
CIVIL LITIGATION FOR ASSISTANTS

APPEAL PROCEDURES & PRECEDENTS

**Court Litigation Support Service
Clinic Resource Office
Revised: April 2010**

The information contained in this booklet is provided to assist clinic workers in finding their way around the Rules of Civil Procedure and other requirements for undertaking applications for judicial review and civil appeals. Some of the rules discussed in this document also apply, with modification in some cases, in other contexts, such as in actions in Superior Court, which have not been discussed here. Rules change often, sometimes in subtle ways; also, courts issue Practice Directions, which modify or supplement the requirements of the Rules. This document is not legal advice and should not be relied upon as such. It is very important to consult the Rules and relevant Practice Directions oneself. Practice directions can be found on the Ontario Courts website, at www.ontariocourts.ca. That website also contains contact information for the Divisional Court and the Court of Appeal. Practice may vary in different regions and the requirements for filing can be quite specific. When in doubt, it's best to contact the court directly to confirm you are proceeding correctly.

In this document, any reference to 'rules', unless otherwise stated, pertain to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Last updated April 8, 2010.

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INDEX

TAB

1. Civil Litigation for Assistants Appeal Procedures & Precedents
2. Appellate Courts Procedure Chart
3. Service Chart and Affidavit of Service Precedents
4. Appeal Precedents
5. Useful websites

TAB 1

Civil Litigation for Assistants
Appeal Procedures & Precedents

<u>1.</u>	<u>CIVIL LAW OVERVIEW</u>	1
<u>2.</u>	<u>INTRODUCTION TO THE RULES OF CIVIL PROCEDURE</u>	1
<u>3.</u>	<u>COURT DOCUMENTS</u>	1
	3.1 Format.....	2
	3.2 General Heading	2
	3.3 Body of Document.....	2
	3.4 Backpage.....	3
	3.5 Binding of Documents.....	3
<u>4.</u>	<u>COMPUTATION OF TIME</u>	4
<u>5.</u>	<u>SERVICE</u>	5
	5.1 General Rules for Manner of Service	5
	5.2 Personal Service.....	6
	5.3 Alternatives to Personal Service	6
	5.4 Service on a Solicitor.....	7
	5.5 Service by Mail.....	8
<u>6.</u>	<u>COMMENCEMENT OF PROCEEDINGS</u>	8
<u>7.</u>	<u>PROCEEDINGS FOR JUDICIAL REVIEW</u>	8
	7.1 Notice of Application	9
	7.2 Notice of Appearance.....	9
	7.3 Application Records and Factums.....	10
	7.4 Certificate of Perfection	11
<u>8.</u>	<u>APPEALS TO AN APPELLATE COURT</u>	11
	8.1 Divisional Court.....	11
	8.2 Court of Appeal.....	12
<u>9.</u>	<u>COMMENCEMENT OF APPEALS</u>	13
	9.1 Notice of Appeal	13
	9.2 Certificate Respecting Evidence	14
	9.3 Agreement Respecting Evidence.....	14
	9.4 Transcripts	14
<u>10.</u>	<u>PERFECTING APPEALS</u>	14
	10.1 Time for Perfecting	14
	10.2 Appellant's Materials to be Served and Filed	15
	10.3 Respondent's Materials to be Served and Filed	16
	10.4 Book of Authorities	16
	10.5 Dismissal for Delay	17
	10.6 Abandoned Appeals.....	18
<u>11.</u>	<u>BRINGING AND RESPONDING TO MOTIONS IN CIVIL APPEALS</u>	18
	11.1 Types of Motions	18
	11.2 Motions Heard by a Single Judge.....	19
	11.3 Motions Heard by Three Judges.....	21
<u>12.</u>	<u>ELECTRONIC FILING OF MATERIALS IN APPEALS AND MOTIONS</u>	22
	12.1 General.....	22
	12.2 E-mail Filing	22
	12.3 E-mail Format.....	22
	12.4 Message Accompanying E-mail Attachment	22
	12.5 Other Electronic Filings.....	23
	12.6 Paper Versions	23
	12.7 Formatting.....	23
	12.8 Naming of Electronic Versions of Factums or Transcripts	24
<u>13.</u>	<u>LEGAL CITATIONS</u>	24

1. CIVIL LAW OVERVIEW

- Canadian civil proceedings operate on an adversarial model. The role of the courts in civil disputes is to provide a way to resolve conflicts when the parties can not or will not settle in any other way.
- The courts become involved in civil matters when an individual, group or organization has asked them to. The parties are expected to present all of the evidence and argument in support of their positions. While the judge controls the process in court s/he is not entitled to take an investigative or inquisitorial role.
- In a civil case the judge makes a decision on a balance of probabilities. This means that when the parties are disagreeing about what was said or what happened, the court must decide which side's evidence is more probably reflecting the truth, and apply the law to that. A civil suit may be stopped at any time if the parties reach an out-of court settlement. This is very different from a criminal trial where the trial usually continues until a determination of guilt or innocence is made 'beyond a reasonable doubt'.
- This booklet will focus on the steps that an unsuccessful party must follow if s/he wishes to appeal or review an unfavourable decision from a lower court or tribunal.

2. INTRODUCTION TO THE RULES OF CIVIL PROCEDURE

- The Rules govern the conduct of all civil proceedings in the Superior Court of Justice and the Court of Appeal for Ontario. They generally do not apply to the Small Claims Court, which has its own set of rules and its own distinct paperwork; although, if an issue arises that is not addressed by the Small Claims Court rules, the judge may consult the Rules of Civil Procedure.
- The prevailing philosophy of the Rules is set out in Rule 1.04 which provides that These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.
- Many terms used in the Rules are defined in Rule 1.03. Particular attention must be paid to these definitions, as they are often different from what one would ordinarily expect.
- The Courts also issue Practice Directions that might be relevant to the documents you're preparing. Always consult www.ontariocourts.on.ca and check Superior Court of Justice Divisional Court or Court of Appeal.

3. COURT DOCUMENTS

- The Rules prescribe the format of documents that may be filed with the court during the course of a legal proceeding. This term refers to formal documents (affidavits, motion records etc.) prepared by a party during the course of the lawsuit, to be filed with the court. It does not apply to documents that existed prior to the lawsuit that might, at some point become exhibits.

3.1 Format

- **Rule 4.01** states that any document used in a proceeding should meet the following standards
 - printed, typewritten, written or reproduced legibly;
 - double-spaced;
 - prepared with a margin of approximately 40 mm (1.5") on the left-hand side;
 - prepared with characters of at least 12 point; and
 - prepared on good quality white paper (8½" x 11") in size
 - text may appear on one or both sides of the paper.

3.2 General Heading

- **Rule 4.02(1)** indicates that every document in a legal proceeding must have a heading that sets out:
 - the name of the court and the court file number
 - the title of proceedings (see Rule 14.06)

<u>General Heading of Documents</u>		
Action (Form 4A)	Application (Form 4B)	Appellate Courts (Form 61B)

3.3 Body of Document

- **Rule 4.02(2)** indicates that every document should have in its body:
 - the title of the document
 - its date
 - where the document is filed by a party and not issued by a registrar or is an originating process
 - a. the name
 - b. address
 - c. e-mail¹
 - d. telephone & fax numbers
 - where the document is issued by a registrar
 - a. the name
 - b. address
 - c. e-mail
 - d. telephone & fax numbers
 - e. the address of the court where the proceeding is to be heard or was commenced

¹ Parties should include their e-mail address on all documents.

3.4 Backpage

- **Rule 4.02(3)** indicates that every document in a proceeding should be accompanied by a backsheet (Form 4C) which has:
 - the short title of the proceeding
 - the name of the court and court file number
 - in the case of an affidavit, the deponent's name and the date when s/he swore it
 - the location of the court office in which the proceeding was commenced
 - the title of the document
 - the name, Law Society Registration number, address, e-mail, telephone & fax numbers of the solicitor or party serving and filing the document
- The backsheet is also the place where an acceptance of service can be noted, where the court filing stamp is affixed and where a judge's endorsement is written.

3.5 Binding of Documents

- **Rule 4.07** covers the binding of court documents (essentially what colour the front and back covers must be).

Records

- **Rule 4.07(1)** Records for motions, applications, trials and appeals must have a light blue backsheet.

Transcripts

- **Rule 4.07(2)** Transcripts of evidence for use on a motion or application or at trial must have a light grey backsheet.

Appeal Book & Compendium

- **Rule 4.07(3)** Appeal books must be bound front and back in buff covers.

Transcripts on Appeal

- **Rule 4.07(4)** Transcripts of evidence for use in an appeal must be bound front and back in red covers, except where the transcript forms part of the appeal book or record, and where there is more than one volume of transcripts, the volumes must be clearly numbered.

Factums & Book of Authorities

- **Rule 4.07(5)** A factum or casebook filed by an applicant, moving party or appellant must be bound front and back in white covers. A factum or casebook of a respondent or responding party must be bound front and back in green covers.

4. COMPUTATION OF TIME

- The Rules prescribe numerous timelines and time limits, although the courts have jurisdiction to extend or abridge them.
- **Rule 3.01(1)(a)** states that where there is a reference to a number of days between two events, then **do not** count the day on which the first event happens, but **do** count the day on which the second event happens.

example - Rule 61.03.1(3)(b) provides that the notice of motion for leave to appeal to the Court of Appeal be filed with proof of service in the office of the Registrar within 5 days after service.

Following the Rule, if one serves (first event) the notice on Monday October 16th, the last possible day for filing (second event) is the following Monday October 23rd.

Sun	Mon	Tue	Wed	Thurs	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
Holidays: Thanksgiving Day (October 9th)						

- **Rule 3.01(1)(b)** If the prescribed time period is 6 days or less **do not** count holidays². If the prescribed time period is 7 days or longer **do** count holidays

example - If service of a document by mail is effective on the 5th day after the document is mailed, then service of the document mailed on Monday, October 23rd, will be effective on Monday, October 30th. However, if the Rules said that service is effective on the 8th day after mailing, the weekend would count and service would be effective on Tuesday, October 31st.

Sun	Mon	Tue	Wed	Thurs	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
Holidays: Thanksgiving Day (October 9th)						

² See Rule 1.03 of the *Courts of Justice Act* for the complete definition of “holiday”. Basically any Saturday or Sunday as well as any statutory holiday is considered a holiday.

- **Rule 3.01(1)(d)** provides that service of a document (except an originating process³) after 4pm or on a holiday, is deemed to have been made on the next day that is not a holiday.

example - if a notice of motion is served at 6pm on a Friday, October 6th, it is deemed to have been served on the following Tuesday, October 10th, because of the holiday Monday.

Sun	Mon	Tue	Wed	Thurs	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
Holidays: Thanksgiving Day (October 9th)						

5. SERVICE

- Virtually all documents generated during the course of litigation must be served on someone (all parties, only certain parties and even persons who are not parties to the proceedings).
- Insofar as service is concerned, documents fall into 3 categories:
 - documents which must be served either personally or by an alternative to personal service;
 - documents which must be served personally and *not* by an alternative to personal service; and
 - documents which are not required to be served personally or by an alternative to personal service, but may be served by other means (i.e. mail, fax etc.)
- Once a document has been served it is necessary for the party who served the document to have proof of such service.
- The Rules allow for several acceptable forms of proof of service, the most common being an affidavit of service (Form 16B) sworn by the person who effected service.

5.1 **General Rules for Manner of Service**

- **Rule 16.01(1)** In all instances an *originating process* must be served personally or by an alternative to personal service.
- Most documents other than an originating process are not required to be served personally or by an alternative to personal service.
- Whenever there is an exception, it will be specifically set out in the Rule governing the document in question or by a court order.

³ This can be served any time day or night and is deemed served on the actual date it is served.

5.2 Personal Service

- **Rule 16.02(1)** provides an exhaustive list of all types of personal service.
- **Rule 16.02(2)** A person effecting personal service of a document need not produce the original document or have it in his or her possession.
- The most common methods are described below:

Service on Individual⁴

- Personal service is made by delivering a copy of the document into the hands of the person to be served.

Service on Corporation

- Personal Service is made by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business.

Service on the Attorney General of Ontario

- Personal service is made by leaving a copy of the document with a solicitor in the Crown Law Office (Civil Law) of the Ministry of the Attorney General.

5.3 Alternatives to Personal Service

- **Rule 16.03** provides all the different methods for alternatives to personal service.

Acceptance of Service by Solicitor

- **Rule 16.03(2)** Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor or an employee in the solicitor's office

Note:

(1) Service is only effective if the solicitor endorses on the document or a copy of it an acceptance of service and the date of the acceptance.

Service by Mail to Last Known Address

- **Rule 16.03(4)** Service of a document may be made by sending a copy of the document, together with an acknowledgement of receipt card (Form 16A), by mail to the last known address of the person to be served

Note:

(1) Service is only effective as of the date the sender receives the card.

⁴ Other than a person under a disability

Service at Place of Residence

- **Rule 16.03(5)** Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document(s) may be served by:
 - leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household and,
 - on the same day or the following day mailing another copy of the document to the person at the place of residence.

Note:

(1) Service in this manner is effective on the 5th day after mailing.

5.4 Service on a Solicitor

- **Rule 16.05** Service of a document on a solicitor of record may be made by:
 - mailing a copy to the solicitor's office, effective the 5th day after the document is mailed;
 - leaving a copy with a solicitor or employee in the solicitor's office;
 - depositing a copy at a document exchange of which the solicitor is a member or subscriber

Note:

(1) Service is only effective if the document or a copy of it and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy (Rule 16.05(1)(c)).

(2) Service is effective on the day following the day on which it was deposited and date stamped, unless that following day is a holiday, in which case service is effective on the next day that is not a holiday. (Rule 16.05(2))

- faxing a copy to the solicitor's office in accordance with subrules (3), (3.1) & (3.2);

Note:

(1) A document of 16 pages or more may be served by fax *only* between 4 p.m. and 8 a.m. the following day, unless the party to be served gives prior consent. (Rule 16.05(3.1)).

(2) An appeal book & compendium, book of authorities, motion record or application record may not be served by fax at any time unless the party to be served gives prior consent (Rule 16.05(3.2)).

- sending a copy to the solicitor's office by courier;

Note:

(1) Service is effective on the 2nd day following the day the courier was given the document, unless that second day is a holiday, in which case service is effective on the next day that is not a holiday (Rule 16.05(2.1)).

- e-mailing a copy to the solicitor's office in accordance with subrule (4).

Note:

(1) Service is only effective if the solicitor of record provides by e-mail an acceptance of service and the date of the acceptance.

(2) When the e-mail acceptance is received between 4 p.m. and midnight, service will be effective on the following day unless the party to be served gives prior consent to do otherwise (Rule 16.05(1)(f)).

5.5 Service by Mail

- **Rule 16.06(2)** Service of a document by mail, except under Rule 16.03(4), is effective on the 5th day after the document is mailed but the document may be filed with proof of service before service becomes effective.

6. COMMENCEMENT OF PROCEEDINGS:

- **Rule 14.01(1)** Civil proceedings are commenced by issuing an originating process defined in Rule 1.03 of the *Courts of Justice Act*.
- In most jurisdictions originating processes must be issued⁵ at a court office. This involves attending in person⁶ and paying the prescribed fee. The court will then issue the originating process by applying the court's seal, dating, signing and assigning to it a court file number.
- **Rule 14.02** provides that legal proceedings must take the form of an action except where a statute or the Rules provide otherwise. An action has, as its conclusion, a trial in front of a judge or a judge and jury with live witnesses. In contrast, an application proceeds on the basis of affidavit evidence and transcripts of cross-examinations. There is no trial and no 'live' evidence. It concludes with a hearing in front of a judge based on the written evidence and legal argument.

7. PROCEEDINGS FOR JUDICIAL REVIEW (Div. Ct. only)

- Parties dissatisfied with a decision of a Board/Tribunal, may seek to have it overturned in an application for judicial review. This is not an appeal in the traditional sense. The Court does not review the facts of a particular case — there is no calling of witnesses or giving evidence — but looks at the Board's decision and determines if it was defensible in all the circumstances.

⁵ Rule 4.05 of the *Rules of Civil Procedure* governs issuing and filing

⁶ All documents (except originating processes) can be filed at the court office by mailing it with the prescribed fee.

- Rule 68 governs the proceedings for judicial review and is one of the few rules, which specifically allows for the use of an application. Rule 38, except as provided in subrule 38.01(2), also sets out the jurisdiction and procedure for judicial reviews in Divisional Court.

7.1 Notice of Application

- **Rule 68.01(1)** An application to the Divisional Court must be commenced with a notice of application (Form 68A).
- Every notice of application must state,
 - the precise relief sought;
 - the grounds to be argued, including a reference to any statutory provision or Rule to be relied on; and
 - the documentary evidence to be used at the hearing of the application.
- **Rule 68.03** A notice of application must state that the application is to be heard on a date to be fixed by the Registrar at the place of hearing.
- **Rule 38.05** A notice of application must be issued as provided by Rule 14.07 before it is served.

Note:

(1) In an application for judicial review from the decision of a specific board, Tribunal or decision-maker, that entity should be named as a respondent, rather than "her Majesty the Queen".

(2) The notice of the application for judicial review must be served upon the decision-maker, and any other respondents. In addition, notice of any application for judicial review must be served upon the Attorney General ⁷ at:

Crown Law Office - Civil,
720 Bay Street, 8th Floor,
Toronto, Ontario M5G 2K1

- **Rule 38.06(3)** The notice of application must be served at least 10 days before the date of the hearing of the application, except where the notice is served outside Ontario, in which case it must be served at least 20 days before the hearing date.
- **Rule 38.06(4)** The notice of application must be filed with proof of service at least 4 days before the hearing date in the court office where the application is to be heard.

7.2 Notice of Appearance

- **Rule 38.07(1)** A respondent who has been served with a notice of application must deliver a notice of appearance (Form 38A) and file it with proof of service.

⁷ A.G.'s Telephone number 416-326-4008

7.3

Application Records and Factums

Note:

(1) For administration purposes, counsel should put on the cover page of their records and factums, the date the application is returnable⁸. This will assist the court to locate the correct material from the file.

- **Rule 68.04(1)** The applicant must deliver an application record and a factum,
 - where the nature of the application requires a record of the proceeding before the court or tribunal whose decision is to be reviewed, within 30 days after the record is filed; or
 - where the nature of the application does not require such a record, within 30 days after the application is commenced.
- Refer to **Rule 68.04(2)** for the contents of the application record.
- Refer to **Rule 68.04(3)** for the contents of the applicant's factum.
- **Rule 68.04(4)** The respondent must deliver an application record and a factum within 30 days after service of the applicant's application record and factum.
- Refer to **Rule 68.04(5)** for the contents of the respondent's application record.
- Refer to **Rule 68.04(6)** for the contents of the respondent's factum.
- The parties must file 3 copies of their application records and factums with the court.

Note:

(1) Any material served by a party for use on an application may be filed, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material (Rule 68.04(8)).

- **Rule 68.04(9)** A party who intends to refer to a transcript of evidence at the hearing must file 3 copies of the transcript with the application record and factum, despite subrule 34.18(2).

⁸ The date the application will be heard.

7.4 **Certificate of Perfection**

- **Rule 68.05(1)** The applicant must file with the application record a certificate of perfection, stating that all the material required to be filed by the applicant for the hearing of the application has been filed, and setting out the name, address and telephone number of the solicitor for,
 - every party to the proceeding; and
 - any person entitled by statute or an order under rule 13.03 intervention to be heard on the application.
 - or where a party or person acts in person, the party's or person's name, address for service and telephone number.

Note:

(1) When the certificate of perfection has been filed, the registrar will place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection (Rule 68.05(2)).

8. **APPEALS TO AN APPELLATE COURT**

- Where a party is of the view that a lower court or tribunal made an error in its decision, then s/he can seek to have a higher court review the decision.
- Once the decision to appeal has been made, certain issues must be considered:
 - to what court the appeal is available - the Divisional Court or the Court of Appeal.
 - whether leave to appeal is required
 - the time limit for commencing either the appeal or motion for leave to appeal
 - the procedure that must be followed in order to perfect the appeal
- A careful study of the applicable legislation will reveal the proper appeal route and the grounds upon which an appeal may be taken.
- Certain Ontario legislation also provides for appeals from the decisions of various tribunals and statutory decision-makers. Please refer to those statutes for guidance as to the procedure on an appeal.

8.1 **Divisional Court**

Notice of Motion for Leave

- **Rule 61.03(1)** Where an appeal to the Divisional Court requires the leave of that court, the notice of motion for leave to appeal must,
 - state that the motion will be heard on a date to be fixed by the Registrar;
 - be served within 15 days after the date of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and
 - be filed with proof of service in the office of the Registrar, within 5 days after service.

- The moving party must serve a motion record, factum, book of authorities and transcripts, if any. Then file 3 copies of each with proof of service, within 30 days after the filing of the notice of motion for leave to appeal.
- Refer to **Rule 61.03(2)(a)** for the contents of the moving party's motion record.
- **Rule 61.03(3)** The responding party, where s/he is of the opinion that the moving party's motion record is incomplete, can serve a motion record.
- Refer to **Rule 61.03(3)** for the contents of the responding party's motion record.
- The responding party must file 3 copies of the factum, book of authorities and motion record, if any, with proof of service, within 15 days after service of the materials.
- **Rule 61.03(5)** The Registrar will fix a date for the hearing of the motion which will not, except with the responding party's consent, be earlier than 15 days after the filing of the moving party's motion record, factum and transcripts, if any.
- **Rule 61.03(6)** Where leave is granted, the notice of appeal must be delivered within 7 days after the granting of leave. (See "Commencement of Appeals")

8.2 Court of Appeal

Notice of Motion for Leave

- **Rule 61.03.1(2)** The notice of motion for leave to appeal must state that the court will hear the motion in writing, 36 days after service of the moving party's motion record, factum and transcripts, if any, or on the filing of the moving party's reply factum, if any, whichever is earlier.
- **Rule 61.03.1(3)** The notice of motion,
 - must be served within 15 days after the date of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and
 - must be filed with proof of service in the office of the Registrar within 5 days after service.
- Refer to **Rule 61.03.1(4)** for the contents of the moving party's factum.
- Refer to **Rule 61.03(2)(a)** for the contents of the moving party's motion record.
- **Rule 61.03.1(6)** The moving party must file 3 copies of the motion record, factum, book of authorities and transcripts, if any, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal.
- The responding party may, if s/he is of the opinion that the moving party's motion record is incomplete, serve a motion record as provided in subrule 61.03(3).
- See **Rule 61.03.1(8)** for the contents of the responding party's factum.

- **Rule 61.03.1(10)** The responding party must file 3 copies of the factum, book of authorities, and motion record, if any, with proof of service within 25 days after service of the moving party's materials.
- **Rule 61.03.1(11)** If the responding party's factum raises an issue on which the moving party has not taken a position in the moving party's factum, that party may serve a reply factum.
- **Rule 61.03.1(13)** The moving party must file 3 copies of the reply factum with proof of service within 10 days after service of the responding party's factum.
- Where leave is granted, the notice of appeal must be delivered within 7 days after the granting of leave. (See "Commencement of Appeals")

9. COMMENCEMENT OF APPEALS

- **Rule 61.04(1)** An appeal to an appellate court must be commenced by serving a notice of appeal (Form 61A) together with the certificate or agreement respecting evidence, within 30 days after the making of the order appealed from, unless a statute or these rules provide otherwise,
 - on every party whose interest may be affected by the appeal; and
 - on any person entitled by statute to be heard on the appeal.
- **Rule 61.04(1.1)** The notice of appeal and certificate/agreement respecting evidence does not need to be served on,
 - a defendant who was noted in default; or
 - a respondent who has not delivered a notice of appearance, unless s/he was heard at the hearing with leave; and
- **Rule 61.04(2)** The title of proceeding in an appeal must be in accordance with Form 61B.

9.1 Notice of Appeal

- **Rule 61.04(3)** The notice of appeal (Form 61A) must state,
 - the relief sought;
 - the grounds of appeal; and
 - the basis for the appellate court's jurisdiction including references to
 - a. any provision of a statute or regulation establishing jurisdiction,
 - b. whether the order appealed from is a final or interlocutory,
 - c. whether leave to appeal is necessary and if so whether it has been granted, and
 - d. any other facts relevant to establishing jurisdiction.
- **Rule 61.04(4)** The notice of appeal, with proof of service, must be filed at the Registrar's office within 10 days after service.

9.2 Certificate Respecting Evidence

- **Rule 61.05(1)** In order to minimize the number of documents and the length of the transcript required for an appeal, the appellant must serve with the notice of appeal an appellant's certificate respecting evidence (Form 61C) setting out only the portions of the evidence that, in the appellant's opinion, are required for the appeal.
- **Rule 61.05(2)** Within 15 days after service of the appellant's certificate, the respondent must serve on the appellant a respondent's certificate respecting evidence (Form 61D), confirming the appellant's certificate or setting out any additions to or deletions from it.

Note:

(1) If a respondent fails to serve a respondent's certificate within the prescribed time, it will be assumed that the respondent confirmed the appellant's certificate. (Rule 61.05(3)).

9.3 Agreement Respecting Evidence

- **Rule 61.05(4)** Instead of a certificate respecting evidence, the parties may, within 30 days after service of the notice of appeal, make an agreement respecting the documents to be included in the appeal book and compendium and the transcript required for the appeal.

9.4 Transcripts

- **Rule 61.05(5)** The appellant must within 30 days after filing the notice of appeal file proof that s/he has ordered a transcript of all oral evidence that the parties have not agreed to omit, subject to any direction under subrule 61.09(4). (See "Perfecting Appeals")

10. PERFECTING APPEALS

10.1 Time for Perfecting

- **Rule 61.09(1)** The appellant must perfect the appeal by complying with Rules 61.09(2) and 61.09(3),
 - where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; or
 - where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed.

10.2 Appellant's Materials to be Served and Filed

- **Rule 61.09(3)(a)** The appellant must serve on every other party to the appeal and any other person entitled by statute or an order under Rule 13.03 (intervention in appeal) to be heard on the appeal,
 - the appeal book and compendium;
 - the exhibit book, if any;
 - a typed or printed copy of the transcript of evidence;
 - an electronic version of the transcript of evidence, unless the court reporter did not prepare an electronic version; and
 - a typed or printed copy of the appellant's factum.

- Refer to **Rule 61.10(1)** for the contents of the appellant's appeal book & compendium.

- Refer to **Rule 61.10.1** for the contents of the exhibit book.

- Refer to **Rule 61.11(1)** for the contents of the appellant's factum.

- **Rule 61.09(3)(b)** The appellant must file with the Registrar, with proof of service,
 - 3 copies of the appeal book and compendium, and where the appeal is to be heard by 5 judges, 2 additional copies;
 - 1 copy of the exhibit book, if any,
 - 1 typed or printed copy of the transcript of evidence;
 - 1 electronic version of the transcript of evidence, unless the court reporter did not prepare an electronic version;
 - 3 typed or printed copies of the appellant's factum, and where the appeal is to be heard by 5 judges, 2 additional copies; and
 - 1 electronic version of the appellant's factum.

- **Rule 61.09(3)(c)** The appellant must file with the Registrar a certificate of perfection,
 - stating that the appeal book, exhibit book, if any, transcripts and appellant's factum have been filed, and
 - setting out, with respect to every party to the appeal and any person entitled by statute or by an order under Rule 13.03 (intervention in appeal) to be heard on the appeal, the name, address and telephone number of
 - a. the party's or person's lawyer, or
 - b. the party or other person, if acting in person.

- **Rule 61.09(5)** When an appeal is perfected, the Registrar will place it on the list of cases to be heard at the appropriate place of hearing and must mail a notice of listing for hearing (Form 61G) to every person listed in the certificate of perfection.

10.3 Respondent's Materials to be Served and Filed

- **Rule 61.12(1)** Every respondent must,
 - serve on every other party to the appeal a typed or printed copy of the respondent's factum and the respondent's compendium.
 - file with the Registrar, with proof of service,
 - a. 3 typed or printed copies of the respondent's factum and where the appeal is to be heard by 5 judges, 2 additional copies;
 - b. 3 typed or printed copies of the respondent's compendium and where the appeal is to be heard by 5 judges, 2 additional copies; and
 - c. 1 electronic version of the respondent's factum.
- **Rule 61.12(2)** A respondent's factum and compendium must be delivered within 60 days after service of the appellant's materials.
- Refer to **Rule 61.12(3)** for the contents of the respondent's factum.
- Refer to **Rule 61.12(7)** for the contents of the respondent's compendium.

10.4 Book of Authorities

- Should include only the cases counsel intends to refer to in the oral argument. The particular passages in the cases counsel actually refer to should be clearly marked. (black-lined or highlighted)
- Should be prepared jointly in accordance with the current practice. Where counsel are unable to agree, then such casebooks should indicate whether they are filed by the appellant or the respondent. There should be consultation between counsel to avoid any duplication of the authorities included in their respective casebooks.
- Should have a tab for each case (either numerical or alphabetical), should include an index of the authorities and indicate the tab where the authority is reproduced. It is not necessary to number the pages in the casebooks so long as the photocopies show the page or paragraph numbers of each authority.
- Should be filed together with the factum but if not possible, then not later than Monday of the week preceding the hearing of the appeal.
- Copies of cases obtained from internet legal reporting services or other electronic databases are acceptable provided the report of the judgment contains paragraph numeration consistent with the numbering of the paragraphs in the judgment as released by the court. Counsel should be aware that judgements posted on the Internet may be subject to correction or editing within a few days of the initial posting and accordingly counsel should ensure that a judgment so obtained has not been subsequently amended. Citations of any published versions should be given in addition to the citation of the electronic source. The date that the copy of the decision was obtained should be included if it was obtained from an Internet or online source.

Judges' Book of Authorities (Div. Ct. only)

- A Judges' Book of Authorities containing authorities frequently relied on is now supplied to each Judge who sits in Divisional Court. There will be additions to, and deletions from, the book from time to time. An up-to-date list of the authorities in the Judges' Book is available at the office of each Regional Registrar or online at <http://www.ontariocourts.on.ca/scj/en/divct/casebook.htm#alpha>
- In preparing books of authorities, counsel need no longer include authorities contained in the Judges' Book. However, extracts from those authorities which counsel intend to refer to the court should be included in the factum or book of authorities.

10.5 Dismissal for Delay

Motion by Respondent

- **Rule 61.13(1)** Where an appellant has not,
 - filed proof that a transcript of evidence that the parties have not agreed to omit was ordered within the time prescribed by subrule 61.05 (5); or
 - perfected the appeal within the time prescribed by subrule 61.09 (1) or by an order of the appellate court or a judge of that court,

the respondent may make a motion to the Registrar, on 10 days notice to the appellant, to have the appeal dismissed for delay.

Notice by Registrar

- **Rule 61.13(2)** Where the appellant has not,
 - filed a transcript of evidence within 60 days after the Registrar received notice that the evidence has been transcribed; or
 - perfected the appeal within one year after filing the notice of appeal,the Registrar may serve notice on the appellant that the appeal will be dismissed for delay unless it is perfected within 10 days after service of the notice.
- **Rule 61.13 (2.1)** Where no transcript of evidence is required for the appeal and the appellant has not perfected it within the time prescribed by subrule 61.09 (1) or by an order of the appellate court or a judge of that court, the Registrar may serve notice on the appellant that the appeal will be dismissed for delay unless it is perfected within 10 days after service of the notice.

Note:

(1) Where the appellant does not cure the default under subrules (1), (2) or (2.1) the Registrar will make an order in (Form 61I) dismissing the appeal for delay, with costs despite Rule 58.13 and will serve the order on the respondent. (Rule 61.13(3)).

Motions for Leave

- **Rule 61.13(6)** On a motion for leave to appeal, where the moving party has not served and filed the motion record and other documents in accordance with subrule 61.03 (2) or subrules 61.03.1 (4) to (6), the responding party may make a motion to the Registrar, on 10 days notice to the moving party, to have the motion for leave to appeal dismissed for delay.
- **Rule 61.13(7)** On a motion for leave to appeal, where the moving party has not served and filed the motion record and other documents within 60 days after the filing of the notice of motion for leave to appeal, the Registrar may serve notice on the moving party that the motion will be dismissed for delay unless the documents are served and filed within 10 days after service of the notice.
- **Rule 61.13(8)** On a motion for leave to appeal, where the moving party,
 - in the case of a motion under subrule (6), does not serve and file the documents before the hearing of that motion, or within such longer period as a judge of the appellate court allows;
 - in the case of a notice under subrule (7), does not serve and file the documents within 10 days after service of the notice or within such longer period as a judge of the appellate court allows,

the Registrar will make an order in (Form 61J) dismissing the motion for delay, with costs.

10.6 Abandoned Appeals

- **Rule 61.14(1)** A party may abandon his or her appeal or cross-appeal by delivering a notice of abandonment (Form 61K).
- **Rule 61.14(2)** A party who serves a notice of appeal or cross-appeal and does not file it within 10 days after service will be deemed to have abandoned the appeal or cross-appeal, unless the court orders otherwise.
- **Rule 61.14(3)** Where an appeal or cross-appeal is abandoned or is deemed to have been abandoned, the appeal or cross-appeal is at an end, and the respondent or appellant is entitled to the costs of the appeal or cross-appeal, unless a judge of the appellate court orders otherwise.

11. BRINGING AND RESPONDING TO MOTIONS IN CIVIL APPEALS

- Rule 37, except Rules 37.02 to 37.04 and 37.17, applies to motions in an appellate court, with necessary modifications.

11.1 Types of Motions

- Most motions are heard by a single judge, but a statute or a Rule may dictate that a panel of 3 judges hears the motion. The procedure for motions to a single judge and motions to a panel of 3 judges are different, as generally described below.

11.2 Motions Heard by a Single Judge

- Most motions in the Court of Appeal are brought before one judge. The most common examples of motions brought to a single judge are:
 - a motion to extend the time in which to file an appeal, if you missed the deadline for doing so.
 - a motion to extend the time to perfect an appeal, if you missed that deadline.
 - a motion to expedite the hearing of an appeal if there is some urgency.
 - a motion to adjust the timelines for filing materials, either shortening lengthening them, depending on circumstances of the case.
 - a motion to dispense with the filing of certain materials, the filing of which may be required by the Rules but which are unnecessary for the hearing of the appeal.
 - a motion to "stay" the order under appeal, if it was not one that was automatically stayed on the filing of the appeal (see Rule 63)
 - a motion to remove the "stay" if one was automatically imposed by the filing of the appeal.
- If you are the party bringing the motion to a single judge, generally you must:
 - serve your notice of motion (Form 37A), factum and motion record on all parties at least 4 days before the hearing date.
 - the notice of motion must contain a statement outlining the jurisdiction of a single judge to hear the motion and grant the relief requested.
 - the notice of motion must contain a certificate stating an estimated length of time for the oral argument of the motion.
 - choose a date (at 10 a.m.) for the hearing of the motion.
 - in order to ensure the efficient use of court resources, the Registrar may direct that a motion scheduled for hearing be removed from the list and rescheduled to a different date. Counsel or the parties will be consulted before the motion is removed from the list and the hearing rescheduled.
 - file your notice of motion, factum⁹ and motion record at least 3 days before the hearing, with proof of service.
 - motions to expedite the production of transcripts must be served on the opposing party and the court reporter or the local Manager/Coordinator of Court Reporters.
 - motions to expedite appeals may be brought to a judge in Chambers.
- Refer to **Rule 37.06** for the contents of the notice of motion.
- Refer to **Rule 37.10(7)** for the contents of the moving party's factum.

⁹ The deadline to file the factum is actually at least 2 days before the hearing. However, it might be more convenient to file it along with the notice of motion and motion record so as to avoid making additional trips to the court

- Refer to **Rule 37.10(2)** for the contents of the moving party's motion record.

Note:

(1) Any material served by a party for use on a motion may be filed, together with proof of service, as part of the party's motion record and need not be filed separately (Rule 37.10(4)).

Note:

(1) For administration purposes, counsel should put on the cover page of their records and factums, the date the motion is returnable¹⁰.
 (2) Consider whether to serve and file the book of authorities or simply provide it to opposing counsel and the Court at the hearing.

Note:

(1) A party who intends to refer to a transcript of evidence at the hearing of a motion must file a copy of the transcript as provided by Rule 34.18 (Rule 37.10(5)).

- If you are a party responding to a motion you may file a responding motion record and a respondent's factum.
 - serve and file both, with proof of service at least 2 days before the hearing.
- Refer to **Rule 37.10(6)** for the contents of the responding party's factum.
- Refer to **Rule 37.10(3)** for the contents of the moving party's motion record.
- The parties should consult with each other to attempt to narrow the issues or determine whether the responding party will consent to the order.

Confirmation of Motion

- **Rule 37.10.1(1)** The party bringing the motion must file a confirmation of motion (Form 37B). If no confirmation is given, the motion will not be heard, except by order of the court.
- A party who makes a motion on notice to another party must :
 - confer or attempt to confer with the other party;
 - not later than 2 p.m. two days before the hearing date, give the Registrar a confirmation of motion by sending it by fax, by e-mail, or by leaving it at the court office; and
 - send a copy of the confirmation of motion to the other party by fax or e-mail.
- A party who has given a confirmation of motion and later determines that the confirmation is no longer correct must immediately give the Registrar a corrected confirmation of motion (Form 37B) and send a copy of the corrected confirmation of motion to the other party

¹⁰ The date the application will be heard.

- The notice of motion and the confirmation of motion both require an estimate for the anticipated length of the oral argument of the motion. Note, however, that if any party does not file a factum of their argument (which is not mandatory on a motion before a single judge) that party's argument will be limited to 15 minutes. Similarly, a judge may cut short the time requested for oral argument if it appears that the party's estimate was unreasonable.

Motions on Consent

- Where all parties consent to an order, counsel may file a notice of motion, 2 copies of the draft order, the consent of the parties and an affidavit or covering letter setting out why the consent order is appropriate.
- If a judge considering the proposed consent order is satisfied that it should be issued, s/he will do so usually within 24 hours.
- If a judge considering the proposed order is not satisfied that it should be issued, the parties will be advised and will be given an opportunity to make further oral or written argument.

11.3 Motions Heard by Three Judges

- The most common types of panel motions are:
 - a motion to quash an appeal (on the basis that the Court of Appeal does not even have jurisdiction to hear the appeal).
 - a motion to introduce new or "fresh" evidence on the appeal.
 - a motion to review a decision of a single judge who heard an earlier motion.
 - a motion seeking leave to appeal a decision of Divisional Court

General

- Except in cases of urgency, motions before a panel will not be scheduled for hearing until the moving party has filed the notice of motion, motion record, factum and transcripts¹¹ if any.
- Where a motion is to be heard by a panel, the notice of motion must state that the motion will be heard on a date to be fixed by the Registrar.
- In motions before a panel, the oral argument must be limited to 15 minutes for the moving party, 10 minutes for the responding party, and 5 minutes for reply.

¹¹ A party who intends to refer to a transcript of evidence at the hearing should include it as part of the motion record.

- **Rule 61.16(4)** on a motion to be heard by more than one judge,
 - the moving party must serve a motion record that contains the documents referred to in subrule 37.10(2) and a factum consisting of a concise argument stating the facts and law relied on by the moving party. Then file 3 copies of these materials, with proof of service, within 30 days after filing of the notice of motion (Form 37A).
 - the responding party can serve a motion record that contains the documents referred to in subrule 37.10(3) (if s/he is of the opinion that the moving party's record is incomplete) and a factum consisting of a concise argument stating the facts and law relied on by the responding party. Then file 3 copies of these materials, with proof of service, within 25 days after service of the moving party's materials.

Motions to Quash an Appeal

- Motions to quash appeals are heard by a panel of the court. Where the basis for the motion to quash is that the court lacks jurisdiction to hear the appeal, the motion will be scheduled at an early date.
- Motions to quash an appeal based on an argument that the appeal is devoid of merit will be heard together with the appeal, since the court will be obliged to consider the merits of the appeal, in any event, in determining the motion.

12. ELECTRONIC FILING OF MATERIALS IN APPEALS & MOTIONS

12.1 General

- Parties are *required* to file electronic versions of factums and transcripts in civil appeals. The parties are also *encouraged* to file electronic versions of factums and transcripts in civil motions. The appellate courts also requests that parties include their e-mail address on all documents filed.

12.2 E-mail Filing

- Parties may file factums or transcripts through the Internet within the times prescribed by the Rules by sending the factum or transcript as an e-mail attachment to the Court of Appeal at COA.E-file@ontario.ca.

12.3 E-mail Format

- Factums or transcripts submitted through the Internet must be in HTML format.

12.4 Message Accompanying E-mail Attachment

- The cover e-mail accompanying a factum or transcript must list the motion or appeal by name and by appeal or motion number. The attachment icon in the cover e-mail must indicate the appeal or motion number and the document code identifying the type of document.

- Here is a sample cover e-mail message:

Attached are the [Appellant's/Respondent's/Moving Party's] factum and a transcript in the following cases, which are listed for [insert date]:

- (1) [short title of proceeding] [appeal or motion number]
- (2) [short title of proceeding] [appeal or motion number]
- (3) [short title of proceeding] [appeal or motion number]

12.5 Other Electronic Filings

- Although the Court prefers e-mail, the Court will continue to accept other forms of electronic versions of factums and transcripts. Parties may file factums or transcripts on diskettes formatted for an IBM computer or on CD-ROM (written using the ISO 9660 standard or equivalent) within the times prescribed by the Rules. Electronic versions of factums and transcripts submitted other than through the Internet may be submitted in most of the common formats including:

HTML	Lotus 1-2-3	Microsoft Excel	MS-DOS Text with Layout
Adobe	Text with Layout	WordPerfect versions	Word version 4-5x for the Macintosh (requires OS8 or greater)
Works	Rich-text format	Text only (Ansi Text)	Word 8.0. for windows (Word 97) or lower

12.6 Paper Versions

- The Court is in a transition stage respecting the filing of electronic versions of documents and therefore, parties filing electronic versions of factums or transcripts must still file typed or printed copies of such documents in accordance with the requirements of the Rules.

12.7 Formatting

- An electronic version of a document must be formatted so that the complete document is contained in a single electronic file or e-mail attachment.

example - a single file or e-mail attachment for a factum should contain the front and back pages, the index, the text and the schedules. An electronic version of a factum or transcript must be formatted so that it contains, so far as practical, the identical information to the paper version.

12.8 Naming of Electronic Versions of Factums or Transcripts

- The file names for all electronic versions of factums or transcripts must start with the appellate court's appeal or motion number followed by one of the character codes set out below.

Appeals

Code	Description	Code	Description
FAP	Factum of Appellant	AFRE	Amended Factum for Respondent
FRE	Factum of Respondent	SAF	Supplementary Factum of Appellant
FXA	Factum of Cross-appellant	SRF	Supplementary Factum of Respondent
FXR	Factum of Cross-respondent	SFOI	Supplementary Factum of Intervenor
FOI	Factum of Intervenor	SFAC	Supplementary Factum of Amicus Curiae
FOAC	Factum of Amicus Curiae	FSE	Further Submissions - Appellant
AFAP	Amended Factum for Appellant	FSR	Further Submissions - Respondent

Motions

Transcripts

Code	Description	Code	Description
MPF	Moving Party Factum	TRN	Transcript
RPF	Responding Party Factum		
MPRF	Moving Party Reply factum		

13. LEGAL CITATIONS

- Special Rules have been developed for citing legal resources. Legal citation serves two major functions:
 - a complete citation allows the reader to find the decision;
 - it should convey valuable information about the case, including the date it was handed down, court level, jurisdiction and case history (if included).
- The *Canadian Guide to Uniform Legal Citation*, 6th ed. (Toronto: Carswell, 2006) [*Guide*], a publication often referred to as the "*McGill Guide*", was created by the *McGill Law Journal* in an effort to standardize Canadian legal citation and provide a nationally accepted reference system. Certain formatting and punctuation conventions have been adopted by courts and reporters and should be followed. These are shown in the examples given below.
- The following is the standard formula for citing a case in Canada:
 - case name (also called "title of proceeding"), neutral citation if available (a citation given by the court issuing the decision), date (if there is no neutral citation containing the date, or if the date is in square brackets, showing that it is part of the legal reference being added), law report volume number, law report series (if any), page number (first page of decision), court (if not obvious from the previous information), pinpoint (page or paragraph where your quote is found - if there are only page references, you just say "at 444", if there are paragraph references, say "at para. 32")

example - *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 25

Note:

- (1) Check the first page of the judgment and if the case has an "indexed as" reference, use it for citation purposes.
- (2) Round brackets refer to the date the reasons for judgment were released. This date would be added after the case name if the same date does not appear in square brackets in one of the parallel citations.

Square brackets refer to the date on the spine of the reporter and form part of the citation for that reporter; the date is usually the date of the decision but not always. A comma follows round brackets but comes before square brackets.

Note:

- (1) A law reporter is always referred to in the citation by a standard abbreviation of its title. The *McGill Guide* provides a list of reporter names and abbreviations.
- (2) If the reporter uses a series number, this is also abbreviated and placed in brackets directly following the report title. The abbreviations used are (2d), (3d), (4th), (5th) and so on.
- (3) You must always be able to discern both the jurisdiction and court level from the citation. This information will either be implicit in the title of the law reporter or expressly indicated in round brackets at the end of the cite.

Examples:

R. v. Carosella (1995), 26 O.R. (3d) 209 (C.A.)

In this case, it is obvious from the court reporter that the decision is from Ontario. Had this not been obvious, the court level would have read (Ont. C.A.).

Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190

Implicit in the reporter title (and the neutral citation) is the information that this case was heard by the Supreme Court of Canada. As a result, it is not necessary to list the court in brackets at the end of the citation.

(4) Cases may be reported in several different reporters and there is no way of knowing which reporter any given reader will be able to access. For this reason parallel citations are used.

(5) Canadian law reporters are ranked in status as either official, semi-official, or unofficial. Official reporters are published by the Queen's Printer. Semi-official reporters are published under the auspices of the local Law Society. Unofficial reporters are ones that are neither official nor semi-official. The official ones are the S.C.R.s (the Supreme Court Reports), the F.C.s (the Federal Court Reports) and the Ex.C.R.s (the Exchequer Court of Canada Reports).

Semi-official reporters include the O.R.s (the Ontario Reports). Unofficial reports include the D.L.R.s (the Dominion Law Reports).

When including parallel citations, arrange these in order from the most official to least official versions.

Citing Unreported Cases

- Cases published in law reporters are chosen because of their relevance in expanding on or clarifying a point of law and, as a result, many cases remain "unreported". Unreported cases are sometimes available through an electronic source such as CanLII (a free database of decisions) or Quicklaw. Where a case is not available electronically, however, it must be accessed directly from the court which handed down the decision.
- Many of these cases will now have a neutral citation given by the court. Some courts started using the neutral citation as early as 1998, others have just started - for instance, the Ontario Superior Court of Justice began assigning neutral citations only as of 1 January 2010.
- Where there is no neutral citation, use the following form:

Canada (Attorney General) v. Pyne (15 December 1999), Docket No. A-378-98 (F.C.A.)

Include the docket number for the decision, followed by the jurisdiction and court level

Citing Statutes and Regulations

- Citation of statutes and regulations is very straightforward and will take the following form:
 - short title, abbreviation for the volume, chapter number, section number
example - *Fewer Politicians Act*, S.O. 1996, c. 28, s. 1

Up until the 1990s, Ontario statutes were consolidated every ten years, and then published using the abbreviation "R.S.O." (Revised Statutes of Ontario). Pre-1990 statutes are still referred to by their "R.S.O." number. Federal statutes were also consolidated periodically and bear the reference "R.S.C."

examples -

French Language Services Act, R.S.O. 1990, c. F.32, ss. 2, 6, 9

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 8(2)

Citing Books and Journal Articles

- A proper legal book citation conforms to the following standard:
 - name of author, title, edition statement, place of publication, publisher, year of publication, page or paragraph reference ("at 342" for pages, "at para. 52" for paragraphs)

example - S.M. Waddams, *The Law of Contracts*, 3d ed. (Toronto: Canada Law Book, 1993) at 342

- The formula for citing journal articles is similar to citing books (note formatting as it is a bit different from that used for book citations):

- author's name, title of article, year, volume and issue number, journal or review, page number for beginning of paper, page or paragraph reference for pinpoint (page or paragraph cited)

example - P. Hughes, "Women, Sexual Abuse by Professionals, and the Law: Changing Parameters" (1996) 21 Queen's L.J. 297 at 302

TAB 2

APPELLATE COURTS RE: FINAL ORDERS & JUDICIAL REVIEW PROCEDURES

(REVISED APRIL 2010)

TABLE OF CONTENTS

1.	Leave to Appeal (Divisional Court).....	pg. 2
2.	Leave to Appeal (Court of Appeal)	pg. 3
3.	The Appeal	pg. 4
4.	Perfecting the Appeal.....	pg. 5
5.	Motions in an Appellate Court	pg. 7
6.	Proceeding for Judicial Review	pg. 8
7.	IMPORTANT: Court of Appeal Costs Practice Note	pg. 9

****DISCLAIMER: Please note attempts have been made to make this document as accurate as possible when prepared. However, this document should be used as a guide only. To ensure the information you are using is accurate, please see official source materials****

ACTION	DOCUMENT	SERVICE	FILING	DOCUMENT CONTENTS	HOW MUCH?	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS
LEAVE TO APPEAL (Div.Ct.)	Notice of Motion for Leave <u>Note:</u> Notice shall state that the motion will be heard on a date to be fixed by the Registrar [r. 61.03(1)]	15 days after the date of the order or decision from which leave to appeal is sought [r. 61.03(1)]	File, with proof of service, within 5 days after service [r. 61.03(1)]	See r. 61.03(1) Forms 37A & 61B <u>Note:</u> Do not include Court file number. A number will be assigned when it is filed.	\$127.00 (payable to the Minister of Finance)	One copy	
	Motion Record for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03(2)] <u>Respondent</u> - Serve and file, with proof of service, within 15 days after service of the moving party's materials [r. 61.03(3)]		See r. 61.03(2)		Three copies	<u>Moving Party</u> and <u>Respondent</u> - Light blue backsheet [r. 4.07(1)]
	Factum for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03(2)] <u>Respondent</u> - Serve and file, with proof of service, within 15 days after service of the moving party's materials [r. 61.03(3)]		See r. 61.03(2)(b)		Three copies	<u>Moving Party</u> - White front and back <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Book of Authorities for Leave to Appeal (if necessary)	<u>Moving Party</u> - Should be filed, if possible, no later than the Monday of the week preceding the hearing of the matter <u>Respondent</u> - Should be filed, if possible, no later than the Monday of the week preceding the hearing of the matter		See pg. 1234 of the Ontario Annual Practice, 2008-2009, "Practice Direction"		Three copies <u>NOTE:</u> Case Law must be easy to read and clean copies. Relevant sections must be blacklined or highlighted	<u>Moving Party</u> - White front and back <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Transcripts of Evidence for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03(2)] <u>Respondent</u> - Serve and file, with proof of service, within 15 days after service of the moving party's materials [r. 61.03(3)]				Three copies	<u>Moving Party</u> and <u>Respondent</u> - Red front and Back
	Notice of Appeal	Where leave is granted, the notice of appeal shall be delivered within 7 days after the granting of leave [r. 61.03(6)]			See "The Appeal"		

ACTION	DOCUMENT	SERVICE	FILING	DOCUMENT CONTENTS	HOW MUCH \$	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS
LEAVE TO APPEAL (CA)	Notice of Motion for Leave <u>Note:</u> Notice shall state that the court will hear the motion in writing 36 days after the service of the moving party's materials [r. 61.03.1(2)]	Shall be served within 15 days after the date of the order or decision from which leave to appeal is sought [r. 61.03.1(1)]	File, with proof of service, within 5 days after service [r. 61.03.1(1)]	Form 37A <u>Note:</u> Do not include Court file number. A number will be assigned when it is filed.	\$127.00 (payable to the Minister of Finance)	One copy	
	Motion Record for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03.1(6)] <u>Respondent</u> - Serve and file, with proof of service, within 25 days after service of the moving party's materials [r. 61.03.1(10)]		See r. 61.03(4) See r. 61.03(8)		Three copies	<u>Moving Party and Respondent</u> - Light blue backsheet [r. 4.07(1)]
	Factum for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03.1(6)] <u>Respondent</u> - Serve and file, with proof of service, within 25 days after service of the moving party's materials [r. 61.03.1(10)]		See r. 61.03.1(4) and 61.03.1(5) See r. 61.03(8) and 61.03(9)		Three copies	<u>Moving Party</u> - White front and back <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Book of Authorities for Leave to Appeal (if necessary)	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03.1(6)] <u>Respondent</u> - Serve and file, with proof of service, within 15 days after service of the moving party's materials [r. 61.03.1(10)] NOTE: Should be filed with Motion Record and Factum, if possible, if not please file no later than the Monday of the week preceding the hearing of the matter		See pg. 1234 of the Ontario Annual Practice, 2008-2009, "Practice Direction"		Three copies NOTE: Case Law must be easy to read and clean copies. Relevant sections must be blacklined or highlighted	<u>Moving Party</u> - White front and back <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Transcripts of Evidence for Leave to Appeal	<u>Moving Party</u> - Serve and file, with proof of service, within 30 days after the filing of the notice of motion for leave to appeal [r. 61.03.1(6)] <u>Respondent</u> - Serve and file, with proof of service, within 15 days after service of the moving party's materials [r. 61.03.1(10)]				Three copies	<u>Moving Party and Respondent</u> - Red front and back [r. 4.07(4)]
	Notice of Appeal	Where leave is granted, the notice of appeal shall be delivered within 7 days after the granting of leave [r. 61.03.1(16)]		See "The Appeal"			

ACTION	DOCUMENT	SERVICE	FILING	DOCUMENT CONTENTS	HOW MUCH?	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS	
THE APPEAL	Notice of Appeal	Must be served within 30 days after the date of the order appealed from [r. 61.04(1) and 61.04(4)]	Shall be filed, with proof of service, in accordance with subrule 4.05(4) in the Registrar's office within 10 days after service [r. 61.04(4)]	Form 61A Form 61B (Heading) See r. 61.04(2) and 61.04(3)	\$259.00 (payable to the Minister of Finance)	One copy		
	IMPORTANT NOTE: There may be overriding provisions in other legislation varying the times for serving and filing the Notice of Appeal. See, for example, s. 70 of O. Reg. 222/98 made under the <i>Ontario Disability Support Program Act, 1997</i> , S.O. 1997, c. 25, Sched. B and s. 81 of O. Reg. 134/98 made under the <i>Ontario Works Act, 1997</i> , S.O. 1997, c. 25, Sched. A.							
	Certificate or Agreement Respecting Evidence	<u>Appellant</u> - Must be served with the Notice of Appeal within 30 days after the date of the order appealed from [r. 61.05(1)] <u>Respondent</u> - Must be served within 15 days after service of the appellant's certificate [r. 61.05(2)]	Shall be filed in accordance with subrule 4.05(4) in the Registrar's office within 10 days after service [r. 61.04(4)]	Form 61C and 61D				
Notice of Cross-Appeal	Must be served within 15 days after service of the notice of appeal [r. 61.07(1)]	Shall be filed, with proof of service, with the Registrar within 10 days after service [r. 61.07(2)]	Form 61E	\$259.00 (payable to the Minister of Finance)				

ACTION	DOCUMENT	SERVICE	FILING	DOCUMENT CONTENTS	HOW MUCH?	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS
PERFECTING THE APPEAL NOTE: To Perfect the appeal comply with r. 61.09(2) and 61.09(3)	Appeal Book & Compendium	Where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; OR Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See r. 61.10(1)		Three copies, and where the appeal is to be heard by five judges, two additional copies	Buff front and back [r. 4.07(3)]
	Exhibit Book	Where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; OR Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See r. 61.10.1(1)		One copy	Call Court for further directions.
	Transcript of evidence	Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]				One copy Div Ct requires 3 copies	Red front and back [r. 4.07(4)]
	Electronic Version of the transcript of evidence	Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See pg. 1248 to 1251 of the Ontario Annual Practice, 2008-2009, "Practice Direction"		One copy	
	Typed or printed copy of the Appellant's Factum	Where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; OR Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See r. 61.11(1) Note: Factum must include Certificate re: Estimate of Time [r. 61.11(1)(e)]		Three Judges = three copies Five Judges = five copies	<u>Appellant</u> - White front and back [r. 4.07(5)]
	Electronic version of the Appellant's factum;	Where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; OR Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See pg. 1248 to 1251 of the Ontario Annual Practice, 2008-2009, "Practice Direction"			
	Certificate of Perfection	Where no transcript of evidence is required for the appeal, within 30 days after filing the notice of appeal; OR Where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed [r. 69.09(1)]		See r. 61.09(3)(c)	\$201.00 (payable to the Minister of Finance)	One copy	
	Respondent's Factum & Compendium	File with the Registrar, with proof of service, within 60 days after service of the appeal book and compendium, exhibit book, transcript of evidence, if any, and appellant's factum [r. 61.12(2)] An electronic version of the factum is also necessary.		See r. 61.12(3) Note: Factum must include Certificate re: Estimate of Time [r. 61.12(3)(f)]		Three Judges = three copies Five Judges = five copies	<u>Respondent</u> - Green front and back [r. 4.07(5)]
When an appeal is perfected, the Registrar shall place it on the list of cases to be heard at the appropriate place of hearing and shall mail a notice of listing for hearing (Form 61G) to every person listed in the certificate of perfection [r. 61.09(5)]							

ACTION	DOCUMENT	SERVICE	FILING	DOCUMENT CONTENTS	HOW MUCH?	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS
MOTIONS IN AN APPELLATE COURT	Notice of Motion	Where a motion is made on notice, the notice of motion shall be served and filed with proof of service in the office of the Registrar, at least 3 days before the hearing date [r. 61.16(3.1)] <u>DIV. CT. NOTE:</u> You must call the Registrar to get an available date. When you call you may need the following information: parties in the action, court file number, what the motion is for, counsel who will be present, and amount of time for the motion. <u>CA NOTE:</u> When the appeal is to be heard by a panel of judges the notice of motion should read "on a date to be fixed by the Registrar" [r. 61.16(3)].		<u>Note:</u> The Notice of Motion shall contain a Certificate re: Estimate of Time [r. 61.16(3.2)]	\$127.00 (payable to the Minister of Finance)	A notice of motion may be served and filed, with proof of service, as part of the party's motion record and need not be filed separately [r. 37.10(4)]	
	Motion Record <u>Note:</u> If the Notice of Motion was filed separately than you do not need to provide the court with another \$127.00.	<u>Moving Party</u> - The Record shall be served and filed, with proof of service, within 30 days after filling the notice of motion [r. 61.16(4)] <u>Respondent</u> - The Responding Record shall be served and filed, with proof of service, within 25 days after service of the moving party's motion record and factum [r. 61.16(4)(b)]		See r. 37.10(2) and 37.10(3)	\$127.00 (payable to the Minister of Finance)	Three copies	<u>Moving Party</u> and <u>Respondent</u> - Light Blue backsheet [r. 4.07(1)]
	Factum	<u>Moving Party</u> - The Factum shall be served and filed, with proof of service, within 30 days after filling the notice of motion [r. 61.16(4)] <u>Respondent</u> - The Responding Factum shall be served and filed, with proof of service, within 25 days after service of the moving party's motion record and factum [r. 61.16(4)(b)]		See r. 37.10(6)		Three copies	<u>Moving Party</u> - White front and back [r. 4.07(5)] <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Book of Authorities	<u>Moving Party</u> - Should be filed if possible no later than the Monday of the week preceding the hearing of the matter <u>Respondent</u> - Should be filed if possible no later than the Monday of the week preceding the hearing of the matter		See pg. 1243 of the Ontario Annual Practice, 2008-2009, "Practice Direction"		Three copies <u>NOTE:</u> Case Law must be easy to read and clean copies. Relevant sections must be blacklined or highlighted	<u>Moving Party</u> - White front and back [r. 4.07(5)] <u>Respondent</u> - Green front and back [r. 4.07(5)]
	Transcript of Evidence	A party who intends to refer to a transcript of evidence at the hearing shall file within 30 days after filing the notice of motion [r. 61.16(4)(c)]				Three copies	Light grey backsheet [r. 4.07(2)]
	CA Motion Confirmation Form	There are no confirmation forms for CA					
	Div. Ct. Motion Confirmation Form	All motions and applications must be confirmed by 2:00 p.m. two business days before the motion or application is to be heard by using a Divisional Court Motion Confirmation Form (Toronto - "Confirmation of Hearing" - confirmation can be made by fax at 416-327-5032 or by e-mail (coa.e-file@ontario.ca), or by leaving it at the court office					

APPLICATION	DOCUMENT	SERVICE	FILING/ISSUING	DOCUMENT CONTENTS	HOW MUCH ?	HOW MANY COPIES TO BE FILED?	BINDING INSTRUCTIONS	
PROCEEDING FOR JUDICIAL REVIEW	Notice of Application Note: Notice shall state that the application is to be heard on a date to be fixed by the Registrar at the place of hearing [r. 68.03]	After the Notice of Application has been issued you can serve it in the Application Record OR you can serve just the Notice of Application within 30 days after the application is commenced. [PERSONAL SERVICE]	Issue the Notice of Application with the Divisional Court or the Superior Court of Justice [r. 68.01(1)]	Form 68A See r. 38.04 Note: The Attorney General, and the board/tribunal/decision-maker must be served with all judicial review materials.	\$181.00 (payable to the Minister of Finance)	One copy		
	Application Record Note: Because an application is an originating process the Application Record or Notice of Application must be served personally	Where the nature of the application requires a record of the proceeding before the court or tribunal whose decision is to be reviewed, shall serve and file, with proof of service, within 30 days after the record is filed [r. 68.04(1)(a)] OR Where the nature of the application does not require such a record, within 30 days after the application is commenced [r. 68.04(1)(b)] [PERSONAL SERVICE]		See r. 68.04(2)		Three copies	Light blue backsheet [r. 4.07(1)]	
	Factum	Where the nature of the application requires a record of the proceeding before the court or tribunal whose decision is to be reviewed, shall serve and file, with proof of service, within 30 days after the record is filed [r. 68.04(1)(a)] OR Where the nature of the application does not require such a record, within 30 days after the application is commenced [r. 68.04(1)(b)]		See r. 68.04(3)		Three copies	White front and back [r. 4.07(5)]	
	Transcript of Evidence	If a party intends to refer to a transcript of evidence it should be served and filed with the application record and the factum [r. 68.04(9)]				Three copies	Light grey backsheet [r. 4.07(2)]	
	Certificate of Perfection	Shall be filed with the application record and factum [r. 68.05(1)]			\$201.00	One copy		
	Notice of Appearance	A respondent who has been served with a notice of application shall deliver forthwith a notice of appearance [r. 38.07(1)]			Form 38A	\$ 102.00	One copy	
	Respondent's Application Record	Shall be served and filed, with proof of service, within 30 days after service of the applicant's application record and factum		See r. 68.04(5)			Three copies	Light blue backsheet [r. 4.07(1)]
	Respondent's Factum	Shall be served and filed, with proof of service, within 30 days after service of the applicant's application record and factum		See r. 68.04(6)			Three copies	Green front and back [r. 4.07(5)]
	When the application is perfected, the Registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and other persons named in the Certificate of Perfection [r. 68.05(2)]							

Court of Appeal Practice Direction, pg. 1270 to 1288 of the Ontario Annual Practice 2009-2010

"COSTS IN THE COURT OF APPEAL" (pg. 1283)

Amendments to the Rules of Civil Procedure incorporated a new "costs grid" and require that, generally, a court hearing a matter fix the costs of the proceeding.

Counsel appearing in the Court of Appeal for Ontario are advised that they should be prepared to address all issues of costs, including the quantum of costs, at the hearing of an appeal or a motion.

All counsel who may be entitled to costs must prepare and exchange their proposed bill of costs to be filed at the time of argument if requested by the court. This bill will be complete to the point of the day before argument but will include an estimate of the counsel fee for the hearing of the appeal or motion.

TAB 3

SERVICE OF DOCUMENTS CHART - RULE 16

(Revised – April 2010)

TABLE OF CONTENTS

General Rules	pg. 2
Personal Service - r. 16.02(1)	pg. 2
Alternatives to Personal Service - r. 16.03(1)	pg. 3
Service on a Lawyer of Record - r.16.05(1)	pg. 4
Precedents	pg. 5
Affidavit of Service – FAX	
Affidavit of Service – COURIER	
Affidavit of Service – PERSONAL	

****DISCLAIMER: Please note attempts have been made to make this document as accurate as possible when prepared. However, this document should be used as a guide only. To ensure the information you are using is accurate, please see official source materials****

<p>General Rules for Manner of Service [r. 16.01]</p>	<p>r. 16.01(1) - An originating process shall be served personally as provided in rule 16.02 or, by an alternative to personal service as provided in rule 16. 03.</p> <p>r. 16.01 (2) A party who has not been served with the originating process but delivers a defence, notice of intent to defend or notice of appearance shall be deemed to have been served with the originating process as of the date of delivery.</p>
<p>All Other Documents [r. 16.01(3) and r. 16.01(4)]</p>	<p>r. 16.01(3) - No other document need be served personally, or by an alternative to personal service, unless these rules or an order require personal service or an alternative to personal service</p> <p>r. 16.01(4)- Any document that is not required to be served personally or by an alternative to personal service,</p> <p>(a) shall be served on a party who has a lawyer of record by serving the lawyer, and service may be made in a manner provided in rule 16.05;</p> <p>(b) may be served on a party acting in person or on a person who is not a party,</p> <p>(i) by mailing a copy of the document to the last address for service provided by the party or other person or, if no such address has been provided, to the party's or person's last known address; or</p> <p>(ii) by personal service or by an alternative to personal service.</p>

PROCESS	ON WHOM SERVICE IS MADE	HOW TO EFFECT SERVICE	WHEN SERVICE IS CONSIDERED EFFECTIVE
<p>Personal Service [r.16.02(1)]</p>	<p>A person effecting personal service of a document need not produce the original document or have it in his or her possession [r. 16.02(2)]</p>		
	<p><i>Individual</i></p>	<p>Leave a copy of the document with the individual.</p>	<p>Service is effective the same day.</p>
	<p><i>Corporation</i></p>	<p>Leave a copy of the document with an officer, director, or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business.</p>	<p>Service is effective the same day.</p>
	<p><i>Attorney General</i></p>	<p>Leave a copy of the document with a lawyer in the Crown Law Office (civil law) of the Ministry of the Attorney General.</p>	<p>Service is effective the same day.</p>
<p><i>Refer to rule 16.02(1)(a) to (n) for additional rules of personal service.</i></p>			

PROCESS	ON WHOM SERVICE IS MADE	HOW TO EFFECT SERVICE	WHEN SERVICE IS CONSIDERED EFFECTIVE
Alternatives to Personal Service [r. 16.03(1)]	<i>Acceptance of service by lawyer</i>	Service on a party who has a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office.	Only if the lawyer endorses on the document or a copy of it with an acceptance of service and the date of the acceptance.
	<i>Service by mail to last known address</i>	Service of a document may be made by sending a copy of the document together with an acknowledgement of receipt card (Form 16A) by mail to the last known address of the person to be served.	As of the date the sender receives the card.
	<i>Service at place of residence</i>	Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by, (1) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and (2) on the same day or the following day mailing another copy of the document to the person at the place of residence.	Service is effective on the 5th day after the document is mailed.
	<i>Service on a corporation</i>	Where the head office, registered office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.	

PROCESS	ON WHOM SERVICE IS MADE	HOW TO EFFECT SERVICE	WHEN SERVICE IS CONSIDERED EFFECTIVE
Service on a Lawyer of Record [r. 16.05(1)]	<i>Regular Mail</i>	By mailing a copy to the lawyer's office.	Service of a document by mail is effective on the 5th day after the document is mailed but the document may be filed with proof of service before service becomes effective.
	<i>Personal Service</i>	By leaving a copy with a lawyer or employee in the lawyer's office.	Service is effective the same day.
	<i>Document Exchange</i>	By depositing a copy at a document exchange of which the lawyer is a member or subscriber but service is effective only if the document or a copy of it and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy.	Service is effective on the day following the day on which it was deposited and date stamped, unless that following day is a holiday, in which case service is effective on the next day that is not a holiday.
	<i>Courier</i>	By sending a copy to the lawyer's office by courier.	Service of a document by sending a copy by courier under clause 16.05(1)(e) is effective on the second day following the day the courier was given the document, unless that second day is a holiday, in which case service is effective on the next day that is not a holiday.
	<i>Fax</i>	By faxing a copy to the lawyer's office in accordance with subrules 16.05(3)(3.1) and (3.2) but, where service is made under this clause between 4 p.m. and midnight, it shall be deemed to have been made on the following day.	r. 16.05(3) A document that is served by fax shall include a cover page indicating: r. 16.05(3)(a) to (f). 16.05(3.1) A document of 16 pages or more inclusive of the cover page and the back sheet may be served by fax only between 4 p.m. and 8 a.m. the following day, unless the party to be served gives prior consent. r. 16.05(3.2) A motion record, application record, trial record, appeal book or book of authorities may not be served by fax at any time unless the party to be served gives prior consent.
	E-mail	By e-mailing a copy to the lawyer's office in accordance with subrule 16.05(4). r. 16.05(4) The e-mail message to which a document served under clause 16.05(1)(f) is attached shall include, (1) the sender's name, address, telephone number, fax number and e-mail address; (2) the name of lawyer; (3) the date and time of transmission; and the name and telephone number of a person to contact in the event of transmission problems.	Service is only effective if the lawyer of record provides by e-mail an acceptance of service and the date of the acceptance, and where the e-mail acceptance is received between 4 p.m. and midnight, service shall be deemed to have been made on the following day.

AFFIDAVIT OF SERVICE: FAX

Court File No. PRECEDENT

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

AFFIDAVIT OF SERVICE

I, LESLI BISGOULD, of the City of Toronto, MAKE OATH AND SAY:

1. On March 10, 2010, I served the Respondent, with a Notice of Motion, by sending copy by fax to 416-555-5555 on March 10, 2010, to the attention of Judy Jones of the Torkin Thompson LLP, the solicitors for the Respondent.

SWORN BEFORE ME in)
 the City of Toronto, this 10th day)
 of March, 2010)
)

 Lesli Bisgould

 Commissioner for Taking Affidavits

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No. PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**AFFIDAVIT OF SERVICE
(Sworn on March 10, 2010)**

**LEGAL AID ONTARIO
CLINIC RESOURCE OFFICE**

Lesli Bisgould (LSUC# 55555)
425 Adelaide Street West, 4th Floor
Toronto, ON M5V 3C1
Tel: 416-204-5434
Fax: 416-204-5422
E-mail: bisgoul@lao.on.ca

Counsel for the Appellant

AFFIDAVIT OF SERVICE: COURIER

Court File No. PRECEDENT

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

AFFIDAVIT OF SERVICE

I, LESLI BISGOULD, of the City of Toronto, MAKE OATH AND SAY:

1. I served the Respondent, Jane Doe, with the Appellant's Factum, and Book of Authorities, by sending copies by Purolator, a courier, to the attention of Judy Jones of the Torkin Thompson LLP, the solicitors for the Respondent, located at 5555 Centre Street, Suite 222, Toronto, Ontario, M6J 4L6.
2. The copies were given to the courier on March 1, 2010.

SWORN BEFORE ME in)
 the City of Toronto, this 10th day)
 of March, 2010)

 Lesli Bisgould

 Commissioner for Taking Affidavits

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No. PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**AFFIDAVIT OF SERVICE
(Sworn on March 10, 2010)**

**LEGAL AID ONTARIO
CLINIC RESOURCE OFFICE**

Lesli Bisgould (LSUC# 55555)
425 Adelaide Street West, 4th Floor
Toronto, ON M5V 3C1
Tel: 416-204-5434
Fax: 416-204-5422
E-mail: bisgoul@lao.on.ca

Counsel for the Appellant

AFFIDAVIT OF SERVICE: PERSONAL

Court File No. PRECEDENT

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

AFFIDAVIT OF SERVICE

I, LESLI BISGOULD, of the City of Toronto, MAKE OATH AND SAY:

1. On March 10, 2010, I served the Respondent, Jane Doe, with the Notice of Appeal and Certificate Respecting Evidence, by leaving a copy with Betty Rogers, a receptionist at the Torkin Thompson LLP, the solicitors for the Respondent, located at 5555 Centre Street, Suite 222, Toronto, Ontario, M6J 4L6.
2. I was able to identify the person by means of the said Betty Rogers indentifying herself to me as such.

SWORN BEFORE ME in)
 the City of Toronto, this 10th day)
 of March, 2010)
)

 Lesli Bisgould

 Commissioner for Taking Affidavits

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No. PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**AFFIDAVIT OF SERVICE
(Sworn on March 10, 2010)**

**LEGAL AID ONTARIO
CLINIC RESOURCE OFFICE**

Lesli Bisgould (LSUC# 55555)
425 Adelaide Street West, 4th Floor
Toronto, ON M5V 3C1
Tel: 416-204-5434
Fax: 416-204-5422
E-mail: bisgoul@lao.on.ca

Counsel for the Appellant

TAB 4

PRECEDENTS

TAB

- A. Motion Record for Leave to Appeal
- B. Notice of Appeal
- C. Appellant's Certificate Respecting Evidence
- D. Respondent's Certificate Respecting Evidence
- E. Appeal Book and Compendium
- F. Factum
- G. Brief of transcripts
- H. Book of Authorities
- I. Certificate of Perfection

****DISCLAIMER: Please note attempts have been made to make this document as accurate as possible when prepared. However, this document should be used as a guide only. To ensure the information you are using is accurate, please see official source materials****

VISIT: <http://www.ontariocourtforms.on.ca/english/> or Rules of Civil Procedure

TAB 4 - A

MOTION RECORD (Appellate Courts)

THINGS TO CONSIDER

- Does the Moving Party's motion record contain the following (r. 61.03(2)):
 - i. a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
 - ii. a copy of the notice of motion;
 - iii. a copy of the order or decision from which leave to appeal is sought, as signed and entered;
 - iv. a copy of the reasons of the court or tribunal from which leave to appeal is sought with a further typed or printed copy if the reasons are handwritten;
 - (iv.1) a copy of any order or decision that was the subject of the hearing before the court or tribunal from which leave to appeal is sought;
 - (iv.2) a copy of any reasons for the order or decision referred to in subclause (iv.1), with a further typed or printed copy if the reasons are handwritten;
 - v. a copy of all affidavits and other material used before the court or tribunal from which leave to appeal is sought;
 - vi. a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
 - vii. a copy of any other material in the court file that is necessary for the hearing of the motion.

- Does the Responding Party's motion record contain the following (r. 61.03(3)):
 - a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
 - b) a copy of any material to be used by the responding party on the motion and not included in the motion record.

- Does the cover page and backsheet state what the motion is for (i.e. motion for leave to appeal) as well as the date the motion is returnable?

- If more than one volume, does the cover page and backsheet indicate the volume number (i.e. Volume I of III)?

- Check to see if every page is clearly numbered (top right corner)?

- Check the page numbers to see if the Index is correct?

- Check each copy of the motion record for copying errors (i.e. missing pages, pages turned around and not in the right order).

- Check to see if all the backpages face the proper direction?

- Does each exhibit have an exhibit stamp or an exhibit page? Are the exhibit stamps/pages signed?
- How many copies are you going to need (i.e. file, court, client and responding parties)?
- How long is it going to take to bind? Do you need to send it out or can you do it yourself?
- If you can do it yourself, do you have the supplies to bind (i.e. light blue cardstock, clear covers, tabs, binding rings)?
- Where do you have to serve it and how long do you have to serve it? Diarize this in a calendar as a reminder.
- Prepare an affidavit of service to file with the court. (Remember to keep a copy of the affidavit in the file and file the original with the court.)
- Where do you have to file it?
- When are the motions heard? (Divisional Court)

Note: The Registrar will fix a date for the hearing of the motion which won't be earlier than fifteen days (except with the responding party's consent) after the filing of the moving party's materials.

- How to confirm the motion (e.g., in Toronto you must send a "Confirmation of Hearing" by 2 p.m. two days before the date of the motion) (diarize this in a calendar as a reminder) Prepare the Confirmation of Hearing, if needed.

Note: Thirty-six days after service of the moving party's materials, or on the filing of the moving party's reply factum, if any, whichever is earlier, the motion will be submitted to the Court of Appeal for Ontario for consideration, and,

- c) if it appears from the written material that no oral hearing is warranted, the court will determine the motion;
- d) otherwise, the court will order an oral hearing to determine the motion. If the court orders an oral hearing, the Registrar will fix a date for it.

Court File No. PRECEDENT

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Moving Party(ies)

- and -

JANE DOE

Responding Party(ies)

**MOTION RECORD
(Motion for Leave to Appeal)**

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Toronto, ON M7A 1E9

Attention: Director of Legal Services

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Solicitors for the Responding Party

AND TO: Social Benefits Tribunal
98 Parkside Drive, 7th Floor
Toronto, ON M5S 2B1

Attention: Director of Legal Services

Tel: 416-555-5555
Fax: 416-555-5555

Solicitors for the Social Benefits Tribunal

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Moving Party(ies)

- and -

JANE DOE

Responding Party(ies)

INDEX

TAB

PAGE

A. **NOTICE OF MOTION** dated November 25, 20091

B. **AFFIDAVIT of Michael Kor**, sworn November 11, 2009 5
Exhibit 1: Copy of letter to Eva Nunes dated September 16, 2009.....12
Exhibit 3: Copy of letter to Eva Nunes dated September 25, 2009.....14

C. **TRANSCRIPTS OF EVIDENCE** (*if necessary*)..... 15

D. **ANY OTHER MATERIAL THAT IS NECESSARY FOR THE HEARING OF THE MOTION** 20

This is EXHIBIT "A" referred to in the
Affidavit of MICHAEL KOR
Sworn before me, this 11th day
of November 2009

A Commissioner, ETC.

JOHN SMITH
Moving Party

-and -

JANE DOE
Responding Party

Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**MOTION RECORD
(Motion for Leave to Appeal)**

**LEGAL AID ONTARIO
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Counsel for the Moving Party

TAB 4 - B

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

NOTICE OF APPEAL

THE APPELLANT APPEALS to the Divisional Court from the decision of Bob Simpson, Vice Chair of the Social Benefits Tribunal, dated April 5, 2009 made at Toronto, which denied the Appellant's request for reconsideration; and from decision of Michael Kane, Member of the Social Benefits Tribunal, dated January 11, 2006 made at Mount Forest.

THE APPELLANT ASKS that the decisions be set aside and an Order be granted as follows:

1. the overpayment is rescinded;
2. in the alternative, the overpayment should not be recovered having given consideration to all the appellant's circumstances;

3. in the alternative, referring the matter back to the Tribunal with such directions as this Honourable Court may deem just;
4. costs of this appeal; and
5. such other and further relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

1. The Social Benefits Tribunal erred in law, in its interpretation and application of the *Ontario Disability Support Program Act, 1997*.
2. The Social Benefits Tribunal erred in law, in its interpretation of the *Social Assistance Reform Act*.
3. The Social Benefits Tribunal erred in law, in its interpretation and application of s.1(1)(a) of the *Ontario Disability Support Program Regulation 222/98*.
4. The Social Benefits Tribunal erred in law, by coming to an unreasonable conclusion, and ignoring, misapprehending, or failing to give appropriate weight to the evidence before it, in finding that the appellant resided with a spouse.
5. The Social Benefits Tribunal erred in law, by failing to allow a Reconsideration of the matter under appeal for reasons that resulted in a breach of natural justice and procedural fairness.
6. Such further grounds as counsel may advise and this Honourable Court permit

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (i) s. 31 of ***Ontario Disability Support Program Act, 1997***, S.O. 1997, c. 25, Sched. B;
s.70 of ***O. Reg. 222/98*** pursuant to that Act.
- (ii) The order appealed from is final
- (iii) Leave to appeal is not required

- (iv) The Tribunal has refused the Appellant's request for a reconsideration of the decision.

THE APPELLANT REQUESTS that this appeal be heard at Toronto.

Date: May 3, 2009

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Solicitors for the Responding Party

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

NOTICE OF APPEAL

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Counsel for the Appellant

TAB 4 - C

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

The Appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. All exhibits;
2. The affidavit evidence of (*names of deponents*); and
3. The oral evidence of (*names of witnesses*)

Date: March 12, 2010

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Solicitors for the Respondent

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**APPELLANT'S CERTIFICATE
RESPECTING EVIDENCE**

**LEGAL AID ONTARIO
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Counsel for the Appellant

TAB 4 - D

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

RESPONDENTS' CERTIFICATE RESPECTING EVIDENCE

The Respondent confirms the Appellant's certificate.

ADDITIONS

1. Exhibits numbers (*exhibit number*) are required for the appeal.
2. The affidavit evidence of (*names of deponents*) is required for the appeal.
3. The oral evidence of (*names of witnesses*) is required for the appeal.

DELETIONS

4. Exhibits numbers (*exhibit number*) are not required for the appeal.
5. The affidavit evidence of (*names of deponents*) is not required for the appeal.
6. The oral evidence of (*names of witnesses*) is not required for the appeal.

Date: March 12, 2010

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Solicitors for the Appellant

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**RESPONDENT'S CERTIFICATE
RESPECTING EVIDENCE**

**LEGAL AID ONTARIO
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Counsel for the Respondent

TAB 4 - E

APPEAL BOOK & COMPENDIUM
(Appellate Courts)
THINGS TO CONSIDER

Does the Appellant's appeal book & compendium contain the following (r. 61.10(1)):

- (a) a table of contents describing each document by its nature and date;
- (b) a copy of the notice of appeal and of any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
- (c) a copy of the order or decision appealed from as signed and entered;
- (d) a copy of the reasons of the court or tribunal appealed from, with a further typed or printed copy if the reasons are handwritten;
- (e) if an earlier order or decision was the subject of the hearing before the court or tribunal appealed from, a copy of the order or decision, as signed and entered, and a copy of any reasons for it, with a further typed or printed copy if the reasons are handwritten;
- (f) a copy of the pleadings or notice of application or of any other document that initiated the proceeding or defines the issues in it;
- (g) a copy of any excerpts from a transcript of evidence that are referred to in the appellant's factum;
- (h) a copy of any exhibits that are referred to in the appellant's factum;
- (i) a copy of any other documents relevant to the hearing of the appeal that are referred to in the appellant's factum;
- (j) a copy of the certificates or agreement respecting evidence referred to in rule 61.05;
- (k) a copy of any order made in respect of the conduct of the appeal; and
- (l) a certificate (Form 61H) signed by the appellant's lawyer, or on the lawyer's behalf by someone he or she has specifically authorized, stating that the contents of the appeal book and compendium are complete and legible.

Does the Respondent's compendium contain the following (r. 61.12(7)):

- (a) a table of contents describing each document by its nature and date;
- (b) a copy of any excerpts from a transcript of evidence that are referred to in the respondent's factum;
- (c) a copy of any exhibits that are referred to in the respondent's factum; and
- (d) a copy of any other documents relevant to the hearing of the appeal that are referred to in the respondent's factum.

Note: The Registrar may refuse to accept an appeal book and compendium if it does not apply with these rules or is not legible.

If more than one volume, does the cover page and backsheet indicate the volume number (i.e. Volume I of III)?

Check to see if every page is clearly numbered (top right corner)?

- Check the page numbers to see if the Index is correct?
- Check each copy of the appeal book and compendium for copying errors (i.e. missing pages, pages turned around and not in the right order).
- Check to see if all the backpages face the proper direction?
- Does each exhibit have an exhibit stamp or an exhibit page? Are the exhibit stamps/pages signed?
- How many copies are you going to need (i.e. file, court, client, other parties)?
- How long is it going to take to bind. Do you need to send it out or can you do it yourself?
- If you can do it yourself, do you have the supplies to bind (i.e. buff cardstock, clear covers, tabs, binding rings)?
- Where do you have to serve it and how long do you have to serve it (diarize this in a calendar as a reminder)?
- Prepare an affidavit of service to file with the court. (Remember to keep a copy of the affidavit in the file and file the original with the court!)
- Where do you have to file it?

Court File No. PRECEDENT

COURT OF APPEAL FOR ONTARIO

or

ONTARIO SUPERIOR COURT OF JUSTICE

(Divisional Court)

BETWEEN:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

APPEAL BOOK AND COMPENDIUM

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Solicitors for the Responding Party

COURT OF APPEAL FOR ONTARIO

or

ONTARIO SUPERIOR COURT OF JUSTICE

(Divisional Court)

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

INDEX

<u>TAB</u>	<u>PAGE</u>
1. NOTICE OF APPEAL dated May 3, 2009	1
2. RECONSIDERATION DECISION , dated April 5, 2009	5
3. APPEAL DECISION dated January 11, 2009	7
4. SOCIAL BENEFITS TRIBUNAL APPEAL , filed February 27, 2006.....	9
5. APPLICATION FOR RECONSIDERATION dated February 15, 2009.....	10
6. EXCERPTS from Transcript of Evidence.....	13
A. Eligibility Review Officer’s Notes of Interview with Robert Redford on December 2, 2005 from Submissions and Evidence filed by Ministry of Community and Social Services: Exhibit R-1 found at Volume 1, Tab 3, Appendix G, pages 232-253 of the Record of Proceedings	13
B. Transcripts of Eligibility Review from Submissions and Evidence filed by Ministry of Community and Social Services: Exhibit R-2 found at Volume 2, Tab 3 of the Record of Proceedings	24

7. APPELLANT'S CERTIFICATE Respecting Evidence, filed May 3, 2009...	38
8. CERTIFICATE OF COMPLETENESS , dated October 25, 2009	40

COURT OF APPEAL FOR ONTARIO

or

**ONTARIO SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N:

JOHN SMITH

Appellant

- and -

JANE DOE

Respondent

CERTIFICATE OF COMPLETENESS

I, LESLI BISGOULD, lawyer for the appellant, certify that the appeal book and compendium in this appeal is complete and legible.

Date:

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Solicitors for the Respondent

JOHN SMITH
Appellant

-and -

JANE DOE
Respondent

Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

NOTICE OF COMPLETENESS

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Court File No.: PRECEDENT

**ONTARIO
SUPERIOUR COURT OF JUSTICE
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Proceedings commenced at Toronto

APPEAL BOOK AND COMPENDIUM

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