

## **Part 56**

### **Crown Practice Rules in Civil Matters**

#### **General rules to apply**

**737** Except where provided specially in this Part, the general Rules, including those relating to abridgment or extension of time, apply in all matters under this Part.

AR 390/68 s737

#### **Order not writ shall issue**

**738(1)** An order in the nature of habeas corpus may be granted upon application by notice of motion returnable before the court.

**(1.1)** An order in the nature of mandamus, prohibition, certiorari, quo warranto or habeas corpus may be granted upon application for judicial review under Part 56.1.

**(2)** The writs of mandamus, prohibition, certiorari, habeas corpus and quo warranto shall not be issued, but all necessary provisions shall be made in the judgment or order.

AR 390/68 s738;457/87

#### **Service of notice of motion**

**739(1)** The notice of motion shall be served upon every person who appears to be interested or likely to be affected by the proceedings.

**(2)** The court may require the notice of motion to be served upon any person not previously served.

**(3)** Where it is sought to quash a judgment, order, warrant or inquiry, and in all applications for an order in the nature of prohibition, notice of motion shall also be served at least seven days before the return date thereof

**(a)** upon the Attorney General, and

**(b)** upon the person making the order or holding the inquiry.

**(4)** Any person not served with the notice of motion may show that he is affected by the proceedings and thereupon may take part in the proceedings as though served.

AR 390/68 s739

#### **Appeal**

**740** An appeal lies from the order of the court to the Court of Appeal.

AR 390/68 s740;338/83

**Direction by a judge**

**741** Any direction required to give effect to an order of the Court of Appeal may be made by a judge of the Court of Appeal.

AR 390/68 s741;338/83

**Repealed**

**742 to 753** Repealed AR 457/87 s2.

## **Part 56.1**

### **Judicial Review in Civil Matters**

#### **Definition**

**753.01** In this Part, “person” includes a board, commission, tribunal or other body whose decision, act or omission is subject to judicial review, whether comprised of 1 person or of 2 or more persons acting together and whether or not styled by a collective title.

AR 457/87 s3

#### **Application for judicial review**

**753.02** A proceeding under this Part shall be known as an application for judicial review.

AR 457/87 s3

#### **Commencement**

**753.03** An application for judicial review shall be commenced by originating notice.

AR 457/87 s3

#### **Granting of relief**

**753.04(1)** On an application for judicial review, the court may grant any relief that the applicant would be entitled to in proceedings for any one or more of the following remedies:

- (a) an order in the nature of mandamus, prohibition, certiorari, quo warranto or habeas corpus;
- (b) a declaration or injunction.

**(2)** In such application a declaration may be made or an injunction granted where the court considers that it is just and convenient to do so having regard to all the circumstances of the case including

- (a) the nature of the matters in respect of which relief may be granted by orders in the nature of mandamus, prohibition, certiorari or quo warranto, and
- (b) the nature of the persons from whose decisions, acts or omissions relief may be granted by such orders.

**(3)** Subrule (1) applies whether the remedy under which the applicant would be entitled to the relief is or is not specifically named in an application.

**(4)** Before the court may grant relief under subrule (1), it must be satisfied that the grounds for the remedy under which the applicant would be entitled to the relief have been established.

AR 457/87 s3

### **Setting aside**

**753.05** Subject to Rule 753.11, where the applicant on an application for judicial review is entitled to a declaration that a decision or act is unauthorized or invalid, the court may, instead of making a declaration, set aside the decision or act.

AR 457/87 s3

### **Reconsideration and determination**

**753.06(1)** On an application for judicial review, the court may direct the person from whose decision, act or omission relief is claimed to reconsider and determine the whole or any part of a matter to which the application for judicial review relates but in respect of a decision the court may only direct a reconsideration and determination if the decision has been set aside.

**(2)** In acting under subrule (1), the court may give such directions as it considers appropriate.

AR 457/87 s3

### **Technical defect**

**753.07** On an application for judicial review where the sole ground for relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, the court may refuse relief and, where a decision has been made, may make an order validating the decision, notwithstanding such defect, to have effect from such time and on such terms as the court considers proper.

AR 457/87 s3

### **Originating notice**

**753.08(1)** An originating notice taken under this Part shall be in Form G modified in such manner as may be necessary having regard to the nature of the application.

**(2)** Every originating notice taken under this Part shall include a concise statement of the grounds on which relief is claimed in the proceedings and the nature of the relief claimed.

AR 457/87 s3

### **Service of application**

**753.09(1)** The application for judicial review shall be served on

- (a) the person from whose decision, act or omission relief is claimed,
- (b) the Attorney General, and
- (c) every person directly affected by the proceedings.

**(2)** The court may require the application for judicial review to be served on any person not previously served.

AR 457/87 s3

**Parties**

**753.1(1)** The court may direct any person to be added or struck out as a party to proceedings for judicial review.

(2) The Attorney General is entitled as of right to be heard in person or by counsel on the application.

(3) Any person not served with the application for judicial review may show that he is affected by the proceedings and thereon may, in the discretion of the court, take part in the proceedings as though served.

AR 457/87 s3

**Limitation period**

**753.11(1)** Where the relief sought is an order to set aside a decision or act, the application for judicial review shall be filed and served within six months after the decision or act to which it relates.

(2) Rule 548 does not apply to this Rule.

AR 457/87 s3

**Notice for return**

**753.12(1)** Where the relief claimed on an application for judicial review is an order to set aside a decision or act, the applicant shall cause to be endorsed on the application for judicial review a notice to the following effect, adapted as may be necessary, addressed to the person from whose decision or act relief is claimed:

“You are required forthwith after service of this notice to return to the clerk of the Court of Queen’s Bench at \_\_\_\_\_ (as the case may be) the judgment, order or decision (or as the case may be) to which this notice refers and reasons, if any, together with the process commencing the proceedings, the evidence and all exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

Date \_\_\_\_\_

To A.B., provincial judge at \_\_\_\_\_  
(or as the case may be)

Signed C.D. \_\_\_\_\_  
(Solicitor for the Applicant)”.

(2) All things required by this section to be returned to the clerk of the Court of Queen’s Bench shall for the purposes of the application constitute part of the record.

AR 457/87 s3

**Return of judgment**

**753.13(1)** On receiving the application for judicial review endorsed in accordance with Rule 753.12, the person from whose decision or act relief is claimed shall return forthwith to the office mentioned therein the judgment, order or decision, as the case may be, together with the process commencing the proceedings, the evidence and all exhibits filed, if any, and all things touching the matter and the notice served on him with a certificate endorsed thereon in the following form:

“Pursuant to the accompanying notice, I hereby return to the Honourable Court the following papers and documents, that is to say

- (a) the judgment, order or decision, as the case may be, and the reasons therefor;
- (b) the process commencing the proceedings;
- (c) the evidence taken at the hearing and all exhibits filed;
- (d) all other papers or documents touching the matter.

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody and power relating to the matter set forth in the originating notice”.

- (2) The certificate prescribed in subrule (1) has the same effect as a return to a writ of certiorari.
- (3) If the proceedings are not in the possession of the person required to transmit them, he shall, in lieu of the certificate, so state and explain the circumstances.
- (4) If the proceedings have not been received by the officer to whom or the clerk of the office to which they are by law required to be transmitted, that officer or clerk shall return a certificate of the fact.
- (5) The court may dispense with the return of the evidence or exhibits or part of them.
- (6) A copy of this Rule shall appear on or be annexed to the application for judicial review served on the person from whom the return is required.

AR 457/87 s3

**Return of record**

**753.14(1)** Where relief other than an order to set aside a decision or act is claimed on an application for judicial review and the applicant is of the opinion that the record is necessary to establish the claim, he may apply to the court to require the person from whose decision or act relief is claimed to make the return unless that person consents to file a return.

(2) The court may in its discretion order or refuse to order the return of the record or any part thereof.

(3) Where the court orders the return of the record, Rules 753.12(2) and 753.13 apply except as altered by the order of the court.

AR 457/87 s3

#### **Stay of decision**

**753.15(1)** Unless otherwise provided by statute, the court may, if in its opinion it is necessary for the purpose of preserving the position of the applicant, stay the operation of the decision sought to be set aside pending final determination of the application for judicial review.

(2) No order shall be made under subrule (1) if, in the opinion of the court, such an order would be detrimental either to the public interest or to public safety.

AR 457/87 s3

#### **Continuation of proceedings**

**753.16(1)** If the relief claimed in a proceeding begun by statement of claim or originating notice under Rule 410 or another procedure ought to be claimed on an application for judicial review, the court, on application or its own motion, may direct that the proceeding be continued as an application for judicial review.

(2) If the relief claimed on an application for judicial review ought to be claimed in a proceeding begun by statement of claim or originating notice under Rule 410 or another procedure, the court, on application or its own motion, may direct that the proceeding be continued under that other procedure.

(3) The court may give such further directions as are necessary to cause the proceedings to conform to the procedure by which they are to be continued.

AR 457/87 s3

#### **Appeal**

**753.17** An appeal from an order granted on an application for judicial review lies to the Court of Appeal.

AR 457/87 s3

#### **Direction respecting order**

**753.18** Any direction required to give effect to an order of the Court of Appeal may be made by a judge of the Court of Appeal.

AR 457/87 s3

#### **Application of general Rules**

**753.19** Except where provided specially in this Part, the general Rules, including the originating notice Rules in Part 33 and those relating to abridgment or extension of time, apply to all matters under this Part.

AR 457/87 s3