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Part 39

Appeals to the Court of Appeal

Definitions

501 In this Part

- (a) “appeal” includes a motion for a new trial or to set aside a finding or verdict of a judge or jury;
 - (b) “court” or “Court of Appeal” means the Court of Appeal of Alberta;
 - (c) “judge” means (except in Rule 505) a judge of the Court of Appeal.
- AR 390/68 s501;97/82

Sittings

502 The Court shall sit at least twice a year at Edmonton and at least twice a year at Calgary on such days as the Chief Justice thereof appoints and at any other time and place that the judges consider necessary.

AR 390/68 s502;97/82

Chief Justice to preside

503 The Chief Justice of Alberta shall preside at the sittings of the court but in his absence the senior judge then present not being a supernumerary judge or an ex officio member of the court shall preside.

AR 390/68 s503;68/81;97/82

Adjournment of sittings

504 Any sitting may be adjourned from time to time and from place to place as may be necessary.

AR 390/68 s504

When appeal available

505(1) Except as otherwise provided, an appeal lies to the court from the whole or any part of any judgment, order, direction or finding of a judge sitting in court or the verdict or finding of a jury or from the judgment, order or direction of a judge sitting in chambers.

(2) No appeal lies directly to the court from the judgment, order or decision of a master in chambers except in proceedings before a master in action brought under the *Divorce Act*.

(3) No judgment given or order made by the consent of the parties or as to costs only shall be subject to any appeal, except by leave of the court giving the judgment or making the order.

(4) Where the matter in controversy in the appeal can be estimated in money and does not exceed the sum of \$25 000, exclusive of costs, no appeal lies without the leave of the court or a judge thereof.

(NOTE: As to the effective date of the \$25 000 limit in subrule (4), see AR 200/2003, section 5(2).)

(5) The appeal in the case of a refusal of an ex parte application, when the refusal is for any other reason than the want of notice, shall be by way of renewal of the application to the court.

(6) No judgment given or order made by one justice of appeal shall be subject to any appeal, except by leave of the justice giving the judgment or making the order.

AR 390/68 s505;316/72;124/73;97/82;178/82;52/2001;200/2003

Notice

506(1) Subject to Rule 514(3) and Rule 577.3, notice of appeal shall be filed in the office of the clerk of the judicial district in which the proceedings have been carried on and in the office of the Registrar of the court to which appeals from that judicial district are required to go, within 20 days

- (a) in the case of a judgment, after the formal judgment or order has been signed, entered and served,
- (b) in the case of an order, after the order has been signed issued and served,
- (c) in the case of a direction, after the judgment or order founded thereon has been signed, entered, or issued and served,
- (d) in the case of a finding or verdict, after the judgment or order founded thereon has been signed, entered or issued and served, and
- (e) in the case that the defendant has not filed a defence or demand of notice, after the entry of judgment.

(2) Where a party files a notice of appeal in the office of the Registrar under subrule (1), that party shall forthwith file in the office of that Registrar a copy of the formal judgment, the entered order or other document in respect of which the appeal was filed.

(3) Except as ordered by the court in exceptional circumstances, a separate notice of appeal must be filed for each order being appealed, unless those orders were granted by the same judge in the same suit (or, if applicable, consolidated suit) and arise out of the same hearing.

(4) A substantive order and a later order awarding or concerning costs of the earlier substantive order shall be deemed to arise out of the same hearing.

AR 390/68 s506;97/82;117/86;166/94;200/2003

Address for service and solicitor's appointment continue

507 An address for service or the appointment of a solicitor in the Court appealed from continues for the purposes of an appeal or proposed appeal until a formal change is made in accordance with Part 42.

AR 152/98 s13

Stay of enforcement

508(1) Subject to subrule (3), an appeal does not operate as a stay of enforcement or of proceedings under the decision appealed from unless the Court of Queen's Bench stays enforcement or proceedings of the decision pending appeal.

(2) An appeal does not invalidate any intermediate act or proceeding except as may be directed by the court that rendered the decision being appealed.

(3) If an application under subrule (1) to the judge appealed from is granted, refused, made but not heard, or is impractical, a judge of the Court of Appeal may de novo stay enforcement or proceedings of the decision being appealed.

AR 390/68 s508;97/82;277/95;52/2001

Notice of cross appeal

509 A respondent intending to contend that the decision of the court below should be varied, shall within 10 days after service of the notice of appeal on him, give notice of his intention to any parties who may be affected, and the notice of his intention shall have the effect of a cross appeal.

AR 390/68 s509;97/82

Service

510(1) Notice of appeal shall be served upon all parties affected by the appeal within the time limited for filing the notice of appeal.

(2) The court may direct that notice of appeal shall be served upon

- (a) all or any of the parties to the action or proceedings, and
- (b) upon any person not a party and in that case may give such judgment or make such order as might have been given or made if that person had originally been a party.

AR 390/68 s510

Contents of notice

511 The notice of appeal shall state whether the whole or a specified part only of the judgment, order, direction, finding, verdict or award is complained of.

AR 390/68 s511;209/74

Amendment of notice

512 The notice of appeal may be amended at any time by leave of the court or a judge on such terms as may be considered just.

AR 390/68 s512

Production of court file

513(1) If any party interested considers it necessary that any original papers or documents on file in the clerk's office or in the office of a tribunal whose decision is under appeal should be before the Court, that party may on payment of the necessary expenses require the clerk or tribunal to transmit them either by courier or registered mail to the Registrar.

(2) A judge or case management officer may give the clerk, Registrar or tribunal directions for the purposes of subrule (1).

AR 390/68 s513;97/2008

Place of entry

514(1) Unless otherwise ordered by a judge, appeals arising in the judicial districts of Calgary, Lethbridge/Macleod, Medicine Hat, Red Deer and Drumheller/Hanna, shall be entered for hearing at a sitting of the court to be held at Calgary, and appeals arising in all other judicial districts shall be entered for hearing at a sitting of the court to be held at Edmonton.

(2) Materials comprising the appeal record, factums, documents and papers required to be filed or deposited in connection with appeals and motions must be filed in the office of the Registrar at Calgary or Edmonton, as the case may be.

(3) In an urgent situation, any document, including a notice of appeal, required to be filed in an office of the Registrar of the Court of Appeal, may be deposited in the office of the Clerk of the Court of Queen's Bench in the judicial district in which the appeal arose, and the Clerk must

- (a) provide a dated receipt, and
- (b) send the documents to the appropriate Registrar's office to be checked for correctness.

(3.1) If the documents sent to the Registrar under subrule (3)(b)

- (a) are correct, the date of filing must be backdated to the date of receipt by the Clerk;
- (b) are incorrect, they must be returned to the person who deposited them with the Clerk.

(4) The Clerk of the Court of Queen's Bench receiving a document referred to in subsection (3) shall forthwith inform the appropriate Registrar of the Court of Appeal by telephone or telegraph that the document has been filed and shall forthwith forward the document to the Registrar.

(5) On receipt of information that a document has been filed in the office of a Clerk of the Court of Queen's Bench, the Registrar shall enter on the Court file a memorandum that the document has been filed with particulars of the place and date of the filing.

AR 390/68 s514;97/82;462/87;361/94;101/99;97/2008

515 Repealed AR 97/2008 s4.

General Appeal List

515.1(1) The Registrar shall enter a case on the General Appeal List whenever the first of the following events occurs:

- (a) 6 months have elapsed since the notice of appeal was filed;
- (b) the Appeal Digest referred to in Rule 530(1)(c)(i) and transcripts have been filed;
- (c) a judge or case management officer directs that the case be so entered.

(2) The General Appeal List shall be called by a Judge in Chambers at a time and place to be specified in advance by the Chief Justice.

(3) Counsel for each party to an appeal shall appear at the time and place specified and signify whether or not the case is ready for hearing.

(4) When the General Appeal List is called, the Chambers Judge shall transfer those cases ready for hearing to the Appeal Hearing List for a specified sittings of the Court.

(5) Any case may be placed directly on the Appeal Hearing List without first appearing on the General Appeal List, or may be transferred from the General Appeal List to the Appeal Hearing List by fiat of a Judge.

(6) If counsel for all parties concur in a written request, signed by at least one of them, to the Registrar, a case may be put over to the next occasion when the General Appeal List is to be called without the attendance of counsel.

(7) If counsel does not appear when a case is called on the General Appeal List and an adjournment has not been granted, the case shall be struck from the General Appeal List.

(8) A civil appeal may be dismissed for want of prosecution

- (a) by the court at any time before or after 6 months from the date when a notice of appeal was filed, on the application of any party or on its own motion, or
- (b) by a judge, on the application of any party where the appellant has done nothing effective to advance the appeal for more than one year.

(9) If a case has been struck from the General Appeal List and the case is not restored to the General Appeal List within 6 months from the day that the case was struck from the General Appeal List, the appeal is deemed to have been abandoned.

(9.1) An appeal struck from the General Appeal List under subrule (7) or any other rule or under a practice direction, order or judgment may not thereafter be restored except by the order of the Court or a judge of the Court, or on consent

of all parties, and on payment to the Registrar of costs referred to in subrule (10).

(10) Unless for a special reason a judge orders a lesser amount or waives the costs payable, the costs to be paid under subrule (9.1) for restoring an appeal are as follow:

- (a) the first time that the appeal is restored, \$200;
- (b) the second time that the appeal is restored, \$500;
- (c) the third and any subsequent times that the appeal is restored, \$1000.

AR 97/82 s11;269/97;68/2000;200/2003;47/2005;220/2006;17/2007;97/2008

Chamber orders

516 A judge may make any order in chambers in respect to any matters incidental to an appeal which the court could make either ex parte or on such notice as he may direct, and any such order may be set aside or varied by a judge if the order was obtained ex parte.

AR 390/68 s516;209/74;52/2001

Time between service and hearing

516.1(1) In this Rule, “business day” means a day other than a Saturday or a holiday.

(2) Unless leave is given, there must be 21 or more business days between the service of a notice of motion and the actual day for the hearing, when the relief sought is

- (a) leave to appeal,
- (b) dismissal of an appeal,
- (c) admission of new evidence,
- (d) restoring an appeal to the general list,
- (e) extending time to appeal, or
- (f) relief that one judge cannot grant.

(3) In all other motions to a judge, unless leave is given, there must be 7 or more business days between the service of a notice of motion and the actual day for the hearing.

AR 172/99 s13;47/2005

Deadline or time limit

516.2 Except with leave of the Court or a judge, no motion by a party to adduce new evidence in the Court of Appeal may be made unless the party has

filed and served a notice of motion on or before the day when that party's factum is due.

AR 47/2005;17/2007

View by court

517 In appeals from judgments in actions in which an inspection of property was made by the trial judge or a view had by the jury, the court may make a similar view or inspection.

AR 390/68 s517

Powers of court

518 The court may:

- (a) direct amendment of any proceeding before it;
- (b) receive further evidence either by oral examination, by affidavit, upon commission or otherwise;
- (c) draw inferences of fact;
- (d) direct a new trial;
- (e) give any judgment and make any order which ought to have been made and make such further or other order as the case may require;
- (f) make such order as to costs as to it seems just, but where the court is equally divided, the costs shall follow the event of the appeal.

AR 390/68 s518

Application of Part 12

518.1 Part 12 of these Rules applies, with the necessary changes, to an offer or payment into court made between the filing of an appeal and the commencement of oral argument of an appeal.

AR 52/2001 s10

New trial

519(1) A new trial shall not be directed

- (a) on the grounds of misdirection or of the improper admission or rejection of evidence, or
- (b) because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them,

unless in the opinion of the court some substantial wrong or miscarriage has been thereby occasioned.

(2) Where it appears to the court that the wrong or miscarriage affects part only of the matter in controversy the court may give final judgment on part of the matter and direct a new trial of any other part.

(3) Where it appears to the court that the wrong or miscarriage does not affect all the parties, the court may give final judgment to any party and direct a new trial for any other party.

(4) A new trial may be ordered on any question without interfering with the finding or decision upon any other question.

AR 390/68 s519

Interest from date of trial

520 If the judgment of the court below is reversed or varied and the judgment which is directed to be entered is one for a sum of money, it shall bear interest from the date of the judgment at trial.

AR 390/68 s520;124/73;149/73

Delivery of judgment

521(1) Judgment may be delivered at any time, whether at a sitting or otherwise.

(2) Any judge may deliver the judgment of the court when authorized to do so by the judges who heard the matter and may deliver the judgment of any other judge when authorized to do so by the other judge, notwithstanding the absence of the judge or judges aforesaid.

AR 390/68 s521

Adjournment of hearing

522 The court may postpone or adjourn the hearing of the appeal upon such terms as it considers just.

AR 390/68 s522

Interlocutory order

523 No interlocutory order from which there has been no appeal operates so as to bar or prejudice the court from giving such decision upon the appeal as may be just.

AR 390/68 s523

Security for costs

524(1) No security for costs shall be required in appeals unless by reason of special circumstances security is ordered by a judge.

(2) Unless the court otherwise orders an appellant who fails to give security for costs when ordered shall be deemed to have abandoned his appeal and the respondent is entitled to his costs.

AR 390/68 s524;97/82

Appellant may discontinue

525(1) An appellant may discontinue his appeal by filing with the registrar and serving upon the respondent a notice signed by the appellant or his solicitor stating that he has so discontinued it and thereupon the appeal is at an end and the respondent is entitled to his costs of the appeal.

(2) The discontinuance of an appeal does not operate as a discontinuance of a cross appeal.

(3) Where an appeal is discontinued the rules relating to appeals apply to the cross appeal as if it were an appeal.

AR 390/68 s525;66/85

Repealed

526 Repealed AR 97/82 s13.

Costs

527 Costs to which a party has become entitled under Rules 524(2) or 525 may be taxed without an order on the production of

- (a) the notice of discontinuance, or
- (b) the certificate of the proper officer that security for costs has been ordered but not given

and on taxation the respondent shall be deemed to have judgment for the amount taxed.

AR 390/68 s527;97/82

Entry of judgment

528(1) When the judgment of the Supreme Court of Canada in appeal has been certified by the registrar of that court to the clerk of the court with whom the judgment or order appealed from was entered, the clerk shall thereupon cause it to be entered in the proper book and all subsequent proceedings may be taken thereupon as if the decision had been given in the latter court.

(2) The decision of the Court of Appeal shall be certified by the registrar to the clerk of the court with whom the judgment or order appealed from was entered, who shall thereupon cause it to be entered in the proper judgment or order book and all subsequent proceedings may be taken thereupon as if the decision had been given by the judge appealed from.

AR 390/68 s528;97/82

Consent judgment

529 A respondent may consent to the reversal or variation of the judgment, order or proceeding appealed from by giving to the appellant a notice of his consent signed by himself or his solicitor and thereupon the court may pronounce judgment of reversal or variation accordingly.

AR 390/68 s529

Appeal number

529.1 All documents filed with the Court of Appeal must specify the appeal number on the front page and the backer of the document.

AR 152/2000 s9

Appeal Record

Contents of filed record

530(1) Subject to subrule (2), the appeal record

(a) must contain the following sections:

- (i) Part I - Pleadings, as described in subrule 530.3(a), prepared in accordance with Rule 530.4, and filed in accordance with Rule 530.5;
- (ii) Part II - Final Documents, as described in subrule 530.3(b), prepared in accordance with Rule 530.4, and filed in accordance with Rule 530.5;
- (iii) Part III - any transcripts of oral evidence required by Rule 530.1(1)(a)(i), prepared in accordance with Rule 530.2, and filed in electronic and paper form in accordance with Rule 530.5;

(b) may include Extracts of Key Evidence if the parties so elect, prepared in accordance with Rule 537.2, and filed in accordance with Rule 537.1

(c) must be arranged and indexed in the following order:

- (i) First - Appeal Digest, consisting of Parts I and II;
- (ii) Second - Part III, oral evidence (if any) required by Rule 530.1(1)(a)(i);

and the Extracts of Key Evidence are to be separately indexed in accordance with Rule 537.2(1);

(d) must contain pages numbered consecutively as follows:

- (i) Part I must commence page numbering with page P1;
- (ii) Part II must commence page numbering with page F1;
- (iii) Part III must commence page numbering with page 1;
- (iv) if a supplement to the appeal record is filed, the page numbering for that supplement must continue sequentially from the last number of the last page of the immediately preceding record to which the supplement relates;

and the Extracts of Key Evidence are to be numbered in accordance with Rule 537.2(1).

(2) All oral or written evidence or exhibits received for that case by the court or tribunal whose decision is appealed is an official part of the appeal record,

notwithstanding that no copy is officially filed with the Court of Appeal.

AR 390/68 s530;97/82;34/89;160/93;166/94;152/98;
172/99;152/2000;52/2001;16/2002;85/2002;200/2003;97/2008

Transcripts, generally

530.1(1) Within 10 days after a notice of appeal is filed the appellant must, unless otherwise ordered by a judge,

- (a) order from Transcript Management Services of the Department of Justice, or any other commercial preparer, a complete verbatim transcript of
 - (i) all oral evidence,
 - (ii) all oral argument in a chambers hearing, if that hearing did not exceed ½ day, and
 - (iii) any oral reasons for the decision;
- (b) order or commence preparation of the Appeal Digest in accordance with rule 530.3.

(2) Subject to subrule (1)(a)(ii), the appellant need not transcribe oral argument at a civil trial or hearing.

(3) The appellant must file a copy of the order placed under subrule (1) with the Registrar within 5 days of placing the order

(4) Any request or countermand for preparation or revision of transcripts or Appeal Digests must be promptly sent to the office preparing them, and a copy filed with the appropriate Registrar.

(5) Subrule (4) does not apply to Appeal Digests prepared wholly by an appellant or a law office.

(6) If no oral record as provided for in subrule (1)(a) exists, the appellant must file with the Registrar either

- (a) a certificate of no oral record in Form T of Schedule A by the appellant's solicitor, or
- (b) if the appellant is unrepresented, a certificate in Form U of Schedule A by the clerk of the court or the tribunal from which the order, judgment or decision is being appealed.

AR 97/2008 s6

Transcripts of oral evidence

530.2(1) Subject to Rule 530.6, the transcripts of oral evidence on the appeal record must conform to the requirements of Schedule E, Number 8.

(2) The electronic copy of Part III, the oral evidence portion of the appeal record, must be filed with the Registrar in a format satisfactory to the Registrar.

AR 97/2008 s6;190/2009 s2

Appeal Digest

530.3 The Appeal Digest must contain the following documents, excluding the document backers when they are not needed to distinguish different suits, in chronological, ascending date order:

- (a) Part I, the Pleadings (as identified by the appellant when ordering or preparing the Appeal Digest), which are any documents by which proceedings are commenced or by which the issues in the action are defined, including at least
 - (i) the last amended version of any relevant pleading that was amended before trial,
 - (ii) any amendments made at trial, and
 - (iii) if the appeal concerns any order arising from a motion, the notice of motion;
- (b) Part II, the Final Documents, which must include
 - (i) the written or transcribed oral reasons of
 - (A) the judge or tribunal directly appealed from, and
 - (B) all prior judges, Masters, sub-tribunals or committees whose decision led up to the decision now appealed,
 - (ii) the formal judgment or order appealed from,
 - (iii) the Notice of Appeal,
 - (iv) the Certificate of Preparer in Form S of Schedule A,
 - (v) if the appeal record has been prepared by anyone other than Transcript Management Services of the Department of Justice, the Clerk's Certificate in Form N of Schedule A,
 - (A) the Clerk's Certificate in Form N of Schedule A, and
 - (B) the Lawyer's Certificate in Form O of Schedule A, if the appellant is represented by counsel,
 - (vi) in the case of a direct appeal from a tribunal, a certificate from the tribunal's records custodian or, where the tribunal has no records custodian, an agreement as to the authenticity of the records signed by all parties,
 - (vii) the "Ban on Publication and Similar Order" form or any other similar document, if one exists,

- (viii) a transcript of all oral argument in a chambers hearing, if that hearing did not exceed 1/2 day,
- (ix) where applicable, the certificate of no oral record as provided for in Rule 530.1(6), and
- (x) the Lawyer's Certificate in Form O of Schedule A, if the appellant is represented by counsel.

AR 97/2008 s6; 221/2009 s3

Appeal record produced in paper

530.4(1) Any portion of Parts I, II and III of the appeal record produced in paper form must be prepared in the following manner:

- (a) if they are the original copy, clearly marked as “original” at the top of the front cover;
- (b) printed or reproduced on one side of good quality, white, 8 1/2 by 11 inch paper, bound along the right edge so that the printed pages are to the left;
- (c) bound with heavy stock front and back covers, with
 - (i) Appeal Digest covers in red, and
 - (ii) any transcript covers in grey;
- (d) Repealed AR 190/2009 s3
- (e) contain legible material only or, if material does not photocopy well, provide a photocopy together with a typewritten transcript of the illegible text;
- (f) printed or reproduced in type whose capital letters are at least 2.9 mm high, whether or not the original is in smaller type and, if need be, reproducing one original sheet on 2 or more pages;
- (g) contain no more than 200 pages per volume, and where any volume would otherwise exceed 200 pages, be split into separate volumes of approximately equal length.

(1.1) In addition to the requirements of subrule (1), any portion of Parts I and II of the appeal record produced in paper form must contain

- (a) a front cover and title page clearly setting out the information in Form R of Schedule A, and
- (b) a comprehensive table of contents of all of Parts I, II and III at the beginning of each volume,

bound along the left margin so that the printed pages are to the right.

(2) Notwithstanding Rules 530(1) and 530.4(1), if Part III does not exceed a total of 15 pages, it must be included in the Appeal Digest and be labelled accordingly.

(3) Notwithstanding Rule 530.4(1)(b), the transcripts of oral evidence included in Part III of the appeal record must be printed or reproduced as double sided pages on good quality, white, 8 ½ x 11 inch paper.

AR 97/2008 s6; 190/2009 s3

Transcripts of oral testimony

530.5(1) On every appeal that contains transcripts of oral testimony required by Rule 530.1(1)(a)(i), the appellant must file with the Registrar

- (a) the original and one paper copy of Part III, the transcripts of oral testimony,
- (b) the original and 4 paper copies of Parts I and II, the Appeal Digest, and
- (c) one electronic copy of Part III, the transcripts of oral testimony.

(2) On every appeal when the appeal record contains no transcripts of oral testimony, the appellant must file with the Registrar the original and 4 paper copies of Parts I and II, the Appeal Digest.

(3) In addition to the copies required under subrules (1) and (2), the appellant must serve on each other party to the appeal a copy of the Appeal Digest, and an electronic copy of Part III, any transcripts of oral testimony.

(4) Transcripts and Appeal Digests must

- (a) be prepared promptly and filed and served forthwith after they are prepared, and
- (b) unless otherwise ordered by a judge, be filed not later than 15 weeks from the date on which the notice of appeal was filed,

or the appeal will be struck by the Registrar.

(5) An appeal that has been struck and has not been restored within 6 months from the date the appeal was struck is deemed to be abandoned.

AR 97/2008 s6

Appeal record that does not conform to Rules

530.6(1) Subject to subrule (2), an appeal record that does not materially conform to these Rules requires a fiat from a judge, the Registrar, the Deputy Registrar or a case management officer, and the fiat must be obtained.

- (a) where there is consent, by providing a letter to the Registrar that sets out the discrepancies and requests that a fiat be granted;
- (b) where there is no consent, by filing and serving a notice of motion, supporting affidavit and memorandum returnable before a judge.

- (2) A transcript portion of an appeal record may be filed, without fiat, if
- (a) it was prepared by an official court reporter or examiner before service of the notice of appeal, and
 - (b) it deviates from the requirements of Schedule E, Number 8 only in spacing.

AR 97/2008 s6;190/2009 s4

531, 532 Repealed AR 97/82 s17.

Supreme Court of Canada format

533 If requested by the solicitor for any party, the appeal record may be printed so as to comply with the rules of the Supreme Court of Canada.

AR 390/68 s533;97/2008

Registrar shall examine books

534 The registrar shall examine all appeal records before they are filed and if they do not comply with these Rules or are not readily legible or are slovenly or for any good and sufficient reason he may refuse to accept them for filing.

AR 390/68 s534;97/2008

535(1) Repealed AR 16/2002 s9.

(2) Repealed by AR 97/2008 s7.

Five copies of motion and documents

536 When a motion is returnable before the court, 5 copies of the notice of motion, affidavits and all other documents proposed to be referred to shall be filed for the use of the court at the time of filing of the notice of motion, and copies thereof shall be served on the solicitor for the opposite party.

AR 390/68 s536; 50/2006

Judge may vary compliance

537 Where compliance with the Rules as to appeal records would cause undue expense or delay, a judge may give special directions.

AR 390/68 s537;97/2008

Extracts of Key Evidence

537.1(1) If so desired, any appellant, respondent or intervener may each file Extracts of Key Evidence, prepared in accordance with Rule 537.2, which may include those

- (a) extracts from the transcribed oral evidence or written trial or tribunal evidence,
- (b) selected exhibits entered before the trial court or tribunal, and
- (c) other documents on the trial or tribunal record,

that that party believes will be needed for the disposition of the appeal or will support the arguments in that party's factum.

(2) Without derogating from Rule 530(2), it is the duty of counsel on an appeal to ensure so far as possible that only the material needed for the disposition of the appeal is included in the Extracts of Key Evidence and to exclude evidence, exhibits and other material unlikely to be needed.

(3) Notwithstanding subrule (1), parties who are advancing the same position may, if they wish, file joint Extracts of Key Evidence.

(4) A party filing Extracts of Key Evidence must, at or before the time of filing or service of that party's factum,

- (a) file the original and 4 copies of its Extracts of Key Evidence with the Registrar, and
- (b) serve an additional copy thereof on each of the other parties.

(5) When Extracts of Key Evidence are not filed within the time fixed by these Rules, the party in default is not entitled to costs for preparation of the Extracts of Key Evidence unless the court otherwise orders.

AR 97/2008 s8

Extracts of Key Evidence

537.2(1) The Extracts of Key Evidence shall

- (a) contain a comprehensive table of contents of the whole of that party's Extracts of Key Evidence at the beginning of each volume,
- (b) be organized in such order as the party filing it desires, and not necessarily chronologically,
- (c) subject to clause (d), contain pages numbered consecutively, commencing in the following fashion:
 - (i) with Page A1 in the Appellant's Extracts of Key Evidence;
 - (ii) with Page R1 in the Respondent's Extracts of Key Evidence;
 - (iii) with Page IN1 in the Intervener's Extracts of Key Evidence,
- (d) not contain any duplicate page numbers, and where there are multiple appellants, or respondents, or interveners, they shall cooperate to avoid such duplication,
- (e) reproduce documents in facsimile, containing legible material only or, if material does not photocopy well, provide a photocopy together with a typewritten transcript of the illegible text, and
- (f) not contain any comment, argument, trial briefs, authorities or new evidence.

(2) In the case of exhibits that cannot be readily reproduced and will be referred to in argument, the Extracts of Key Evidence must be accompanied by a letter to the Registrar requesting that the original exhibit be made available at

the appeal hearing.

(3) If the Extracts of Key Evidence, any other appendices and the factum together do not exceed a total of 60 pages, the Extracts of Key Evidence may be included as an appendix to the factum, or with the book of authorities.

(4) If the Extracts of Key Evidence, any other appendices and the factum together do exceed a total of 60 pages, the Extracts of Key Evidence must be filed separately with a front cover and title page in Form R of Schedule A, naming the party filing it, and bound with heavy stock on the front and back covers coloured as follows:

- (a) yellow for the Appellant's Extracts of Key Evidence;
- (b) pink for the Respondent's Extracts of Key Evidence;
- (c) dark blue for the Intervener's Extracts of Key Evidence.

(5) No one volume of the Extracts of Key Evidence may contain more than 200 pages, and if the total otherwise exceeds that, the Extracts of Key Evidence shall be split into separate volumes of approximately equal length.

AR 97/2008 s8

Expense of preparing and filing

537.3 Each party shall bear the initial expense of preparing and filing the appeal record and Extracts of Key Evidence which that party orders or files, but unless otherwise ordered and subject to Rule 537.1(5), the reasonable costs of preparation shall be a taxable disbursement in the appeal.

AR 97/2008 s8

Factums

Filing

538(1) The appellant shall file 5 copies of the appellant's factum with the registrar and shall serve a copy thereof on each respondent

- (a) on the 60th day or before 60 days have elapsed from the day on which the appeal Digest was prepared, or
- (b) during the 7th month or before 7 months have elapsed after the filing of the notice of appeal,

whichever is the earliest date.

(2) Unless otherwise ordered, within 45 days after service upon him of the appellant's factum the respondent shall file 5 copies of his factum or a letter of intention not to file a factum, with the registrar and serve a copy thereof upon the appellant.

(3) Where a notice of intention to vary has been given, the appellant may within 10 days after service upon him of the respondent's factum file and serve a further factum in reply.

(4) When a factum is not filed within the time fixed by these Rules, the party in default shall not be entitled to costs for preparation of the factum unless the court otherwise orders.

(5) The 5 copies referred to in subrules (1) and (2) do not include copies to be served on an opposing party.

(6) When neither a factum nor a letter of intention not to file a factum is filed by a respondent within the time period set out in subrule (2), or as ordered by the court, the party in default may not present oral argument, unless otherwise ordered by the panel.

AR 390/68 s538;209/74;182/76;341/77;97/82;269/97;101/99;
172/99;85/2002; 50/2006;97/2008;221/2009

Dispensing with factums or oral argument

539(1) On application by either party a judge may dispense with the delivery of factums by either or both parties or vary the time for such delivery to the registrar.

(2) The Court may dispense with oral argument by either or both parties.

AR 390/68 s539;152/98

Contents

540(1) The factum shall consist of 4 parts as follows:

PART I - Statement of Facts

In the appellant's factum this part shall be a concise statement of the facts. In the respondent's factum this part shall be a concise statement of his position with respect to the appellant's statement of facts, including a concise statement of any other facts that he considers relevant.

Each party may at the start of the Statement of Facts state concisely what he considers to be the legal issue or issues raised by the appeal as for example:

The issue on this appeal is whether land may be obtained by adverse possession when unknown to both parties a fence is not on the surveyed boundary.

The issue on this appeal is whether the Registrar of Land Titles may file a Registrar's caveat claiming error in title.

PART II - Grounds of Appeal

In the appellant's factum this part shall be a concise statement setting out clearly and particularly the grounds of his appeal. On the argument of the appeal the appellant shall, unless the court otherwise orders or directs, be confined to these grounds.

In the respondent's factum this part shall be a statement of his position in regard to the grounds of appeal and of any other points he may properly put in issue.

PART III - Points of Law

In each factum shall be a brief of the argument setting out concisely the points of law or fact intended to be discussed with particular reference to pages and lines of the appeal record, and the authorities intended to be cited in support of each point.

PART IV - Nature of Relief Desired

Each factum shall contain a concise statement of the nature of the relief or order the party desires the court to make or grant, including any special direction requested with respect to costs.

(2) At the end of each factum and on a separate page the authorities referred to in the factum shall be set out together with the citations, in the order in which they are likely to be referred to.

(2.1) Any factum filed by any party must cite passages in the oral evidence both to the electronic appeal record and to its Extracts of Key Evidence, if applicable.

(3) Where a notice of intention to vary has been given, the respondent's factum shall consist of 2 main headings each of 4 parts, the first of which shall be entitled "factum on the appeal" and the second of which shall be entitled "factum on the cross appeal".

(4) Where a statute, regulation, rule, ordinance or by-law is relied on so much thereof as may be necessary to the decision of the case shall be printed at length as an appendix to the factum or 8 copies of the statute, regulation, rule, ordinance or by-law shall be filed for the use of the court.

(5) The factum shall be printed on white paper of good quality, eleven by eight and one-half inches in size, on one side of the paper only, with the printed pages to the left.

(6) For the purpose of this rule "printing" includes offsetting and mimeographing and any other process approved by the court.

(7) Unless otherwise ordered, the covers of factums shall be coloured as follows:

- (a) appellants – buff;
- (b) respondents – green;
- (c) respondents who are cross-appellants – green;
- (d) interveners – blue.

(8) A factum shall not contain irrelevant matter nor reproduce matter that appears in the appeal record if a reference to it will reasonably suffice.

(9) The registrar shall not accept any factum or copy which is not in accordance with these rules or which is not readily legible or is slovenly.

AR 390/68 s540;209/74;97/82;152/98;97/2008

Repealed

541, 542 Repealed AR 280/74 s2.

Failure to comply with rules

543(1) Where a party fails to comply with the rules as to factums the court may impose such terms upon the party in default as it considers just.

(2) On the opening of the court, the registrar shall report any such default to the court.

AR 390/68 s543

FORM A Repealed AR 152/98 s17.