Practice Direction Concerning

Civil Appeals at the Court of Appeal for Ontario

Effective: 1 March 2017

Amended: 10 July 2018

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1. EFFECTIVE DATE

This Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario revokes and replaces the Court of Appeal's previously issued Practice Direction Concerning Civil Appeals (effective 1 January 2004, updated November 2008).

This Practice Direction was filed with the Secretary of the Civil Rules Committee on 24 January 2017 and is published pursuant to rule 1.07 of the *Rules of Civil Procedure*. It is effective as of 1 March 2017.

2. APPLICATION OF THE RULES OF CIVIL PROCEDURE

When bringing an appeal or motion in the Court of Appeal, parties must consult the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Rule 61 is the primary rule governing procedures for bringing appeals and motions in writing for leave to appeal in the Court of Appeal. Rule 61.03.1 governs motions for leave to appeal. Rule 61.16 and Rule 37 are the primary rules governing procedures for bringing motions to a single judge and motions to a three-judge panel of the Court of Appeal, except for motions for leave to appeal.

Other rules that more commonly apply to appeals and motions in the Court of Appeal include:

- Rule 2 (Non-compliance with the Rules)
- Rule 2.1 (General Powers to Stay or Dismiss a Proceeding/Motion if Vexatious, etc.)
- Rule 3 (Time)
- Rule 4 (Court Documents)
- Rule 16.01(3)-(4); 16.03-16.09 (Service)
- Rule 57 (Costs of Proceedings)
- Rule 58 (Assessment of Costs)
- Rule 63 (Stay Pending Appeal)

Practice directions supplement the *Rules of Civil Procedure* and provide guidance and direction about matters not covered by the *Rules.* If there is a conflict between the *Rules of Civil Procedure* and this Practice Direction, the *Rules of Civil Procedure* take precedence.

3. ACCESS TO COURT SERVICES IN FRENCH

Motions and appeals are equally available in English and French without delay. Where you are proceeding in French or in both English and French, please note this in your correspondence.

The staff of the Court of Appeal for Ontario is pleased to serve the public in English and French. Staff will direct French inquiries to bilingual staff members.

4. CORRESPONDENCE

4.1 Providing a Copy of all Correspondence to Opposing Parties

1. Any correspondence addressed to the Court of Appeal in relation to a court file must be copied to all parties to the proceeding or, if the parties are represented by a lawyer(s), to their lawyer(s) of record. This requirement applies, without limitation, to any correspondence addressed to the Registrar, Deputy Registrar, Senior Legal Officer, the Appeal Scheduling Unit and/or the Motions Clerk. All such correspondence must contain the Court of Appeal file number (where applicable) and title of proceeding.

2. In the event that correspondence addressed to the Court of Appeal or any of its staff is not copied to all parties or their lawyers, it will not be received, reviewed or answered.

4.2 Correspondence to a Judge Must be Addressed to the Registrar of the Court of Appeal

1. Rule 1.09 of the *Rules of Civil Procedure* requires that all parties must consent to out-of-court communications with a judge about a court proceeding unless the court directs otherwise.

All correspondence intended to be reviewed by a judge or judges must be addressed to the Registrar and copied to all parties to the proceeding or, if the parties are represented by a lawyer(s), to their lawyer(s) of record. The Registrar will consult with the judge(s) to whom the correspondence is directed for directions as to whether the judge(s) will receive the correspondence.

2. In the event that correspondence intended to be reviewed by a judge or judges is not addressed to the Registrar or is not copied to all parties or their lawyers, it will not be received, reviewed or answered.

4.3. Restrictions on Sending Correspondence by Email

1. The Court of Appeal E-filing address, COA.E-file@ontario.ca, must only be used to deliver electronic versions of factums, transcripts and other documents specified in this Practice Direction and in the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario. This email address is not designed or intended to receive any inquiries or other communications about court proceedings.

2. Please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario for the complete list of the type of documents that may be sent to COA.E-file@ontario.ca.

3. In order to receive a timely response to an inquiry involving proceedings in the Court of Appeal, including case searches, status inquiries, or inquiries about filing requirements, please call 416-327-5020 or toll free at 1-855-718-1756. Inquiries may also be sent via fax to (416) 327-5032. Alternatively, you may consult the Court of Appeal's website for detailed information about how best to direct your inquiry:

http://www.ontariocourts.ca/coa/en/about/information.htm

5. SERVICE

5.1 Service

1. The Registrar will accept copies of affidavits of service. The court will address any issues associated with proof of service as necessary.

2. The requirement in the *Rules of Civil Procedure* to serve and file electronic versions of appeal material (factums and transcripts) may be met by satisfying the Registrar that the electronic version was emailed to the opposing party(ies), together with proof of service of the paper version of the factum and transcript.

5.2 Service on a Party Acting in Person

Rule 16 of the *Rules of Civil Procedure* describes the ways that service shall be made on a party acting in person ("self-represented party") and a party with a lawyer of record. To clarify, in the case of service on a party acting in person, service may be made by regular mail, registered mail, or by courier. If service is by courier, the deponent of the affidavit of service must indicate the date when the document was provided to the courier and the date that the courier provided the document to the self-represented party.

5.3 Alternative Arrangements for Service of Court Documents

When a judge of the Ontario Superior Court of Justice has made an order approving a form of substituted service pursuant to rule 16.04 of the *Rules of Civil Procedure*, including an order approving and adopting the "Commercial List E-Service Guide", the parties should file a copy of such order with the Registrar of the Court of Appeal, together with the notice of appeal. When such an order has

been filed, the service of documents in accordance with the order shall be considered as valid and effective service for all documents filed in the Court of Appeal, unless a judge of the Court of Appeal directs otherwise.

6. NOTICE OF APPEAL IN CIVIL APPEALS

6.1 Time for Commencing an Appeal

1. A party must serve a notice of appeal together with the certificate required by rule 61.05(1) of the *Rules of Civil Procedure* within 30 days after the order appealed from was made, unless a statute or the *Rules* provide otherwise. The notice of appeal, with proof of service, must be filed in the Registrar's Office in person or by mail within 10 days after service.

The time limit for serving the notice of appeal is 30 days from the making of the order or judgment that the party is appealing from and not 30 days from the making of a subsequent, related order, such as an order dealing with costs.

2. Rules 16.05 and 16.06 specify when service of a document becomes effective. For example, if a notice of appeal is served by mail, then service of the notice of appeal only becomes effective on the fifth day after the document is mailed. In other words, the notice of appeal must be mailed at least five days before the expiry of the 30-day time period for filing the notice of appeal. Rule 3 regulates the computation of time under the *Rules of Civil Procedure*.

6.2 Title of Proceeding

The title of a proceeding in the Court of Appeal must conform to rule 61.04(2) of the *Rules of Civil Procedure* and Form 61B. The title of proceeding should set out the parties in the same order as they appear in the title of proceeding in the court appealed from. Clearly identify the appellant and respondent as indicated in Form 61B.

The title of proceeding should include any person who has been added as a party to the proceeding by an order of the court under rule 13.01 or 13.03(2) of the *Rules of Civil Procedure*. The title of proceeding should not include any person who has been granted leave to intervene as a friend of the court under rule 13.02 or 13.03(2).

6.3 Jurisdictional Statement – Ensuring the Court of Appeal has Jurisdiction

1. The *Rules of Civil Procedure* require that the notice of appeal includes a jurisdictional statement identifying the statutory or other basis for filing an appeal in a particular appellate court. This requirement is intended to avoid the problem of appeals being filed in the wrong court, or appeals being commenced even though there is no right to appeal from the order in question, or leave to appeal from the order is required before an appeal may be brought.

2. Parties need to be aware that there is no common law or inherent right of appeal. For there to be a right of appeal from any order or judgment, the right of appeal must be conferred by a statute. Accordingly, the jurisdictional statement in the notice of appeal must set out the basis upon which the appellant claims that the Court of Appeal has jurisdiction to entertain the appeal, including any relevant statute that provides for an appeal to the Court of Appeal.

3. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides for the general appellate jurisdiction of the Court of Appeal and the Divisional Court in civil matters (see ss. 6, 19 and 21.9.1 of the *Courts of Justice Act*). Parties to an appeal need to consider and indicate whether the order under appeal is final or interlocutory (see s. 6(1)(b) of the *Courts of Justice Act*). In addition, if the order is only for the payment of money, then the parties need to review s. 19(1.2) of the *Courts of Justice Act* to determine if the appeal lies to the Court of Appeal or to the Divisional Court. In family law matters, the parties need to consider the application of s. 21.9.1 of the *Courts of Justice Act* to determine if the appeal lies to the Divisional Court rather than to the Court of Appeal.

4. In preparing the jurisdictional statement, parties must be aware that provisions of other statutes that govern certain types of litigation may displace the general provisions of the *Courts of Justice Act* by providing that an appeal from an order lies to the Divisional Court (for example, see s. 255 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, and s. 30 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6). Parties must also consider that orders may not be appealed if they were made under a statute that explicitly precludes a right of appeal (e.g., see the *Arbitration Act, 1991*, S.O. 1991, c. 17, ss. 7(6), 10(2), 15 and 17). In addition, some legislation requires leave to appeal before an appeal may be filed (e.g., see the *Arbitration Act, 1991*, S.O. 1991, c. 17, s. 49).

6.4 Additional Information to Provide to the Court

On all documents filed with the court, parties shall include their telephone number, fax number, mailing address, email address (if available) and, in the case of lawyers, Law Society number.

Lawyers and self-represented parties should promptly advise the court and the other parties of any changes to their mailing or email address by emailing the Registrar's Office at COA.E-file@ontario.ca or by fax to 416-327-5032. Please include in the subject line of the email the title of proceeding and the court file number and the nature of the information being provided.

7. MOTIONS TO THE COURT OF APPEAL IN CIVIL MATTERS

7.1 Motions to a Single Judge

7.1.1 General

1. A single judge of the Court of Appeal hears motions Monday through Friday in chambers court located in Courtroom 7 at Osgoode Hall. From September to June, motions court starts at 10 a.m., unless the court orders otherwise. In July and August, motions court starts at 9:30 a.m., unless the court orders otherwise.

2. Lawyers do not need to wear gowns when they appear on motions before a single judge in chambers.

7.1.2 Notice of Motion

1. The notice of motion must be formatted in accordance with Form 37A of the *Rules of Civil Procedure*.

2. The moving party may select the date for the hearing of a motion if the time limits in Rule 37 of the *Rules of Civil Procedure* for serving and filing the notice of motion and the motion record are met. Section 7.1.5 of this Practice Direction discusses the deadlines for filing a notice of motion and motion record.

3. The notice of motion must contain a statement outlining the jurisdiction of a single judge to hear the motion and to grant the relief requested.

4. The notice of motion must contain an estimated length of time for the oral argument of the motion.

5. If the hearing of a motion is expected to take more than 30 minutes, the moving party is strongly encouraged to contact the motions desk at 416-327-5020 (select

your language of choice, followed by option 3) to determine the current status of the list before selecting a hearing date and serving and filing the motion material.

7.1.3 Scheduling Motions

1. Self-represented parties, and lawyers who are bringing motions involving self-represented parties, are encouraged to schedule motions on Wednesdays or Thursdays when pro bono (free) duty counsel will be present at the court to provide advice and assistance to self-represented parties.

2. Parties who are self-represented in family law matters, and lawyers who are bringing motions against self-represented parties in family law matters, are encouraged to schedule motions on Wednesdays when pro bono (free) family law duty counsel will be available to provide advice and assistance to self-represented parties.

3. Duty counsel in motions court assists self-represented parties as *amicus curiae*, or "friend of the court".

4. More information about the duty counsel and family law duty counsel program can be obtained at the following link:

http://www.ontariocourts.ca/coa/en/info/civfam/legalaid.htm

5. On Wednesdays and Thursdays, motions brought by or against self-represented parties receive priority. When all parties are represented by lawyers, they are advised to schedule motions on other days of the week if possible in order to avoid delays in having their motion heard.

6. If the moving party's estimated time for arguing a motion is 15 minutes or more, the moving party must serve and file a factum. If the moving party does not file a factum, then the moving party's time for oral argument shall be limited to 15 minutes.

7. In order to ensure the efficient use of court resources, the Registrar may direct that a motion scheduled for hearing be removed from the list and rescheduled to a different date. The parties will be consulted before the motion is removed from the list and the hearing rescheduled.

7.1.4 Motions on Consent

1. Where all parties consent to an order, the moving party should file a notice of motion, two copies of the draft order, and a document indicating the parties' consent to the order. This document must be signed by the parties or their lawyers and contain the relevant court file number(s) and the title of proceeding. Parties are advised to include an affidavit or covering letter addressed to the Office of the Registrar setting out why the consent order is appropriate.

2. If a judge considering the proposed consent order is satisfied that it should issue, the order will be issued, usually within 2-3 business days.

3. If a judge considering the proposed order is not satisfied that it is appropriate or that it should issue, the parties will be advised and will be given an opportunity to provide oral or written argument.

7.1.5 Requirement to Deliver a Motion Record and the Time Limits for Service and Filing

1. Rule 37.10 of the *Rules of Civil Procedure* requires the moving party to serve and file a notice of motion and a motion record together with proof of service at least seven days before the hearing date. To ensure the efficient hearing of motions by a single judge, the Registrar's office will only schedule a motion for hearing if the notice of motion and the motion record are served and filed at least seven days before the hearing date, subject to the exceptions noted in paragraphs 3 and 4 below.

2. The motion record should include the materials referred to in rule 37.10(2). In accordance with rule 37.10(2)(e), the moving party should include in the motion record a copy of the Notice of Appeal or, if the party is seeking an extension of time, the proposed Notice of Appeal. The motion record should also include any previous court order(s) made in the proceeding that is (are) relevant to the issues on the motion together with the court's reasons for the prior order(s).

3. As provided in rule 37.10(1), the moving party may seek to obtain court approval dispensing with the requirement to file a motion record. To obtain such approval, the moving party should send a letter to the attention of the Registrar setting out the reasons for the request. The letter should be copied to the responding party(ies) and be sent by email to COA.E-file@ontario.ca or by fax to 416-327-5032. The request and any response by the responding party(ies) will be placed before a judge of the Court of Appeal in advance of the hearing.

4. In situations of urgency or in unanticipated circumstances where the time limits for filing a notice of motion and/or motion record cannot be complied with, the material may be served and/or filed on shorter notice only by filing a consent or with leave of a judge.

5. When a party seeks an abridgement of the time to serve and/or file motion materials, the notice of motion should include in the relief sought a request for an abridgement of the time limits for serving and/or filing the relevant motion material. The request for an abridgement of time should be supported by a letter or affidavit explaining the reason for the request. The moving party shall deliver the letter or affidavit and accompanying motion materials to the Registrar's Office in person or by email to COA.E-file@ontario.ca or by fax to 416-327-5032. The Registrar will present the materials to a judge to determine if the material may be filed and if the motion may be heard on the date requested, and the parties will be promptly advised of the outcome.

7.1.6 Including Materials from the Court File in the Motion Record

If the parties wish to refer at the hearing of the motion to any material from the court file that is associated with the appeal, or if they wish to refer to any material from a prior motion, the moving party must submit a letter addressed to the motions clerk asking for the specified material to be placed before the motions judge. The letter should be submitted at the same time that the motion materials must be filed pursuant to rule 37.10 of the *Rules of Civil Procedure*.

7.1.7 Factums for Use on Motions

1. Factums greatly assist the judges in hearing and deciding motions. At the same time, it is understood that the filing of factums in some relatively simple motions may not be necessary and may cause undue expense to the parties.

2. As a result, a factum must be served and filed in motions before a single judge if the moving party's estimated time for argument is 15 minutes or more.

3. The last paragraph of a factum for a motion must indicate the amount of time estimated to argue the motion, not including reply.

4. The court requests that the parties file an electronic copy of any factum filed on a motion. For details on the procedures for filing electronic material, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

5. In the majority of motions, the length of the factums should be 10 pages or less. Factums shall not be more than 30 pages without a court order authorizing the filing of a longer factum.

6. If a party does not file a factum on a motion, the party will be limited to 15 minutes of oral argument at the hearing of the motion.

7.1.8 Motions to Expedite

1. Motions to expedite the production of transcripts must be served on the opposing party and the authorized court transcriptionist.

2. Motions to expedite appeals may be brought to a judge in chambers. For more information on expedited appeals, see section 12.1 of this Practice Direction.

7.1.9 Ex Parte Motions (Motions Without Notice to the Other Party)

When a party seeks to bring a motion without serving the notice of motion on the opposing party(ies), the moving party must indicate in the notice of motion the reasons for seeking to bring the motion without notice. A judge of the court will review the notice of motion and may grant the request to move without notice if the judge is satisfied that the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary.

7.1.10 Motions to Intervene in an Appeal

1. Motions to intervene in a civil proceeding in the Court of Appeal are heard by the Chief Justice or Associate Chief Justice or a judge designated for the purpose: see rule 13.03(2) of the *Rules of Civil Procedure*.

2. The parties should consult with each other to obtain mutually agreeable dates for hearing the motion and present these dates to the court through correspondence addressed to the court's Senior Legal Officer. If the parties cannot agree on suitable dates, the court will fix the date of the hearing. The moving party will be advised of the hearing date selected by the court and will be responsible for notifying the other parties.

3. After the date for the hearing of the motion to intervene is confirmed, the moving party must file a notice of motion, motion record, factum, and other material for use by the court in accordance with rule 37.10 of the *Rules of Civil Procedure* and this Practice Direction.

4. The parties may request that the motion for intervention be heard by teleconference call or videoconference. This request should be included in correspondence addressed to the Senior Legal Officer, who will put the request to the judge assigned to hear the motion.

7.2 Motions before Three Judges

7.2.1. Panel Motions (Except for Motions for Leave to Appeal to the Court of Appeal)

A three-judge panel of the Court of Appeal holds oral hearings on the following types of motions ("panel motions"):

- motions to quash an appeal pursuant to s. 134(3) of the *Courts of Justice Act*;
- motions under s. 7(5) of the *Courts of Justice Act* to set aside or vary the decision of a single judge of the Court of Appeal on a motion; and
- motions to introduce further evidence under s. 134(4)(b) of the *Courts of Justice Act*.

7.2.2 Notice of Motion

1. The notice of motion must be in accordance with Form 37A of the *Rules of Civil Procedure*. The notice of motion must contain a statement outlining the jurisdiction of a panel to hear the motion and to grant the relief requested.

2. As provided in rule 61.16(3), the notice of motion should state that the moving party will make a motion to the court on a date to be fixed by the Registrar.

7.2.3 Scheduling Panel Motions

1. Except in cases of urgency, panel motions will not be scheduled for hearing until the moving party has filed the motion record, factum and transcript, if any.

2. The oral argument for panel motions shall be limited to 15 minutes for the moving party, 10 minutes for the responding party, and 5 minutes for reply.

3. A party who seeks more time for oral argument must make a request to the civil List Judge. For details on requesting more time for oral argument, please see section 12.2 of this Practice Direction.

7.2.4 Factums for use on Panel Motions

1. In the majority of panel motions, the length of the factums should be 10 pages or less. Factums shall not be more than 30 pages without a court order authorizing the filing of a longer factum.

2. The court requests that the parties file an electronic copy of any factum or transcript filed on a motion before a panel. For details on the procedures for filing electronic material, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

7.2.5 Motion to Quash an Appeal

1. Where the basis for a motion to quash an appeal is that the court lacks jurisdiction to hear the appeal, the motion will be scheduled at an early date.

2. A motion to quash an appeal based on an argument that the appeal is devoid of merit is heard together with the appeal because the court must consider the merits of the appeal in deciding the motion.

7.2.6 Motion to Introduce Further Evidence

1. When a party seeks leave to file further evidence on an appeal pursuant to s. 134(4)(b) of the *Courts of Justice Act*, rule 61.16(2) of the *Rules of Civil Procedure* requires the party to bring such a motion to the panel of judges hearing the appeal.

2. The party must file three copies of the proposed further evidence in a document that is bound front and back in orange covers and identified on the cover as “Fresh Evidence Tendered by the Appellant” or “Fresh Evidence Tendered by the Respondent”, as appropriate.

3. The parties should file a factum on the motion containing their arguments for or against admitting the further evidence on the appeal, including any impact the evidence may have on the resolution of the appeal.

4. Parties should consult rule 61.16(4) of the *Rules of Civil Procedure* for the timelines for serving and filing motion records and factums on a motion to introduce further evidence under s. 134(4)(b) of the *Courts of Justice Act*.

5. In situations of urgency or in unanticipated circumstances where the time limits for filing a motion record and/or factum cannot be complied with, the material may be served and/or filed on shorter notice only with the permission of a judge. For information on bringing a request to abridge the time for serving and/or filing motion materials, please refer to section 7.1.5 of this Practice Direction.

7.2.7 Motions in Writing for Leave to Appeal

1. Pursuant to rule 61.03.1 of the *Rules of Civil Procedure*, a three-judge panel hears motions for leave to appeal to the Court of Appeal in writing without an oral hearing.

2. The court requests that the parties file an electronic copy of any factum filed on a motion in writing for leave to appeal brought under rule 61.03.1. For details on the procedures for filing electronic material, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

3. On a motion for leave to appeal, the court may consider whether the issue raised by the moving party involves a question of public importance. Any party that seeks to introduce additional evidence on the question of public importance must file a motion to admit this evidence and a supporting affidavit together with the motion for leave to appeal.

4. The moving party should file three copies of the proposed additional evidence bound front and back in orange covers and identified as "Additional Evidence Tendered by the Moving Party". If the respondent seeks to file its own additional evidence on the question of public importance, the respondent should file three copies of the proposed further evidence bound front and back in orange covers and identified as "Additional Evidence Tendered by the Respondent".

5. The parties may include submissions regarding the admissibility and significance of the proposed additional evidence in their factums filed on the motion for leave to appeal, provided that the factum clearly indicates that the evidence in question is being tendered as additional evidence on the leave motion.

6. Motions to strike or reject affidavits concerning the question of public importance and motions to cross-examine any witness who has sworn such an affidavit should be brought to a single judge in chambers.

7.3 Formatting and Binding of Motion Material

1. With the exception of motions to file further or additional evidence as discussed in section 7.2.6, motion records shall have a white front cover and a light blue back sheet. Responding motion records shall have a green front cover and a light blue back sheet. The moving party's factum shall be bound in front and back white covers while the responding party's factum shall be bound in green front and back covers.

2. Parties should consult Rule 4 of the *Rules of Civil Procedure* for further information on the formatting and binding of motion material filed at the court. All text in factums must be double-spaced, except for quotations longer than four lines and footnotes. The Court of Appeal requires the use of 12-point or larger font and encourages the use of Arial or Times New Roman for all text in factums, including citations and footnotes.

3. The Registrar may refuse to accept documents or materials for filing if they do not comply with the *Rules* and/or this Practice Direction, or if they are not legible.

7.4 Power to Stay or Dismiss a Motion

Parties should be aware that, pursuant to rule 2.1.02 of the *Rules of Civil Procedure*, the court may, on its own initiative, stay or dismiss a motion if the motion appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

At the Court of Appeal, the review process contemplated by rule 2.1.02 will primarily be used in relation to motions brought to a panel seeking to have a judgment of the court set aside or varied under rule 59.06 of the *Rules of Civil Procedure*. Parties who bring this type of motion should expect that the court will screen their motion in accordance with rule 2.1.02.

7.5 Adjournment Requests

7.5.1 Single Judge Motions

1. If all parties are prepared to consent to an adjournment of a single judge motion, then the moving party should provide a letter addressed to the motions clerk and copied to all parties advising of the adjournment request. The requesting letter may be submitted by email to COA.E-file@ontario.ca (please include "Adjournment Request" and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-5032). The motions clerk will adjourn the motion to a date as agreed by the parties.

2. If the request to adjourn a single judge motion is opposed, then the party requesting the adjournment should provide a letter addressed to the motions clerk and copied to all parties advising of the reason for the adjournment request. The party opposing the request should provide a letter addressed to the motions clerk and copied to all parties advising of the reasons for opposing the adjournment request. This correspondence should be submitted by email to COA.E-

file@ontario.ca (please include “Adjournment Request” and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-5032). The motions clerk will present the correspondence to the motions judge for review and his or her determination will be communicated to the parties by the motions clerk before the hearing date of the motion.

7.5.2 Panel Motions

1. If a hearing date for a panel motion is more than three weeks away, and if all parties are prepared to consent to an adjournment, then the moving party should provide a letter addressed to the Appeal Scheduling Unit and copied to all parties advising of the adjournment request. The requesting letter may be submitted by email to COA.E-file@ontario.ca (please include “Adjournment Request” and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-6256). The Appeal Scheduling Unit will confirm if the matter will be adjourned and if so, will advise the parties of the new hearing date.

2. If a hearing date for a panel motion is more than three weeks away, and if the adjournment request is opposed by one or more of the parties, then the party seeking the adjournment must make the adjournment request to a judge of the court who has been designated by the Chief Justice to serve as the civil List Judge.

3. A conference call before the civil List Judge to change a hearing date must be arranged through the Appeal Scheduling Unit by contacting 416-327-5020 (select your language of choice, followed by option 4, and then press 2) or by fax (416-327-6256). The Appeal Scheduling Unit will contact the parties with the date, time and the dial-in details for the conference call.

4. If the hearing date for a panel motion is three weeks or less away, any adjournment request – whether on consent or opposed – must be made in writing to the attention of the Appeal Scheduling Unit. The requesting letter may be submitted by email to COA.E-file@ontario.ca (please include “Adjournment Request” and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-6256). The request will be forwarded to the president of the panel for review and his or her determination will be communicated to the parties by the Appeal Scheduling Unit.

7.6 Withdrawing or Abandoning a Motion

1. If the moving party withdraws or abandons a motion to be heard by a single judge or by a panel of judges, the party must serve and file a notice of abandonment in accordance with rule 37.09 (use Form 61K with necessary modifications). The moving party should also send a letter addressed to the Registrar advising that the motion has been withdrawn or abandoned. The letter should be copied to all parties and be sent by email to COA.E-file@ontario.ca (please include "Notice of Abandonment of a Motion" and the court file number and title of proceeding in the subject line of the email) or by fax to (416) 327-5032. The letter should indicate how the issue of costs has been resolved.

2. If a motion before a single judge is withdrawn or abandoned within two days of the scheduled hearing date, the moving party must advise the motions clerk that the motion will not be proceeding by calling 416-327-5020 (select your language of choice, followed by option 3).

3. If a motion before a panel of three judges is abandoned after it has been listed for hearing, the moving party must promptly advise the Appeal Scheduling Unit by contacting 416-327-5020 (select your language of choice, followed by option 4, and then press 2) or by fax (416-327-6256).

8. APPEAL MANAGEMENT

1. In especially complicated appeals, such as appeals involving multiple parties or grouped appeals, it may be appropriate for a judge to be assigned to manage the conduct of the appeal(s). A request for the assignment of an appeal management judge should be made to the court by letter addressed to the Senior Legal Officer. The request should contain enough information to satisfy the court that such an appointment is appropriate. The decision to appoint an appeal management judge is made by the Chief Justice or Associate Chief Justice and is communicated to the parties.

2. The appeal management judge will conduct appeal management conferences to ensure the efficient conduct of the appeal. Appeal management conferences are held to deal with matters not otherwise governed by the *Rules of Civil Procedure*, including: the order of argument; time allocations for oral argument; the hearing date; the issues to be argued; the possibility of settling the appeal or any issues under appeal; coordination, if necessary, of the scheduling of prehearing motions; creating customized electronic appeal records; and similar matters. Such

conferences are conducted in person or by teleconference or videoconference and are arranged through the Appeal Scheduling Office of the Court of Appeal.

3. In order to ensure the efficient conduct of the appeal, the appeal management judge's decisions at appeal management conferences will be communicated as required to the panel hearing the appeal, the parties, and the court's staff.

4. When the parties to a case-managed appeal seek to obtain relief from compliance with any requirements of the *Rules of Civil Procedure* or of this Practice Direction, an order of the appeal management judge dispensing with such compliance will be required. Such an order may be obtained on consent of all parties by providing two copies of the draft order, a document indicating the signed consent of the parties, and an affidavit or letter addressed to the appeal management judge with sufficient information to satisfy the appeal management judge that the order is appropriate.

9. PRE-HEARING SETTLEMENT CONFERENCES IN FAMILY LAW APPEALS

9.1 General

The Court of Appeal for Ontario offers a voluntary pre-hearing settlement conference program. Its purpose is to attempt to resolve family law appeals at an earlier stage in order to reduce costs for litigants. The court makes available a roster of appellate judges who have particular interest in family law matters. The pre-hearing settlement conference is for those parties who would like to explore a final resolution of their legal differences before a full hearing or a narrowing of the issues requiring resolution. The court will hold a pre-hearing settlement conference only if all parties believe that a judge's assistance may assist them in resolving or narrowing the issues on appeal.

9.2 Two-Stage Process

Pre-hearing settlement conferences are offered at two stages, as the parties require. A Stage 1 conference will take place as soon as possible after the Notice of Appeal has been filed but before the transcript has been prepared. The purpose of the conference at this stage of the proceedings is to minimize cost, if at all possible, especially the cost of the production of the transcripts. However, the parties must comply with rule 61.05(5) of the *Rules of Civil Procedure*.

A Stage 2 conference will take place after perfection of the appeal. It is designed to attempt a global resolution of the issues under appeal but, if unsuccessful, at least to offer a "good, hard look" at the issues and explore alternatives to see if the appeal, or at least some issues, can be resolved.

9.3 Application for a Pre-hearing Settlement Conference

In order to request a conference, the parties must complete a Form entitled "Joint Request for Pre-hearing Settlement Conference" Word, PDF. They are to specify whether they are seeking a Stage 1 or Stage 2 conference although, in most cases, the timing of the application will be sufficient to advise the court. The Form must be submitted to the Appeal Scheduling Unit by email to COA.E-file@ontario.ca or by facsimile (416-327-6256). The parties should propose a range of dates and times for the conference that are suitable to all participants. The request should also contain a reasonable estimate for the length of the conference, although the court will be as flexible as required by the circumstances.

Once the "Joint Request" is received by the court, the Appeal Scheduling Unit will schedule a conference, usually within 7 to 30 days. The court will make every effort, especially in respect of Stage 1 conferences, to convene counsel and the parties as quickly as possible. Because the pre-hearing settlement conference is not intended to delay the normal progress of the appeal, a request for such a conference does not operate to suspend the obligation of the parties to comply with the requirements of Rule 61 of the *Rules of Civil Procedure*.

9.4 Memoranda

If the parties request a Stage 1 conference, they will be required to file a copy of the reasons for judgment and a memorandum outlining the issues. It is the appellant's responsibility to deliver the reasons for judgment to the court for use at the conference. The memorandum of each party shall be no longer than 6 pages. If either party requires an exhibit from the trial or the proceeding being appealed, it may be attached to the memorandum. The court expects that the parties will attempt to isolate the real points in issue and consider ways in which they may be resolved. Since the court file will be available to the judge at the conference, the parties need not include material in the memorandums that is referred to in the notice of appeal. The parties shall serve their memorandum on the other parties.

The judgment and memorandums should be filed with the court at least 2 days before the conference.

If the parties wish a Stage 2 conference, they must file memorandums as in Stage 1. The court will also rely on the appeal book and the factums filed in preparing for the conference.

9.5 The Conference

A Court of Appeal judge will preside over the conference. The parties and those who may have a significant influence on the outcome of the conference must be present, since they are the ultimate decision-makers. The parties are free to ask the court for whatever arrangement counsel believes to be appropriate and necessary. The process is meant to be as flexible as the parties wish. The pre-hearing settlement conference will not result in an adjournment of the appeal. The judge conducting the conference will not be assigned to the panel ultimately hearing the appeal and will not discuss any aspect of the conference with the panel.

9.6 The Results

If the pre-hearing settlement conference results in a successful resolution of some or all of the issues, the court will expect an agreement to be drafted and signed by the parties. Counsel may also be required to provide a draft order and to speak to the settlement in court. This will depend on the circumstances of the settlement.

Except for such an agreement and draft order, the fact of the pre-hearing settlement conference, the memorandums filed and all deliberations in the process will remain strictly confidential and without prejudice to the parties' legal positions.

If the pre-hearing settlement conference is unsuccessful, the appeal will proceed as scheduled.

9.7 Notice to Parties

To encourage parties to use the pre-hearing settlement conference facility, counsel filing or responding to a family law appeal will be required to advise their client of the availability of this service.

9.8 Inquiries

Further information, if required, may be obtained from the Court's Appeal Scheduling Unit by telephone (416-327-5028/4615). A pre-hearing conference may be arranged by contacting the court's Appeal Scheduling Unit by telephone (416-327-5028/4615) or fax (416-327-6256).

10. PRE-HEARING SETTLEMENT CONFERENCES IN OTHER APPEALS

A judge of the court may conduct a pre-hearing settlement conference in any appeal in which all counsel request such a conference. Arrangements for a pre-hearing conference shall be made through the court's Appeal Scheduling Unit by telephone (416-327-5028/4615) or by fax (416-327-5256). The parties should proceed by way of analogy to the procedures set out in the program for pre-hearing settlement conferences in family law appeals.

11. PERFECTING AN APPEAL

11.1 Perfection: Steps Required

1. The appellant is responsible for taking the steps prescribed by rules 61.09(2) and (3) of the *Rules of Civil Procedure* for perfecting an appeal. The appellant must file with the Registrar a certificate of perfection as described in rule 61.09(3)(c) before the appeal is perfected. After an appeal is perfected, the Registrar will assign a date for hearing the appeal.

2. Rule 61.09(4) permits an appellant to bring a motion to a single judge of the Court of Appeal for directions to vary the rules governing the material that must be served and filed to perfect an appeal. The moving party must satisfy the judge that

it is in the interest of justice to grant relief from compliance with any of the *Rules*. Details about bringing motions to a single judge are found in section 7.1 of this Practice Direction and in rules 61.16 and 37 of the *Rules of Civil Procedure*.

11.2 *Child, Youth and Family Services Act* Appeals

Rule 38(2) of the *Family Law Rules* modifies certain time periods that apply in appeals under the *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1, including the time for perfecting the appeal. The parties should consult this rule for the deadlines that apply in these types of appeals. These deadlines are generally shorter than the time periods prescribed in the *Rules of Civil Procedure*.

11.3 Transcripts and Exhibits

1. The phrase "transcript of evidence" as used in rule 61.09(1) of the *Rules of Civil Procedure* refers only to the oral testimony of witnesses given in the presence of a judge. Oral arguments by a lawyer or a self-represented party do not qualify as "evidence" under the *Rules*.

2. Attention is directed to rule 61.05 regarding the service of certificates (Form 61C and Form 61D) and/or an agreement respecting evidence. The appellant's certificate respecting evidence should be served and filed together with the notice of appeal. The respondent's certificate respecting evidence must be served on the appellant within 15 days of service of the appellant's certificate.

3. When a lawyer who acted at trial is not acting on the appeal, the court expects that the trial lawyer will provide timely assistance to the appellate lawyer or to the self-represented party in completing the certificates or in making an agreement respecting evidence.

4. According to rule 61.05(5), the appellant must order a transcript of all the oral evidence that the parties have not agreed to exclude.

5. In the vast majority of appeals, it is not necessary to transcribe all the testimony of the witnesses who testified in the lower court. Oral evidence should be transcribed only if the Court of Appeal needs to review the evidence in order to properly analyze the grounds of appeal and any cross-appeal.

Unnecessary transcription of the evidence of witnesses in the lower court delays the hearing of appeals and substantially increases the cost of litigation. The parties

should give serious consideration to the issue of what evidence is really necessary for a proper adjudication of the appeal.

6. In appeals where the facts are not in dispute, the parties are encouraged to file an agreed statement of facts, which will take the place of a transcript. The agreed statement of facts shall be filed in the appeal book and compendium.

7. The court may impose costs sanctions where evidence is transcribed unnecessarily.

8. Unless otherwise ordered by a judge of the Court of Appeal, the transcripts of trial proceedings shall omit the following aspects of the proceedings:

(a) all proceedings on the challenge of the array or of jurors for cause;

(b) any opening address of the trial judge;

(c) the opening address of a lawyer and/or a self-represented party;

(d) all proceedings in the absence of the jury and all argument in the absence of the jury (except objections to a charge and the trial judge's related rulings together with any reasons for the rulings);

(e) all objections to the admissibility of evidence, except for a notation that an objection was made (note: the ruling of the trial judge on the objection, including any reasons for the ruling, will be transcribed.)

9. When any aspect of the proceedings mentioned in paragraph 8 is the subject of a ground of appeal, the relevant material may be transcribed without the need for a judge’s order.

11.4 Timely Preparation of Transcripts

1. Authorized court transcriptionists have been instructed that after a transcript has been ordered for a civil appeal, the completion of the transcript is not to be suspended without an order of a judge of the Court of Appeal or the receipt of a notice of abandonment of the appeal.

2. This instruction does not apply to appeals where the Area Committee has not yet decided whether to grant a Legal Aid certificate to cover the client’s appeal. To ensure the timely determination of Legal Aid applications, trial lawyers are reminded of their primary responsibility to prepare an opinion letter for use on the

application for Legal Aid. Every effort should be made to prepare and submit this opinion letter to Legal Aid within 30 days of the filing of the notice of appeal.

3. Lawyers are reminded that interim payments for transcripts may be obtained from Legal Aid Ontario in cases where a Legal Aid certificate has been issued.

4. The authorized court transcriptionist is requested to file with the Court of Appeal a Certificate/Proof of Ordering when the transcript has been ordered and a Certificate/Notification of Completion when the transcript has been completed. This request is in addition to any obligation imposed on the parties by the *Rules of Civil Procedure*.

5. Transcripts are generally completed within 90 days of the date of being ordered, subject to extensions for exceptional circumstances.

6. If a transcriptionist's Certificate of Completion has not been filed by the expected completion date of the transcript, the court will inquire about the status of the transcript and ascertain if the court's assistance is required to ensure its timely completion. The court may refer the issue of the outstanding transcript to a status court hearing before a judge of the Court of Appeal. The ordering party must attend the hearing, and the other parties may choose to attend in order to make submissions. The parties may attend either by way of teleconference or in person. At the hearing, the judge may order the transcriptionist to appear in order to explain the delay and to provide a plan for the timely completion of the transcript.

11.5 Filing Transcripts

The authorized court transcriptionist must prepare an electronic version of the transcript for the court's use, and for the parties' use if they request it. The appellant is required to file an electronic version of the transcript with the court, together with a paper copy. The line and page numbering of the transcript in electronic form must correspond with that in the hard copy.

For details on the proper formatting and procedures for filing electronic documents in the Court of Appeal, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

11.6 Compendiums and Exhibit Books

1. Rules 61.09 and 61.10 of the *Rules of Civil Procedure* require the appellant to file three copies of an appeal book and compendium together with the factum in order to perfect an appeal. Rule 61.12 requires a respondent to file three copies of a respondent's compendium. The appellant's appeal book and compendium shall be bound front and back in buff covers. The respondent's compendium shall be bound front and back in green covers.

2. Rules 61.09 and 61.10.1 require the appellant to file one copy of an exhibit book. The exhibit book shall be bound front and back in buff covers.

3. If an appeal is from an order made on an application or on a motion in which no exhibits were filed, then the court will not require the appellant to serve and file an exhibit book in order to perfect the appeal. The appellant shall serve the certificate of perfection on the other parties to the appeal and shall state in the certificate that an exhibit book is not required because no exhibits were filed on the application or motion.

4. The appellant's appeal book and compendium and the respondent's compendium contain documents essential to the hearing of the appeal, including the excerpts from the transcript and any exhibits that the parties will refer to in oral argument. Since the parties are only required to file one paper copy of the transcript and one paper copy of the exhibit book, it is essential to include in the compendiums all portions of the transcript that are relevant to the grounds of appeal and all relevant exhibits.

5. When the proceedings in the lower court were conducted in full or in part based on affidavit evidence, all relevant affidavits and any attached exhibits must be included in the appeal book and compendium or in the respondent's compendium.

6. In appeals from civil jury trials, if any ground of appeal relates to the charge to the jury, the trial judge's charge must be included in the appeal book and compendium.

7. In the event that the appeal book and compendium includes all the affidavits and exhibits that were filed in the lower court, then the appellant does not need to also serve and file an exhibit book in order to perfect the appeal. In such cases, the appellant's certificate of perfection should state: "All the exhibits required for this appeal are included in the appeal book and compendium." Parties should be

aware, however, that the appeal book and compendium is far less useful if unnecessary exhibits or materials are included in it.

8. Filing compendiums is critical to the efficient preparation and effective argument of appeals. Thus, the requirement to file an appeal book and compendium and a respondent's compendium in all civil matters is mandatory and must be complied with, unless a judge orders relief from compliance on a motion brought under rule 61.09(4).

9. The appeal book and compendium and the respondent's compendium should be organized as described in rules 61.10(1) and 61.12(7) of the *Rules of Civil Procedure*, and should be organized in a way that enables the court to easily locate all of the documents that are referred to in the parties' factums.

10. Extracts of transcripts, affidavits or exhibits in the compendiums should include as much material as is needed to understand the context for the part of the extract that the party is relying on.

11. The Court of Appeal encourages parties to submit electronic copies of compendiums and exhibit books by CD/DVD-ROM or USB Flash Drive/USB Key, in addition to serving and filing paper copies of these materials. For details on the procedures for filing electronic material, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

11.7 Factums

1. Rules 61.11 and 61.12 of the *Rules of Civil Procedure* deal with the appellant's and the respondent's factums. These rules emphasize the need for a concise summary of the relevant facts, a concise argument of the law relating to each issue, and the requirement to cross-reference the factum to the compendium. The court may impose cost sanctions on respondents who do not file their factums within the time provided in rule 61.12(2).

2. The Court of Appeal encourages the use of hyperlinks to case law referred to in electronically-filed factums. Parties may hyperlink authorities to the judgments database found on the websites of Canadian courts, www.canlii.org/en/index.html, in addition to LexisNexis Quicklaw and WestlawNext Canada.

3. The Court of Appeal requires the use of 12-point or larger font and encourages the use of Arial or Times New Roman for all text in factums, including citations and footnotes. All text in factums must be double-spaced, except for quotations longer

than four lines and footnotes. The appellant's factum shall be bound in front and back white covers while the respondent's factum shall be bound in green front and back covers. The Registrar may refuse to accept materials for filing if they do not comply with the *Rules* and/or this Practice Direction, or if they are not legible.

4. In the majority of appeals, the length of the factum should be 30 pages or less. The Registrar will refuse to accept factums that use excessive footnotes or that use formatting that is inconsistent with rule 4.01(1) of the *Rules of Civil Procedure* in order to meet the 30-page limit.

5. To file a factum of longer than 30 pages, permission must be obtained by bringing a motion to a single judge of the Court of Appeal. On any such motion, the moving party must, other than in exceptional cases, include a copy of the proposed factum in the motion record.

6. If the factum refers to information that is subject to a publication ban or sealing order imposed by a court in the proceedings, or contains information the release of which would violate a legislative provision, then the party must include a prominent reference to the terms of the applicable order or legislative provision on the front cover of the factum.

7. The *Rules of Civil Procedure* require the filing of an electronic copy of all factums for use on appeals. For details on the proper formatting and procedures for preparing electronic documents for filing at the Court of Appeal, please consult the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.

8. Parties are encouraged to consult the Reference Guide for Citation Practices at the Court of Appeal for Ontario for assistance in preparing their factums and other appeal material. This reference guide is for information purposes only.

11.8 Books of Authorities

1. Although not required to perfect an appeal, the Court of Appeal is greatly assisted by books of authorities containing copies of the cases and relevant extracts from secondary authorities to which the parties intend to refer in arguing their appeal.

2. Parties are welcome to file joint books of authorities whenever possible.

3. If it is not feasible to provide a joint book of authorities, then do not include copies of cases that are in the other party's book of authorities. The factum should cite to the version of the case that is found in the other party's book of authorities.

4. The following practices should be followed when preparing and filing books of authorities:

(i) Include the cases being relied on in the factum and in oral argument, subject to the exception noted next.

(ii) The Court of Appeal has adopted a List of Frequently Cited Civil Authorities. Authorities on this list do not need to be included in the books of authorities. Instead, when a party's factum refers to an authority on this list, the book of authorities should only include the headnote and particular passage(s) from the authority being relied on. A complete version of the authorities on this list is available for the judges' use.

(iii) Separate the authorities in the book of authorities with a tab (either numerical or alphabetical) and include a table of contents listing where to find each authority. The authorities may be printed on both sides of the page.

(iv) Clearly mark in each authority the passage(s) that is(are) being relying on.

(v) Joint books of authorities should be bound front and back in yellow covers and marked "Joint Book of Authorities". A book of authorities filed only by the appellant should be bound front and back in white covers and marked "Appellant's Book of Authorities". A book of authorities filed only by the respondent should be bound front and back in green covers and marked "Respondent's Book of Authorities".

(vi) Because books of authorities are of great assistance to the judges in preparing for the hearing, they should be filed whenever possible at the same time as the factum. If this is not possible, then they should be filed no later than one month before the hearing date.

5. The order for selecting which print version of a case to include in the book of authorities is as follows:

(i) the decision as posted on the relevant court's website, preferably using the PDF format;

(ii) the decision as posted on CanLII (www.canlii.org), preferably using the PDF format;

(ii) the decision as it appears in an official or semi-official reporter (e.g., Supreme Court of Canada Reports, Ontario Reports, Federal Reports, and other provincial reporter series such as the B.C.L.R.'s, etc.);

(iii) the decision as it appears in an unofficial reporter (e.g., Dominion Law Reports, Business Law Reports, etc.);

(iv) the decision as posted on subscription-based databases (e.g., WestlawNext Canada, LexisNexis Quicklaw, etc.).

11.9 Materials for Consolidated and Grouped Appeals

1. When two or more appeals are to be heard together because the appeals are from the same or related court orders, if all parties consent to filing consolidated material for the appeals, then the parties may file a letter of consent together with the consolidated material, including consolidated appeal books and compendiums, exhibit books, factums and the books of authorities for use on all the appeals.

2. If the parties to consolidated appeals are unable to agree on the use of consolidated material, a motion for directions may be brought before a single judge of the court to authorize the preparation and filing of consolidated material as the court may approve.

3. The material filed in consolidated appeals should include the court file number of each appeal that is being heard together.

4. When two or more appeals are grouped for hearing together because they raise similar issues but the appeals are from orders made in separate proceedings, the parties must file separate material for each appeal unless a judge directs otherwise on a motion for directions.

5. Parties to consolidated or grouped appeals may seek the assistance of an appeal management judge early in the appellate process. Section 8 of this Practice

Direction discusses the process for requesting the assignment of an appeal management judge.

11.10 Electronic Appeals

1. When the volume of material is large or the appeal is complex, the appeal will be much more efficiently presented to the court if the paper appeal materials are also filed in an electronic format. Thus, parties should consider the desirability of filing an electronic copy of not only the factums and transcripts but also the materials in the compendiums.

2. The electronic copies of the factums should be hyperlinked to the authorities that are cited in the factums and to the materials found in the electronic compendiums.

3. If electronic copies of any of the materials referred to in the factum are not available, then paper copies of the materials should be scanned using an optical character recognition feature to convert the scanned document into a searchable format. Generally speaking, it is not helpful to provide the court with non-searchable PDF files. To confirm that your document is searchable, use the word search feature of your software program.

12. APPEAL SCHEDULING PROCEDURES

12.1 Expedited Appeals

1. Most civil appeals will be heard within four to six months of perfection. However, it is recognized that some appeals must be heard more quickly.

2. The court automatically expedites the following types of appeals:

(a) family law appeals;

(b) appeals under the *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1; and

(c) appeals that may delay the progress of an ongoing proceeding.

3. Such appeals will be heard at the earliest practicable date, usually within three months of perfection.

4. Appeals other than those listed in paragraph 2 may be expedited by bringing a motion to a judge of the Court of Appeal for an order expediting the appeal. The

judge must be satisfied that the urgency of the matter requires an earlier hearing date.

12.2 Estimate of Time Required for Oral Argument

1. Parties shall certify in the factum a realistic estimate of the time for oral argument of the appeal, not including reply, in fractions of an hour or hours (e.g., ¾ of an hour, 1½ hours).

2. Prior to scheduling the appeal for a hearing date, a judge of the court will review the time estimate of the appellant and will assign time for the oral argument of each party, including any time for reply.

3. The parties will be notified of the time assignment for oral argument when they are notified of the hearing date of the appeal.

4. The time assignments are provided to the panel hearing the appeal. The court expects the parties to adhere to their time assignments.

5. Parties who seek more time for oral argument must make a request to a judge of the court who has been designated by the Chief Justice to serve as the civil List Judge.

6. A conference before the civil List Judge for more time for oral argument must be arranged through the Appeal Scheduling Unit by contacting 416-327-5020 (select your language of choice, followed by option 4, and then press 2) or by fax (416-327-6256).

7. Requests made for the assistance of the List Judge will be dealt with by conference call. The Appeal Scheduling Unit will contact the parties with the date, time and the dial-in details for the List Judge conference call.

12.3 Adjournment Requests

1. If a hearing date for an appeal is more than three weeks away, and if all parties are prepared to consent to an adjournment, then the appellant should provide a letter addressed to the Appeal Scheduling Unit and copied to all parties advising of the adjournment request. The requesting letter may be submitted by email to COA.E-file@ontario.ca (please include "Adjournment Request" and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-6256). The Appeal Scheduling Unit will confirm if the matter will be adjourned and if so, will advise the parties of the new hearing date.

2. If a hearing date for an appeal is more than three weeks away, and if the adjournment request is opposed by one or more of the parties, then the party seeking the adjournment must make the adjournment request to a judge of the court who has been designated by the Chief Justice to serve as the civil List Judge.

3. A conference call before the civil List Judge to change a hearing date must be arranged through the Appeal Scheduling Unit by contacting 416-327-5020 (select your language of choice, followed by option 4, and then press 2) or by fax (416-327-6256). The Appeal Scheduling Unit will contact the parties with the date, time and the dial-in details for the conference call.

4. If the hearing date for an appeal is three weeks or less away, any adjournment request – whether on consent or opposed – must be made in writing to the attention of the Appeal Scheduling Unit. The requesting letter may be submitted by email to COA.E-file@ontario.ca (please include "Adjournment Request" and the court file number and title of proceeding in the subject line of the email) or by fax (416-327-6256). The request will be forwarded to the president of the panel for review and his or her determination will be communicated to the parties by the Appeal Scheduling Unit.

12.4 Appeals without Oral Argument

1. The court may decide appeals without oral argument on the consent of the parties. Parties who seek to have an appeal decided without oral argument shall, after delivering their factums, file a written consent with the Registrar to hear the appeal in writing.

2. In appeals without oral argument, the appellant shall be permitted to file a reply factum, which must be served and filed within ten days of the filing of the respondent's factum.

3. Where practical, the court shall render judgment within 60 days of the filing of the consent.

12.5 The Composition of the Panel

The parties may consult the Court of Appeal's website at http://www.ontariocourts.ca/coa/en/caselist/ to see the weekly hearings lists and the composition of the panel for their appeal. The weekly hearing lists are posted on Friday at noon on the week prior to the next week's hearings.

13. REQUEST TO RECONSIDER A PRIOR PRECEDENTIAL DECISION OF THE COURT OF APPEAL

1. When a party wishes to ask the court to decline to follow a prior precedential decision of the Court of Appeal for Ontario, the party should send a letter to the attention of the Senior Legal Officer requesting that the court convene a five-judge panel to hear the appeal. The letter should explain why there is reason to think that the court's prior precedential decision should not be followed. The letter should be copied to all parties and be submitted not later than the time for filing the requesting party's factum.

2. Any party to the proceeding in the Court of Appeal may send a letter responding to the request to convene a five-judge panel to hear the appeal.

3. The Chief or the Associate Chief Justice will review a party's request for a five-judge panel and his or her decision on the matter is final.

14. SETTLING OR ABANDONING AN APPEAL OR CROSS-APPEAL

1. If the parties agree to settle an appeal or cross-appeal, they are required to promptly submit a letter addressed to the Registrar advising that the matter has been settled. The letter should be copied to all parties and be sent by email to COA.E-file@ontario.ca (please include "Notice of Abandonment" or "Notice of Settlement" and the court file number and title of proceeding in the subject line of the email) or by fax to (416) 327-5032. The letter should indicate how the issue of costs has been resolved. The parties may attach a copy of any minutes of settlement with the letter advising of the settlement.

2. In accordance with rule 61.16(2.2) of the *Rules of Civil Procedure*, an order dismissing an appeal on consent of the parties may be obtained from a judge in chambers. When the parties settle an appeal and seek relief other than an order dismissing the appeal on consent, at least one of the parties may be directed by the court to appear in order to satisfy the court that the requested order is not inappropriate.

3. If an appeal or cross-appeal is abandoned, the relevant party is required to promptly file a notice of abandonment (Form 61K) in accordance with rule 61.14(1).

4. If an appeal and/or cross-appeal is settled or abandoned after it has been listed for hearing, the relevant party must promptly advise the Appeal Scheduling Unit of the settlement or abandonment by contacting 416-327-5020 (select your language of choice, followed by option 4, and then press 2) or by fax (416-327-6256) to ensure the efficient use of courtrooms and court resources.

15. COURTROOM DECORUM

15.1 Addressing the Court

Members of the Court of Appeal should be addressed as “Chief Justice”, “Associate Chief Justice”, “Justice” or “Justice (Surname)”, as appropriate, and not as Madam Justice, My Lady, My Lord, Your Ladyship, Your Lordship or Your Honour.

15.2 Courtroom Attire

Lawyers do not need to wear gowns when they appear on motions before a single judge in chambers.

Counsel who are pregnant when appearing before a panel in the Court of Appeal for Ontario are free to modify their traditional court attire in order to accommodate their pregnancy as they see fit, including dispensing with a waistcoat and tabs.

15.3 Use of Electronic Communication Devices in the Courtroom

Unless a judge orders otherwise, electronic communication devices including cell phones and laptop computers may be used in the courtroom in a manner that is not disruptive of the proceedings. Anyone using an electronic communication device to transmit information about a court hearing has the responsibility to identify and comply with the terms of any applicable publication ban, sealing order,

or other restriction on publication that has been imposed by court order or by statute.[1]

Photography and video recording of a court hearing without the authorization of a judge is prohibited by s. 136(1) of the *Courts of Justice Act*. Audio recording of a court hearing is permissible for note-taking purposes, but these audio recordings may not be transmitted. Anyone who uses an electronic communication device in a way that violates this Practice Direction may be ordered to turn off the device, leave the device outside the courtroom, leave the courtroom, abide by any other court order, and may also be subject to prosecution.

16. ELECTRONIC DELIVERY OF REASONS FOR JUDGMENT

The court will send an HTML and PDF copy of the signed judgment by email to those lawyers and self-represented parties who have provided an email address on their materials filed with the court. Paper copies of judgments are also available at the Registrar's Office to those parties who do not have an email address, and to members of the public (who must pay the prescribed fee).

Judgments are posted on the court's website shortly after release at http://www.ontariocourts.ca/decisions_index/en/.

The court provides advance notice of release of its reserved decisions at http://www.ontariocourts.ca/decisions_index/notice.htm.

17. DIGITAL AUDIO RECORDINGS

1. The Court of Appeal is not a "court of record". Its oral hearings are not monitored or transcribed as a matter of routine. However, the Court of Appeal records all hearings that are held in open court through the use of digital audio recording. Unless a judge orders otherwise, a copy of a digital audio recording is available upon request, provided that the proceedings are not subject to a statutory publication ban or other court order that prevents the release of the digital audio recording.

2. Requests for access to digital audio recordings should be made in the Registrar's Office and are subject to payment of the prescribed fee, unless a fee waiver certificate is produced. Such recordings are for personal use, and will not

[1] For example, see C*hild, Youth and Family Services Act*, S.O. 2017, c. 14, Sched. 1 s. 134(11); *Criminal Code of Canada*, R.S.C. 1985, c. C-46, ss. 486, 486.4-486.6, 517, 539; *Youth Criminal Justice Act*, S.C. 2002, c. 1, ss. 110, 111.

be released unless the person requesting the recording signs an undertaking agreeing to respect the limits on the permitted uses of the recording.

3. If a person wishes to have a transcript of a hearing made, he or she must first bring a motion for permission to do so before a single judge. Once the order is obtained, the person may have the recording transcribed at her or her own expense.

4. The publication, broadcasting, reproduction or other dissemination of an audio recording of a court hearing is prohibited unless expressly authorized by a court order.

18. COSTS IN THE COURT OF APPEAL

1. Parties should be prepared to address all issues of costs, including the quantum of costs, at the hearing of an appeal or a motion.

2. Parties who may be entitled to costs must prepare and exchange their proposed bills of costs, to be filed at the time of argument if requested by the court. This bill should be complete to the day before the hearing and include an estimate of the costs associated with the hearing of the appeal or motion.

3. If the decision on the appeal or motion is released orally immediately after the hearing, the parties will have an opportunity to make brief submissions as to the quantum and scale of costs to be paid.

4. If the decision on the appeal or motion is reserved, the filing of the bill of costs and submissions will usually occur at the hearing.

5. The court may determine that it would be preferable to receive costs submissions after releasing its decision. In such cases, a party entitled to receive costs will deliver a bill of costs together with any submissions, in writing, in support of the requested order for costs within seven days of the release of the decision. Any party liable to pay costs may deliver a response, in writing, within 14 days of the release of the decision. The party entitled to receive costs may deliver a brief reply within 17 days of the release of the decision. These deadlines apply unless the court directs different deadlines at the hearing.

6. Unless the court orders otherwise, such material should be filed at the Registrar’s Office in triplicate, together with proof of service, to the attention of the Appeal Scheduling Unit.

7. Unless the court orders otherwise, any material received in relation to costs will be forwarded to the panel for consideration 18 days after the release of the decision. The parties will be notified of the decision as to costs by way of an addendum to the decision.

19. POST-HEARING SUBMISSIONS

1. The parties are expected to fully argue all issues on an appeal in the factum and in oral submissions at the hearing of the appeal. Attempts by the parties to provide the court with additional written submissions, authorities, or other material after the hearing are improper, subject to the exceptions discussed here.

2. On occasion, after the hearing of an appeal, the court may wish to receive further submissions from the parties in respect of one or more issues. The Senior Legal Officer will advise the parties of any request by the court for further submissions and will give a timetable within which to serve and file this material.

3. The parties may become aware of a newly-decided authority that might have an impact on a reserved appeal. The authority may be sent, without submissions, to the attention of the Senior Legal Officer, who will ensure that the material is transmitted to the panel that heard the appeal.

4. If a party wishes to make submissions concerning the impact of a new authority, a request to do so should be included in a covering letter addressed to the Senior Legal Officer and copied to the other parties. The Senior Legal Officer will advise the parties whether the court is prepared to entertain such submissions and, if necessary, will give a timetable for serving and filing submissions.

5. In exceptional circumstances, a party may seek to make additional submissions to the court while an appeal is under reserve. The request, outlining the essentials of the argument and the reasons the argument was not made at the hearing of the appeal, should be made in writing to the attention of the Senior Legal Officer. Opposing parties may respond in writing to the request. The Senior Legal Officer will advise the parties whether the panel will receive further submissions. This process is not to be viewed as a substitute for properly preparing the factum and fully arguing the issues at the hearing of the appeal.

6. After a panel has released its reasons for judgment, the decision of the court is final. The normal recourse for a party who objects to the court's decision is by way of an application for leave to appeal to the Supreme Court of Canada.

7. In accordance with rule 61.16(6.1) of the *Rules of Civil Procedure*, an order or decision of a panel of the Court of Appeal may not be set aside or varied except in accordance with rules 37.14 and 59.06. Parties should be aware that rule 59.06 provides for a very narrow jurisdiction to set aside or vary an order made by a panel. This rule and the authorities that have interpreted it should be consulted before commencing a motion under rule 59.06.

8. In accordance with rule 2.1.02 of the *Rules of Civil Procedure*, the Court of Appeal will automatically screen motions under rule 59.06(2) in order to ensure that the motion is not frivolous, vexatious, or otherwise an abuse of the process of the court.

20. CONTACT INFORMATION FOR THE COURT'S REGISTRAR

The office of the Registrar may be contacted at COA.Registrar@ontario.ca or by fax at 416-327-5032.

21. CONTACT INFORMATION FOR THE COURT'S SENIOR LEGAL OFFICER

The office of the Senior Legal Officer may be contacted at COA.SeniorLegalOfficer@ontario.ca or by fax at 416-327-6256.

Chief Justice George R. Strathy

July 10, 2018

Date

Effective: March 1, 2017

Amended: July 10, 2018