

**Stays Pending Appeals Subcommittee
(Civil Rules Committee)**

**Consultation on Potential Amendments to Rule
63.01 of the *Rules of Civil Procedure***

Consultation Paper

Part I: Background for the Consultation

Brief History of Rule 63.01

The 1984 rules of procedure in Ontario provided for an automatic stay for all orders with three exceptions: 1) an order for an injunction, 2) a mandatory order, or 3) an order awarding support or maintenance or custody of or access to a child.

In 1989, the Civil Rules Committee further revised Rule 63 due to interpretive issues arising out of the phrase “mandatory order”. At this time, the Committee received submissions that there should be no automatic stay pending appeal, and that such a stay should only be obtained by court order. The Committee decided to limit automatic stays to monetary orders.

Later in 1989, the Committee clarified whether this provision applied to an order that awarded both monetary and non-monetary relief by amending the Rule to provide that “any provision of the order for the payment for money” was automatically stayed.

Rule 63.01 has not been amended since 1989. Ontario and Quebec are the only provinces in which a notice of appeal automatically stays monetary orders.¹

At the Supreme Court of Canada, monetary orders are not stayed until the appellant given security to the satisfaction of the court appealed from.²

Formation of the Stays Pending Appeal Subcommittee

Rule 63.01, in particular the rule authorizing automatic stays of monetary orders pending appeal, has come to the attention of the Civil Rules Committee in multiple ways.

Firstly, Gabriel Latner, a member of the Bar, raised the automatic stays of monetary orders in his submission to the Civil Rules Review Working Group, where he proposed:

The automatic stay of money-orders pending appeal should be eliminated. These are stays that would almost never be granted under the common-law test, and lead to frivolous appeals intended only to delay collection. Concerns about the inability of an appellant to recover sums from the respondent after a successful appeal could

¹ See Appendix A for a summary of the rules in other Canadian provinces, the Federal Court of Appeal and Supreme Court of Canada, and other jurisdictions. See Appendix B for a chart outlining the rules for each province, Appendix C for a chart outlining the rules in the Federal Court of Appeal, and the Supreme Canada, and Appendix D for a chart outlining the rules in non-Canadian jurisdictions.

² Section 65 of the *Supreme Court Act*, R.S.C., 1985, c. S-26, s. 61(1)(d). See s. 65(1) generally for the requirements to obtain a stay at the Supreme Court of Canada for different types of orders.

be addressed by giving appellants the option of paying such amounts into court pending the appeal.

In response to this proposal, in its Final Policy Report, the Civil Rules Review Working Group recommended that the Civil Rules Committee consider eliminating the automatic stay of monetary orders pending appeal:

One Consultee strongly urged the elimination of the automatic stay of monetary orders pending final appeals. He asserted that most stays of such orders would never be granted under the common law test and tend to foster frivolous appeals intended only to delay collection. He argued that concerns about the inability of an appellant to recover sums from the respondent after a successful appeal could be addressed by offering appellants the option of paying the disputed amounts into court pending appeal.

While the Working Group agrees that automatic stays of money judgments often encourage appeals aimed at hindering or delaying enforcement, we did not consider, research, or consult on a proposal to eliminate the automatic stay. We recommend that the Civil Rules Committee further consider this issue.³

Secondly, a different member of the Bar, Jonathan Pinkus, on behalf of his law firm, made a proposal to the Committee to amend Rule 63.01(1) to eliminate the automatic stay of monetary awards pending appeal. He argues that the automatic stays allow for prolonged period on non-payment, asset dissipation and litigation gamesmanship (e.g. appellants using the automatic stay as a bargaining chip to pressure respondents into lopsided agreements). He proposes the rules being amended to provide for a conditional stay, whereby an appellant may obtain suspension of enforcement by paying the amount of judgment (inclusive of costs and interest) into court or to a mutually acceptable trust within a fixed period after serving the notice of appeal.

In addition, the Honourable Bill Hourigan, Michael Wilson and Professor Preston Lim have advocated for the elimination of the automatic stays of monetary orders to combat delay in the civil justice system at the appellate level:

An appellant should be required to bring a motion in writing to obtain a stay, and judges should have the discretion to order the posting of security for the judgment as a stay term. This reform resembles but also exceeds in rigour the current approach under rule 62(b) of the U.S. Federal Rules of Civil Procedure, which “permits a party seeking to stay the execution of a judgment pending appeal to post a bond or other security to [automatically] secure the payment of the judgment to the judgment creditor.”⁴

³ Final Policy Report of the Civil Rules Review Working Group (October 31, 2025) at p. 209 [citations omitted].

⁴ Hourigan, Bill and Wilson, Michael and Lim, Preston Jordan, A Modest and Principled Proposal for Civil Justice Reform in Ontario (March 05, 2025) at pp. 27-28 [citations omitted].

The Civil Rules Committee struck a Stays Pending Appeal Committee to consider whether any amendments should be made to Rule 63.01 broadly including, but not limited to, eliminating the automatic stay of monetary orders.

A common theme is the concern that the automatic stay of monetary orders encourages frivolous appeals that are brought for the purpose of delaying payment of the court order. Currently, the main tools respondents have at their disposal for addressing frivolous appeals brought to delay payment are: (1) bringing a rule 2.1 request to have the appeal stayed or dismissed as frivolous, vexatious or an abuse of process;⁵ (2) bringing a motion to lift the stay;⁶ and (3) bringing a motion for security of costs.⁷ Frivolous appeals brought for the purpose of delaying payment may exhaust the respondent’s resources as well as waste judicial resources.

On the other hand, automatic stays of monetary orders support access to justice by ensuring that appellants are not effectively denied their right to appeal on the basis they cannot afford it. Appellants who are not able to afford paying the monetary order and bringing an appeal can apply for a fee waiver of court fees if they meet the criteria⁸ and can bring a motion to stay the order.⁹ If the respondent is successful, prejudice from the stay can generally be remedied by interest. If automatic stays of monetary orders are eliminated or narrowed, it can be expected that there will be an increase in motions brought for a stay of those monetary orders.

In summary, the main trade offs can be summarized as follows:

Automatic Stay of Monetary Orders	No Automatic Stay of Monetary Orders
Default benefits appellant; respondent required to bring motion to lift stay.	Default benefits respondent; appellant required to bring motion for stay.
Facilitates Frivolous appeals brought for the purpose of delaying payment	Increases number of motions for stay brought.

⁵ The Court of Appeal has held that the use of rule 2.1 is for “the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading”: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, at para. 8.

⁶ For a summary of the test to lift an automatic stay under rule 63.01(5), see Appendix E.

⁷ Section 61.06(1) of the *Rules of Civil Procedure* sets out the categories of cases that a judge may exercise his or her discretion to order security for costs of an appeal. See also, *Foodinvest Limited v. Royal Bank of Canada*, 2020 ONCA 387.

⁸ See *Administration of Justice Act*, R.S.O. 1990, c. A.6, ss. 4.3 and 4.4.

⁹ The criteria for obtaining a stay of an order pending appeal under rule 63.02 are those in *RJR-MacDonald v. Canada*, [1994] 1 S.C.R. 311: (1) whether there is a serious issue to be tried; (2) whether the moving party would suffer irreparable harm if the stay were refused; and (3) The balance of convenience, namely which of the parties would suffer greater harm from the granting or refusing of the stay. See e.g. *Belton v. Spencer*, 2020 ONCA 623 at paras. 20-22.

Part II: Consultation Questions

The following questions serve to provide a broad analytical framework for the purposes of stimulating comprehensive feedback on all aspects of the issue of stays under the *Rules* that has been undertaken for study by the Subcommittee. They are not intended to suggest a specific analytical path in considering the issue of stays; rather, it is hoped and encouraged that stakeholders will provide a varied response, including raising points beyond the questions listed below.

Scope of Rule 63.01

No change should be made to Automatic Stays of Monetary Order

1. Should any changes be made to automatic stays of monetary orders?

Removing or Varying Automatic Stays of Monetary Orders

1. Should the automatic stays of monetary orders be eliminated completely?
2. If the automatic stay of monetary orders is not eliminated completely, should the exceptions to the automatic stay (currently support orders and orders refusing to set aside a default judgment) be expanded?
 - a. If so, what types of monetary orders? For example, do you support costs, equalization payments or wrongful dismissal damages being excepted?
3. If the automatic stay of monetary orders remains, should there be any modifications to the application of post-judgment interest in the appeal process? For example, should the interest be compound or simple? Should there be an elevated rate beyond what is currently provided in the *Rules*?
4. If the automatic stay of monetary orders remains, should any amendments to the Rule 63.01(5) test for lifting the automatic stay be made?
5. If the automatic stay of monetary orders remains, should any amendments to the Rule 61.06(1) test for granting security of costs be made?

Substituting Automatic Stays of Monetary Orders for Conditional Stays Upon Payment of part or all of the judgment and/or costs

6. Should the automatic stay of monetary orders be substituted for a conditional stay such that there is a stay of monetary orders when the appellant pays money into court, a trust or to the respondent?
 - a. If yes, who should the money be paid to (e.g. court, trust, respondent, or other)?

- b. If yes, should the appellant be required to pay the full monetary order (including costs and interest), a percentage of the monetary order, a fixed amount regardless of the quantum of the monetary order or costs only?
- c. If yes, should there be any modifications to post-judgment interest in the appeal process as applied to monies paid as security for a stay? For example, should the interest be compound or simple? Should there be an elevated rate beyond what is currently provided in the *Rules*?
- d. If yes, should there be any consequences if there is default in payment of part or all of the judgment/costs? If so, what should those consequences be? For example, a dismissal or stay of the appeal until payment is made in full?

Expanding The Type of Orders Subject to Automatic Stays or Conditional Stays

7. Should the automatic stay of non-monetary orders (currently certain orders under the *Residential Tenancies Act, 2006* and certain co-operative Housing Orders) be expanded?
 - a. If so, what types of non-monetary orders?
8. Under s. 65 of the *Supreme Court Act*, on filing and serving the notice of appeal and depositing security as required by s. 60, execution shall be stayed in the original cause, except that
 - where a judgment directs the delivery of personal property, execution is stayed if the property is brought into court, placed with court-appointed officers, or security is given to satisfy the court of appeal (s. 65(1)(a));
 - where the judgment directs the execution of a conveyance, execution is not stayed until the instrument has been executed and deposited with the court appealed from (s. 65(1)(b)); and
 - where the judgment directs the sale or delivery of property, execution is not stayed until security has been given to the satisfaction of the court appealed from (s. 65(1)(c)).

Currently, Rule 63.01 does not provide for conditional stays for the delivery of personal property, the execution of a conveyance or the sale or delivery of property. Do you support adopting a similar approach as under the *Supreme Court Act* for any of these types of orders?

Procedure Related to Rule 63.01

Timing for Automatic or Conditional Stays to Take Effect

9. Currently, orders subject to an automatic stay are stayed upon the delivery of the notice of appeal. If automatic stays are not eliminated, should the stay continue to take effect upon the delivery of the notice of appeal?

10. If monetary orders are subject to conditional stays (i.e. enforcement of the order is stayed if the appellants pay the money into court), by which date do you recommend the money has to be provided (e.g. on filing the notice appeal)?

11. Again, should there be any consequences for failing to make the required payments? If so, what should they be?

Motion Process Related to Stays

12. If automatic stays for monetary orders are eliminated, should there be any changes to the procedure for motions for a stay to streamline the process?

- a. In particular, are you supportive of stay motions being heard presumptively in writing?
- b. In particular, are you supportive of stay motions not being reviewable to a panel?
- c. Alternatively, are you supportive of stay motions being made in writing directly to a panel, instead of to a single judge?

13. If automatic stays for monetary orders are not eliminated, should there be any changes to the procedure for motions to lift a stay or for security for costs to streamline the process?

- a. In particular, are you supportive of either of these motions being heard presumptively in writing?
- b. In particular, are you supportive of either of these motions not being reviewable to a panel?
- c. Alternatively, are you supportive of stay motions being made in writing directly to a panel, instead of to a single judge?

Miscellaneous

14. For stakeholders who operate interprovincially, how does a lack of an automatic stay for monetary orders in other provinces (except Quebec) impact your practice?

15. Do you have any other suggestions to improve Rule 63.01?

Appendix A: Summary of Other Jurisdictions Approach to Stays Pending Appeals

I. Rules Comparison across Provinces

a. Quebec

Ontario and Quebec are the only provinces in which a notice of appeal automatically stays monetary orders.¹⁰

Quebec's rule reads as follows:

355. A properly initiated appeal stays execution of the judgment, except if provisional execution has been ordered or is provided for by law.

If the sole object of the appeal is to obtain an increase or a decrease in the amount awarded by the judgment, a judge of the Court of Appeal may, on an application, order the party against which the judgment was awarded to comply with the judgment up to the uncontested amount.

A judgment is provisionally executed as of right if it falls under the categories in Article 660:

1. concerns support payments or a support provision, determines arrangements regarding the custody of children or adjudicates on parental authority;
2. orders a child's return under the Act respecting the civil aspects of international and interprovincial child abduction (chapter A-23.01);
3. appoints, removes or replaces a tutor, temporary representative or other administrator of the property of others, or homologates or revokes a protection mandate;
4. orders urgent repairs;
5. orders an eviction in the absence of a lease or after the lease has expired or been resiliated or cancelled;
6. orders a rendering of account or an inventory;
7. orders any measure for the liquidation of a succession;
8. adjudicates on the possession of property;
9. adjudicates on the sequestration of property;
10. adjudicates on an abuse of procedure;
11. orders a provision for costs; or
12. rules on legal costs, but only with respect to the portion not exceeding \$15,000.

It appears that parties will occasionally make arguments about whether an exception applies before the trial judge, particularly art. 660(10), leading to trial judgments that

¹⁰ See Appendix B for a chart indicating the rules regarding stays of execution in place in each province.

specifically order that the judgment is enforceable notwithstanding appeal: see 7006098 *Canada Inc. v. Leclerc*, 2019 QCCQ 6309, at para. 154.

Any order staying provisional execution must give reasons; this fact has been cited as evidence that an exception to the principle that an appeal stays execution should be interpreted restrictively: *Duchesneau v. Footmaxx of Canada Inc.*, 2019 QCCA 124, at para. 5. As put in *Ferme BDR c. Larose*, 2023 QCCA 1506, “[t]he successful appellant will (potentially) be required to start another action to recover the amounts paid in execution of an overturned judgment.”

If an order staying provisional execution is challenged, the criteria to consider in staying the order are, similar to in *RJR-Macdonald*, (1) an apparent weakness in the decision below; (2) a serious prejudice if the provisional execution is maintained; and (3) the balance of convenience: *Ge c. 9401-0428 Québec Inc.*, 2025 QCCA 786, at para. 3.

A judge can also order provisional execution on a discretionary basis, under a similar test to that for granting a discretionary stay in Ontario: see *Hendou c. Abdallah*, 2025 QCCS 4052, at para. 185. Provisional execution can be ordered in part, per article 661. The court can also suspend automatic provisional enforcement.

b. Other Provinces

With the exception of Quebec and Ontario, the general rule is that filing an appeal does not stay proceedings or enforcement of the decision. Where a stay is not automatic, there is a discretionary power to grant a stay; in some provinces, this discretion must be exercised by the judge who granted the order and in others the motion can be made to the judge who granted the order or an appeal judge.

As the Alberta Court of Appeal noted in *Knelsen Sand & Gravel Ltd v. Harco Enterprises Ltd*, 2021 ABCA 362, “[t]here has been general agreement for the last fifteen years or so that the test for a stay of an enforcement of a money judgment pending appeal is the tripartite test” in *RJR-MacDonald*.

There has been some criticism of the use of the *RJR-Macdonald* test for the stay of monetary orders, arising out of the application of the ‘irreparable harm’ criterion. However, the “tripartite test properly understood directs a court to address any legitimate concerns about the respondent’s ability to repay any sum to which it is ultimately adjudged not to be entitled”: *Knelsen*, at para. 37.

II. ***Federal Courts Act, s. 50***¹¹

Appeals to the Federal Court of Appeal do not immediately stay proceedings. Section 50 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 sets out the rules for discretionary stays pending appeal.

50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

Again, the test for a stay of enforcement of a monetary order is the tripartite test in *RJR-MacDonald*.

A mandatory stay of proceedings is required on application of the Attorney General of Canada in respect of a claim against the Crown “if it appears that the claimant has an action or a proceeding in respect of the same claim pending in another court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect of that matter, acting so as to engage the liability of the Crown.”: s. 50(2).

III. ***Supreme Court Act, s. 65***

Section 65 of the *Supreme Court Act*, R.S.C., 1985, c. S-26 sets out the exceptions to the automatic stay of execution for orders pending appeal to the Supreme Court of Canada. To obtain a stay under these exceptions, an application to stay and settle the appropriate security may be made to the court of appeal.

- a) Where a judgment directs the delivery of personal property, execution is not stayed until the property is brought into court, placed with court-appointed officers, or security is given to satisfy the court of appeal (s. 65(1)(a)).
- b) Where the judgment directs the execution of a conveyance, execution is not stayed until the instrument has been executed and deposited with the court appealed from (s. 65(1)(b)).
- c) Where the judgment directs the sale or delivery of property, execution is not stayed until security has been given to the satisfaction of the court appealed from (s. 65(1)(c)).
- d) Where the judgment appealed from directs the payment of money, execution is not stayed until the appellant has given security to the satisfaction of the court appealed from (s. 65(1)(d)).

¹¹ See Appendix C for a chart indicating the rules regarding federal stays of execution.

The Court of Appeal for Ontario has been clear that s. 65 does not require parties to meet the requirements of the *RJR-MacDonald* test: *Keays v. Honda Canada Inc.*, 2007 ONCA 564, at para. 17. Once the appellant provides security to the satisfaction of the court appealed from, they are entitled to a stay.

However, s. 65(4) of the *Supreme Court Act* reads as follows:

The Court, the court appealed from or a judge of either of those courts may modify, vary or vacate a stay of execution imposed by subsection (1).

The court in *Keays* rejected a narrow reading of ss. 65(1)(d) and s. 65(4) that would lead to a limit on the court's jurisdiction to modify, vary or vacate a stay to only a change of circumstances under which the stay was granted. Instead, the court found that "the language of s. 65(4) is sufficiently broad to permit me to vary the stay in appropriate circumstances": para. 18. The court then used the test under Rule 63.01(5) of the *Rules of Civil Procedure*, involving a balancing of:

- i. the financial hardship to the respondent if the stay is not lifted;
- ii. the ability of the respondent to repay or provide security for the amount paid;
and
- iii. the merits of the appeal.

IV. Rules for Stays of Execution in Non-Canadian Jurisdictions¹²

a. Australia (New South Wales)

New South Wales does not have an automatic stay pending appeal. The *Uniform Civil Procedure Rules 2005*, Reg 51.44 states that appeal proceedings do not operate as a stay unless Court or court below directs that it should. The Court of Appeal may order that the decision below be stayed upon the filing of an appeal. Generally, an application for a stay pending appeal is made, in the first instance at least, to the trial judge.

b. California

Per s. 916 of California's *Code of Civil Procedure*, perfecting an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order. However, s. 916 indicates that there is no automatic stay in respect of the exceptions in ss. 917.1-917.10.

¹² See Appendix D for a chart indicating the rules regarding stays of execution in non-Canadian jurisdictions.

Importantly, s. 917.1 states that the perfecting of an appeal “shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:

(1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action.

(2) Costs awarded pursuant to Section 998 which otherwise would not have been awarded as costs pursuant to Section 1033.5.

(3) Costs awarded pursuant to Section 1141.21 which otherwise would not have been awarded as costs pursuant to Section 1033.5.

[Emphasis added.]

The other exceptions include 1) where the judgment or order appealed from directs the sale, conveyance or delivery of possession of real property which is in the possession or control of the appellant or the party ordered to sell, convey or deliver possession of the property (§ 917.5) or 2) provisions of a judgment or order which award, change, or otherwise affect the custody of a minor child.

c. England

An appeal does not automatically operate as a stay. Per the *Civil Procedure Rules*, r. 52.16:

Unless –

(a) the appeal court or the lower court orders otherwise; or

(b) the appeal is from the Immigration and Asylum Chamber of the Upper Tribunal,

an appeal shall not operate as a stay of any order or decision of the lower court.

Per *Leicester Circuits Ltd v Coates Brothers PLC* [2002] EWCA Civ 474, the court has an unfettered discretion to grant a stay pending appeal and must make the order which accords with the interests of justice by balancing the prejudices to both sides if a stay is, or is not, order. The court can look at the strength of the appeal.

d. New York

New York’s *Civil Practice Law and Rules* § 5519 states that automatic stays pending appeals exist in limited classes of cases, including where a party against which a money judgment is issued posts an undertaking in that sum “that if the judgment or order

appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed”.

All other cases require a motion to “the court from or to which an appeal is taken or the court of original instance,” any of which “may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal” (CPLR 5519 [c]).

e. New Zealand

Per Rule 20.10 of the *High Court Rules*, there is no automatic stay pending appeal in New Zealand. The party may apply for a stay of proceeding or a stay of enforcement, to be granted by “the decision-maker or the court”.

Appendix B: Stays Pending Appeals across Provinces

Province	Automatic stay?	Stay Provision
Alberta	No	<p>14.48 An application to stay proceedings or enforcement of a decision pending appeal may be made</p> <ul style="list-style-type: none"> (a) to the judge who made that decision, or (b) to a single appeal judge, whether or not the application was made to the judge who made the decision, and whether or not that application was granted or dismissed. <p>[...]</p> <p>14.68 Unless otherwise ordered under Rule 14.48 or provided by law, the filing of an appeal or an application for permission to appeal does not operate as a stay of proceedings or enforcement of the decision under appeal.</p> <p><i>Alberta Rules of Court, Alta Reg 124/2010</i></p>
British Columbia	No	<p>Rule 13-2 — Enforcement of Orders</p> <p>Stay of execution</p> <p>(31) The court may, at or after the time of making an order,</p> <ul style="list-style-type: none"> (a) stay the execution of the order until such time as it thinks fit, or (b) provide that an order for the payment of money be payable by instalments. <p><i>Court Rules Act, Supreme Court Civil Rules, <u>B.C. Reg. 168/2009</u></i></p> <p>Stays of proceedings</p> <p>33 (1) After an appeal or application for leave to appeal is brought, a justice may, on terms and conditions the justice considers appropriate, order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought.</p> <p>(2) After an appeal has been decided, a justice may, on terms and conditions the justice considers appropriate, do one or both of the following:</p> <ul style="list-style-type: none"> (a) make an order under subsection (1); (b) make any other order to preserve the rights of the parties pending further proceedings. <p>(3) Without limiting subsection (1) or (2), a justice may order one or more of the following:</p>

Province	Automatic stay?	Stay Provision
		<p>(a) that documents be delivered; (b) that possession of land or personal property be given; (c) that property be placed in the custody of a person specified by the justice; (d) that an instrument be executed; (e) that perishable property be sold and the proceeds paid into the court or the court appealed from; (f) that a direction be given to a sheriff or poundage be disallowed; (g) that a person be paid money received by a sheriff under an execution; (h) that security be given for any purpose in a form and manner directed by the justice.</p> <p><i>Court of Appeal Act, SBC 2021, c 6, s. 33(1)</i></p>

Manitoba	No	<p>Stay of judge's order</p> <p>63.01(1) An appeal to The Court of Appeal shall not operate as a stay of execution or of proceedings under the order appealed from, but the judge who granted the order may stay the order at any time before the appeal is determined.</p> <p><i>Court of King's Bench Rules, M.R. 553/88</i></p>
New Brunswick	No	<p>62.26 Stay of Proceedings</p> <p>(1) Unless ordered otherwise, an appeal does not</p> <p style="padding-left: 20px;">(a) operate as a stay of execution or of proceedings under the decision or order appealed from, or</p> <p style="padding-left: 20px;">(b) invalidate any intermediate act or proceeding.</p> <p>(2) A motion for a stay of execution or a stay of proceedings may be made before the judge appealed from, the Court of Appeal or a judge of the Court of Appeal.</p> <p>(3) On a motion for a stay of execution or a stay of proceedings, the Court of Appeal or judge may</p> <p style="padding-left: 20px;">(a) if a question arose at the trial or hearing which is appropriate for submission to the Court of Appeal, grant a stay,</p> <p style="padding-left: 20px;">(b) if a stay of execution or a stay of proceedings may cause the respondent to lose the benefits of the verdict or judgment, impose terms to secure the respondent's interests, and</p> <p style="padding-left: 20px;">(c) impose any other terms necessary to prevent prejudice to the respondent.</p> <p><i>Rules of Court, NB Reg 82-73</i></p>

<p>Newfoundland and Labrador</p>	<p>No</p>	<p>Notice of appeal not a Stay 53A.01. The filing of a Notice of Appeal to the Court of Appeal from an order of the Court shall not operate as a stay of the order.</p> <p>Judge on application may stay an order 53A.02. A judge may, on the application of a party to an appeal to the Court of Appeal from an order of the Supreme Court, stay the order appealed from pending the disposition of the appeal and may stay any order of or proceeding before a judge of the Provincial Court or a tribunal in respect of which an order of the Court granting or refusing relief under Rule 54 or otherwise has been appealed.</p> <p>Interest not precluded by order of stay 53A.03. A staying order shall not operate to preclude the accrual of interest if any on the amount payable under the order appealed from.</p> <p>Terms of order 53A.04. An order under rule 53A.02 may be granted on such terms as the judge deems just.</p> <p>Rule applies to execution of judgments 53A.05. This Rule 53A applies to proceedings of the Court and to the execution of judgments of the Court.</p> <p>Rules of the Supreme Court, 1986, SNL1986 c42, Schedule D</p>
<p>Nova Scotia</p>	<p>No</p>	<p>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 motion of a party to an appeal may: (a) grant an interim stay on such terms as may be just, until the completion of the hearing of the motion for a stay; (b) upon completion of the hearing of a motion for a stay, 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, pending the disposition of the appeal</p> <p>Nova Scotia Civil Procedure Rules</p>
<p>Northwest Territories & Nunavut</p>	<p>No</p>	<p>36. An application to stay proceedings or enforcement of a decision pending appeal may be made (a) to the judge who made that decision; or</p>

		<p>(b) to a single appeal judge, whether the application was made to the judge who made the decision, and whether that application was granted or dismissed</p> <p>[...]</p> <p>54. Unless otherwise ordered under rule 36 or provided by law, the filing of an appeal or an application for permission to appeal does not operate as a stay of proceedings or enforcement of the decision under appeal</p> <p>Rules of the Court of Appeal for the Northwest Territories Respecting Civil Appeals R-091-2018</p>
Ontario	Yes	<p>63.01 (1) The delivery of a notice of appeal from an interlocutory or final order stays, until the disposition of the appeal, any provision of the order for the payment of money, except a provision that awards support or enforces a support order.</p> <p>Rules of Civil Procedure, R.R.O. 1990, Reg. 194</p>
Prince Edward Island	No	<p>No Stay of Proceedings</p> <p>63.01 (1) Subject to subrule (2), the filing of a notice of appeal does not operate as a stay of proceedings under the order appealed from, or invalidate any interlocutory order in the proceedings.</p> <p>Stay by Order</p> <p>(2) An order, whether final or interlocutory, may be stayed on such terms as are just by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken.</p> <p>(3) A stay granted under subrule (2) may be set aside or varied, on such terms as are just, by a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken</p> <p>Rules of Civil Procedure</p>
Quebec	Yes	<p>355. A properly initiated appeal stays execution of the judgment, except if provisional execution has been ordered or is provided for by law.</p> <p>If the sole object of the appeal is to obtain an increase or a decrease in the amount awarded by the judgment, a judge of the Court of Appeal may, on an application, order the party against which the judgment was awarded to comply with the judgment up to the uncontested amount.</p> <p>Code of Civil Procedure, 2014, c. 1, a. 355.</p>
Saskatchewan	No	Appeal not a stay

		<p>14-2 Unless the enactment pursuant to which the appeal is taken provides otherwise or a judge orders otherwise, an appeal from a provincial court judge's decision does not act as a stay of proceedings</p> <p><u>The King's Bench Rules</u></p>
Yukon	No	<p>13 Stay of Execution Execution of the judgment appealed from shall not be stayed except under order of the judge of the Supreme Court or the Court of Appeal, or a judge thereof, and on those terms that are just.</p> <p><i>Court of Appeal Act</i>, <u>R.S.Y. 2002, c. 47</u></p>

Appendix C: Stays Pending Appeals in Federal Court of Appeal and Supreme Court of Canada

Court	Automatic stay?	Stay Provision
Federal Court of Appeal	No	<p>50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter</p> <p style="padding-left: 20px;">(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or</p> <p style="padding-left: 20px;">(b) where for any other reason it is in the interest of justice that the proceedings be stayed.</p> <p><i>Federal Courts Act, R.S.C., 1985, c. F-7, s. 50(1)</i></p>
Supreme Court of Canada	Monetary orders require security	<p>65 (1) On filing and serving the notice of appeal and depositing security as required by section 60, execution shall be stayed in the original cause, except that</p> <p>[...]</p> <p style="padding-left: 20px;">(d) where the judgment appealed from directs the payment of money, either as a debt or for damages or costs, the execution of the judgment shall not be stayed until the appellant has given security to the satisfaction of the court appealed from, or of a judge thereof, that, if the judgment or any part thereof is affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof with respect to which the judgment is affirmed, if it is affirmed only with respect to part, and all damages awarded against the appellant on the appeal.</p> <p><i>Supreme Court Act, R.S.C., 1985, c. S-26, s. 65(1)</i></p>

Appendix D: Stays Pending Appeals in Non-Canadian Jurisdiction

Country	Automatic stay?	Stay Provision
Australia (New South Wales)	No	<p>51.44 Appeal proceedings do not operate as stay unless Court or court below directs</p> <p>(1) Subject to the filing of a relevant originating process, the Court may order that the decision below or the proceedings under the decision be stayed.</p> <p>(2) The filing of a relevant originating process does not--</p> <p style="padding-left: 40px;">(a) operate as a stay of proceedings under the decision below, or</p> <p style="padding-left: 40px;">(b) invalidate any intermediate act or proceedings.</p> <p><i>Uniform Civil Procedure Rules 2005 - Reg 51.44</i></p>
California	Not in respect of monetary orders	<p>916. (a) Except as provided in Sections 917.1 to 917.10, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.</p> <p>917.1. (a) Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:</p> <p style="padding-left: 40px;">(1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action.</p> <p><i>CA Civ Pro Code § 916 and 917.1 (2025)</i></p>
England	No	<p>Unless –</p> <p style="padding-left: 40px;">(a) the appeal court or the lower court orders otherwise; or</p> <p style="padding-left: 40px;">(b) the appeal is from the Immigration and Asylum Chamber of the Upper Tribunal,</p> <p>an appeal shall not operate as a stay of any order or decision of the lower court.</p> <p><i>Civil Procedure Rules, r. 52.16</i></p>
New York	Not without undertaking to pay monetary order	<p>§ 5519. Stay of enforcement. (a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:</p> <p>[...]</p> <p>2. the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed</p> <p>[...]</p>

Country	Automatic stay?	Stay Provision
		<p>(c) Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).</p> <p>NY CPLR § 5519 (2025)</p>
New Zealand	No	<p>Stay of proceedings</p> <p>(1) An appeal does not operate as a stay—</p> <ul style="list-style-type: none"> (a) of the proceedings appealed against; or (b) of enforcement of any judgment or order appealed against. <p>(2) Despite subclause (1), the decision-maker or the court may, on application, do any 1 or more of the following pending determination of an appeal:</p> <ul style="list-style-type: none"> (a) order a stay of proceedings in relation to the decision appealed against; (b) order a stay of enforcement of any judgment or order appealed against; (c) grant any interim relief. <p>(3) An order made or relief granted under subclause (2) may—</p> <ul style="list-style-type: none"> (a) relate to enforcement of the whole of a judgment or order or to a particular form of enforcement; (b) be subject to any conditions for the giving of security the decision-maker or the court thinks just. <p><i>High Court Rules 2016, Rule 20.10</i></p>

Appendix E: Summary of the Test to Lift an Automatic Stay under Rule 63.01(5)

The Court of Appeal recently set out the test for lifting an automatic stay in *Peoples Trust Company v. PSP Services Inc.*, 2025 ONCA 524, at paras. 11-14:

[11] Under r. 63.01(5) of the *Rules of Civil Procedure*, a party may bring a motion to a judge of this court to lift an automatic stay, which order may be granted on “such terms as are just.” The decision to lift a stay is discretionary: *Hrvoic v. Hrvoic*, 2023 ONCA 288, at para. 10.

[12] As set out by Lauwers J.A. in *Antunes v. Limen Structures Ltd.*, 2016 ONCA 61, at para. 13, where a party seeks to lift an automatic stay, the court will consider contextual factors: the grounds of appeal; the parties’ position at trial; what has happened since the trial; the general circumstances of the case, including the trial judge’s reasons; and the probable delay between trial and appeal that cannot be controlled by the parties.

[13] The test for lifting a stay is set out in *SA Horeca Financial Services v. Light*, 2014 ONCA 811, 123 O.R. (3d) 542, at para. 13, and requires consideration of three principal factors:

- a. the financial hardship to the respondent if the stay is not lifted;
- b. the ability of the respondent to repay or provide security for the amount paid; and
- c. the merits of the appeal.

[14] As noted, the context of the appeal is important. For example, if an appellant will still have to pay the respondent even if successful on appeal, the court may be more inclined to partially lift the stay: see *Hrvoic*, at para. 17.

In determining whether to lift the stay, the court should “consider the general circumstances of the case” and determine whether it would be in the interests of justice to lift the stay: *SFC Litigation Trust v. Chan*, 2018 ONCA 710, at para. 9. The Court of Appeal court has noted that “motions under this rule should be restricted to cases of demonstrable and unusual hardship to the respondent, and where a reasonable measure of protection can be

afforded to the appellants”: *Ryan v. Laidlaw Transportation Ltd.* (1994), 19 O.R. (3d) 547 (C.A.), at pp. 711-12; *SFC Litigation Trust*, at para. 8.

On the merits of appeal factor, Paciocco J.A. has observed: “A preliminary assessment of the merits of the appeal can assist a motion judge in assessing the risk of non-recovery where the respondent cannot assure the court that the appellant’s funds will otherwise be protected; a meritorious appeal will heighten that risk while a frivolous one lessens it.”: *The Innkeepers S.R.L. v. Enthusiast Gaming Holdings Inc.*, 2025 ONCA 853, at para. 17.

An arguable case does not necessitate that a stay should not be lifted. That is, “[e]ven when an appeal on its face has merit, an order lifting the stay may be justified in the circumstances of the case”: *Innkeepers S.R.L.*, at para. 25. In *Lang-Newlands v. Newlands*, 2025 ONCA 328, Pepall J.A. determined that while there was “an arguable case”, the fact that the case was tried over 32 days and the complexity of the reasons meant that “[a]ny assessment of the merits at this juncture and on the limited record” was “necessarily limited in nature”. Pepall J.A. went on to lift the stay, as the other two factors favoured lifting a stay.