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Part 18 - Proceedings in the Court of Appeal

Rule 90 - Civil Appeal

Educational Notes

This Rule replaces the previous R.62. Appellate practice will not change substantially, with a few exceptions. Key changes include new timelines for filing appeals, deadlines for moving to set the appeal down, dealing with motions for leave to appeal in a separate hearing before a single judge, and the ability to make motions by correspondence or telephone.

Rule 90.13 alters the deadlines for filing various types of appeals. Interlocutory appeals, or appeals as to costs only, must now be filed no more than 10 days after the order. Other orders of the court or a tribunal must be appealed no more than 25 days after the date of the order. For these appeals, days are calculated in accordance with R.94 (all clear business days.) Appeals under the *Divorce Act* and *Workers Compensation Act* must be filed within 30 days but days are calculated under that legislation, and not under R.94.

Rule 90.16 requires the appellant to join each other party as a respondent, who is not already listed as an appellant. This differs from the current practice where only those parties who are directly affected are required to be named.

Rule 91.19(4) requires a motion for leave to intervene no more than 15 days after the notice of appeal is filed.

Notices of cross-appeal must be filed no more than 10 days after the notice of appeal is delivered. The deadline for notices of contention seeking to uphold the decision under appeal for reasons other than those given in the judgment is also 10 days (R.90.21-90.22).

Rule 90 requires that if the decision under appeal resulted in an order, the order must be filed with the court before the appeal is set down for hearing (R.90.15).

Rule 90.25 now contains set timelines bringing the motion to set the time and date for the appeal and give directions. The deadlines range from 10 days after filing the notice of appeal in child protection cases, to 15 days for interlocutory appeals or appeals as to costs only, 25 days for tribunal appeals, and 80 days for other matters. Five days before the motion for directions, the appellant must file a certificate of readiness under R.90.26.

There is no longer a specific deadline for filing the appeal book. Rule 90.32 makes the appellant's factum due 10 days after the day the appeal book is delivered, and the respondent's factum due 10 days after the appellant's factum is delivered.

There are new requirements for factums under R.90.32. Factums must now begin with a concise overview of the appeal, followed by a concise statement of the facts, list of issues, and standard of review for each issue, followed by argument and a statement of the order or relief sought. Rule 90.32(4) now limits factums to 40 double spaced, single sided letter sized pages in 12 point font or more, unless permission is obtained to file a longer factum.

Applications for leave to appeal are now made to a single judge under R.90.12(1), unless legislation provides that the appeal is to the "Court of Appeal." The judge may refer the leave application to the court. Practically speaking, this means that most leave applications will have to be dealt with separately from the appeal hearing.

Motions in the Court of Appeal are now available by telephone (R.90.37(8) and (9)) or by correspondence (R.90.35). Case management is available under R.90.45.

A notice of motion for leave to review an order of a judge of the Court of Appeal in chambers must be filed no more than 7 days after the date of the order to be reviewed.

90.01 - Definitions

(1) In this Rule, unless the context requires otherwise,

"appeal" means an appeal to the Court of Appeal;

"appeal as to costs only" means an appeal in which costs is the only issue;

"appellant" means a person who brings an appeal and includes a person who makes an application for leave to appeal or for a reference;

"Chief Justice" means the Chief Justice of Nova Scotia;

"child protection appeal" means an appeal under Section 49 of the *Children and Family Services Act*;

"Court of Appeal" means the Nova Scotia Court of Appeal;

"court appealed from" means a court, judge, or tribunal from which an appeal is available to the Court of Appeal;

"file" means to file with the registrar;

"general appeal" means an appeal other than a tribunal appeal, child protection appeal, interlocutory appeal, and costs only appeal;

"interlocutory appeal" means an appeal of an interlocutory order;

"interlocutory order" in reference to an order under appeal, includes an interim order;

"judgment" means the formal disposition of an appeal by the Court of Appeal and includes an order for judgment, and, when referring to a judgment appealed from, means the judgment, verdict, order, finding, direction, determination or award of the court appealed from;

"registrar" means the registrar of the Court of Appeal, and includes a deputy registrar;

"respondent" means a person against whom the appellant brings an appeal, and any other person other than an intervenor who is authorized by the Court of Appeal or a judge to be a party to the appeal;

"tribunal" means any person or body, from whom an appeal lies to the Court of Appeal, including any board, commission, committee, municipal authority, Minister, public official, or other public or governmental agency or authority such as the Governor in Council, but only includes a court, judge or magistrate that reserves, refers or states a matter to the Court of Appeal;

"tribunal appeal" means an appeal from a decision or order of a tribunal.

90.02 - Scope of Rule 90

- (1) The Civil Procedure Rules that are not inconsistent with this Rule apply to proceedings in the Court of Appeal with necessary modifications as directed by the Court of Appeal or a judge of the Court of Appeal.
- (2) A person may do any of the following, in accordance with this Rule:
 - (a) bring or respond to an appeal before the Court of Appeal;
 - (b) bring or respond to an application for an order for leave to appeal;
 - (c) make an application to have a reference, stated case or similar proceeding presented to the Court of Appeal.

N.S. Gaz. Pt. 1, 10/28/09

90.03 - Sittings of the court

- (1) The Court of Appeal must sit at Halifax, and it may sit elsewhere, as the Chief Justice directs.
- (2) The terms of sittings of the Court of Appeal are from and to the following days, inclusive of those days, unless the Chief Justice directs otherwise:
 - (a) the second Tuesday of January to the third Friday of February;
 - (b) the second Tuesday of March to the third Friday of April;
 - (c) the second Tuesday of May to the third Friday of June;
 - (d) the second Tuesday of September to the third Friday of October;
 - (e) the second Tuesday of November to the second Friday of December.
- (3) Each appeal must be heard and determined by a panel of three or more judges of the Court of Appeal.
- (4) The Chief Justice, and in the absence of the Chief Justice the next senior judge on the panel other than a supernumerary judge, must preside at a sitting of the Court of Appeal.

90.04 - Starting an appeal

A person may bring an appeal by filing a notice of appeal with the registrar, in accordance with this Rule 90.

90.05 - Notices of appeal

- (1) An appeal must be started by filing a notice of appeal (general) in the form prescribed in Rule 90.06, except each of the following kinds of proceedings must be started by filing one of the following special notices:
 - (a) a tribunal appeal, by notice of appeal (tribunal) under Rule 90.07;
 - (b) an appeal under Section 49 of the *Children and Family Services Act*, by notice of appeal (child protection) under Rule 90.08;
 - (c) an application for leave to appeal and appeal of an interlocutory order, by notice of appeal (interlocutory order) under Rule 90.09;

- (d) an application for leave to appeal and appeal as to costs only, by notice of appeal (costs only) under Rule 90.10.
- (2) Despite the requirements to start an appeal by a prescribed notice, an appeal may be started by filing a notice as prescribed in the legislation, if the legislation prescribes another kind of notice or other method.
- (3) A notice of appeal and an application for leave to appeal must be filed by the deadlines in Rule 90.13.

90.06 - Notice of appeal (general)

- (1) A notice of appeal (general) must have the standard heading as shown in Form 90.06, be entitled "Notice of Appeal (General)", be dated and signed by each appellant or their counsel, and include all of the following:
 - (a) a notice that the appellant appeals a judgment, including the name of the court appealed from, the date of the order or decision, the effect of the order or decision, and in the case of an appeal from a court order, the court number and name of judge;
 - (b) a statement of whether the whole or a part of the order or judgment under appeal is being appealed from, and if it is a part, a statement describing the part;
 - (c) a concise statement of all grounds of appeal, a citation of the statutory authority for the appeal, and a concise description of the order to be sought at the conclusion of the appeal;
 - (d) a statement that the appellant will, no later than eighty days after the day the notice of appeal is filed, make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions;
 - (e) if there is only one appellant, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for delivery to all or separate addresses for each;
 - (f) the names and addresses of the persons to whom a copy of the notice of appeal is to be delivered.
- (2) The notice of appeal (general) may be in Form 90.06.

Forms

Notice of Appeal (General) (90.06).

90.07 - Notice of appeal (tribunal)

[Editor's note: this section has not been amended as per *N.S. Gaz. Pt. 1, 01/13/2010*, pending clarification from the Court of Appeal]

- (1) A provision in legislation prescribing the procedures to be followed for a tribunal appeal, including a provision prescribing how and when the appeal must be brought, and to whom the notice of appeal must be delivered, prevails over any inconsistent provision of this Rule 90, other than Rules made pursuant to s. 50 of the *Judicature Act*.
- (2) An application for leave to appeal pursuant to the *Workers' Compensation Act* must be made in Form 90.07A and if leave to appeal is granted a notice of appeal (tribunal) in accordance with this Rule must be filed.

- (3) A notice of appeal (tribunal) must be entitled "Notice of Appeal (Tribunal)", be dated and signed by each appellant or their counsel, include everything required for a notice of appeal (general), add as respondents the Attorney General of Nova Scotia and the tribunal as required by Rule 90.16(6), and it must include a notice to the respondent that the respondent may only participate in the appeal as a respondent if the respondent files a notice of intention to participate in the tribunal appeal no more than ten days after the notice of appeal is delivered to the respondent.

N.S. Gaz. Pt. 1, 01/13/2010

Forms

Notice of Application for Leave to Appeal (Workers' Compensation) (90.07A), Notice of Appeal (Tribunal)(90.07B).

90.08 - Notice of appeal (child protection)

- (1) A notice of appeal (child protection) must have the standard heading as shown on Form 90.08, be entitled "Notice of Appeal (Child Protection)", be dated and signed by each appellant or their counsel, and include everything required in a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include the time and date when the appellant will make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties.
- (2) An appellant in a child protection appeal must make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.
- (3) The motion must be made no later than ten days following the filing of the notice of appeal, failing which the appeal shall be deemed dismissed unless a judge orders otherwise.
- (4) The notice of appeal (child protection) may be in Form 90.08.

Forms

Notice of Appeal (Child Protection) (90.08).

90.09 - Notice of appeal (interlocutory)

- (1) A notice of appeal (interlocutory) must have the standard heading as shown on Form 90.09, be entitled "Notice of Application for Leave to Appeal and Notice of Appeal (Interlocutory)", be dated and signed by each appellant or their counsel, and include everything required for a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include:
 - (a) the time, and date when the appellant will make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties;
 - (b) a notice that the judge of the Court of Appeal and the Court of Appeal may proceed in the absence of the respondent, and the Court of Appeal may determine the appeal, if the respondent, or their counsel, does not attend the motion for directions.

- (c) an application for leave to appeal.
- (2) An appellant in an interlocutory appeal, within the deadlines in Rule 90.25(2), must make a motion to a judge of the Court of Appeal to set the time and date for the leave application and the appeal to be heard, and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.
- (3) The notice of application for leave to appeal and notice of appeal (interlocutory) may be in Form 90.09/90.10.

Forms

Notice of Application for Leave to Appeal and Notice Appeal (Interlocutory) or (Costs Only)(90.09).

90.10 - Notice of appeal (costs only)

- (1) A notice of appeal (costs only) must have the standard heading as shown on Form 90.10, be entitled "Notice of Application for Leave to Appeal and Notice of Appeal (Costs Only)", be dated and signed by each appellant or their counsel, and include everything required for a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include the additional statements required for notice of appeal (interlocutory) as set out in Rule 90.09(1).
- (2) An appellant in a costs appeal, within the time limit stated in Rule 90.25(2), must make a motion to a judge of the Court of Appeal to set the time and date for the leave application and the appeal to be heard, and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.
- (3) The notice of application for leave to appeal and notice of appeal (costs only) may be in Form 90.09/90.10.

Forms

Notice of Application for Leave to Appeal and Notice Appeal (Interlocutory) or (Costs Only)(90.10).

90.11 - Ground and decision

- (1) An appellant may not rely on any ground of appeal not specified in the notice, unless the Court of Appeal or a judge of the Court of Appeal permits otherwise.
- (2) A copy of the decision and order must be filed with the notice of appeal, if the decision or order is in writing.

90.12 - Leave to appeal

- (1) An application for leave to appeal must be made to a judge of the Court of Appeal, unless legislation requires the application to be made to the Court of Appeal.
- (2) The judge who hears the application for leave may refer the application to the Court.
- (3) A party who makes an application for an order for leave to appeal may include the notice of application in the notice of appeal.

90.13 - Deadline for starting appeal

- (1) An appeal under legislation that provides a deadline for starting the appeal must be started no later than the time provided in the legislation and the calculation of the days shall be as intended by the legislation.
- (2) An appeal, or application for leave to appeal, from one of the following kinds of orders, or from the decision upon which it is based, must be started no more than the number of days in the following table after the date of the order, unless legislation provides, or a judge of the Court of Appeal permits, otherwise:

Kind of Order	Number of Days After
under <i>Divorce Act</i>	30 days, within the meaning of <i>Divorce Act</i>
under <i>Workers' Compensation Act</i>	30 days within the meaning of <i>Workers' Compensation Act</i>
interlocutory or costs only order of judge or court	10 days, within the meaning of Rule 94
other order of judge or court	25 days, within the meaning of Rule 94
order of tribunal	25 days, within the meaning of Rule 94

- (3) An appeal from a decision of a court or tribunal that has not issued an order must be started no more than the number of days stated for the applicable proceeding listed in the above table, after the day the decision is made, unless legislation provides, or a judge of the Court of Appeal permits otherwise.

90.14 - Delivery of Notice of Appeal

The appellant must deliver the notice of appeal or notice of application for leave to appeal to each respondent by the deadline in Rule 90.13(2).

90.15 - Appeal from decision

A person may appeal from a decision for which no order is issued, and the person must file the order before the appeal is set down for hearing unless the decision is of a tribunal that does not issue an order.

90.16 - Parties

- (1) An appellant must join as a respondent each other party to the proceedings under appeal and who is not an appellant.
- (2) A person who applies to be joined as a respondent in an appeal must include in the affidavit in support of the motion a statement of the person's interest in the appeal and a summary of the position the person will take on the appeal.
- (3) The appellant must join as a respondent, the Attorney General of Nova Scotia or the Minister of Community Services, on whom a notice of appeal is required to be served under this Rule 90.
- (4) A judge of the Court of Appeal in a tribunal appeal may direct the appellant to notify a person of the appeal by delivering a certified copy of the notice of appeal to the person.

- (5) An appellant must deliver a copy of the notice of appeal to the court appealed from, for the information of the judge who made the decision.
- (6) An appellant on a tribunal appeal must join as respondents the Attorney General of Nova Scotia and the tribunal appealed from.
- (7) An appellant in a tribunal appeal who is uncertain as to whether a further person needs to be joined as a party or is uncertain as to the form of notice may seek clarification from a judge of the Court of Appeal at the hearing of the appellant's motion for directions.
- (8) A judge of the Court of Appeal may order that a person be joined as a respondent.

90.17 - Notification

- (1) An appellant may deliver a copy of the notice of appeal and any other document in one of the following ways:
 - (a) as agreed with the respondent;
 - (b) by faxing or hand delivering a certified copy of the document to the respondent's counsel;
 - (c) in accordance with the provisions of Rules 31.02 to 31.10 for notifying a party of an action or application.
- (2) A party who makes a motion in an appeal must notify the other parties of the motion by delivering a copy of a notice of motion to the other parties.
- (3) A party who files a document in an appeal must deliver a copy of the document to each other party immediately before or immediately after it is filed.
- (4) An appellant may notify a person who is not a party to an appeal by delivering a certified copy of the notice of appeal to the person referred in accordance with Rule 31.03(1).
- (5) A party or the registrar may make a motion to a judge of the Court of Appeal for directions as to how the party must notify a person who is not a party to the appeal.
- (6) A copy of a notice of appeal (child protection) must be delivered to the Minister of Community Services by the deadline for starting the appeal in accordance with Rule 90.13(2).

90.18 - Constitutional and other questions of public importance

- (1) If a constitutional question or other question of public importance is raised by an appeal, the following applies:
 - (a) a party may, or on direction of the Court of Appeal, a judge of the Court of Appeal or the registrar, a party must, give notice of the question to the Attorney General of Canada or to the Attorney General of Nova Scotia, by delivering the notice to the Attorney General;
 - (b) the Attorney General of Canada, the Attorney General of Nova Scotia, or the Attorney General of any other Province of Canada, may make a motion under Rule 90.16 to be added as a respondent or an intervenor in an appeal by filing a notice of motion (intervention on question).
- (2) A notice to the Attorney General is given, for notice to the Attorney General of Canada, in accordance with Rule 31.03(1)(k), and, for notice to the Attorney General of Nova Scotia, in accordance with Rule 31.03(1)(j) by delivering both of the following:

- (a) a copy of the notice of appeal;
 - (b) a document describing the question.
- (3) A notice of motion (intervention on question) must be filed no more than fifteen days after the day the notice of appeal is delivered to the Attorney General.

N.S. Gaz. Pt. 1, [12/10/2008](#); [02/04/2009](#); [28/10/09](#)

90.19 - Intervention

- (1) A person may intervene in an appeal with leave of a judge of the Court of Appeal.
- (2) A judge of the Court of Appeal may make an order granting leave to intervene on terms and conditions the judge sets.
- (3) A person who wishes to intervene in an appeal may make a motion to a judge of the Court of Appeal for leave to intervene by filing a notice of motion for leave.
- (4) The notice of motion for leave to intervene must be filed no more than fifteen days after the day the notice of appeal is filed.
- (5) A motion for leave must concisely describe all of the following:
 - (a) the intervenor;
 - (b) the intervenor's interest in the appeal;
 - (c) the intervenor's position to be taken on the appeal;
 - (d) the submissions to be advanced by the intervenor, their relevancy to the appeal, and the reasons for believing that the submissions will be useful to the Court of Appeal and will be different from those of the parties.
- (6) An intervenor's factum must not exceed twenty-five pages, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal.
- (7) An intervenor is bound by the content of the appeal books and may not add to them, unless a judge of the Court of Appeal directs otherwise.
- (8) An intervenor may present oral argument only if permitted by the Court of Appeal or a judge of the Court of Appeal.

Annotations

The accused was charged with several counts of armed robbery. A lawyer acted for him in relation to the charges for two years, withdrawing about 18 months before trial. After representing himself at the trial, the accused was convicted on all counts. He appealed and his grounds of appeal contained allegations concerning the lawyer's representation, including that he was incompetent/ineffective. The lawyer brought a motion under Rule 90.19 for leave to intervene/intervenor status. Neither the accused nor the Crown opposed. *Held*, leave to apply and intervenor status granted. Rule 91.02 and s. 482 of the *Criminal Code* authorize a single judge of the appeal court, who is managing the appeal, to grant leave to apply for intervenor status. On the merits, principles emerging from the existing case law and factors at play warrant the intervention. It will not result in delay, and in fact could help streamline/clarify the issues. The lawyer has a direct interest in the proceeding, and deserves the opportunity to answer the charges. A finding of incompetence could impact him personally. Details concerning the length of his factum and oral arguments to be left to the panel assigned to hear the appeal.

R. v. West, [2009 NSCA 63](#)

90.20 - Participation in tribunal appeal

- (1) A respondent in a tribunal appeal may only participate in the appeal if the respondent files a notice of intention to participate in a tribunal appeal.
- (2) A notice must include a statement of intention to participate in the appeal and be filed no more than ten days after the day the notice of appeal is delivered to the respondent.
- (3) The notice to participate in a tribunal appeal must begin with the standard heading, be entitled "Notice to Participate in Tribunal Appeal", be dated and signed by each respondent or their counsel, and include the address for service of documents on the respondent.

90.21 - Cross-appeal

- (1) A respondent who seeks an order setting aside or varying the judgment under appeal must cross-appeal.
- (2) The respondent may cross-appeal by filing a notice of cross-appeal.
- (3) The respondent must file the notice of cross-appeal no more than ten days after the day the notice of appeal is delivered to the respondent.
- (4) A notice of cross-appeal must have the standard heading, be entitled "Notice of Cross-appeal", be dated and signed by the respondent who cross-appeals or their counsel, and otherwise include everything required for a notice of appeal (general) under Rule 90.06, modified as required.
- (5) A respondent may not rely on any ground of appeal not specified in the notice of cross-appeal, unless the Court of Appeal or a judge of the Court of Appeal permits.
- (6) After filing a cross-appeal, the respondent may make a motion to a judge of the Court of Appeal respecting directions, notification, and setting down dates for hearing the cross-appeal and a judge may make such order as the judge considers just.

90.22 - Respondent's notice of contention

- (1) A respondent who does not cross-appeal and wishes to contend that the judgment under appeal should be affirmed for reasons different than those expressed in the decision or the judgment under appeal must file a notice of contention.
- (2) The respondent must file the notice of contention no more than ten days after the day the notice of appeal is delivered to the respondent.
- (3) A notice of contention must be entitled "Notice of Contention", have the standard heading, be dated and signed by each respondent who wishes to contend on the appeal, and include a concise and complete summary of the alternative grounds put forward by the respondent for upholding the decision under appeal.
- (4) A failure of a respondent who contends for affirmation for different reasons to file a notice of contention does not diminish the power of the Court of Appeal, but it may be grounds for an adjournment and an order for costs.

90.23 - Reference

An application made by an Attorney General or other person to make a reference under the *Constitutional Questions Act* or other statute must be made by notice of motion under these Rules and in accordance with the provisions of this Rule 90 respecting directions, notification, and setting down dates for hearing the reference, and a judge of the Court of Appeal hearing the motion may make such order as the judge considers just.

90.24 - Stated Case

- (1) A court, tribunal, commission, or other party allowed by legislation wishing to refer a question of law to the Court of Appeal for an opinion, must state a case in writing setting forth the question or questions of law to be answered and file it with the Court of Appeal.
- (2) After filing a stated case, the referring court, tribunal or party, or any party to the proceeding may make a motion to a judge of the Court of Appeal respecting directions, notification, and setting down dates for hearing the stated case and the judge may make such order as the judge considers just.

90.25 - Motion for date and directions

- (1) An appellant must make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties, and the judge may make such order as the judge considers just.
- (2) The motion to set the time and date and for directions must be scheduled by the appellant to be heard no more than the number of days in the following table after filing the kind of notice of appeal stated in the table:

Kind of Notice	Number of Days as defined in Rule 94
notice of appeal (general)	80
notice of appeal (tribunal)	25
notice of appeal (child protection)	10
notice of appeal (interlocutory)	15
notice of appeal (costs only)	15

- (3) The notice of motion to set a time and date for the hearing and for directions in an interlocutory, costs only, or child protection appeal must be included in the notice of appeal.

90.26 - Certificate of readiness

- (1) Except as provided in Rule 90.26(4), an appellant must file a certificate of readiness in Form 90.26 in support of the motion for directions no less than four days before the day the motion is to be heard.
- (2) By the certificate of readiness, the appellant or the appellant's counsel must certify all of the following:
 - (a) the court appealed from has issued a formal order;
 - (b) the appellant has a paper copy of the written decision under appeal,

- (c) the appellant has ordered copies of the audio recordings from the appropriate court;
 - (d) the appellant has ordered the transcription of the audio recordings from a certified court reporter;
 - (e) the appellant has been informed by the certified court reporter that the transcription will be completed by a specified date;
 - (f) the appellant will be able to file the appeal book by a specified date.
- (3) If no written decision is filed with the registrar, the appellant or the appellant's counsel must undertake to send a copy of the transcribed oral decision to the judge or tribunal appealed from as soon as it is received from the court reporter.
- (4) An appellant who is unable to comply with Rule 90.26(1) must file an affidavit in support of the motion for directions, explaining the omission.

N.S. Gaz. Pt. 1, 02/04/2009; 10/28/2009; 12/16/2009

Forms

Certificate of Readiness (90.26).

90.27 - Motion by respondent for directions

- (1) A respondent in an appeal may make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.
- (2) A notice of motion for a date and directions must be filed no less than four days before the day of the hearing.

N.S. Gaz. Pt. 1, 28/10/09

90.28 - Registrar's request for documents

- (1) The registrar on the filing of a notice of appeal, other than an appeal as to costs only or a tribunal appeal, must as soon as possible request the prothonotary or clerk of the court appealed from to transmit to the registrar the pleadings, documentary exhibits, and other papers in the proceeding being appealed and a list of any exhibits that are not documents.
- (2) A judge of the Court of Appeal may direct a tribunal to deliver to the registrar a transcript, exhibit, or other document for use on the appeal.
- (3) The prothonotary, clerk of the court, or tribunal who receives a request from the registrar or a direction of a judge of the Court of Appeal must comply with the request or the direction as soon as practicable.

90.29 - Obtaining transcript

- (1) An appellant who appeals from a decision or order of a court or judge must request a copy of the audio recording of the proceeding from the prothonotary or clerk of the court appealed from, and pay the prescribed fee to the prothonotary or clerk.

- (2) The prothonotary or clerk, on receipt of the prescribed fee from the appellant, must provide the appellant with an audio recording of the entire hearing of the proceedings, including evidence, the oral submissions and all oral rulings and decisions.
- (3) An appellant who appeals from a decision or order of a tribunal must request a copy of the entire record of the proceedings before the tribunal and pay the prescribed fee for the copy to the tribunal.
- (4) The tribunal or other person or body that holds the record must, on receipt of the request and the prescribed fee from the appellant, provide the appellant with a copy of the entire record of the proceedings, including all rulings and decisions.
- (5) The appellant must cause a transcript of the proceeding to be prepared by a certified court reporter, unless legislation provides otherwise or a judge permits otherwise.

90.30 - Appeal book

- (1) An appellant must do both of the following unless a judge of the Court of Appeal permits otherwise:
 - (a) file five copies of the appeal book for the use of the Court of Appeal;
 - (b) deliver a copy of the appeal book to each respondent.
- (2) An appeal book must be in the format required by Rule 90.30(3) and consist of the following two parts, containing all of the following in each part, unless a judge of the Court of Appeal directs otherwise:
 - (a) Part 1 - Pleadings and Related Documents:
 - (i) a table of contents describing each document,
 - (ii) a copy of the notice of appeal and any notice of cross-appeal or respondent's notice of contention,
 - (iii) a copy of the order or decision appealed from,
 - (iv) a copy of the pleadings, including any particulars,
 - (v) a reference sheet containing the heading and file number of the proceeding under appeal, the name of the judge, and the dates of the hearing and of the decision in the court appealed from;
 - (b) Part 2 - Evidence and Related Materials:
 - (i) an index of witnesses describing each witness, including the name of the witness, the party who called the witness, and the page reference in the appeal book where the direct examination, cross-examination, or re-direct examination begins,
 - (ii) a list of all exhibits,
 - (iii) a copy of the transcript of everything said in the course of the proceedings under appeal, including all of the following:
 - (A) a headline on each page stating the name of the witness and whether it is direct examination, cross-examination, or re-direct examination;
 - (B) unless the individual lines of transcript are numbered, the questions must be numbered consecutively, and each question to be preceded by the letter "Q" and each answer by the letter "A";
 - (C) a copy of any written submissions and the transcript of submissions made,

- (iv) a copy of each document or electronic information admitted into evidence, indexed and numbered as at the trial, including a statement of facts, affidavit, written admission, or discovery transcript, if it is not reproduced in the transcript of evidence,
 - (v) a statement of facts agreed to by the parties instead of any part or all of the transcript, document, electronic information required by Rules (iii), (iv),
 - (vi) a copy of any charge to the jury, certified by the trial judge to be accurate.
- (3) An appeal book referred to in Rule 90.30(2) must be in a format that conforms with all of the following:
- (a) be printed double-spaced on letter size paper with printing on both sides of the paper and page numbering in the upper right corner of odd-numbered pages and the upper left corner of even-numbered pages;
 - (b) be bound with a plastic coil binder, divided into a separate volume for each Part, unless Part 2 is not lengthy;
 - (c) use a typing font of no less than twelve point, and be left-side justified, so as to be consistent with the format in these Rules;
 - (d) for the transcript,
 - (i) have margins for each page of transcript that are two inches on the bottom of the page and one inch on the top and sides of the page, and
 - (ii) use a typing font of no less than twelve point;
 - (e) have a cover that is grey and has marked on it the short title of the appeal, and each volume have marked on it its number and the number of each Part, and if a Part contains more than one volume, have each volume repeat the table of contents and show on its cover the page numbers contained in it.
 - (f) All pages of the appeal book must be numbered consecutively starting at page 1. However, if the transcript is bound in a separate volume, the pages of the transcript may have separate page numbering starting at page 1. If there is more than one transcript, each transcript must be either in a separate volume or separated by tabs within one volume.
- (4) Parties to an appeal may make an agreement to avoid the expense or delay of reproducing material unnecessary for the appeal by abridging all or part of the transcript of evidence or of any other material otherwise required to be included in the appeal book, or substituting an agreed statement of facts instead of a transcript or exhibit.
- (5) A party may make a motion to a judge of the Court of Appeal for an order abridging a requirement for the form or content of the appeal book.
- (6) An appellant must file an electronic copy of the transcript in a format satisfactory to the registrar, in addition to filing paper copies, unless the registrar or a judge of the Court of Appeal orders otherwise.
- (7) An appeal book may not be filed by fax.

N.S. Gaz. Pt. 1, [12/10/2008](#); [28/10/2009](#); [12/16/2009](#)

90.31 - Appeal book - appeal as to costs only

An appeal book in an appeal as to costs only must be in the format required by Rule 90.30(3) and consist of all of the following, unless a judge of the Court of Appeal directs otherwise:

- (a) a table of contents describing each document;

- (b) a copy of the notice of appeal;
- (c) a copy of the order and decision appealed from;
- (d) a copy of the pleadings, including any particulars;
- (e) any offers to settle, exhibits and evidence relevant to the appeal;
- (f) a reference sheet containing the heading and file number of the matter appealed, the name of the judge, and the date of the hearing and of the decision in the court below;
- (g) a transcript of submissions made.

N.S. Gaz. Pt. 1, [02/04/09](#)

90.32 - Factum

- (1) An appellant must do both of the following no more than ten days after the day the appeal book is delivered, or when a judge of the Court of Appeal directs:
 - (a) file five copies of a factum for the use of the Court of Appeal;
 - (b) deliver a copy of the factum to each respondent.
- (2) A respondent must do both of the following no more than ten days after the day the appellant's factum is delivered, or when a judge of the Court of Appeal directs:
 - (a) file five copies of a factum for the use of the Court of Appeal;
 - (b) deliver a copy of the factum to each other party.
- (3) A factum must be in the format required in Rule 90.32(4) and consist of all of the following parts and appendices:
 - (a) Part 1 - Concise Overview of the Appeal;
 - (b) Part 2 - Concise Statement of Facts;
 - (c) Part 3 - List of Issues;
 - (d) Part 4 - Standard of Review for each Issue;
 - (e) Part 5 - Argument (containing a summary of the submissions on each issue);
 - (f) Part 6 - Order or Relief Sought (including any order as to costs);
 - (g) Appendix A - List of Citations referred to in Part 5;
 - (h) Appendix B - Statutes and Regulations (include the text of relevant statutory provisions).
- (4) A factum referred to in Rule 90.32(3) must be in a format that conforms with all of the following:
 - (a) be printed in no less than a twelve point font, double-spaced on letter size paper with printing on one side of the paper only with the typed pages to the left;
 - (b) include a table of contents for the Parts and Appendices;
 - (c) have each page numbered consecutively, after the table of contents;
 - (d) have each paragraph numbered consecutively;
 - (e) if an authority cited in the factum is reproduced in the book of authorities, refer to the authority by its tab number or letter used in the book of authorities;
 - (f) for the appellant's factum, have a cover that is coloured buff or yellow, and for the respondent's factum, including a cross-appellant's factum, have a cover that is coloured green or blue;

- (g) not exceed forty pages in length, excluding the appendices, unless a judge of the Court of Appeal permits otherwise.
- (5) A respondent who cross-appeals or files a notice of contention on a matter not conveniently covered by the respondent's factum must file and deliver with their factum a second factum, and the appellant who wishes to submit a factum in response must file and deliver their factum no later than five days after the day the respondent's factum is delivered.
- (6) Every party to an appeal must, unless the registrar or a judge of the Court of Appeal orders otherwise, file an electronic copy of the factum in a format satisfactory to the registrar, in addition to filing a paper copy.
- (7) A factum may not be filed by fax.

N.S. Gaz. Pt. 1, 12/10/2008; 12/24/2008; 04/01/2009

Annotations

The appellant wife appealed a ruling of the Supreme Court (Family Division) dismissing her application to overturn a Corollary Relief Judgment. She laid out numerous grounds of appeal, and sought the court's permission (under Rule 90.32(4)(g)) to file a factum exceeding 40 pages. The application was (with the husband's consent) dealt with by way of correspondence, under Rule 90.35. *Held*, application granted, appellant permitted to file a longer factum, not to exceed 60 pages. There were several issues on appeal, and it was set for a full day hearing. The court commented that the 40 page rule was implemented to encourage efficient, concise facta. It is unnecessary to include pages of quotes from documents and decisions. All that is required is a short reference (at the end of the paragraph setting out the argument relating to them) to the location of those quotes in the appeal book or book of authorities.

Jachimowicz v. Jachimowicz, [2009 NSCA 36](#)

90.33 - Book of authorities

- (1) A party to an appeal who wishes to rely on authorities in argument, such as a judicial decision or a scholarly article, must file five copies of a book of authorities at the same time that the party files a factum, unless the parties have agreed to file a joint book of authorities.
- (2) Parties must make best efforts to agree on, prepare, and file a joint book of authorities. Five copies of a joint book of authorities must be filed at the same time that the respondent's factum is filed.
- (3) An intervenor who files a book of authorities must not duplicate anything included in the appellant's or respondent's book of authorities.
- (4) A book of authorities must have all of the following:
 - (a) a cover that contains the title "Book of Authorities";
 - (b) a secure binding;
 - (c) a table of contents identifying each authority;
 - (d) a copy of each authority cited in the party's factum in alphabetical order and marked with a tab numbered or lettered consecutively;
 - (e) numbered pages only if the authority does not clearly provide its own page numbering;

- (f) excerpts of authorities to be relied on indicated by page or paragraph references, and highlighted by underlining the relevant passage or marking the passage in the margin of the text.
- (5) The entire table of contents must be included in each volume if the authorities are contained in more than one volume.

N.S. Gaz. Pt. 1, 12/10/08; 02/04/09

90.34 - Motions

- (1) A party may make either of the following kinds of motions:
 - (a) a motion to the Court of Appeal, in accordance with Rule 90.36;
 - (b) a motion to a judge of the Court of Appeal, in accordance with Rule 90.37.
- (2) A notice of motion to the Court of Appeal and a notice of motion to a judge of the Court of Appeal must include all of the following:
 - (a) a concise statement of the grounds for the motion;
 - (b) a reference to the Rule or statute under which the motion is brought;
 - (c) a statement describing the proposed order;
 - (d) the time and date when, and the place where, the motion is to be heard;
 - (e) a reference to each affidavit relied on by the party making the motion, identified by the name of the affiant and either the date it was sworn or affirmed to or a brief description of its contents;
 - (f) a statement that the other party may file an affidavit or a brief, and attend the hearing of the motion;
 - (g) a warning that an order may be made if the other party does not attend.
- (3) A reference in this Rule 90 to a motion to the Court of Appeal means a motion under Rule 90.36, unless the Rule making the reference provides otherwise.
- (4) A reference in this Rule 90 to a motion to a judge of the Court of Appeal means a motion under Section 90.37, unless the Rule making the reference provides otherwise.
- (5) A person who wishes to make a motion must make the motion on notice, unless they satisfy the Court of Appeal or a judge of the Court of Appeal that it is properly made *ex parte*.
- (6) The Civil Procedure Rules governing motions in the Supreme Court of Nova Scotia, that are not inconsistent with Rule 90, apply to motions in the Court of Appeal, as are required for the orderly conduct of the motion.

90.35 - Motion by correspondence

- (1) A party may make a motion to a judge by delivering correspondence in any of the following circumstances:
 - (a) the party seeks an adjournment or dismissal of an *ex parte* motion made by the party;
 - (b) with the consent of the other parties, the party seeks an adjournment or dismissal of a motion made on notice;
 - (c) the party moves for a consent order;

- (d) if the respondent consents to the motion being made by correspondence;
 - (e) a judge permits a motion to be made by correspondence to that judge.
- (2) A party who wishes to have a motion decided on the basis of correspondence other than in the circumstances provided for in Rule 90.35(1) must make a request in the notice of motion.
 - (3) A respondent who receives a notice of motion that requests that the motion be decided on the basis of written correspondence must do either of the following:
 - (a) if the respondent does not object to disposition of the motion in writing, respond in writing to the notice of motion;
 - (b) if the respondent objects to disposition of the motion in writing, indicate in their brief the reasons why the motion should not be disposed of in writing.
 - (4) A moving party who receives the respondent's response in writing may file written representations in reply no later than four days after the day the respondent's response in writing is delivered.
 - (5) A judge of the Court of Appeal may give directions for the disposition of a motion in writing, dispose of the motion on the basis of the written submission, or fix a time and date for an oral hearing of the motion.

N.S. Gaz. Pt. 1, 12/10/08

90.36 - Motion to the Court of Appeal

- (1) A motion may be made to the Court of Appeal, in accordance with this Rule 90.36.
- (2) A motion may be made to the Court of Appeal in any appeal or other matter in which a motion may be made to the Court of Appeal by notice, application, motion, petition, or otherwise under this Rule 90.36, another Rule in these Rules, any other Rules, the *Supreme Court Act* (Canada), or other legislation.
- (3) A person who intends to make a motion to the Court of Appeal must first make a motion for a date and directions to a judge in accordance with Rule 90.25.

N.S. Gaz. Pt. 1, 28/10/09

90.37 - Motion to a judge of the Court of Appeal

- (1) A motion to a judge of the Court of Appeal may be made or responded to, in accordance with this Rule 90.37.
- (2) A judge of the Court of Appeal has and may exercise any power necessary to deal with a motion made to the judge under this Rule 90.37 or any other Rule, or other legislation.
- (3) A motion to a judge of the Court of Appeal, whether required to be made by notice, application, motion, petition, or otherwise, must be made by filing a notice of motion.
- (4) A brief of the points of argument, including a list of authorities relied on must be filed with the notice of motion.
- (5) A notice of motion to a judge of the Court of Appeal, with draft order, any affidavit, memorandum, and other supporting material, must be filed and delivered no later than four days before the date of the hearing of the motion, or such other time required by the Rule or legislation authorizing the motion.

Rule 90 - Civil Appeal

- (6) A party opposing a motion may file and deliver any affidavit or brief no less than two days before the date of the hearing of the motion, unless a judge otherwise orders.
- (7) A motion must be heard by a chambers judge of the Court of Appeal designated from time to time by the Chief Justice.
- (8) Uncontested motions and motions for dates and directions may be made by telephone conference by making prior arrangements with the Deputy Registrar of the Court of Appeal.
- (9) Contested motions may be heard by telephone with leave of the Chambers judge.
- (10) A motion must be heard in chambers at the Law Courts at Halifax every Thursday at ten o'clock in the morning, unless a judge of the Court of Appeal otherwise permits.
- (11) A motion may be made *ex parte* in one of the following circumstances:
 - (a) legislation or a Rule permits the motion to be made *ex parte* ;
 - (b) the other party waives notice in writing or consents to the proposed order;
 - (c) the judge authorizes the motion to be made *ex parte* ;
- (12) A judge of the Court of Appeal hearing a motion, in addition to any other powers, may order any of the following:
 - (a) a notice of motion be delivered to a person as the judge directs and a hearing be adjourned to permit the delivery;
 - (b) delivery of notice on a person be dispensed with;
 - (c) a motion be adjourned, continued, or dismissed if a person who ought to have received delivery did not receive delivery;
 - (d) the motion be referred to the Court of Appeal for hearing and disposition;
 - (e) a particular requirement of a form be dispensed with;
 - (f) counsel be appointed to represent a party to an appeal under the *Children and Family Services Act*, where the Court of Appeal is authorized to do so;
 - (g) a person detaining a party to bring the party before the Court of Appeal for the hearing of a motion or of the appeal or for any other business the person has with the Court of Appeal;
 - (h) that any time prescribed by this Rule 90 be extended or abridged before or after the expiration thereof.
- (13) The hearing of a motion under Rule 90.36 or 90.37 is conducted in accordance with the procedures and rules of evidence set out in Part 6 - Motions.
- (14) A judge of the Court of Appeal may order costs of a motion be paid by a party to another party.
- (15) A judge of the Court of Appeal, on motion, may make an order to do any of the following, until the Court of Appeal provides a further order:
 - (a) allow the use of pseudonyms in the pleadings;
 - (b) impose a publication ban;
 - (c) require a sealing of a court file;
 - (d) require a hearing to be *in camera*.

N.S. Gaz. Pt. 1, [28/10/2009](#)

Annotations

The accused appealed his robbery conviction. His grounds of appeal contained allegations concerning his lawyer's representation, including that he was incompetent/ineffective. The lawyer and Crown brought motions, including a motion for a declaration that the accused had waived privilege. The Crown also brought motions for directions in relation to their factum (permission to exceed the 40 page limit, permission to provide a brief factual context in relation to each issue, and asking whether their response to the accused's motion to admit fresh evidence should be addressed in a separate, free standing submission). *Held*, the directions sought by the Crown are to be given as incidental to the authority of the chambers judge to case manage the appeal. In terms of the motions for a declaration that the accused waived solicitor-client privilege, there is nothing in Rule 90 or 91 to suggest that a single judge has the power to declare that privilege has been waived. After conducting an extensive review of the Rules, and case law, the chambers judge concluded the decision on this issue should be made by the panel hearing the appeal. None of the parties objected. In *obiter*, he stated that even if he (acting alone) had the authority to declare privilege waived, he would decline to do so without hearing evidence and making assessments on credibility issues.

R. v. West, [2009 NSCA 63](#)

The respondent, Carvery, retained the appellant lawyer to bring a personal injury action against the other two respondents. She moved. The appellant was unable to contact her for several years. He brought an application to be removed as solicitor of record. The application was dismissed. He filed for leave to appeal the dismissal. Since he was unable to locate any of the respondents, he asked the court to dispense with notice of the leave application/appeal. At issue was whether a chambers judge of the appeal court has jurisdiction to dispense with notice of a leave application/appeal. *Held*, notice dispensed with. Further efforts at service would be highly artificial and without any real purpose. Rule 20.03(1)(a) and Rule 90.37(11) authorize a chambers judge of the appeal court to hear an *ex parte* motion; and Rule 90.37(12)(b) allows for dispensing with notice of the leave application/appeal. "Notice" here is not limited to notice of motions as in Rule 90.37(12)(a). It can be extended to include notice of an appeal. Historically, the old *Rules* allowed for dispensing with notice in this manner.

Wagner v. Carvery et al., [2009 NSCA 102](#)

90.38 - Review of order of judge

- (1) In this Rule 90.38,
 - (a) a reference to the "Chief Justice" includes a judge designated by the Chief Justice for the purpose of this Rule;
 - (b) "party" includes an intervenor under Rule 90.19.
- (2) An order of a judge of the Court of Appeal in chambers is a final order of the Court of Appeal, subject only to review under this Rule 90.38.
- (3) An order of a judge in chambers that disposes of an appeal may be reviewed by a panel of the Court of Appeal, with leave of the Chief Justice.
- (4) A party who requests leave to review an order of a judge must file a notice of motion for leave to review with the Chief Justice and deliver the notice to the other parties to the appeal, no more than seven days after the date of the order to be reviewed.

- (5) A party who opposes a motion for leave to review must file with the Chief Justice, and deliver to the other parties, a reply no more than seven days after the date of the filing of the motion for leave to review.
- (6) The Chief Justice may do any of the following on a motion for leave to review:
 - (a) dismiss the motion for leave to review;
 - (b) set the motion down for hearing;
 - (c) grant leave to review the order of the judge in chambers if the Chief Justice is satisfied that the judge acted without authority under the rules, or the order is inconsistent with an earlier decision of a judge in chambers or the Court of Appeal, or that a hearing by a panel is necessary to prevent an injustice.
- (7) The Chief Justice need not give reasons for the determination of a motion under this Rule.
- (8) If leave is granted, the Chief Justice must set a time and date for the hearing of the review before a panel of the Court of Appeal and give directions for the filing of factums and other material.
- (9) A judge may not sit as a member of the panel of the Court of Appeal hearing an appeal from the judge's order.
- (10) An order granting leave to appeal under this Rule 90.38 is a final order of the Court of Appeal and is not subject to further review.

90.39 - Amending notice of appeal

- (1) A party may amend a notice of appeal, notice of cross-appeal, or notice of contention no more than fifteen days after the day the notice is filed.
- (2) A judge of the Court of Appeal may permit a party to amend a document filed at any time.
- (3) An amended document must be filed and served immediately after it is amended.

Annotations

The appellant sought to amend his notice of appeal pursuant to Rule 90.39. The appeal was in relation to a Supreme Court decision striking a portion of his claim and dismissing an application to amend the claim. Chief Justice MacDonald considered the case-law under the old rules, and found the guiding principles to be whether: (1) the amendments were necessary and (2) there would be any prejudice to the responding parties. *Held*, it was just to deny the application to amend for several reasons. The appellant admitted the main amendment proposed was in relation to a matter not before the trial judge. The remainder of the proposed amendments appeared to be an attempt to elaborate his arguments in relation to the ground(s) he wanted to advance in the amendments denied by the trial judge. There was also concern about the prejudice to the respondents should the amendment(s) be allowed: the appellant's claim, from the outset, was a continuously moving target.

Nyiti v. Cape Breton University (Board of Governors), [2009 NSCA 54](#)

90.40 - Setting aside or dismissing an appeal summarily

- (1) A judge of the Court of Appeal may set aside a notice of appeal if it fails to disclose any ground for an appeal.

- (2) A judge of the Court of Appeal may dismiss an appeal if the appeal is not conducted in compliance with this Rule 90 for any reason, such as, failing to comply with Rules respecting any of the following:
 - (a) the form of the notice of appeal,
 - (b) notifying a person of the appeal,
 - (c) making a motion for directions,
 - (d) setting the appeal down for a hearing,
 - (e) filing the certificate of readiness.
- (3) On a motion for which seven days notice has been given to the appellant, a judge of the Court of Appeal may dismiss an appeal if it is demonstrated that no appeal lies to the Court of Appeal.
- (4) A judge of the Court of Appeal hearing a motion to set aside a notice of appeal or dismiss an appeal may give directions on the appeal, order costs, or require the defaulting party to indemnify each other party for the expenses caused by the default.

90.41 - Stay of execution

- (1) The filing of a notice of appeal shall not operate as a stay of execution or enforcement of the judgment appealed from.
- (2) A judge of the Court of Appeal on application of a party to an appeal may, pending disposition of the appeal, order stayed the execution and enforcement of any judgment appealed from or grant such other relief against such a judgment or order, on such terms as may be just.
- (3) Interest for such time as execution may be delayed by an appeal shall be allowed on the judgment in accordance with the *Interest on Judgments Act* from the filing of the notice of appeal, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal, and the interest shall be added to the judgment on execution without an order for that purpose.
- (4) This Rule 90.41 does not prevent the staying of execution or proceedings by the court appealed from, as authorized by a Rule or legislation.
- (5) An appellant who obtains a stay under this Rule 90.41 may obtain a certificate from the registrar stating that a stay of execution and enforcement has been granted and deliver the certificate to the sheriff.
- (6) A sheriff who receives a certificate must cease enforcement of the order under appeal.
- (7) An appellant who delivers a certificate to a sheriff who ceases enforcement must pay the outstanding sheriff's fees and the payment may be allowed as part of the costs of the appeal.
- (8) A stay of execution and enforcement stays other processes to enforce the order appealed from, other than the taxation of costs in the proceeding and the recording of the judgement in the Registry of Deeds, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal.

Annotations

The chambers judge refused to grant the infant applicant's motion for a publication ban or to allow the use of pseudonyms (initials) in her action concerning a false Facebook page that was set up using her name. She appealed and (in part) moved under Rule

90.41 and Rule 90.37(15)(b) for an order staying the chambers judgment pending disposition of her appeal. *Held*, motion granted. The media has already reported on the substance of the case, and nature of the contents of the Facebook page; the applicant is only asking that the actual words be kept confidential. The two-part test in *Sierra Club [2002]* applies to a motion for a publication ban. Having already met the test in her motion to allow the use of pseudonyms, the applicant has met the test for a publication ban. The ban is necessary to prevent a serious risk to an important interest (reputation/privacy) where reasonable alternative measures will not work and the deleterious effects of the ban are insubstantial. Denying the motion would render part of the appeal moot.

B. (A.) v. Bragg Communications Inc. et al. , [2010 NSCA 57](#)

The applicants applied for a stay of execution under the *Civil Procedure Rules (1979)* (62.10(2)). They were appealing what was a second order requiring them to disclose the names and addresses of former members of their partnership and argued forcing disclosure would cause irreparable harm. *Held*, application dismissed. In *obiter*, the court noted that, while this application arose under the *Civil Procedure Rules (1979)*, the test has not changed under the new rules (Rule 90.41(2)).

La Ferme D'Acadie v. Atlantic Canada Opportunities Agency , [2009 NSCA 5](#)

This decision arose under the old rules. The respondent employer terminated the appellant, and brought an action accusing him of fraud. The appellant counter-claimed, arguing wrongful dismissal. The respondent applied for, and obtained, summary judgment in respect of a portion of the damages claimed. The applicant asked for a stay of execution pending his appeal of the summary judgment decision. *Held*, stay granted. To satisfy the test for granting a stay pending appeal, the appellant must either (1) satisfy the court that: there is an arguable issue on appeal; there will be irreparable harm that cannot be compensated (including whether the appellant could collect if successful on appeal); and the balance of convenience favors the applicant; or (2) satisfy the court there are exceptional circumstances making it just and fit that the stay be granted. Here, there were exceptional circumstances: the judgment was obtained by summary proceedings; the appellant raised what appeared to be an arguable issue that could possibly succeed on appeal; and the appellants counter-claim and claim for a set-off had not yet been decided. The proceedings were incomplete and it would be premature to execute on a judgment.

Purdy v. Fulton Insurance Agencies Ltd. , [1990 CanLII 2357](#)

The self-represented applicant, who alleged that she suffered from post-traumatic stress disorder and had previously said she was incompetent, appealed an order requiring her to submit to a competency assessment. She sought a stay of execution under Rule 90.41(2), arguing her continued attendance at the assessment would disrupt her ability to attend a trade show and devastate the income of her business. The motion for a stay was heard after the competency assessment had started. *Held*, considering the unique circumstances of this case, a stay is granted only to the extent of delaying the continuation of the assessment until after the completion of the trade show (approximately three weeks). The test for a stay is the same as under the former Rule [Rule 62.10(2)] and the applicant failed to meet the primary test, which required her to show an arguable issue on appeal. The competency assessment was delayed slightly, but to a date preceding the appeal (regardless of the fact this might make the appeal moot).

Ocean v. Economical Mutual Insurance Co. , [2009 NSCA 9](#)

90.42 - Security for costs

- (1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.
- (2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

Annotations

This decision arose under the old rules. The appellant appealed the dismissal of his action (with costs) for damages against Nova Scotia Power after a fire destroyed his building. Nova Scotia Power applied for security for costs. *Held*, security for costs ordered in the amount of \$8,000. The appellant had agreed to post security for costs (\$20,000) before trial. Trial costs had not been set yet. The evidence showed the appellant had failed to pay 10 outstanding judgments (of over \$205,000). He had acted in an insolvent manner towards creditors, which constituted "special circumstances" justifying a security award. Although Nova Scotia Power asked for \$25,000 in security, it was appropriate to award 40 per cent of the security for costs posted at trial (\$8,000). Security ordered is usually less than the expected taxable costs of the appeal.

Rogers v. Nova Scotia Power Inc. , [2006 NSCA 33](#)

This decision arose under the old rules. The applicant developer was an interested party on appeal, and applied for security for costs of \$10,000 from the appellant citizen's group. *Held*, application dismissed. The appellant had no unpaid debts, and had already paid \$1,000 of the costs awarded on the previous application. A risk the appellant might not be able to afford a costs award is generally insufficient to warrant an order for security, and does not amount to "special circumstances". Usually, an order for security will follow a past and continuing failure to pay costs or a damage award or some other act of insolvency. Further, the amount sought here was excessive.

U. (S.) v. Family and Children's Services of Yarmouth County , [2005 NSCA 76](#)

This decision arose under the old rules. The appellant, who had been found 90 per cent liable following a motor vehicle accident, asked for a stay of execution and a respondent sought security for costs. After setting off costs against the damage award, the appellant owed almost \$28,000 to the respondents. *Held*, stay denied and security for costs fixed at \$2,000. The appellant admitted she was impecunious. She had had the benefit of a trial of her action and it was reasonable for the respondent to worry about the likelihood of collecting costs if successful on appeal.

Leddicote v. Nova Scotia (Attorney General) , [2001 NSCA 152](#)

This decision arose under the old rules. After a father's consent was dispensed with for the purposes of step-parent adoption, he appealed. The mother and step-parent applied for security for costs. *Held*, security granted. The father resided *ex juris*, and had previously failed to honour his court ordered maintenance obligation. Father ordered to pay \$1,000 in security, which was less than the cost award that could arise should the father be unsuccessful on appeal.

S. (R.L.) v. W. (C.N.) et al. , [1999 CanLII 16438](#)

This decision arose under the old rules. The respondent asked the court to dismiss the appellant's appeal dismissed because of her failure to comply with an order requiring her to provide security for costs within 60 days of the order. *Held*, application dismissed. The evidence showed the appellant was impecunious, had applied for social assistance, and was relying on friends and CPP for survival. It would be unjust to deny her right to proceed with the appeal.

Wyman v. Wyman , [1990 CanLII 4068](#)

The applicant sought a stay of the respondent's appeal and security for appeal costs under Rule 90.42. The appeal stemmed from the dismissal of the respondent's action against the applicant's bingo hall, for negligence in failing to take reasonable precautions against thefts. The respondent was injured during a theft at the hall. After her action was dismissed, a substantial cost award was made against her. She still had not paid it. The evidence showed her financial situation such that she could not afford to pay. Her injuries had made her unable to work and she had very little income. The applicant asked the court to stay her appeal until the original cost award was paid, and sought further security for costs of the appeal. *Held*, applications dismissed. Fichaud, J. observed that the test under the new rule has not changed, and that the case law under the old rule (62.13(1)) continued to apply. Here, the appeal was not frivolous. To stay it pending payment of the costs would bar the respondent from proceeding. She simply did not have the resources to pay, and this was significantly attributable to the incident that was the subject of the lawsuit/appeal. The evidence showed the respondent had tried to minimize litigation expenses, and had performed no act of insolvency towards the applicant (other than her failure to pay the costs, which could disappear if the appeal is successful).

Disabled Consumer Society of Colchester v. Burris, [2009 NSCA 21](#)

This decision arose under the old rule. The appellant was ordered to pay \$87,000 (including a significant cost award) following trial. The respondent applied for security for costs of the appeal. *Held*, application granted - \$6,000 in security for costs to be paid before appeal proceeds. The respondent had filed an execution order, which the appellant had ignored. The trial costs had not been paid. The appellant gave evidence that it could not pay the judgment, but proposed a payment plan. There was no evidence that an award of security for costs would make it impossible for the appellant to pursue the appeal. Here, it was appropriate to award 40 per cent of the estimated trial costs. When fixing the costs, the court took into account the disbursements likely to be incurred by the respondent in responding to the appeal.

Branch Tree Nursery & Landscaping Ltd. v. J & P Reid Developments Ltd., [2006 NSCA 131](#)

90.43 - Appellant failing to perfect appeal

- (1) In this Rule 90.43 a "perfected appeal" means one in which the appellant has complied with the Rules as to each of the following:
 - (a) the form and service of the notice of appeal;
 - (b) applying for a date and directions in conformity with Rule 90.25;
 - (c) filing the certificate of readiness in conformity with Rule 90.26;
 - (d) the ordering of copies of the transcript of evidence, in compliance with Rule 90.29;
 - (e) filing and delivery of the appeal book and of the appellant's factum.
- (2) A respondent in an appeal not perfected by an appellant may make a motion to a judge to set down the appeal for hearing or, if five days notice is given to the respondent, to dismiss the appeal.
- (3) In an appeal not perfected before 80 days from the date of the filing of the notice of appeal, or before any other time ordered by a judge, the registrar must make a motion to a judge for an order to dismiss the appeal on five days notice to the parties.
- (4) A judge, on motion of a party or the registrar, may direct perfection of an appeal, set the appeal down for hearing, or, on five days notice to the parties, dismiss the appeal.

N.S. Gaz. Pt. 1, 12/16/2009

Annotations

The Registrar sought an order dismissing the appellant's application for leave to appeal because he failed to perfect his application as required by the *Rules*. The record showed he was given numerous cautions, directions and offers of help for two years. His handwritten materials were in the nature of a general diatribe against perceived systemic injustices, and did not identify grounds or particularize errors. He failed to find a lawyer despite having a legal aid certificate for ten months. *Held*, application for leave to appeal dismissed. Despite the court's best efforts to outline the requirements, and the assistance available to him, he appeared either unable or unwilling to understand the procedural requirements. The *Rules*, both the old (Rule 62) and new (Rule 90) offer plain language, and straightforward instructions on the form/substance needed to properly pursue a civil appeal. There are materials on the court's website, court staff and professional agencies that can help. Cases must progress efficiently so as not to undermine the purpose of the *Rules* to allow for just, speedy and inexpensive access to justice. Saunders, J. noted that "litigation has a shelf-life" and time has run out. *MacDonald v. Nova Scotia (Workers' Compensation Appeals Tribunal) et al.*, [2010 NSCA 23](#)

90.44 - Quashing or dismissing appeal

- (1) A party to an appeal may make a motion to the Court of Appeal at any time before or at the hearing of the appeal for an order setting aside the notice of appeal or dismissing the appeal on either of the two following grounds:
 - (a) the appeal is frivolous, vexatious, or without merit;
 - (b) the appellant has unduly delayed perfection of the appeal.
- (2) A party who makes a motion for an order setting aside the notice of appeal or dismissing the appeal must, no later than fifteen days after the day the notice of motion is filed, make a motion to a judge in chambers for directions on the motion for an order to set aside or dismiss, including setting a date to hear the motion and as to the record and written submissions to be filed by the parties.

N.S. Gaz. Pt. 1, 28/10/09

90.45 - Management of appeal

- (1) The Chief Justice may appoint a judge of the Court of Appeal, or a panel of judges of the Court of Appeal, to assist in the management of an appeal.
- (2) A party may request the appointment of an appeal management judge, or panel of judges, by filing a request with the registrar.
- (3) An appeal management judge, or panel of judges, may give directions that are consistent with this Rule 90 and determine motions.
- (4) Directions may be given and motions may be heard in conference, by correspondence, in chambers, by teleconference, or otherwise, as the appeal management judge, or panel of judges, decides.
- (5) The following are examples of subjects that may be dealt with in judicial management of an appeal:

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- (a) setting tasks and deadlines to complete all steps to the hearing of the appeal;
 - (b) settling the order of argument;
 - (c) limiting the time allocated to each party for argument;
 - (d) settling the issues to be argued and determined;
 - (e) scheduling motions before the hearing of the appeal.
- (6) Directions may be varied on motion.
 - (7) An appeal management judge may direct that the conference be recorded by the Court of Appeal.
 - (8) An appeal management judge or a panel may make an order after a conference that does any of the following:
 - (a) records the subjects discussed, and agreements made, at the conference;
 - (b) records directions given at the conference, or gives further directions;
 - (c) gives effect to a ruling on an issue relating to the appeal book or a factum, or procedure for an upcoming hearing submitted to the judge at the conference with the consent of the parties.
 - (9) An appeal management judge who determines relief must do so by order if a party seeks relief from compliance with these Rules, and an order is required.

90.46 - Discontinuing appeal

- (1) A party may discontinue an appeal or cross-appeal by filing a notice of discontinuance.
- (2) On filing the notice of discontinuance, the appeal or cross-appeal is at an end and the other party is entitled to costs of the appeal or cross-appeal, unless a judge orders otherwise.

90.47 - Giving evidence to the Court of Appeal

- (1) The Court of Appeal, on the motion of a party, may on special grounds authorize evidence to be given to the Court of Appeal on the hearing of an appeal on any question as it directs.
- (2) The evidence may be given through oral examination before the Court of Appeal or by affidavit or deposition, or as the Court of Appeal directs.
- (3) The Court of Appeal on an appeal may on special grounds inspect or view any place, property or thing.

90.48 - Powers of the Court of Appeal

- (1) Without restricting the generality of the jurisdiction, powers and authority conferred on the Court of Appeal by the *Judicature Act* or any other legislation the Court of Appeal may do all of the following:
 - (a) amend, set aside, or discharge a judgment appealed from;

- (b) draw inferences of fact and give any judgment, allow any amendment, or make any order that might have been made by the court appealed from or that the appeal may require;
 - (c) make such order as to costs of the trial, hearing, or appeal as the Court of Appeal considers is in the interest of justice;
 - (d) direct a new trial by jury or otherwise, on terms the Court of Appeal considers is in the interest of justice, and for that purpose order that the judgment appealed from be set aside;
 - (e) make any order or give any judgment that the Court of Appeal considers necessary.
- (2) The Court of Appeal may set aside all or part of a judgment appealed from, although only part is under appeal, and it may grant an order in favour of a person who does not request the relief.
- (3) On or after hearing an application for leave to appeal in which the Court of Appeal decides to grant leave and the merits of the appeal have been fully argued, the Court of Appeal may decide the appeal without further argument.

Annotations

The accused appealed his robbery conviction and the grounds of appeal contained allegations concerning his lawyer's representation. To support his allegations, he filed several pieces of correspondence that would normally be covered by privilege. The lawyer brought a motion for a declaration that the accused had waived solicitor/client privilege. *Held*, motion referred to a panel of judges under Rule 90.37(12)(d). Nothing in Rules 90 or 91 specifically authorize a judge to declare privilege has been waived. Absent specific authorization, the powers of the Court of Appeal (including those under Rule 90.48(1)(e)) are to be exercised by a panel of judges rather than a single chambers judge. In *obiter*, he stated that even if he (acting alone) had the authority to declare privilege waived, he would decline to do so without hearing evidence and making assessments on credibility issues.

R. v. West, [2009 NSCA 63](#)

90.49 - Delivery of judgment by Court of Appeal

- (1) The Court of Appeal may deliver judgment disposing of an appeal in open court when the hearing concludes and give reasons then or later.
- (2) A judgment of the Court of Appeal in open court must be pronounced by the Chief Justice or other judge at the hearing.
- (3) The Court of Appeal, on reserving judgment on an appeal, must later file written reasons for judgment after all the presiding judges have, subject to Section 36 of the *Judicature Act*, written or concurred in reasons for judgment.
- (4) A judgment of the Court of Appeal with written reasons is taken to have been made on the date of filing the judgment.
- (5) If the Court of Appeal is equally divided in a judgment with written reasons, the appeal must be dismissed.
- (6) The registrar must, without charge, deliver a copy of the reasons given in writing or given orally and later reduced to writing to each party, the court appealed from, libraries and other persons as the Chief Justice authorizes in the particular case or generally, and to other persons on payment of a charge that may be set from time to time.

90.50 - Formal order of Court of Appeal

- (1) When the Court of Appeal delivers judgment, the registrar must immediately do both of the following:
 - (a) with the approval of the judge presiding on the appeal, settle, sign, and enter a formal order of judgment that shows the date on which the judgment was delivered, and provides for the disposition of the appeal as directed by the Court of Appeal;
 - (b) deliver a copy of the order to each party and the court appealed from.
- (2) The judge of the Court of Appeal who approves the formal order of judgment, or another judge on motion of a party, may amend the formal order to correct any errors or omissions, or otherwise better express its intent, or may refer the formal order to the Court of Appeal for amendment as the Court of Appeal considers appropriate.
- (3) An amended order must show the date of amendment but is effective from its original date unless a judge of the Court of Appeal orders otherwise.
- (4) The registrar must sign and enter the amended order and deliver a copy of it to each party and to the court appealed from.
- (5) When the judgment appealed from is reversed and the judgment ordered on appeal provides for payment of money, it must bear interest from the day the judgment is reversed.

90.51 - Costs in tribunal appeal

No costs may be ordered paid by or to a party in a tribunal appeal unless the Court of Appeal orders otherwise.

Annotations

A Labor Standards Officer ordered the appellant to pay the respondent \$6026. The appellant appealed the officer's order to the Labor Standards Tribunal, who – on an *anex-parte* application by the respondent – required the appellant to post a bond in the amount of the original judgment before she could proceed with the appeal. At issue was whether she was denied procedural fairness when the tribunal ordered her to pay security without giving her notice or allowing her to make submissions. She appealed and sought costs. *Held*, appeal allowed but costs denied, without prejudice to the appellant's right to claim the costs of this appearance should the matter come before the appeal court again. Rule 90.51 provides that costs are generally not awarded in tribunal appeals. The court was tempted to deviate from the rule and award costs, but: the appeal was on a single issue; the appeal on the merits was being remitted to the tribunal for a full hearing; and there was no one at this stage to challenge the claim to costs and disbursements.

New Scotland Soccer Academy v. Nova Scotia (Labour Standards Tribunal) , [2010 NSCA 43](#)

90.52 - Disposition of files after appeal

After an appeal, the registrar must do both of the following:

- (a) preserve the appeal book, factums, other appeal documents and orders;

- (b) unless the Court of Appeal or a judge of the Court of Appeal orders otherwise, return to the court appealed from all files and exhibits after the time has expired for appeal or application for leave to appeal to the Supreme Court of Canada unless the matter is appealed to that court in which case the registrar must comply with the Rules of that court.

90.53 - Entry by prothonotary of certified order

- (1) When an order of the Court of Appeal has been certified by the registrar to the prothonotary or clerk with whom the order appealed from was entered, the prothonotary or clerk must cause it to be filed, and all subsequent proceedings may be taken as if the certified order had been granted by the court appealed from.
- (2) When an order of the Supreme Court of Canada has been certified by the registrar of that Court to the prothonotary or clerk with whom the order initially appealed from was entered, the prothonotary or clerk must cause it to be filed, and all subsequent proceedings may be taken as if the certified order had been granted by the court initially appealed from.

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Educational Notes

Rule 91.02 applies the rest of the *Civil Procedure Rules* - particularly Rule 90 – Civil Appeal – to criminal appeal proceedings when not inconsistent with R.91. Rule 91 replaces the previous R.65. Criminal appellate practice will not change significantly under R.91 but the Rule does make many small changes in the court’s practice.

The deadline for filing an appeal is slightly different – 25 days from the date of sentence, if the appeal is from a conviction, finding of guilt, or sentence, or 25 days from the decision, if the appeal is from an acquittal or other judgment (R.91.09). Unlike the previous R.65.07(3), the time begins to run from the date of sentence, rather than the date of conviction.

The definition of “judgment” in R.91.01 is more explicit than in the previous R.65.01.

Rule 91.21 allows for case management of an appeal, a feature that will be particularly useful in cases involving self-represented litigants.

As with civil appeals, there is now an 80 day deadline to schedule the motion to appoint a date and time for the appeal and give directions (R.91.12). The appellant must file a certificate of readiness for the motion 5 days before it is heard (R.91.13). If the appellant is a prisoner, the Attorney General is responsible for doing these things.

The previous R.65 also required the Attorney General to prepare the appeal book if the appellant was a prisoner when the notice was filed. Rule 91.01 limits the obligation to appellants who remain in custody and are self-represented.

Rule 91.19 is more detailed about the requirements for books of authorities. It incorporates R.90.33 governing books of authorities in civil appeals.

Rule 91.17 allows the option of making all submissions in writing, by giving notice before the deadline for filing factums.

The deadline for filing factums in criminal appeals is the same as in civil appeals: the appellant’s factum is due no more than 10 days after the transcript and appeal book are filed; the respondent’s factum is due 10 days after the appellant’s factum is delivered.

Factums in criminal appeals now have the same 40 page limit and other requirements as factums in civil appeals, as R.91.02(2) incorporates Rule 90, including R.90.32(4) setting out the format and length of factums.

There is a slightly longer deadline for the trial court to retain custody of the exhibits under R.91.25 – 25 days, versus the previous 10 days in R.65.19(1).

91.01 - Definitions

(1) In this Rule,

“appeal” means an appeal under Part XXI of the Code, section 839 of the Code, or legislation that incorporates provisions of the Code for procedure on an appeal and includes an application for leave to appeal and an appeal contingent on leave being granted;

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“appellant” means a person who brings an appeal;

“Attorney-General” has the same meaning as in the Code, except it includes the Director of Public Prosecutions, Her Majesty the Queen as represented in an appeal, and counsel on behalf of the Attorney-General, the Director of Public Prosecutions, or Her Majesty the Queen;

“Chief Justice” means the Chief Justice of Nova Scotia;

“Code” means the *Criminal Code* ;

“Court of Appeal” means the Nova Scotia Court of Appeal;

“judgment” means a conviction, finding of guilt, acquittal, order staying a proceeding, sentence, verdict of unfit to stand trial, verdict of not criminally responsible on account of mental disorder, a decision or order of a summary conviction appeal court, and includes any other decision or order from which an appeal is available to the Court of Appeal;

“prisoner appeal” means an appeal by a person who is in prison when the appeal is started and who is not represented by counsel, and the appeal ceases to be a prisoner appeal when the person is released or retains counsel;

“prothonotary” means a person appointed by the Minister of Justice of the Province of Nova Scotia as a prothonotary of the Supreme Court of Nova Scotia;

“registrar” means the person appointed by the Minister of Justice of the Province of Nova Scotia as the registrar of the Nova Scotia Court of Appeal, and includes a deputy, assistant or associate registrar;

“sentence appeal” means an appeal in which the appellant only appeals a sentence.

- (2) the interpretation and definition sections of the Code shall apply to this Rule.

91.02 - Scope of Rule 91

- (1) This Rule is made under subsections 482(1) and (3) of the Code.
- (2) The Civil Procedure Rules as a whole and in particular Rule 90 apply to this Rule with any necessary modifications and when not inconsistent with this Rule.
- (3) The procedures in Rule 90 for motions made to a judge of the Court of Appeal and to the Court of Appeal apply to motions made under this Rule.

Annotations

The accused was charged with several counts of armed robbery. A lawyer acted for him in relation to the charges for two years, withdrawing about 18 months before trial. After representing himself at the trial, the accused was convicted on all counts. He appealed and his grounds of appeal contained allegations concerning the lawyer's representation, including that he was incompetent/ineffective. The lawyer brought a motion under Rule 90.19 for leave to intervene/intervenor status. It was unopposed. *Held*, leave to apply and intervenor status granted. Rule 91.02 and s. 482 of the *Criminal Code* authorize a single judge of the appeal court, who is case managing the appeal, to grant leave to apply for intervenor status in appropriate circumstances. *R. v. West*, [2009 NSCA 63](#)

91.03 - Effect of noncompliance with rules

Noncompliance with this Rule 91 shall not render any proceeding void, but the proceeding may be amended or may be set aside as an irregularity or otherwise dealt with as may be just.

91.04 - Extension of time

- (1) Any time prescribed by this Rule may be extended or abridged by a judge of the Court of Appeal or the Court of Appeal before or after the time has expired.
- (2) A person who seeks an extension or abridgment of a time period in the Code or this Rule may make a motion to a judge of the Court of Appeal or the Court of Appeal under a provision in the Code, such as subsection 678(2), under Rule 2 - General, or under subsection (1) of this Rule.

Annotations

Having been convicted and sentenced for murdering his wife, the now self-represented accused brought a motion under Rule 91.04 to extend the time to file his appeal. *Held*, motion denied. The test for granting an extension of time to file a notice of appeal is essentially whether the interests of justice so dictate. Here they did not: there was no legitimate reason for more than 18 month delay; the trial judge was cautious in accepting the plea/joint submission, and the accused (through a translator) indicated his understanding/consent.; the sentence imposed was within the lower part of the appropriate range; and there was no merit to the proposed appeal (he pled guilty, was represented by a lawyer, made a joint submission on sentencing, and the crime was very serious).

R. v. Al-Rabie , [2009 NSCA 55](#)

91.05 - Starting an appeal

- (1) A person may start an appeal by filing a notice of appeal with the registrar.
- (2) The notice of appeal must be entitled "Notice of Appeal", be dated and signed, and include all of the following:
 - (a) a notice that the appellant appeals from a judgment, including the kind of the judgment, the names of the judge and court appealed from, and the date of the judgment;
 - (b) an application for leave to appeal referred to in Rule 91.08, if leave is required;
 - (c) the names of counsel who represented the parties before the court appealed from or a statement that a party was not represented;
 - (d) a description of the offence that was charged and the section reference for the offence;
 - (e) details of the plea that was entered and any sentence that was imposed;
 - (f) a reference to the statutory authority for the appeal, a concise statement of the grounds for appeal, and a concise description of the order to be sought at the conclusion of the appeal;
 - (g) a statement of whether a party is in prison and, if so, the place of imprisonment;

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- (h) if there is only one appellant, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for delivery to all or separate addresses for each;
 - (i) an acknowledgement that documents delivered to the designated address are considered received by the appellant, and a statement that further contact information is available from the registrar.
- (3) The notice of appeal may be in Form 91.05(A) or where the appellant is not represented by a solicitor may be in Form 91.05(B).
 - (4) The senior official of every penal institution must supply to any prisoner in his custody, upon request, a copy of the notice of appeal in Form 91.05(B) for the prisoner's use.

Forms

Notice of Appeal, Appellant is Represented by a Solicitor (91.05(A)), Notice of Appeal, Appellant is not Represented by a Solicitor(91.05(B)).

91.06 - Contact Information

A party to an appeal must designate an address for delivery and provide to the registrar the further contact information referred to in Rule 82.08, of Rule 82 -Administration of Civil Proceedings.

91.07 - Prisoner Appeal

Where a prisoner appeal is commenced and the appellant subsequently retains a solicitor, the solicitor shall immediately notify the registrar and the respondent of the retainer and thereafter all relevant Rules relating to appeals through solicitors apply to the appeal.

91.08 - Applying for leave to appeal

A person who wishes to bring an appeal for which leave of the Court of Appeal is required may file a notice of appeal and include the application in it.

91.09 - Deadline for starting appeal

- (1) For the purpose of section 678 and 839 of the Code, a person may start an appeal of a judgment by filing a notice of appeal no more than twenty-five days after one of the following:
 - (a) the day the appellant is sentenced, if the appeal is from a conviction, finding of guilt, or sentence, or both a conviction or finding of guilt and a sentence;
 - (b) the day a judgment is made, if the appeal is from an acquittal or other judgment that is not a conviction, finding of guilt, or sentence.
- (2) The period is calculated under Rule 94.02, of Rule 94 - Interpretation, and it is subject to being extended under section 678 of the Code or Rule 91.04.

91.10 - Filing and delivery of notice of appeal

- (1) An appellant, other than an appellant in an prisoner appeal, must do each of the following:
 - (a) provide the registrar with two copies of the notice of appeal when the original is filed;
 - (b) cause a copy of the notice of appeal to be delivered to each respondent before the deadline in Rule 91.09(1), by personal service or by another method of giving notice permitted by a judge;
 - (c) provide the registrar with proof of service of the notice of appeal;
 - (d) send a copy of the notice of appeal to the judge from whose judgment the appeal is brought.
- (2) A prisoner who wishes to start a prisoner appeal must, by the deadline in Rule 91.09(1), deliver the original of the notice of appeal, two copies for the registrar, and one copy for each respondent to the senior official of the institution in which the appellant is imprisoned.
- (3) A senior official to whom a notice of appeal in a prisoner appeal is delivered must certify the date of delivery on the notice, cause the notice and two copies to be delivered to the registrar, and cause the other copy to be delivered to the respondent.
- (4) The registrar must send a copy of a prisoner's notice of appeal to the judge from whose judgment the appeal is brought.

91.11 - Cross-appeal

- (1) A respondent may cross-appeal by filing a notice of cross-appeal.
- (2) The notice of cross-appeal must be entitled "Notice of Cross-Appeal", be dated and signed, and include all of the following:
 - (a) the same file number as the notice of appeal and a heading with the names of the cross-appellant and cross-respondent;
 - (b) a notice that the respondent cross-appeals from a judgment, including the nature of the judgment, the names of the judge and court appealed from, and the date of the judgment;
 - (c) an application for leave to cross-appeal referred to in Rule 91.08, if leave is required;
 - (d) a reference to the statutory authority for the cross-appeal, a concise statement of the grounds of cross-appeal, and a concise description of the order to be sought at the conclusion of the appeal;
 - (e) if there is only one respondent who cross-appeals, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for all or separate addresses for each;
 - (f) an acknowledgment that documents delivered to the designated addresses are considered received by the respondent, and a statement that further contact information is available from the registrar.
- (3) A notice of cross-appeal must be filed and delivered no more than twenty-five days after the day a copy of the notice of appeal is delivered to the respondent who wishes to cross-appeal.

- (4) Unless inconsistent with this Rule 91.11, Rules 91.05(2), 91.08, 91.09(2), and 91.10 apply to a cross-appeal as if “appeal” read “cross-appeal” and “appellant” read “respondent who cross-appeals”.

91.12 - Setting time for appeal hearing and deadlines for filing documents

- (1) An appellant, or in a prisoner appeal the Attorney General, must make a motion to a judge of the Court of Appeal to appoint a time and date for the appeal to be heard and to provide directions for the appeal, including when the transcript, appeal book, and factums are to be filed.
- (2) The motion to appoint a time and date and provide directions must be scheduled by the appellant or Attorney General to be heard no more than eighty days after the day the notice of appeal is filed.
- (3) A judge of the Court of Appeal may on his or her own motion set a time for the hearing of any appeal, whether perfected or not, and if the appeal has not been perfected may direct what appeal book or factums or other material shall be filed.

91.13 - Certificate of Readiness

[Editor’s note: this section has not been amended as per *N.S. Gaz. Pt. 1*, [10/28/2009](#), pending clarification from the Court of Appeal]

An appellant, or in a prisoner appeal the Attorney General, must file a certificate of readiness that complies with Rule 90.26 in support of the motion for directions under Rule 91.12(1) no less than four days before the motion is to be heard.

N.S. Gaz. Pt. 1, [02/04/2009](#); [10/28/2009](#)

Forms

Certificate of Readiness(91.13).

91.14 - Obtaining transcript

- (1) An appellant, or in the case of a prisoner appeal the Attorney General, must request a copy of the audio recording of the proceeding from the prothonotary or clerk of the court appealed from, and pay the prescribed fee to the prothonotary or clerk.
- (2) The prothonotary or clerk, on receipt of the prescribed fee from the appellant, or the Attorney General must provide the appellant or the Attorney General with an audio recording of the entire hearing of the proceedings, including evidence, the oral submissions, the jury charge, and all oral rulings and decisions.
- (3) The appellant, or in the case of a prisoner appeal the Attorney General, must cause a transcript of the proceeding to be prepared by a certified court reporter in compliance with s. 682(4) of the Code.

91.15 - Appeal book

- (1) An appeal book must be in the same format as an appeal book under Rule 90.30(3).
- (2) The appeal book must, except for the modifications in Rule 91.15(3) applicable to a sentence appeal, contain each of the following, unless the parties agree or a judge orders otherwise:
 - (a) Part 1 - Documents:
 - (i) a table of contents referring to each document and the page number at which it begins,
 - (ii) a copy of the notice of appeal and of any notice of cross-appeal,
 - (iii) a copy of the information, indictment, or other document by which the proceeding under appeal was started,
 - (iv) a copy of the decision under appeal,
 - (v) a copy of the order or other instrument giving effect to the determination under appeal,
 - (vi) a reference sheet containing the heading of the proceeding under appeal, the court or registry number, the name of the judge who made the judgment, the date of the trial or hearing, and the date of the judgment;
 - (b) Part 2 - Evidence and Related Materials:
 - (i) an index of witnesses describing each witness, including the name of the witness, the party who called the witness, and the page reference in the appeal book where the direct examination, cross-examination, or re-direct examination begins,
 - (ii) a list of all exhibits,
 - (iii) a copy of the transcript of everything said in the course of the proceedings under appeal, including all of the following:
 - (A) a headline on each page stating the name of the witness and whether it is direct examination, cross-examination, or re-direct examination;
 - (B) unless the individual lines of transcript are numbered, the questions must be numbered consecutively, and each question to be preceded by the letter "Q" and each answer by the letter "A";
 - (C) a copy of the transcript of submissions made,
 - (iv) a copy of each documentary exhibit or electronic information admitted into evidence, indexed and numbered as at the trial, including any statement of facts, affidavits and written admissions,
 - (v) a copy of an agreement to limit the contents of the transcript or appeal book,
 - (vi) a copy of an agreed statement of facts in substitution for omitted parts of a transcript or appeal book,
 - (vii) a copy of any charge to the jury, certified by the trial judge to be accurate.
- (3) Rule 91.15(2) applies on a sentence appeal with both of the following modifications:
 - (a) the appeal book need not include exhibits entered at a trial but must include exhibits entered at the sentencing;
 - (b) the appeal book need not include the transcript of the evidence of the trial if only the sentence is appealed;
 - (c) the appeal book must include:

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- (i) a presentence report that was before the sentencing judge,
 - (ii) a statement of the accused's criminal record that was before the sentencing judge if the accused has a record,
 - (iii) and a copy of each order related to the sentence, such as a discharge, probation order, order for a conditional sentence, or warrant of committal.
- (4) An appellant, other than an appellant in a prisoner appeal, must file five copies of an appeal book and deliver a copy to the respondent, in accordance with the directions given by a judge of the Court of Appeal under Rule 91.12.
- (5) In a prisoner appeal, the Attorney General must file five copies of an appeal book, in accordance with the directions given by a judge of the Court of Appeal under Rule 91.12, that conforms with one of the following and deliver a copy to the institution where the appellant is imprisoned:
 - (a) Rule 91.15(2), in an appeal that is not only from sentence;
 - (b) Rule 91.15(2) as modified by Rule 91.15(3), in an appeal only from sentence.
- (6) When a document in a prisoner appeal is delivered to the institution in which the appellant is imprisoned, the senior official of the institution must immediately deliver it to the appellant.
- (7) An appellant, or in the case of a prisoner appeal the Attorney General, must file an electronic copy of the transcript in a format satisfactory to the registrar, in addition to filing paper copies, unless the registrar or a judge of the Court of Appeal orders otherwise.
- (8) An appeal book may not be filed by fax.

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91.16 - Abbreviating transcript or appeal book

- (1) The parties may agree to omit from a transcript or appeal book anything the parties consider unnecessary to an appeal.
- (2) The parties may agree to a statement of facts so as to make a transcript, part of a transcript, or part of an appeal book unnecessary.
- (3) An agreement and an agreed statement of facts must be in writing and be filed.
- (4) A judge may order that a party need not file a transcript or may omit anything from a transcript or appeal book.

91.17 - Appeal with written submissions only

- (1) A party may choose to make all submissions in writing and not attend a hearing of the appeal.
- (2) A party who chooses to make submissions in writing only must state the intention to do so either in the notice of appeal or by a written notice to the other party and the court before the deadlines for filing factums set by a judge of the Court of Appeal.
- (3) A party who chooses to make all submissions in writing must file a factum that complies with Rule 91.18.
- (4) A judge of the Court of Appeal may direct when the factum is to be filed.

91.18 - Factum

- (1) The parties must file five copies of a factum and deliver a copy to the other party by one of the following deadlines, unless a judge of the Court of Appeal permits otherwise:
 - (a) for the appellant's factum, no more than ten days after the day the transcript and appeal book are filed;
 - (b) for the respondent's factum, no more than ten days after a copy of the appellant's factum is delivered to the respondent.
- (2) A factum must be in the same format, and have the same content, as is required in a factum under Rule 90.32.
- (3) A judge of the court of appeal, may excuse a party who is not represented by counsel from compliance with this Rule 91.18.
- (4) A factum may not be filed by fax.

91.19 - Book of authorities

- (1) A party to an appeal who wishes to rely on authorities in argument, such as a judicial decision or a scholarly article, must file five copies of a book of authorities at the same time that the party files a factum, unless the parties have agreed to file a joint book of authorities.
- (2) Parties must make best efforts to agree on, prepare, and file a joint book of authorities. Five copies of a joint book of authorities must be filed at the same time that the respondent's factum is filed.
- (3) The book of authorities must be in the same format and have the same content as is required under Rule 90.33.

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91.20 - Dismissing appeal summarily

- (1) A judge of the Court of Appeal may dismiss an appeal of a judgment from which no appeal lies to the Court.
- (2) A judge of the Court of Appeal may dismiss an appeal in which the appellant fails to comply with this Rule 91, such as failing to comply with a Rule, or directions given under a Rule, on any of the following subjects:
 - (a) ordering a transcript;
 - (b) the form and service of the notice of appeal;
 - (c) filing and delivering a transcript, appeal book, and appellant's factum.
- (3) A judge of the Court of Appeal may give directions for the completion of a prisoner appeal in which the Attorney General fails to comply with this Rule.
- (4) A judge of the Court of Appeal hearing a motion to dismiss an appeal summarily, or to give directions as a result of a failure of the Attorney General, may, in addition to determining the motion, give directions on the appeal generally, order costs, where otherwise permitted by law, or require the defaulting party to indemnify another party for the expenses caused by the default.

91.21 - Management of appeal

- (1) The Chief Justice may appoint a judge of the Court of Appeal, or a panel of judges of the Court of Appeal, to assist in the management of an appeal.
- (2) A party may request the appointment of an appeal management judge, or panel of judges, by filing a request with the registrar.
- (3) An appeal management judge, or panel of judges, may give directions that are consistent with this Rule 91 and determine motions.
- (4) Directions may be given and motions may be heard in conference, by correspondence, in chambers, by teleconference, or otherwise, as the appeal management judge, or panel of judges, decides.
- (5) The following are examples of subjects that may be dealt with in judicial management of an appeal:
 - (a) setting tasks and deadlines to complete all steps to the hearing of the appeal;
 - (b) settling the order of argument;
 - (c) limiting the time allocated to each party for argument;
 - (d) settling the issues to be argued and determined;
 - (e) scheduling motions before the hearing of the appeal.
- (6) Directions may be varied on motion.
- (7) An appeal management judge may direct that the conference be recorded by the Court of Appeal.
- (8) An appeal management judge or a panel may make an order after a conference that does any of the following:
 - (a) records the subjects discussed, and agreements made, at the conference;
 - (b) records directions given at the conference, or gives further directions;
 - (c) gives effect to a ruling on an issue relating to the appeal book or a factum, or procedure for an upcoming hearing submitted to the judge at the conference with the consent of the parties.
- (9) An appeal management judge who determines relief must do so by order if a party seeks relief from compliance with these Rules, and an order is required.

91.22 - Deciding appeal after granting leave

The Court of Appeal may, after determining to grant leave to appeal, do either of the following:

- (a) give directions for the hearing of the appeal;
- (b) decide the appeal without further argument, if the merits have been fully argued.

91.23 - Abandonment of appeal

- (1) An appellant may abandon an appeal by filing a notice of abandonment.
- (2) A notice of abandonment must be entitled "Notice of Abandonment", be dated and signed, and include a notice that the appellant abandons the appeal.
- (3) The signature of an appellant who personally signs a notice of abandonment must be verified by affidavit, by the signature of counsel as subscribing witness, or by the

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signature, as subscribing witness, of an officer of the institution in which the appellant is imprisoned.

- (4) The notice of abandonment may be in Form 91.23.
- (5) A notice of abandonment must be filed and delivered in the same way as a notice of appeal under Rule 91.10.
- (6) A notice of abandonment has the same effect as an order dismissing an appeal, unless a judge who is satisfied that it is in the interest of justice to do so permits the appellant to withdraw the abandonment.
- (7) A respondent may make a motion for an order dismissing an abandoned appeal.

Forms

Notice of Abandonment (91.23).

91.24 - Release pending appeal

- (1) An appellant who appeals against sentence only, is in custody, and wishes to be released pending appeal must make a motion to a judge of the Court of Appeal for leave to appeal, which motion may be heard together with a motion for an order for release under section 679 of the Code and be determined before or at the same time as the motion for release is determined.
- (2) An appellant who makes a motion for release from custody pending appeal under section 679 of the Code must provide evidence of all of the following, by affidavit or agreed statement of facts filed with the notice of motion:
 - (a) details of the conviction;
 - (b) details of any ground of appeal the appellant omitted from the notice of appeal and wishes to argue;
 - (c) the appellant's age, status as a single person or partner or spouse, places of residence in the three years before the conviction, employment before conviction, prospects for employment if released, including the place of prospective employment if released, and any criminal record;
 - (d) the unnecessary hardship of being detained in custody, if the appeal is of sentence only;
 - (e) the amount of money or the value of other security the appellant proposes, if the appellant proposes release on a recognizance with sureties;
 - (f) the names of sureties and the amount for which each is to be liable, if sureties are proposed and arrangements have been made with them.
- (3) An appellant who makes a motion under this Rule must, unless directed otherwise by a judge, file with the notice of motion:
 - (a) the decision of the sentencing judge,
 - (b) the submissions made at the sentencing hearing,
 - (c) a copy of any presentence report,
 - (d) a copy of the appellant's criminal record if any, and
 - (e) a proposed form of order for release pending appeal.
- (4) The Attorney General who opposes release must provide evidence by affidavit or agreed statement of facts on any fact alleged by the Attorney General and not

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established by the affidavit or agreed statement of facts of the party seeking release, or by cross-examination.

- (5) A party may cross-examine a witness who swears or affirms an affidavit filed by the other party.

91.25 - Exhibits

- (1) A judge, clerk, or prothonotary of a court that makes a judgment must retain custody of the exhibits admitted, and other materials that were before the court, in the proceeding that led to the judgment for no less than 25 days after the later of either of the following:
 - (a) the day the deadline for filing a notice of appeal under Rule 91.09(1) expires;
 - (b) the day the deadline extended under Rule 91.09(2) expires.
- (2) An Attorney General who receives or files a notice of appeal must give notice of the appeal to the judge, clerk, or prothonotary who has custody of the exhibits and other materials.
- (3) The judge, clerk, or prothonotary who is notified must continue to retain custody of exhibits and other materials until one of the following happens:
 - (a) a judge of the Court of Appeal or the registrar directs that the exhibits and other materials be delivered to the registrar or another person;
 - (b) the appeal is finally determined.
- (4) The judge, clerk, prothonotary, or registrar must, unless the judge or a judge of the Court of Appeal orders otherwise, return the exhibits or other materials to the party who produced them or the party's counsel when the periods provided in Rules 91.23(1) or (3) expire.
- (5) This Rule 91.23 does not apply to the custody of exhibits or other materials that is provided for in the Code or other legislation, such as the Controlled Drugs and Substances Act.