3) If the respondent's factum refers to evidence that is not included in the appellant's appeal book, the respondent must file and serve an appeal book when the respondent files and serves the respondent's factum.
- (4) An appeal book and joint appeal book must
- (a) be prepared in accordance with the Completion Instructions for appeal books, and
 - (b) include only as much evidence as is necessary to resolve the issues on appeal.
- (5) Despite subrules (2) and (3),
- (a) the parties may file a joint appeal book not more than 30 days after the respondent filing the respondent's factum, and
 - (b) filing a joint appeal book under paragraph (a) satisfies the requirement of a party to file and serve an appeal book.
- (6) If the costs of an appeal are increased unduly by a party's failure to comply with subrule (4), a justice or the registrar may consider the party's failure to comply when awarding or assessing costs.

Book of authorities

- 27** (1) In this rule:
- “book of authorities”** means a book that includes, subject to subrule (5),
- (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 at least 30 days before an appeal hearing date if

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- (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) Despite subrule (2),
- (a) the parties to an appeal may file a joint book of authorities 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.
- (4) A book of authorities and joint book of authorities must be prepared in accordance with the Completion Instructions for the book of authorities.
- (5) If the registrar publishes a list of authorities, a party is not required to include an authority on that list in 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

- 28** (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.
- (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;
 - (d) provide any other directions arising from settling the contents of the document that may be required.
- (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

- 29** (1) Not more than 30 days after being served an appellant's factum under rule 25 (1), a respondent who has brought a cross appeal must file and serve a respondent's cross appeal factum instead of a respondent's factum under rule 25 (2) [*factums*].
- (2) If an appellant is served a respondent's cross appeal factum, the appellant
- (a) must file and serve an appellant's cross appeal response not more than 14 days after being served, and

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- (b) may file and serve an appellant's reply not more than 7 days after being served.
- (3) A respondent referred to in subrule (1) may reply to an appellant's cross appeal response factum by filing and serving a respondent's cross appeal reply not more than 7 days after being served the appellant's cross appeal response factum.
- (4) A party must not unnecessarily repeat in a factum for a cross appeal any matters contained in a factum for the main appeal.
- (5) Documents filed under this rule must be prepared in accordance with the Completion Instructions for factums as follows:
 - (a) a respondent's cross appeal factum must not exceed 45 pages;
 - (b) an appellant's cross appeal response factum must not exceed 15 pages;
 - (c) an appellant's reply must not exceed 5 pages;
 - (d) a respondent's cross appeal reply must not exceed 5 pages.

Appeal books on cross appeal

- 30**
- (1) In this rule, “**appeal book**” and “**joint appeal book**” have the same meaning as in rule 26.
 - (2) 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 when the respondent files and serves the respondent's cross appeal factum, or
 - (b) may, instead of filing and serving an appeal book under paragraph (a), file a joint appeal book with the other parties not more than 30 days after filing the respondent's cross appeal factum.
 - (3) An appeal book and joint appeal book must be prepared in accordance with the Completion Instructions for appeal books.

Division 4 – Expediting Appeals

Expediting appeals

- 31**
- (1) A party may request to expedite an appeal by filing and serving a written request that meets the requirements set out in subrule (2).
 - (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

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- (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) A party may oppose the written request to expedite an appeal by filing and serving a written response not more than 2 business days after being served.

PART 5 – STEPS AFTER AN APPEAL IS READY FOR HEARING

Division 1 – Appeals That Are Ready for Hearing

When an appeal is ready for hearing

- 32** An appeal is ready for hearing on
- (a) the date when the appellant has filed both
 - (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, or
 - (b) the 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

- 33** (1) After an appeal is ready for hearing, an appellant must, without delay,
- (a) obtain 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) After obtaining a hearing date under subrule (1), the appellant must, without delay, file and serve a notice of hearing in Form 5 that has attached a copy of each order being appealed, in the form that the order was entered in the court appealed from.

Respondent may obtain appeal hearing date

- 34** (1) A respondent may obtain 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 33 (1) or (2).
- (2) If a respondent obtains a hearing date under subrule (1), the respondent must, not more than 5 days after obtaining the hearing date, file and serve a notice of hearing in Form 5 that has attached a copy of each order being appealed, in the form that the order was entered in the court appealed from.

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Registrar may set appeal hearing date

- 35** (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.

PART 6 – STEPS AT THE HEARING OF AN APPEAL

Points of law and authorities not cited in factum

- 36** 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 4 [*Steps After an Appeal is Brought*].

**Condensed book of evidence and
condensed book of authorities**

- 37** (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;
- “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 (4) and (5).
- (2) A party may submit a condensed book of authorities or a condensed book of evidence, or both, to the court at the hearing of an appeal by providing a copy of the condensed book to the following persons at the commencement of the hearing:
- (a) each justice in the division of the court hearing the appeal;
- (b) each other party at the hearing of the appeal.
- (3) A condensed book of authorities must be prepared in accordance with the Completion Instructions for condensed books of authorities.
- (4) A condensed book of evidence
- (a) must be prepared in accordance with the Completion Instructions for condensed books of evidence, 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.

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- (5) 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 7 – STEPS AFTER AN APPEAL HAS BEEN HEARD

Drawing up and entering the order of the court

- 38** After judgment on appeal has been given, the order of the court must be drawn up and entered in accordance with rule 66.

Applying to registrar for assessment of costs

- 39** (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 11.
- (2) In bringing an application under subrule (1), a party must, in addition to complying with the requirements under rules 53 [*application hearing date must be obtained*] and 54 [*notice of application*], attach to the notice of application a bill of costs in Form 21.
- (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

- 40** (1) After judgment on appeal has been given, a party may apply to the court for directions under section 45 [*powers of court or a justice in relation to costs*] of the Act if the parties 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) serve a copy of the written request to each party.

PART 8 – MANAGING THE APPEAL PROCESS

Division 1 – General

Dispensing with a rule or extending a time limit

- 41** 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;

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

Attendance through telecommunications

- 42** (1) The court, a justice or the registrar may allow a party to attend a hearing or case management by telephone, video conference or other means of telecommunication authorized by the chief justice.
- (2) Unless otherwise ordered, a party who wishes to attend a hearing by any means of telecommunication under 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

- 43** (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 on each party a copy of the written request.
- (2) A party may oppose a written request under subrule (1) by doing the following not more than 5 days after 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

- 44** (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

- 45** (1) A party must notify the registrar without delay 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 during the 3 weeks before the appeal hearing date must submit a written request for the adjournment to the registrar.

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Abandoning an appeal or application for leave to appeal

- 46** If an appeal or application for leave to appeal is abandoned, because of settlement or for any other reason, the appellant must, without delay, file and serve a notice of settlement or abandonment in Form 6.

Division 2 – Case Management

Case management

- 47** (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 telephone, video conference or other means of telecommunication authorized by the chief justice;
 - (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

- 48** (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 any of 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;

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- (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

- 49** (1) The registrar must, in accordance with this Division, maintain a list of appeals that are inactive.
- (2) If an appeal is on the inactive appeal list during a period, any application for leave to appeal that relates to the appeal is deemed to be on the inactive appeal list during that same period.
- (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

- 50** (1) The registrar must place an appeal on the inactive appeal list if a notice of hearing for the appeal is not filed in accordance with these rules by the date that is
 - (a) one year after the notice of appeal was filed for the appeal, or
 - (b) 60 days after the appeal is ready for hearing.
- (2) Other than a consent order or application to reinstate the appeal, the registry will not accept filings for an appeal that is placed on the inactive list.
- (3) The registrar must remove an appeal from the inactive appeal list if a justice grants leave to proceed with the appeal.
- (4) 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 (3);
 - (b) more than 180 days after a justice granting leave to proceed under subrule (3), a notice of hearing in relation to the appeal is not yet filed
- (5) 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

- 51** (1) For the purposes of section 23 [*appeals or applications for leave to appeal dismissed as abandoned*] 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 days.
- (2) Unless a justice orders otherwise, an appeal that is dismissed as abandoned under subrule (1) may not be reinstated.

PART 9 – APPLICATIONS

Division 1 – How to Bring and Respond to Applications Made to the Court, a Justice or the Registrar

Applications made to the court, a justice or the registrar

- 52** (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 13 [*how to apply for leave to appeal*];
 - (b) an application for a stay of proceedings or stay of execution under rule 20 [*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

- 53** 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.

Notice of application

- 54** A party who wishes to bring an application must file and serve the following materials at least 5 business days before the application hearing date:
- (a) a notice of application in Form 4;
 - (b) the party's supporting affidavits, if any;
 - (c) the party's written argument, if any.

Responding to applications

- 55** A party who is served a notice of application may, for the purposes of responding to the application, file and serve the following materials at least 2 business days before the application hearing date:
- (a) the party's supporting affidavits, if any;
 - (b) the party's written argument, if any.

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Registrar may set dates

- 56** The registrar may set the time and place for hearings for chambers applications under these rules.

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

Urgent applications

- 57** (1) In this rule, “**urgent 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, and
 - (b) filing an urgent application in Form 7.
- (3) On an urgent 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 urgent application, including that notice be given to another party.
- (4) If an order is made under subrule (3), the party who brought the urgent application must serve notice of the order on each party.

Payment of security

- 58** (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, and
 - (b) file and serve the following materials at least 5 business days before the application hearing date:
 - (i) a notice of application in Form 4;
 - (ii) an application book prepared in accordance with the Completion Instructions for application books;
 - (iii) the party’s supporting affidavits, if any;
 - (iv) the party’s written argument, if any.
- (2) A party who is served a notice of application referred to in subrule (1) may, for the purposes of responding to the application, file and serve the following at least 2 business days before the application hearing date:
- (a) a response book prepared in accordance with the Completion Instructions for response books;

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- (b) the party's supporting affidavits, if any;
- (c) the party's written argument, if any.

Adducing fresh or new evidence

- 59** (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;
 - (b) file and serve the following materials:
 - (i) a notice of application in Form 4;
 - (ii) a supporting affidavit that includes the evidence that the party is seeking to adduce;
 - (iii) the party's other supporting affidavits, if any;
 - (iv) the party's written argument, if any, not exceeding 10 pages that sets out why the party should be permitted to adduce the evidence.
- (2) A party who is served an application for leave to adduce evidence referred to in subsection (1) may, for the purposes of responding to the application, file and serve the following materials at least 7 business days before the application hearing date:
- (a) the party's supporting affidavits, if any;
 - (b) the party's written argument, if any.
- (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 by the division of the court hearing the appeal.
- (4) For certainty, a party's factum under rule 25 or 29 may refer to evidence that was not before the court appealed from even though an application under this rule about whether the evidence may be adduced has not yet been heard.

Quashing an appeal or raising a preliminary objection

- 60** (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;
 - (b) file and serve the following materials:
 - (i) a notice of application in Form 4;
 - (ii) the party's supporting affidavits, if any;

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- (iii) the party's written argument, if any.
- (3) A party who is served an application referred to in subrule (2) may, for the purposes of responding to the application, file and serve the following materials at least 2 business days before the application hearing date:
 - (a) the party's supporting affidavits, if any;
 - (b) the party's written argument, if any.
- (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

- 61**
- (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;
 - (b) file and serve the following materials:
 - (i) a notice of application in Form 4;
 - (ii) a memorandum of argument, not exceeding 10 pages, that is prepared in accordance with the Completion Instructions for intervener applications.
 - (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 if the intervener were a party, or
 - (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 prepared in accordance with the Completion Instructions for intervener factums, 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.

Varying an order of a justice

- 62**
- (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 not more than 7 days after the order is made:

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- (a) obtain an application hearing date;
- (b) file and serve the following materials:
 - (i) a notice of application to vary an order of a justice in Form 8;
 - (ii) the party's supporting affidavits, if any;
 - (iii) the party's written argument, if any.
- (2) A party who files a notice of application under subrule (1) must, not more than 14 days after filing the notice of application, file and serve an application book prepared in accordance with the Completion Instructions for applications to vary orders.
- (3) A party who wishes to respond to an application book under subrule (2) must file and serve the following materials not more than 7 days after being served the application book:
 - (a) a response book prepared in accordance with the Completion Instructions for responding to applications to vary orders;
 - (b) the party's supporting affidavits, if any;
 - (c) the party's written argument, if any.
- (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

- 63** (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 not more than 7 days after the order was made or direction given:
 - (a) obtain an application hearing date;
 - (b) file and serve the following materials:
 - (i) a notice of application in Form 4;
 - (ii) the party's supporting affidavits, if any;
 - (iii) the party's written argument, if any.
- (3) A party who is served a notice of application referred to in subrule (2) may, for the purposes of responding to the application, file and serve the following materials at least 2 business days before the application hearing date:
 - (a) the party's supporting affidavits;
 - (b) the party's written argument, if any.

Division 3 – Application Hearings

Attendance at application hearings

- 64** (1) Each party to an application must attend the hearing of the application
 - (a) in person, or

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- (b) if permitted under rule 42 [*attendance through telecommunications*], by telephone, video conference or other means of 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

- 65**
- (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 9, 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 subrules (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 filing and serving, at least 5 business days before the new application hearing date, a requisition in Form 9 setting out the new hearing date and time.

PART 10 – ORDERS

General requirements for orders

- 66**
- (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) of this subrule.
 - (2) For the purpose of subrule (1) (a), an order may be drawn by
 - (a) a party, or

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- (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 10;
 - (b) in the case of an order resulting from a decision made by 3 or more justices, Form 11;
 - (c) in the case of an order resulting from an application to vary an order of a justice, Form 12.
- (4) The registrar must keep all entered orders, in accordance with any directions given by the chief justice.

Consent orders

- 67**
- (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 13;
 - (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 14;
 - (c) in the case of any other consent order, Form 15.

Settling the content of orders

- 68**
- (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 11 – COSTS

Division 1 – Assessment of Costs

Assessment of ordinary costs

- 69**
- (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

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- (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

- 70** (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 71 (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.

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Assessment of special costs

- 71** (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

- 72** (1) The registrar must allow the following on an assessment of fees, disbursements and expenses for a proceeding:
- (a) court fees, paid under rule 87 [*payment of court fees*], that were proper or reasonably necessary to conduct a proceeding;

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- (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

- 73** 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

- 74** (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) adjust the costs by way of reduction or set-off;
 - (c) delay the allowance of the costs that a 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

- 75** (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 in relation to the appeals:
- (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

- 76** (1) Before the registrar makes an assessment of costs, a party may serve on another party, in Form 16, 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

- 77** For the purposes of section 46 (2) [*powers of registrar in relation to costs*] of the Act, the registrar must issue a certificate of costs in Form 17
- (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

- 78** (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.

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- (2) 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.
- (3) A justice may not make an order under this rule against a lawyer unless the lawyer is present or has been given notice.
- (4) 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 12 – GENERAL

Division 1 – Court Documents

Required form of documents

- 79**
- (1) In this rule, “**court form**” means a document that is required under these rules to be filed using a specific form.
 - (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 authorizing the filing of the document.
 - (5) The registrar may refuse to accept a document for filing if the document does not comply with these rules.

Parties must have address for service

- 80**
- (1) Each party must have 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 in British Columbia, other than a post office box;

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- (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 email address for service.
- (2) A party must include the party's address for service on the following that is filed on behalf of the party:
 - (a) a notice of appeal;
 - (b) a form under these rules that requires the address for service be included.
- (3) 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.

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 4, 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.

Amending filed documents

- 82**
- (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;

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- (b) a respondent who is required to apply for leave to appeal may amend 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.

Registry hours

- 83** 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

- 84** (1) In this rule, “**table of fees**” means
- (a) the table of fees in Division 1 of Schedule 2, or
 - (b) if an amended table of fees is published by the Registrar of Regulations under Division 2 of Schedule 2, 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 the government.
- (3) The fees in the table of fees must be recalculated at the frequency set out in, and in accordance with, Division 2 of Schedule 2.

Order that no fees payable

- 85** (1) A party may apply for an order that no fees are payable under rule 84 by filing a Form 22, which is to be considered a notice of application if a hearing date is set under subrule (2).
- (2) If the registrar determines that a hearing is required, the registrar may set a date for the hearing of the application.
- (5) A hearing of an application under this rule is to proceed without notice to the other parties.
- (4) At the hearing of an application under this rule, a justice may order that no fees are payable if the justice finds that
- (a) the appeal is not
 - (i) bound to fail,
 - (ii) scandalous, frivolous or vexatious, or

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- (iii) an abuse of the process of the court, and
 - (b) the party's payment of court fees under rule 84 would cause undue hardship.
- (5) A finding under subrule (4) (a) does not bind a justice in any other applications on the appeal.
- (6) For the purposes of this rule, the registrar may identify financial circumstances in which the payment of court fees under rule 84 would cause undue hardship.

Division 3 – Appointing and Changing Lawyers

Party appointing or changing lawyer

- 86** (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 change of representation or change of address for service in Form 18.
- (2) A party who is represented by a lawyer in an appeal may do either of the following by filing a notice of change of representation or change of address for service in Form 18:
- (a) change to a different lawyer;
 - (b) discharge the lawyer and act on the party's own behalf.

Lawyer withdrawals

- 87** (1) A lawyer who ceases to act for a party may withdraw from an appeal by filing and serving a notice of withdrawal of lawyer in Form 19.
- (2) A party who is served notice under subrule (1) may object to the withdrawal by filing and serving an objection in Form 20 not more than 7 days after being served.
- (3) If an objection is filed under subrule (2), the lawyer who filed the notice may apply to a judge for a declaration that the lawyer has ceased to be lawyer of record for the party to whom the notice relates.
- (4) An application referred to in subrule (3) must be served on the party who filed the objection under subrule (2).

When a lawyer is the lawyer of record

- 88** (1) Unless a party's notice of change of representation/change of address for service filed under rule 86 indicates otherwise, a lawyer appointed by the notice is deemed to be the party's lawyer of record.
- (2) A lawyer ceases to be a party's lawyer of record when any of the following occurs:
- (a) the party files a notice under rule 86 (2) for the purposes of changing lawyers or discharging the lawyer;
 - (b) the lawyer files and serves a notice under rule 87 (1) and no objection is made under rule 87 (2);

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- (c) the court declares that the lawyer has ceased to be the party's lawyer of record.
- (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

- 89** The court may issue practice directives to regulate and control its procedure.

PART 13 – TRANSITION

Definitions

- 90** In this Part:
- “effective date”** means the date that this rule came into force;
 - “former rules”** means the Court of Appeal Rules, B.C. Reg. 297/2001, as they read immediately before the effective date;
 - “pre-existing cross appeal”** means a cross appeal that was commenced before the effective date;
 - “pre-existing appeal”** means either of the following:
 - (a) an appeal that was commenced before the effective date;
 - (b) an appeal that relates to a pre-existing application for leave to appeal;
 - “pre-existing application for leave to appeal”** means an application for leave to appeal that was commenced before the effective date.

Application of rules to pre-existing appeals and applications for leave to appeal

- 91** (1) Except as otherwise provided in this Part, these rules apply to
- (a) a pre-existing appeal, or
 - (b) a pre-existing application for leave to appeal.
- (2) The following rules do not apply to a pre-existing appeal or pre-existing application for leave to appeal:
- (a) rule 11 (a) (i) and (x) and (b) (i) and (v) [*limited appeal orders*];
 - (b) rule 29 (5) [*factums on cross appeal*];
 - (c) rule 69 [*assessment of ordinary costs*].

Bringing cross appeals in relation to pre-existing applications for leave to appeal

- 92** A respondent who has been served a pre-existing application for leave to appeal may bring a cross appeal by complying with rule 8 and, for that purpose, a reference in rule 8 to “notice of appeal” must be read as though it

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were a reference to “pre-existing application for leave to appeal”.

Ordinary costs in relation to pre-existing appeals

- 93** Ordinary costs in relation to a pre-existing appeal must be assessed in accordance with Appendix B of the former rules.

Page limits for cross appeal factums and replies

- 94** Documents filed under rule 29 [*factums on cross appeal*] in relation to a pre-existing cross appeal must be prepared in accordance with the Completion Instructions and as follows:
- (a) a respondent’s cross appeal factum must not exceed 40 pages;
 - (b) an appellant’s cross appeal response factum must not exceed 30 pages;
 - (c) an appellant’s reply must not exceed 5 pages;
 - (d) a respondent’s cross appeal reply must not exceed 5 pages.

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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 application 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

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SCHEDULE 2 – 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 notice of hearing, 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 <ul style="list-style-type: none"> (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 <ul style="list-style-type: none"> (a) an electronic search conducted from outside the registry, or (b) a search of a record of a proceeding by <ul style="list-style-type: none"> (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
12	For copies, per page	1
13	For <ul style="list-style-type: none"> (a) a certified copy of a document or record, 	40

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	(b) issuing a certificate of judgment, or (c) issuing a certificate of pending litigation or other certificate not otherwise provided for	
14	For returning by mail or by fax a confirmation of filing or rejection of a document submitted by fax to a registry	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.
- (2) In 2020, and in every second year after 2020, 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:

$$\text{preliminary fee} = \text{base fee} \times (\text{current CPI} / \text{base CPI})$$
 - (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

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- (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.

SCHEDULE 3 – COURT FORMS

Appendix 2 – Revised Court of Appeal Forms

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1

NOTICE OF APPEAL: RULE 3(1)

Court of Appeal File No.
(For Registry Use Only)

Supreme Court File No.

[STAMP]

The file number can be found in the upper right
hand corner of the Supreme Court documents

Supreme Court Registry Location

To the respondent(s)

A Court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)

List the party or parties appealing
the Supreme Court or tribunal
order. Identify their role in the
Supreme Court in brackets. E.g.:
Jane Doe (plaintiff, petitioner,
etc.)

Respondent(s)

List the other party or parties in
the Supreme Court or tribunal
order you are appealing who are
affected by the appeal. Identify
their role in the Supreme Court in
brackets. E.g.: Jane Doe
(defendant).

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?

Court of Appeal Rule 8 explains when you need leave to appeal. If you are unsure, check “Yes”.

☐ Yes

☐ No

Who made the order?

Name the justice or other decision maker who pronounced the order you are appealing.

What court and/or tribunal pronounced the order(s)?

☐ Supreme Court

☐ Tribunal

Name of tribunal

Date the order was pronounced

Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

DD/MM/YYYY

City where the order was pronounced

Length of lower court hearing

Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter “two hours.”

What type of proceeding are you appealing from?

Check one only.

☐ Trial Judgment

☐ Order of a Tribunal

☐ Summary Trial Judgment

☐ Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being appealed

If you only want to appeal one part of a judgment, enter the part that is being appealed.

Order you are seeking on appeal

Briefly list the order(s) you will ask this Court to make on appeal, for example: "Set aside the trial judgment and order a new trial". Include any order as to costs.

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed

If you are only seeking leave to appeal one part of a judgment, enter the part that you are seeking leave to appeal.

Grounds for leave to appeal

Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

4. ADDITIONAL INFORMATION

Sealing Order

Is there an order sealing any part of the Supreme Court file? If yes, add date(s).

☐ Yes

☐ No

Date

DD/MM/YYYY

Anonymity Order/Publication Bans

Are there orders that protect the identity of a party or parties? If yes, add date(s).

☐ Yes

☐ No

Date

DD/MM/YYYY

Areas of law raised in the appeal

You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.

- | | | |
|--|--|--|
| <input type="checkbox"/> Constitutional/Administrative | <input type="checkbox"/> Civil Procedure | <input type="checkbox"/> Commercial |
| <input type="checkbox"/> Motor Vehicle Accidents | <input type="checkbox"/> Municipal Law | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Torts | <input type="checkbox"/> Equity | <input type="checkbox"/> Wills and Estates |
| <input type="checkbox"/> Divorce Act | <input type="checkbox"/> Family Law Act | <input type="checkbox"/> Other |

Appeals involving children

Does this appeal involve the rights or interests of a child?

- ☐ Yes ☐ No

5. SERVICE

Are you representing yourself?

- ☐ Yes ☐ No

Name(s) and residential or business address(es) within BC for service of the appellant(s). Include law firm

Phone number(s) of appellant(s)

Email address(es) for service of appellant(s)

If you provide an email address, you are consenting to have documents served on you by email.

Date form completed

Name of lawyer or party authorizing filing of this Form

DD/MM/YYYY

To the appellant(s):

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act and Rules*. You must file a Notice of Hearing **within one year** of filing this Form 1 or your appeal will be placed on the inactive list (Rule 48(1)(a)).

To the respondent(s)

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by doing the following WITHIN 10 DAYS of receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file a Notice Appearance:

- (a) You are deemed to take no position on the appeal, or the application for leave to appeal (if leave is required).

- (b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

YOU ARE DEEMED TO TAKE NO POSITION IF YOU FAIL to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468. Fax filings: (604) 660-1951.

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 2

NOTICE OF APPEARANCE: RULES 4(1), 5(2), 6(2)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

Enter the name(s) of the party(ies) responding

Name(s) and residential or business address(es) within B.C. for service of the respondent(s). Include law firm.

Phone number(s)

Email address(es) for service of respondent(s)
if you provide an email address, you are consenting to have documents served on you by email.

Date form completed

Name of lawyer or party authorizing filing of this Form

DD/MM/YYYY

To the party completing this Form: The other parties to this appeal are entitled to rely on the address for service you have provided on this Notice of Appearance unless you change your address for service by filing and serving a Change of Address for Service in Form 18.

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 3

NOTICE OF CROSS APPEAL: RULE 5(1)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

PARTIES TO THE APPEAL

Appellant(s)

List the name(s) of the appellant(s) named on Form 1: Notice of Appeal

Respondent(s)

List the name(s) of the respondent(s) named on Form 1: Notice of Appeal

To the appellant(s) and any respondent(s) not bringing a cross appeal

A Court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. THE ORDER IN THE APPEAL YOU ARE CROSS APPEALING

Is leave to cross appeal required?

Court of Appeal Rule 7 explains when you need leave to cross appeal. If you are unsure, check "yes."

☐ Yes

☐ No

Who made the order?

Name the Justice or decision maker who pronounced the order in the appeal you are cross appealing.

Date the order was pronounced

Include the day, month and year that the order in the appeal that you are cross appealing was pronounced.

DD/MM/YYYY

2. RELIEF SOUGHT

If leave to cross appeal is not required, fill out Part A. If you are seeking leave to cross appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being cross appealed

If you only want to cross appeal one part of a judgment, enter the part that is being cross appealed.

Order you are seeking on cross appeal

Briefly list the order(s) you will ask this Court to make on cross appeal, for example: "Set aside the trial judgment and order a new trial." Include any order as to costs.

PART B: SEEKING LEAVE TO APPEAL

Part of the order being cross appealed

If you are only seeking leave to cross appeal one part of the judgment, enter the part that you are seeking leave to cross appeal.

Grounds for leave to Cross Appeal

Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

3. SERVICE

Are you representing yourself?

☐ Yes

☐ No

Name(s) and address(es) for service of party(ies) filing cross appeal. Include law firm.

Phone number(s) of party(ies) filing cross appeal

Email address(es) for service of party(ies) filing cross appeal
If you provide an email address, you are consenting to have documents served on you by email.

Date form completed

Name of lawyer or party authorizing filing of this Form.

DD/MM/YYYY

To the appellant(s) and any respondent(s) not bringing a cross appeal

IF YOU INTEND TO PARTICIPATE in this cross appeal and you have not already filed a Notice of Appearance in this matter in a Court of Appeal registry, YOU MUST GIVE NOTICE of your intention to participate by filing a form entitled “Notice of Appearance” (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the Notice of Appearance on the other parties to the appeal and cross appeal WITHIN 10 DAYS after receiving this Notice of Cross Appeal.

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 4

NOTICE OF APPLICATION: RULES 16(3), 52, 55(1), 56(1), 57(1), 58(1), 60(2)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

PARTIES TO THE APPEAL

Appellant(s)

List the name(s) of the appellant(s) named on Form 1: Notice of Appeal

Respondent(s)

List the name(s) of the respondent(s) named on Form 1: Notice of Appeal

This application is in the jurisdiction of:

☐ The Court (3 Judges)

☐ A chambers Judge

☐ The Registrar

To the party(ies) filing the application

If your application is before a chambers Judge check the [available chambers dates](#) on the court website and the time lines for bringing your application under the rules.

If your application is before the court or the registrar contact the appropriate scheduler before completing this form.

Communicate with the other party or parties to ensure they are available on the requested date. Chambers applications are to be no more than 30 minutes.

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

Name(s) of the party(ies) to be served with the application

Enter the name(s) of the party(ies) bringing the application

Location where the application will be heard
Enter the address of the courthouse

Date the application will be heard

Time of application
Chambers applications begin at 9:30 am.

DD/MM/YYYY

Enter the section(s) or rule(s) that you are relying on for your application
Eg.: If you are applying for leave to appeal, enter *Section 31 of the Court of Appeal Act*. If you are applying for a stay of proceedings, enter *Section 33 of the Court of Appeal Act*.

Enter the order that you are seeking
E.g.: *“stay of proceedings” or “extension of time to file an appeal book” and any request with respect to costs. If you are seeking leave to appeal, enter “leave to appeal the order of _____.”*

Is an application book required?

☐ Yes

☐ No

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

If you are not required to file an application book, list the affidavit(s) in support of this application
Enter the name of each person whose affidavit is being filed and the date each affidavit was sworn.

The applicant anticipates that this application will be...
Check only one.

☐ Contested ☐ Uncontested

Email address(es) for service of applicant(s)
If you provide an email address, you are consenting to have documents served on you by email.

Date form completed
Day, month and year you or your lawyer complete this form

Name of lawyer or party
authorizing filing of this Form.

DD/MM/YYYY

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 5

NOTICE OF HEARING OF APPEAL: RULE 30(2), 31(2)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

To the party(ies) filing the Notice of Hearing of Appeal:

You are required to attach a copy of the orders under appeal to this form. The Court will review any appeal set for one day or longer and may adjust the length.

Address of the courthouse where the appeal will be heard

Date the appeal will be heard

at 10:00 am

Estimated length of appeal
The default length for an appeal is half a day.

DD/MM/YYYY

Appellant's estimate

Respondent's estimate

I undertake to pay all hearing fees payable under Item 4, of Division 1 of Schedule 3 - Court Fees.

Date form completed

Name of lawyer or party authorizing filing of this Form and giving undertaking.

DD/MM/YYYY

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 6

NOTICE OF SETTLEMENT OR ABANDONMENT: RULE 44

[STAMP]

Court of Appeal File No.

*The file number can be found on the upper
right hand corner of the Notice of Appeal.*

*Name of the first appellant named on
FORM 1: Notice of Appeal.*

*Name of the first respondent named on
FORM 1: Notice of Appeal.*

To the appellant(s)

A person or party who abandons an appeal may be liable for the costs associated with the appeal.

Are you abandoning an...

☐ Appeal ☒ or ☐ Cross Appeal

Which party(ies) are you
abandoning against?

Who made the order?
*Name the Justice or other decision
maker who pronounced the order
you are abandoning.*

Date the order under appeal
was pronounced
*Not the date the order was
entered.*

DD/MM/YYYY

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

Date initiating document in the
appeal or cross appeal you are
abandoning was filed
Notice of Appeal/Form 1
or *Notice of Cross Appeal/Form 3*.

DD/MM/YYYY

Date form completed

DD/MM/YYYY

Name of lawyer or party
authorizing filing of this Form

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 7

NOTICE OF URGENT APPLICATION: RULE 54(2)

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

[STAMP]

v.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

To the party(ies) filing the application

In cases of urgency you may apply for permission to bring an application on shorter notice than is otherwise required under the Court of Appeal Rules. You must obtain an urgent application hearing date from the Registrar. Even in cases of urgency, you must give notice and attempt to serve the application material on all parties.

Name of the party(ies) bringing the urgent application

Location where the application will be heard
Enter the address of the courthouse

Date the application will be heard

Time of application

DD/MM/YYYY

Affidavits explaining need for urgency

DESCRIBE

Materials filed in support of the main application

☐ Yes

☐ No

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

Date form completed



Name of lawyer or party
authorizing filing of this Form



DD/MM/YYYY

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 8

NOTICE OF APPLICATION TO VARY AN ORDER OF A JUSTICE: RULE 59(1)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

PARTIES TO THE APPEAL

Appellant(s)

List the name(s) of the appellant(s) named on Form 1: Notice of Appeal

Respondent(s)

List the name(s) of the respondent(s) named on Form 1: Notice of Appeal

To the party(ies) filing the application

If your application is before a chambers Judge check the [available chambers dates](#) on the court website and the time lines for bringing your application under the rules.

If your application is before the court or the registrar contact the appropriate scheduler before completing this form.

Communicate with the other party or parties to ensure they are available on the requested date. Chambers applications are to be no more than 30 minutes.

Name of the party(ies) bringing the application. Include law firm

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

Date the order you are seeking to
vary was pronounced
*Not the date the order was
entered.*

DD/MM/YYYY

Name of Justice who
pronounced the order

Date form completed

DD/MM/YYYY

Name of lawyer or party
authorizing filing of this Form

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 9

REQUISITION: RULE 62(2) and (5)

Court of Appeal File No.

[STAMP]

The file number can be found on the upper right hand corner of the Notice of Appeal.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

This form may be used for general requests, including but not limited to: requests to reset matters adjourned generally, requests to adjourn matters by consent, and requests to appear by phone (which must include a phone number and reason for the request).

Name of the party(ies) filing the requisition

Relief sought
Describe your request.

Date form completed

Name of lawyer or party
authorizing filing of this Form.

DD/MM/YYYY

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 10

ORDER OF A JUSTICE: RULE 63(3)(a)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

BEFORE THE HONOURABLE MR./MADAM JUSTICE[insert name of chambers justice] IN
CHAMBERS

Vancouver, [or other location of hearing] British Columbia, [date reserve judgment was
released or, if judgment was not reserved, date when judgment was given in chambers]

[Add if applicable] Reasons to follow being released on[date of release of reasons]

THE APPLICATION OF[appellant/respondent] for [insert type of
application] coming on for hearing [insert date of chambers hearing] at
....., British Columbia; AND ON HEARING
.....[insert name of counsel for the appellant or state "the appellant
appearing in person"] and[insert name of counsel for the respondent or
state "the respondent appearing in person"]; AND ON READING the materials filed herein; AND ON JUDGMENT
BEING PRONOUNCED ON THIS DATE;

IT IS ORDERED that
.....

IT IS FURTHER ORDERED that
.....

APPROVED AS TO FORM:

.....
Counsel for the Appellant

.....
A Justice of the Court of Appeal

.....
Counsel for the Respondent

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 11

ORDER OF THREE OR MORE JUSTICES: RULE 63(3)(b)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

BEFORE:

The Honourable Mr./Madam Justice

The Honourable Mr./Madam Justice

The Honourable Mr./Madam Justice

[Justices' names must be set out in the same order as in the reasons for judgment]

Vancouver, [or other location of hearing] British Columbia, *[date reserve judgment was released or, if judgment was not reserved, date when judgment was given in court]*

[Add if applicable] Reasons to follow being released on *[date of release of reasons]*

[Add if applicable] Supplementary reasons being released on *[date of release of supplementary reasons]*

THE APPEAL from the order of *[state name of judge and court/tribunal appealed from]* at *[state location of court/tribunal]*

dated *[insert date of order appealed from]* coming on for hearing on

..... *[insert date(s) of the hearing in the Court of Appeal]*, AND ON HEARING

..... *[insert name of counsel for the appellant or state "the appellant appearing in person"]* and *[insert name of counsel for the respondent or state "the respondent appearing in person"]*, AND ON READING the materials filed herein; AND ON JUDGMENT BEING PRONOUNCED ON THIS DATE;

THIS COURT ORDERS (that the appeal is dismissed/allowed etc.)

AND THIS COURT FURTHER ORDERS that ...

AND THIS COURT FURTHER ORDERS that the *[insert name of successful party on the appeal]* do recover the costs of the appeal from *[insert name of unsuccessful party]* promptly after assessment.

APPROVED AS TO FORM:

BY THE COURT

.....
Counsel for the Appellant

.....
Deputy Registrar

.....
Counsel for the Respondent

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 12

ORDER FROM AN APPLICATION TO VARY THE ORDER OF A JUSTICE: RULE 63(3)(c)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

BEFORE:

The Honourable Mr./Madam Justice

The Honourable Mr./Madam Justice

The Honourable Mr./Madam Justice

[Justices names must be set out in the same order as in the reasons for judgment]

Vancouver [or other location of hearing], British Columbia, [date of judgment]

The application of the [appellant(s)/respondent(s)]
to vary the order of Mr./Madam Justice dated the.....day of.....,
20 coming on for hearing on.....[insert date(s) of the hearing in the Court of Appeal],

AND ON HEARING
[insert name of counsel for the appellant/respondent or state "the appellant/respondent appearing in person"]
and.....

[insert name of counsel for the appellant/respondent or state "the appellant/respondent appearing in person"]

AND ON READING the materials filed herein:

THIS COURT ORDERS that the application to vary the order of Mr./Madam
Justice.....is[insert either
dismissed or allowed]

THIS COURT FURTHER ORDERS

that.....
.....

APPROVED AS TO FORM:

BY THE COURT

.....
Counsel for the Appellant

.....
Deputy Registrar

.....
Counsel for the Respondent

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 13

CONSENT ORDER TO EXTEND TIME TO FILE A DOCUMENT: RULE 64(2)(a)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(*Plaintiff*)

AND:

Appellant/Respondent
(*Defendant*)

[*Insert date of the order*]

WHEREAS:

- (a) all parties have consented to this order,
- (b) no person involved is under any legal disability, and
- (c) all parties have agreed to comply hereafter with the time limits set forth in the *Court of Appeal Act* and Court of Appeal Rules,

IT IS ORDERED that the time set for, the [*appellant/respondent*], to file and serve the appeal record/ the transcript/ its factum/ the appeal book/ its book of authorities is extended until[*insert the date of the extension*]

APPROVED AS TO FORM:

FOR THE COURT

.....
Counsel for the Appellant

.....
Deputy Registrar

.....
Counsel for the Respondent

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 14

CONSENT ORDER TO REMOVE AN APPEAL FROM THE INACTIVE LIST: RULE 64(2)(b)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

[Insert date of the order]

WHEREAS:

- (a) all parties have consented to this order,
- (b) no person involved is under any legal disability, and
- (c) all parties have agreed to comply hereafter with the time limits set forth in the *Court of Appeal Act* and Court of Appeal Rules,

IT IS ORDERED that this appeal/application for leave to appeal be removed from the inactive list and that the time limit for taking the next step required by the *Court of Appeal Act* or Court of Appeal Rules must commence to run as of the date of this order.

IT IS FURTHER ORDERED that the notice of hearing be filed within 180 days of the date of this order, failing which the appeal/application for leave to appeal must be returned to the inactive list.

APPROVED AS TO FORM:

.....
Counsel for the Appellant

.....
A Justice of the Court of Appeal

.....
Counsel for the Respondent

Note: This form of order may not be used to reinstate appeals that have been dismissed as abandoned under section 25 (6) of the Act.

Note: This form of order may only be used if there is no prior order to remove the appeal or application for leave to appeal from the inactive list.

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 15

CONSENT ORDER – GENERAL: RULE 64(2)(c)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

BEFORE THE HONOURABLE

[registrar will insert name of justice]

[registrar will insert date of order]

IN CHAMBERS

ON application of *[appellant/respondent]* herein; AND BY CONSENT;

IT IS ORDERED that *[specify]*

IT IS FURTHER ORDERED that *[specify]*

APPROVED AS TO FORM:

.....
Counsel for the Appellant

.....
Counsel for the Respondent

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 16

OFFER TO SETTLE COSTS: RULE 73(1)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(*Plaintiff*)

AND:

Appellant/Respondent
(*Defendant*)

To: *[party]*

The *[name the party]* offers to settle costs in accordance with section 7 of Appendix B of the Court of Appeal Rules in the amount of \$.....

Date *[month, day, year]*

.....
Party/Party's Solicitor

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 17

CERTIFICATE OF COSTS: RULE 74

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(*Plaintiff*)

AND:

Appellant/Respondent
(*Defendant*)

I CERTIFY that on[*date*], the costs of the [*description and name of party*] have been allowed against the [*description and name of party*] at \$.....

.....
Date

.....
Registrar

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 18

NOTICE OF CHANGE OF REPRESENTATION/ CHANGE OF ADDRESS FOR SERVICE: RULE 87(1)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

v.

Name of the first appellant named on
FORM 1: Notice of Appeal.

Name of the first respondent named on
FORM 1: Notice of Appeal.

If you are changing representation, complete Part A and Part B. If you are only changing your address for service, complete Part B only. If you are a lawyer seeking to withdraw from the record without your client's permission, use Form 19.

PART A

Current status:

☐ Self represented

☐ Lawyer

Name of lawyer and firm name

New status:

☐ Self represented

☐ Lawyer

Name of lawyer and firm name

PART B

Name(s) and residential
or business address(es)
within B.C. for service of the
party(ies) completing this form.
Include law firm

Phone number(s) of the
party(ies) completing this form)

Appendix 2 – Revised Court of Appeal Forms
(White Paper on Amendments to the Court of Appeal Rules)

Email address(es) for service of
the party(ies) completing this
form
*If you provide an email address,
you are consenting to have
documents served on you email.*

Date form completed

DD/MM/YYYY

Name of lawyer or party
authorizing filing of this Form

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 19

NOTICE OF WITHDRAWAL OF LAWYER: RULE 88(1)

[STAMP]

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

v.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

Name of lawyer seeking to withdraw

Name(s) of party(ies) the lawyer represents

Last known address(es) for the party(ies) the lawyer represents

Last known phone number(s) for the party(ies) the lawyer represents

Last known email(s) for the party(ies) the lawyer represents

Date form completed

Name of lawyer or party authorizing filing of this Form

DD/MM/YYYY

To the party(ies) receiving this notice of withdrawal

If you object to the lawyer withdrawing from this proceeding, you may file and serve an objection in Form 20 within seven days of being served with this notice of withdrawal. If you do not file an objection in Form 20 within seven days of being served with this notice of withdrawal the lawyer will be removed from the record.

If no objection is filed, the other parties to the proceeding may serve all further documents on you by mail to your last known address(es) noted above. If you wish to change your address for service, complete Part B of Form 18.

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 20

NOTICE OF OBJECTION TO WITHDRAWAL: RULE 88(2)(a)

Court of Appeal File No.

*The file number can be found on the upper
right hand corner of the Notice of Appeal.*

[STAMP]

v.

*Name of the first appellant named on
FORM 1: Notice of Appeal.*

*Name of the first respondent named on
FORM 1: Notice of Appeal.*

Name(s) of party(ies) objecting

Name of lawyer attempting to
withdraw as counsel of record

Date form completed

Name of lawyer or party
authorizing filing of this Form

DD/MM/YYYY

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 21

RULE 68(1)(B)

Court of Appeal File No

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

BILL OF COSTS OF

Tariff Scale Unit Value \$.....

Item	Description	Number of Units	
		Claimed:	Allowed:
	Total Number of Units
	Multiply by unit value	\$.....	\$.....
	Subtotal
	Tax
	Tax
	Total	\$.....	\$.....

Disbursements	Description	Number of Units	
		Claimed:	Allowed:
	Subtotal
	Tax
	Tax
	Total	\$.....	\$.....

TOTAL ALLOWED: \$.....

Date of Assessment

Registrar.....

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 22

APPLICATION FOR ORDER THAT NO FEES ARE PAYABLE – RULE 85

Court of Appeal File No.

The file number can be found on the upper right hand corner of the Notice of Appeal.

[STAMP]

v.

Name of the first appellant named on FORM 1: Notice of Appeal.

Name of the first respondent named on FORM 1: Notice of Appeal.

To the party(ies) filing the application:

1. To obtain an order that no Court fees are payable, you must show that: (1) your appeal is not bound to fail; scandalous, frivolous or vexatious; or an abuse of court process; and (2) payment of court fees would cause you undue financial hardship.
2. If you meet the income and assets criteria in Part B, you meet the financial hardship criteria. If not, you can complete Part C and argue there are special financial circumstances that establish undue hardship at the hearing, or you can abandon your application.
3. This is a “without notice” application. You do not need to serve this Form on any other parties and they do not need to attend the application hearing.

Enter the name(s) of the party(ies) bringing the application

PART A: BASIS FOR BRINGING THE APPEAL

Order you are seeking to appeal
Briefly list the orders you will ask this court to make on appeal.

Grounds of appeal
Be as specific as possible, for example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

PART B: INCOME AND ASSETS

Check the applicable boxes.
If either the income or assets criteria do not apply, you must complete Part C or abandon your application.

Income

- ☐ 1-3 household members: My gross household income is less than \$60,000
☐ 4 or more household members: My gross household income is less than \$84,000

Assets

- ☐ The value of my household assets, after subtracting any outstanding debt owing on them, is less than \$10,000

PART C: FINANCIAL CIRCUMSTANCES

Special financial circumstances
Be as specific as possible about your financial circumstances. For example, if you have recently lost employment or have a large number of dependents.

Location where the hearing will be heard
Enter the address of the courthouse

Date the hearing will take place

Time the hearing will take place

DD/MM/YYYY