GUIDE TO APPEALS IN DIVISIONAL COURT

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What is an Appeal?

An appeal is a process in which a party to a proceeding in a lower court or administrative body (for example, a board or tribunal) argues that the decision made by the court or tribunal was wrong. In bringing the appeal, the appellant must show that the court or tribunal below made an error that justifies setting aside or varying the decision. The opposing party in the proceeding is called the respondent, who may argue that there is no error in the decision and that no appellate intervention is warranted.

Appeals in Divisional Court are heard by a three-judge panel. Appeals are reviews of the lower court or tribunal's decision. They are not an opportunity for a party to argue its case

again. Appeals are conducted upon the evidence on the record before the lower court or tribunal and new evidence cannot be admitted, unless there are exceptional circumstances.

Which Decisions Can Be Appealed to Divisional Court?

The Divisional Court has jurisdiction to hear civil and statutory appeals. A civil appeal is an appeal from the order of a judge of the Superior Court or a master or case management master, whereas a statutory appeal is an appeal from a decision of an administrative tribunal.

The Court's civil appellate jurisdiction is largely governed by the *Courts of Justice Act*, R.S.O. 1990 c. C.43 ("*CJA*"). The *CJA* provides that the Divisional Court can hear appeals from the following orders of a judge or master:

- final orders of Superior Court judges, provided the appeal is within the monetary jurisdiction set out in s. 19(1.1) and (1.2) of the *CJA*: s. 19(1)(a)
- interlocutory orders of Superior Court judges, provided leave has been granted: s. 19(1)(b) and Rule 62.02
- final orders of a Master: s. 19(1)(c)
- final judgments in Small Claims Court: s. 31
- orders from the Family Court in accordance with s. 21.9.1

The Court also has jurisdiction over certain orders of a Superior Court judge, as provided by statute, such as appeals of:

- a judgment or an order on a motion to oppose confirmation of a report, pursuant to s. 71 of the *Construction Act*, R.S.O. 1990, c. C.30
- refusals to certify a proceeding as a class proceeding or orders decertifying a class proceeding, provided leave has been granted, pursuant to s. 30 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6
- an order made under the *Business Corporations Act*, R.S.O. 1990, c. B.16, pursuant to s. 255

The Divisional Court also hears appeals from the decisions of statutory tribunals where the tribunal's enabling legislation provides for an appeal to the Divisional Court. Examples of these statutory appeals include:

- Appeals from an order of the Landlord Tenant Board, under s. 210 of the *Residential Tenancies Act, 2006,* S.O. 2006, c. 17
- Appeals from proceedings before the Health Professions Appeal and Review Board concerning registration or proceedings before a panel of the Discipline or Fitness to Practise Committee, under s. 70 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, S.O. 1991, c. 18
- Appeals from a prescribed decision or order of the Licence Appeal Tribunal, pursuant to s. 11 of the *Licence Appeal Tribunal Act, 1999,* S.O. 1999, c. 12, Sch. G

- Appeals from a hearing before the License Appeal Tribunal under Part IX of the *Child, Youth and Family Services Act 2017*, SO 2017, c. 14, Sched. 1 pursuant to s. 267(1) of the *Child, Youth and Family Services Act 2017*, SO 2017, c. 14, Sched. 1
- Appeals from a decision of the Social Benefits Tribunal under section 31(1) of the *Ontario Disability Support Program Act*, *1997* S.O. 1997, c. 25 Schedule B
- Appeals from a decision of the Social Benefits Tribunal under section 36(1) of the *Ontario Works Act, 1997*, S.O. 1997, c. 25, Schedule A

Where a statutory appeal is being brought, it is important to identify whether the statute limits the grounds on which an appeal can be made. For instance, the *Residential Tenancies Act, 2006* restricts appeals to those raising questions of law only (see s. 210(1) of the *Residential Tenancies Act, 2006*).

Judicial Review or Appeal?

In addition to hearing civil and statutory appeals, the Divisional Court also hears applications for judicial review. In an application for judicial review, a party asks a three-judge panel of the Divisional Court to change or set aside a decision of an administrative body where the party can show an error was made that warrants action by the Court.

It is important to distinguish between appeals and judicial review, since bringing the matter in the wrong manner may result in dismissal of the proceeding. Judicial reviews are generally not available where a statutory right of appeal exists and has not already been exhausted. If the decision you seek to challenge is made under legislation that provides for an appeal to Divisional Court, then it is improper to seek review of that decision in the form of judicial review. If the statutory right of appeal is limited, then a right of review is not precluded in relation to other aspects of the decision where no right of appeal exists.

For example, decisions made by the Landlord & Tenant Board under the *Residential Tenancies Act, 2006*, are subject to an appeal on questions of law to the Divisional Court pursuant to s. 210(1). Thus, where you seek to have a court review the decision of the Landlord & Tenant Board, it should be brought as an appeal on questions of law. A right of review is not precluded in relation to other aspects of the decision not subject to appeal (e.g., questions of fact and questions of mixed fact and law).

When to Bring an Appeal

The procedures for appeals to Divisional Court are largely set out in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Appeals must generally be brought within **30 days** after the date the order was made, unless a statute or rule provides otherwise: see Rule 61.04(1). An appeal is started by serving and filing a Notice of Appeal as discussed below.

If the appeal requires leave to appeal, then different timelines for the appeal will apply. This is also discussed below.

If a board or tribunal has an internal mechanism for review, then all means of review should be exhausted before the appeal is brought. If these internal mechanisms are not exhausted, then the appeal may be considered “premature” and may be dismissed until review is sought from the board or tribunal.

Final & Interlocutory Orders

Section 19(1)(a) of the *CJA* provides that the Court may hear an appeal from a final order of a judge of the Superior Court, provided it is in the monetary limit as set out in ss. 19(1.1) and (1.2):

> (1.1) If the notice of appeal is filed before October 1, 2007, clause (1) (a) applies in respect of a final order,
>
> (a) for a single payment of not more than $25,000, exclusive of costs;
>
> (b) for periodic payments that amount to not more than $25,000, exclusive of costs, in the 12 months commencing on the date the first payment is due under the order;
>
> (c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or
>
> (d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge or jury indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b).
>
> (1.2) If the notice of appeal is filed on or after October 1, 2007, clause (1)(a) applies in respect of a final order,
>
> (a) for a single payment of not more than $50,000, exclusive of costs;
>
> (b) for periodic payments that amount to not more than $50,000, exclusive of costs, in the 12 months commencing on the date the first payment is due under the order;
>
> (c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or
>
> (d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge or jury indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b).

An order will be final if it determines the subject matter in dispute in the litigation, or if it conclusively disposes of an issue raised as a defence and "thereby deprive[s] the defendant of a substantive right which could be determinative of the entire action": *Stoiantis v. Spirou*, 2008 ONCA 553, at para. 21. On the other hand, an order is interlocutory if it is made in the course of litigation, without actually disposing of the question the parties are disputing.

Examples of interlocutory orders include:

- An order dismissing a motion for summary judgment, unless the motion judge has finally determined a question of law
- An order certifying a proceeding as a class proceeding: see s. 30(2) of the *Class Proceedings Act, 1992*
- An order on a motion for an interlocutory injunction
- An order on a motion to amend pleadings.

If the appeal is of an interlocutory order of a Superior Court judge under s. 19(1)(b) of the *CJA*, then the appellant must ask the Divisional Court for leave to appeal.

Leave to Appeal

Leave to appeal is required where the decision being appealed is an interlocutory order of a judge of the Superior Court and where the provision granting a right to appeal requires leave from the Court, such as an appeal from the Local Planning Appeal Tribunal. Section 133 of the *CJA* also requires leave of the court for appeals from an order made with the consent of the parties and where the appeal is only with respect to a final order as to costs.

To seek leave, the appellant (moving party) must serve and file a "Notice of Motion for Leave to Appeal" (Form 37A). The Notice of Motion for Leave to Appeal should state that the motion will be heard on a date to be fixed by the Registrar and should set out the specific issues that will be raised in hearing the appeal if leave is granted.

Where leave is being sought to appeal an interlocutory order, the motion for leave is heard in writing by a panel of Divisional Court sitting in Toronto. It will be decided according to the test set out in Rule 62.02(4):

> Leave to appeal from an interlocutory order shall not be granted unless,
>
> (a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the panel hearing the motion, desirable that leave to appeal be granted; or
>
> (b) there appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal

involves matters of such importance that, in the panel's opinion, leave to appeal should be granted.

Motions for leave to appeal decisions from a tribunal are heard by a single judge of the Divisional Court. Where there is no test for leave to appeal set out in the legislation, the appellant should look to previous cases where leave has been sought from a decision of the same tribunal.

Materials

Upon delivering a motion for leave to appeal, the moving party must serve and file a factum, a motion record, and transcripts, if required (as discussed below).

The factum should concisely state the facts and law relied on for seeking leave to appeal. Where possible, the factum should set out the specific questions that it is proposed the Divisional Court should answer if leave to appeal is granted. If the motion for leave to appeal is being heard orally, the factum should also include a Certificate of Estimated Time for Argument.

The motion record should be organized, with its pages numbered. It should include the following:

i) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter,
ii) a copy of the notice of motion,
iii) a copy of the order or decision from which leave to appeal is sought, as signed and entered,
iv) a copy of the reasons of the court or tribunal from which leave to appeal is sought with a further typed or printed copy if the reasons are handwritten,
    a. a copy of any order or decision that was the subject of the hearing before the court or tribunal from which leave to appeal is sought,
    b. a copy of any reasons for the order or decision referred to in subclause (a), with a further typed or printed copy if the reasons are handwritten,
v) a copy of all affidavits and other material used before the court or tribunal from which leave to appeal is sought,
vi) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves, and
vii) a copy of any other material in the court file that is necessary for the hearing of the motion.

If the respondent is of the opinion that the motion record is incomplete, the respondent may deliver its own motion record containing:

a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
b) a copy of any material to be used by the responding party on the motion and not included in the motion record.

The respondent may also serve a factum consisting of a concise argument stating the facts and law relied on and, where the motion is being heard orally, a Certificate of Estimated Time for Argument.

It is important to remember that a motion for leave to appeal is not an opportunity to argue the merits of the appeal (i.e., whether the lower decision should be overturned or not). The focus in a motion for leave to appeal should be on showing that there is a good reason for a panel of the Divisional Court to hear the appeal, and the materials filed on a motion for leave should be similarly circumscribed.

Filing and Service

For an appeal of an interlocutory order of a master, the moving party must serve the Notice of Motion for Leave to Appeal on the respondent(s) within **7 days** after the date of the order being appealed. The Notice must then be filed with the Court promptly after completing service, along with proof of service.

For appeals of an interlocutory order of a judge and statutory appeals where leave is required, the moving party must serve the Notice of Motion for Leave to Appeal on the respondents within **15 days** after the date of the order being appealed. The Notice must then be filed with the Court within **5 days** after completing service, along with proof of service.

Within **thirty days** after the filing the Notice of Motion for Leave to Appeal, the moving party must serve the motion record, factum and transcripts, if any, and file three copies, with proof of service, with the Court.

If the respondent decides to deliver its own motion record and factum, they must be served and filed within fifteen days after service of the moving party's motion record, factum and transcripts, in the case of a statutory appeal requiring leave. When the appeal relates to an interlocutory order of a judge, the respondent has twenty-five days to serve and file its materials. Three copies of the motion record and factum, with proof of service, must be filed with the Court.

Both parties are required to file electronic versions of their factums by attaching a USB stick or a compact disc to each copy of their print materials. You are encouraged to include electronic copies of all your materials in addition to your factum, but you must still file the hard copies as well.

Powers of the Court on Appeal

Once the Divisional Court has heard the appeal, it may make any order or decision that ought to or could have been made by the court or tribunal appealed from, order a new trial, or make any other order or decision that is considered just: s. 134(1) of the *CJA*.

If the appeal is being brought from a tribunal, the provision in the tribunal's enabling legislation that allows for an appeal to Divisional Court may also set out the Court's

powers on appeal. For instance, s. 210 of the *Residential Tenancies Act, 2006* provides as follows:

> (4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,
>
> (a) affirm, rescind, amend or replace the decision or order; or
>
> (b) remit the matter to the Board with the opinion of the Divisional Court.
>
> (5) The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper.

Standard of Review

The standard of review is an important feature of any appeal, and should be addressed in the written argument you file with the Court (your factum). The standard of review refers to the degree of scrutiny that the court will apply in examining the substance of the decision being reviewed. On issues of procedural fairness, no standard of review applies.

Civil Appeals

In an appeal of a judge's order, the standards of review have been set out by the Supreme Court of Canada in the case of *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The Supreme Court has said that questions of law are to be reviewed on a standard of correctness. In applying a correctness standard of review, the Court does not defer to the decision of the decision-maker but makes its own determination of the correct outcome.

Questions of fact are to be reviewed on a standard of palpable and overriding error. On this standard, the Court will not interfere with the judge's findings of fact unless the Court can plainly identify the error, and that error is shown to have affected the result.

Questions of mixed fact and law are reviewed on a spectrum between the standard of correctness and the standard of palpable and overriding error. Where the judge has erred in applying a legal principle, the standard of review is correctness. However, where the judge has identified the correct legal principles, but erred in applying them to the evidence, the standard is palpable and overriding error.

Where the judge has made a discretionary decision, the Court will only interfere with that decision in limited circumstances, such as where that decision is so clearly wrong that it amounts to an injustice and where there was no or insufficient weight given to relevant considerations.

Statutory Appeals

Under the new administrative law framework set out in *Canada (Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the same standards of review apply in statutory appeals from an administrative decision as in civil appeals. Unless the applicable standard has been prescribed by statute, it is determined with reference to the nature of the question and the court's jurisprudence on appellate standards of review. In considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, the Court will apply the standard of correctness. Where the appeal includes questions of fact and questions of mixed fact and law, the applicable standard is palpable and overriding error.

Procedural Fairness

Where an appeal challenges the procedural fairness of a decision, the Court will not apply any of the standards of review discussed above. Rather, the Court will consider what level of procedural fairness is necessary in the circumstances and whether that level has been met (see *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817). In determining the appropriate level of procedural fairness, the Court will look at the relevant factors, including:

- The nature of the decision being made and process followed in making it;
- The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- The importance of the decision to the individual or individuals affected;
- The legitimate expectations of the person challenging the decision; and
- The choices of procedure made by the original decision-maker itself.

Starting an Appeal

An appeal is initiated by serving and filing a "Notice of Appeal" (Form 61A) and an "Appellant's Certificate Respecting Evidence" (Form 61C).

Notice of Appeal

The Notice of Appeal briefly sets out:

- The remedy being sought – the order the applicant is asking the Court to make if the applicant is successful;
- The grounds for review – the errors alleged to have been made by the decision-maker and why the Court should make a different decision; and
- A list of the evidence to be relied on – this will usually be limited to the evidence that was before the decision-maker in making its decision. The circumstances under which an applicant can file additional evidence are very limited.

Appellant's Certificate Respecting Evidence

The Appellant's Certificate Respecting Evidence sets out only the portions of the evidence that, in the appellant's opinion, are required for the appeal. The Certificate is intended to minimize the number and length of documents to be filed on an appeal. See Rule 61.05.

Filing and Service

The Notice of Appeal and Certificate should be served on the respondents. In a statutory appeal, these documents should also be served on the administrative decision-maker, which may also be a party to the appeal. Once the appellant has served the Notice of Appeal and Certificate, they may be filed with the Divisional Court, along with proof of service.

Unless otherwise specified, the Notice of Appeal and Appellant's Certificate Respecting Evidence should be served on the respondents within **30 days** after the date of the order being appealed. If being served on the 30th day, the documents should be served before 4:00 p.m.

Once the documents have been served, copies should be filed with the Court within **10 days** after service on all named respondents.

If the appeal requires leave to appeal and leave has been granted, the Notice of Appeal and Appellant's Certificate Respecting Evidence must be served and filed, along with proof of service, within **7 days** of leave being granted.

Once these documents have been filed with the Court, the appellant will be given a file number which should be included in all subsequent materials.

Stays Pending Appeal

Filing a Notice of Appeal does not necessarily mean that the decision being appealed ceases to apply or be effective. If you want the Court to order that the decision be suspended until the Court hears the appeal, you must apply to the Court for what is called a "stay" of the decision. To do so, an appellant must bring a motion to Divisional Court seeking an order staying the original decision so that it does not take effect until the final determination of the appeal.

In certain cases, legislation will provide for an automatic stay of the tribunal or court's decision until the Court determines the appeal. Rule 63.01 provides for automatic stays upon delivery of a Notice of Appeal for the following:

- An order for the payment of money, except a provision that awards support or enforces a support order;
- An eviction order made under the *Residential Tenancies Act, 2006*; and
- An eviction order made under the *Co-operative Corporations Act*, R.S.O. 1990, c C.35

Preparing for an Appeal

Before the appeal is heard, each party is required to prepare several documents that will be served on the other parties and filed with the Court for the judges to read. These documents set out the parties' position on the appeal and provide supporting materials.

In order for the hearing to proceed, the appellant must prepare:

- Transcripts, if necessary;
- An Appellant's Factum;
- An Appeal Book and Compendium; and
- An Exhibit Book

Once the appellant has served and filed these materials, the respondent must prepare:

- A Respondent's Factum;
- A Respondent's Compendium

While Books of Authorities are not strictly required for either party, they are recommended.

Transcripts

Transcripts may be required where a party believes that oral portions of the proceedings below are relevant to the appeal, such as oral testimony of a witness that was significant to the outcome of the decision. Generally, there is no need to produce a transcript of the entire hearing below and a transcript will only be needed for those portions relevant to the appeal. If the judge or decision-maker delivered any rulings orally, they will likely need to be transcribed.

The appellant is responsible for the cost of obtaining the transcript. The transcript must be ordered from the court or tribunal that made the decision being appealed. Within **30 days** of filing the Notice of Appeal, the appellant must obtain a Certificate of Ordering a Transcript for Appeal from the court or tribunal that made the decision being appealed and file it with Divisional Court.

Factums

A factum is a concise summary of a party's case and each party will have to file and serve a factum, which should be no more than 30 pages in length, with each paragraph consecutively numbered.

The appellant's factum should be organized as follows:

- **Part I**: A statement identifying the appellant and the court or tribunal whose decision is being appealed and stating the result in that court or tribunal;

- **Part II**: A concise overview statement describing the nature of the case and the issues;
- **Part III***:* A concise summary of the facts relevant to the issues on the appeal, with reference to transcripts and exhibits where necessary;
- **Part IV***:* A statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- **Part V**: A statement of the order that the Court will be asked to make, including any order for costs;
- **Certificate**: stating (i) that an order under Rule 61.09(2) for the original record and exhibits has been obtained or is not required, and (ii) how much time the party estimates will be required for their oral argument, not including reply;
- **Schedule A**: List of authorities referred to; and
- **Schedule B**: Text of all relevant provisions of statutes, regulations and by-laws.

The respondent's factum should be organized as follows:

- **Part I**: A concise overview statement describing the nature of the case and the issues;
- **Part II***:* A statement of the facts in the appellant's factum that the respondent accepts as correct and those facts with which the respondent disagrees; a concise summary of any additional facts relied on, with reference to transcripts and exhibits where necessary;
- **Part III***:* A statement of the respondent's position on each issue raised by the appellant, immediately followed by a concise statement of the law and authorities relating to that issue;
- **Part IV**: A statement of any additional issues the respondent wishes to raises, followed by a concise argument with reference to the law and authorities on that issue;
- **Part V**: A statement of the order that the Court will be asked to make, including any order for costs;
- **Certificate**: stating (i) that an order under Rule 61.09(2) for the original record and exhibits has been obtained or is not required, and (ii) how much time the party estimates will be required for their oral argument, not including reply;
- **Schedule A**: List of authorities referred to; and
- **Schedule B**: Text of all relevant provisions of statutes, regulations and by-laws.

Appeal Book and Compendium & Respondent's Compendium

Along with the factum, the appellant must also serve and file an Appeal Book and Compendium, which should include all of the documents relevant to the issues raised in the factum. The Appeal Book and Compendium should have consecutively numbered pages and should be organized with numbered tabs, according to the following:

a. a table of contents describing each document by its nature and date;
b. a copy of the notice of appeal and of any notice of cross-appeal or supplementary notice of appeal or cross-appeal;

c. a copy of the order or decision appealed from as signed and entered;
d. a copy of the reasons of the court or tribunal appealed from, with a further typed or printed copy if the reasons are handwritten;
e. if an earlier order or decision was the subject of the hearing before the court or tribunal appealed from, a copy of the order or decision, as signed and entered, and a copy of any reasons for it, with a further typed or printed copy if the reasons are handwritten;
f. a copy of the pleadings or notice of application or of any other document that initiated the proceeding or defines the issues in it;
g. a copy of any excerpts from a transcript of evidence that are referred to in the appellant's factum;
h. a copy of any exhibits that are referred to in the appellant's factum;
i. a copy of any other documents relevant to the hearing of the appeal that are referred to in the appellant's factum;
j. a copy of the certificates or agreement respecting evidence referred to in Rule 61.05;
k. a copy of any order made in respect of the conduct of the appeal; and
l. a certificate (Form 61H) signed by the appellant's lawyer, or on the lawyer's behalf by someone he or she has specifically authorized, stating that the contents of the appeal book and compendium are complete and legible.

The respondent must also serve and file a Respondent's Compendium, which, similarly to the Appeal Book and Compendium, shall be arranged as follows:

a. a table of contents describing each document by its nature and date;
b. a copy of any excerpts from a transcript of evidence that are referred to in the respondent's factum;
c. a copy of any exhibits that are referred to in the respondent's factum; and
d. a copy of any other documents relevant to the hearing of the appeal that are referred to in the respondent's factum.

Exhibit Book

If the appellant is also relying on exhibits entered into evidence in the hearing below, the appellant must serve and file an Exhibit Book. The Exhibit Book should have consecutively numbered pages with numbered tabs organized as follows:

a. a table of contents describing each exhibit by its nature, date and exhibit number or letter;
b. any affidavit evidence, including exhibits, that the parties have not agreed to omit;
c. transcripts of evidence used on a motion or application that the parties have not agreed to omit; and
d. a copy of each exhibit filed at a hearing or marked on an examination that the parties have not agreed to omit, arranged in order by date (or, if there are documents with common characteristics, grouped accordingly in order by date) and not by exhibit number.

Book of Authorities

If a party's factum relies on previous tribunal or court decisions, or other legal texts, then the entire decision or the relevant text (for example, the complete legal article or, if it is a book, the relevant chapter or pages) should be compiled in a Book of Authorities. It is also a good idea to highlight the portions of the case or text that are referred to in the factum. The Book of Authorities should be organized using numbered tabs.

The Book of Authorities is often filed when the appeal is perfected but may be served and filed after the Certificate of Perfection has been completed.

Frequently cited cases are supplied to Divisional Court judges in a Judges' Book of Authorities and do not need to be included in a party's Book of Authorities. The list of cases included in the Judges' Book of Authorities is updated from time to time and can be found on the Divisional Court's website.

Filing & Service

Appellant

An appeal is perfected when the appellant has served and filed all of the necessary materials. Where no transcript is required, the appeal is to be perfected within **30 days** after filing the Notice of Appeal. Where a transcript is required, the appeal must be perfected within **60 days** after receiving notice that the transcript is available.

To perfect the appeal, the appellant must serve on each party the following:

- Appeal Book and Compendium;
- Exhibit Book;
- Transcripts, if required;
- Electronic version of the transcripts, if required; and
- Appellant's Factum.

Once the materials are served, the appellant must file with the court three hard copies and electronic versions of the materials, which should be accompanied by an Affidavit of Service (Form 16B) confirming that it was served on each party.

Once the above materials have been served and filed, the appellant must complete a "Certificate of Perfection". The Certificate of Perfection confirms that all the material required to be filed by the appellant for the hearing of the appeal has been filed and lists the names and contact information of each party. The Certificate of Perfection must be served on each party and filed with the Court.

Once the Certificate of Perfection has been filed, the Registrar will place the appeal on a list for hearing and send the "Notice of Listing for Hearing" (Form 68B) to the parties. The Notice of Listing for Hearing will advise you of the next steps required in order to get a date for the appeal to be heard by the Divisional Court.

Respondent

Once the appellant's materials have been served on the respondent, the respondent will have **60 days** to serve their factum and compendium. The respondent must also file with the court three hard copies and electronic versions of the materials, which should be accompanied by an Affidavit of Service (Form 16B) confirming that it was served on each party.

Dismissal for Delay

If the appellant does not meet the deadlines set out for ordering the transcripts and perfecting the appeal, on **10 days'** notice to the appellant, the respondent may make a motion to the Registrar of Divisional Court to dismiss the appeal for delay. The Registrar can also dismiss the appeal for delay where the appellant has not filed the transcript within **60 days** of it being completed or where the appellant does not perfect the appeal within **one year** of filing the Notice of Appeal. Once notice of dismissal is given, the appellant will have **10 days** to file the missing materials. See Rule 61.13.

The Hearing

Once a hearing date has been set, the parties will have the opportunity to argue the case before a three-person panel of the Divisional Court. The parties can expect the panel to have read the materials filed and be familiar with the issues in the case. The oral hearing is an opportunity to present each party's position on the key issues in the case. It is not an opportunity to recite what is in the factums. The judges may ask questions about the arguments. The hearing begins with the appellant's submissions, after which the respondent(s) will make their oral submissions. The appellant may then make reply submissions, but should only address new matters raised by the respondent.

Appendix: Relevant Legislation

Courts of Justice Act, R.S.O. 1990 c. C.43
Rules of Civil Procedure, R.R.O. 1990, Reg. 194