

## **COURT OF APPEAL PRACTICE GUIDELINES**

### **July 2003**

The new civil and criminal Appeal Court Rules have now come into effect. The Rules are supplemented by the following practice guidelines, some of which are a continuation of practice guidelines from before and some of which are new:

1. A lawyer should not ordinarily appear as lead or associate counsel on an appeal in a proceeding in which he has sworn an affidavit containing evidence relevant to the issues on appeal. When the appeal is taken from an order dealing with a motion to dismiss an action for delay and the delay complained about might fairly be attributed to fault on the part of the plaintiff's lawyers, the Court is also of the view that independent counsel should be retained.
2. Where an appellant or his solicitor attends to file a notice of appeal and it would appear on the face of the document that the time for filing has expired;
  - (a) the registrar shall permit the notice of appeal to be filed where the time for filing is established by a statute, leaving it to the respondent to raise the issue of late filing as may be appropriate, and
  - (b) the registrar shall not accept the notice of appeal where the time for filing is governed by the Rules of Court, leaving it to the appellant to proceed, by motion, to extend the time.
3. PREPARATION OF MATERIAL FOR THE COURT
  - 3.1 All material prepared for the Court in factums and, where possible, in appeal books shall be typed in font size 14, on 8½" x 11" (21.6 cm x 27.9 cm) white paper, using the right-hand side of the page only, double-spaced, and with a maximum of 26 lines per page. Quotations from authorities shall be indented and single-spaced, and thus may increase the number of allowable lines per page. Margins shall be no less than 1" (2.54 cm), and paragraphs throughout shall be numbered sequentially.
  - 3.2 The pages of an appeal factum shall be numbered.

- 3.3 In the section of an appeal factum summarizing the facts, it is desirable that reference be made to the volume, page and line number of the transcript of evidence, or the specific reference to affidavit material or exhibits contained in the appeal book.
- 3.4 Where the factum refers to a legal authority, it should note the appropriate tab number in the book of authorities.
- 3.5 The Court reserves the right to reject factums of excessive length. Any factum exceeding 30 pages is subject to review. If rejected, a more concise factum must be filed on a timely basis.
- 3.6 It is desirable to establish a colour-coding system in all cases as follows:
  - (a) the appeal book should have grey covers;
  - (b) the appellant's factum blue covers;
  - (c) the respondent's factum beige covers;
  - (d) the joint book of authorities green covers; and
  - (e) any other materials white or off-white covers.
- 3.7 The respondent's book of authorities shall contain only those additional authorities or excerpts of authorities not contained in the appellant's book of authorities.
- 3.8 The intervenor's book of authorities shall contain only those additional authorities or excerpts of authorities not contained in either the appellant's or the respondent's book of authorities.
- 3.9 Where counsel refer to reported Supreme Court of Canada decisions, the Court should be provided with the official Supreme Court Reports [S.C.R.] citation. It is only where Supreme Court Reports are not readily available to counsel that different law reports should be cited when referencing decisions of the Supreme Court of Canada.

- 3.10 Each book of authorities should include an index of the authorities reproduced therein and each case should be marked with a tab (either numbered or lettered). Pages of the book of authorities do not have to be numbered if the page numbers of each authority are clearly shown.
- 3.11 A casebook shall contain those passages of decided cases that are relevant to the issues on the appeal, together with the headnote and such other portions of the case that put the passages relied on in the proper context. The specific passages relied on should be highlighted or the passage marked along the margin of the text.
- 3.12 The appellant and the respondent shall file their book of authorities no later than two weeks before the hearing of the appeal.
- 3.13 In a book of authorities, it is generally not necessary to include more than one case for any proposition in law. If it is sought to cite more than one authority in support of a given proposition, lawyers should state the reason for taking that course.
4. Adjournments of motions will be accepted by phone one day prior to the hearing of the motion. A letter can be faxed to the Court of Appeal office indicating the consent of the opposing party. Our fax number is 948-2072.
5. When a notice of motion for leave to appeal or a notice of appeal is filed in the Supreme Court of Canada, a copy of this document should be filed with the Court of Appeal for the Province of Manitoba.
6. The Court of Appeal will retain the original copy only of all material filed from every appeal hearing for one year after the disposition of the appeal.
7. A meeting pursuant to Rule 38 may be appropriate in the following circumstances:
  1. where one or more parties to an appeal request a hearing extending more than one day; and

2. where it appears to the registrar, after consultation with a judge, that it would be of benefit to convene such a meeting.
8. A date for the hearing of an appeal will not ordinarily be fixed until the factum of the appellant has been filed in the Court of Appeal.

The exceptions to this practice will be sentence appeals and appeals by unrepresented accused. The registrar retains the discretion to set dates in other matters as well.

9. Photocopying fees on all civil matters are allowed up to a maximum fee of \$100. However, the Court or a judge may vary that amount in appropriate cases.

## 10. SENTENCE APPEALS

10.1 Sentence appeals will be heard twice a month. Counsel for the accused and Crown should make every effort to make themselves available where possible.

10.2 Sentence appeals will be set down not later than six weeks after the registrar is advised of the completion date of the transcript. Exceptions will be made at the discretion of the registrar, such as for urgent matters.

10.3 In the case of an appeal against sentence only, a notice of application for leave to appeal must be included in, or accompany, the notice of application for release pending the determination of the appeal. The application should be supported by material which would normally include a transcript of the proceedings before the sentencing judge.

10.4 Leave to appeal must be granted before an appellant may be released from custody pending the determination of his appeal against sentence only.  
(*Criminal Code*, s. 679(1)(b))

10.5 Judicial Interim Release will not ordinarily be ordered on a sentence appeal unless counsel undertakes that a request for a transcript will be filed forthwith with Transcription Services Unit.

## 11. JUDICIAL INTERIM RELEASE

11.1 The Court will require as terms of an order for bail when it is granted:

1. the appellant's factum shall be filed by a specific date;
2. the sentence appeal shall be heard on a specific date;
- and
3. the appeal shall proceed in strict compliance with the Rules of the Court, failing which the Crown may apply to revoke the order.

11.2 In the event a variation of such an order is sought, or there has been non-compliance with its provisions, an application for relief must be made to a judge in chambers.

11.3 Material in support of Judicial Interim Release applications can be filed no later than 2:00 p.m. on the day prior to the hearing of the motion.