

ONTARIO SUPERIOR COURT OF JUSTICE

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 made an error that justifies setting aside or varying the decision. The opposing party in the appeal is called the respondent, who may argue that there is no error and that the appellate court should not interfere with the decision.

Appeals in Divisional Court are either heard by a three-judge panel or a single judge of the Divisional Court. 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 based on the evidence that was before the lower court or tribunal. Additional evidence cannot be used except in exceptional circumstances with permission from the Court.

Which Decisions Can Be Appealed to Divisional Court?

The Divisional Court has jurisdiction to hear certain civil and statutory appeals. A civil appeal is an appeal from an order of a judge or associate judge of the Superior Court or a deputy judge of the Small Claims Court. Statutory appeals include appeals from a decision of an administrative tribunal.

The Court's civil appellate jurisdiction is largely governed by the *Courts of Justice Act* (the "CJA"). The CJA provides that the Divisional Court can hear appeals from the following orders of a judge:

- final orders of Superior Court judges, provided the appeal is within the monetary jurisdiction set out in [s. 19\(1.2\)](#) of the CJA: [s. 19\(1\)\(a\)](#);
- interlocutory orders of Superior Court judges, provided leave has been granted: [s. 19\(1\)\(b\)](#) and [r. 62.02](#) of the *Rules of Civil Procedure*;
- final orders of an associate judge: [s. 19\(1\)\(c\)](#);
- final judgments in Small Claims Court: [s. 31](#); and
- orders from the Family Court in accordance with [s. 19\(1\)\(a.1\)](#).

The Court also has appellate jurisdiction over certain orders of a Superior Court judge under other statutes, such as appeals from the following:

- a judgment or an order on a motion to oppose confirmation of a report (under [s. 71](#) of the *Construction Act*);
- an order made under the *Business Corporations Act* (under [s. 255](#) of that Act); and
- a determination made under [s. 46](#) of the *Assessment Act* (under [s. 46\(4\)](#) of that Act).

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

- appeals from final orders of the Landlord and Tenant Board (under [s. 210](#) of the *Residential Tenancies Act, 2006*);
- 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*);
- appeals from a final decision of the Licence Appeal Tribunal (under [s. 11](#) of the *Licence Appeal Tribunal Act, 1999*);
- appeals from a hearing before the License Appeal Tribunal under Part IX of the *Child, Youth and Family Services Act, 2017* (under [s. 267\(1\)](#) of that Act);
- appeals from a decision of the Social Benefits Tribunal under [s. 31\(1\)](#) of the *Ontario Disability Support Program Act, 1997*; and
- appeals from a decision of the Social Benefits Tribunal under [s. 36\(1\)](#) of the *Ontario Works Act, 1997*.

When 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, [s. 210\(1\)](#) of the *Residential Tenancies Act, 2006* restricts appeals from decisions of the Landlord and Tenant Board to those raising questions of law only.

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 way may result in dismissal of the proceeding. Where there is a statutory right of appeal that has not already been pursued, the remedy of judicial review will not necessarily be available. The Divisional Court may, in its discretion, consider an appeal alongside a judicial review application.

When to Bring an Appeal

The procedures for appeals to Divisional Court are mainly set out in the *Rules of Civil Procedure*. Appeals must generally be brought within **30 days** after the date the order was made unless a statute or rule provides otherwise: see [r. 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.

Final & Interlocutory Orders

[Section 19\(1\)\(a\)](#) of the CJA provides for appeals from final orders. The Divisional Court may hear an appeal from a final order of a judge of the Superior Court, provided it is below the monetary limit set out in [s. 19\(1.2\)](#), which includes the following:

- (1.2) ... 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](#).

There are different appeal rights for interlocutory orders. 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 the following:

- an order dismissing a motion for summary judgment, unless the motion judge has finally determined a question of law;
- an order on a motion for an interlocutory injunction; and
- an order dismissing a motion to strike out a statement of claim.

For appeals from an interlocutory order of a Superior Court judge the appellant must first obtain leave to appeal: [s. 19\(1\)\(b\)](#) of the CJA.

Leave to Appeal

Leave to appeal is required where the decision being appealed is an interlocutory order of a judge of the Superior Court or where the provision in the legislation granting a right

to appeal requires leave from the court. [Section 133](#) of the CJA also requires leave of the court to appeal an order made with the consent of the parties and for most costs orders.

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 the appeal if leave is granted.

Motions for leave to appeal are heard in writing by a panel of the Divisional Court sitting in Toronto. Motions for leave to appeal an interlocutory order will be decided according to the test set out in [r. 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 an order or decision of a tribunal under a statute that imposes a leave requirement will be governed by the procedure in the statute. If the statute does not specify a procedure, then the motion for leave will be heard in writing by a panel of the Divisional Court sitting in Toronto.

Leave Motion Materials

After serving and filing a motion for leave to appeal, the moving party must serve and file a Factum, a Motion Record, and transcripts (if required).

The Motion Record should be organized, with its pages numbered. It should include the following:

1. 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;
2. a copy of the notice of motion;
3. a copy of the order or decision from which leave to appeal is sought, as signed and entered;
4. a copy of the reasons for decision of the court or tribunal from which leave to appeal is sought, and any related orders, with a further typed or printed copy if the reasons are handwritten;
5. a copy of all affidavits and other material used before the court or tribunal from which leave to appeal is sought;

6. a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
7. a copy of any other material 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:

1. 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
2. A copy of any material to be used by the responding party on the motion and not included in the Motion Record.

The moving party's 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.

The respondent usually also serves and files a Factum consisting of a concise argument stating the facts and law relied on. If the respondent does not object to the granting of leave, the respondent shall notify the Court and need not provide a Factum.

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 agree to hear the appeal, and the materials filed on a motion for leave should be focused on that issue.

Time to commence Leave Motions:

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.

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

Information about how to file court documents is found in the [Consolidated Practice Direction for Divisional Court Proceedings](#).

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:

1. **The remedy being sought** – the order the appellant is asking the court to make if the appellant is successful;
2. **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
3. **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 appellant 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.

Service and Filing

The Notice of Appeal and Certificate should be served on the respondents. In a statutory appeal from an administrative body, such as a tribunal or board, these documents should also be served on the administrative body, 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.

Time to commence an Appeal

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, they 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.

Information about how to file court documents is found in the [Consolidated Practice Direction for Divisional Court Proceedings](#) as well as other court notices on the court's website. There may be a fee associated with filing your documents. When filing documents electronically, you should ensure that you follow the document naming rules set out in Schedule B of the [Consolidated Practice Direction for Divisional Court Proceedings](#).

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.

Case Management

Once you commence your motion for leave to appeal or your appeal, there are steps that you must take regarding the schedule for the exchange of court documents and any preliminary issues. These steps are set out in the [Consolidated Practice Direction for Divisional Court Proceedings](#).

All proceedings in the Divisional Court are subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in the Divisional Court in a cost-effective and proportional manner.

This means that you may receive written directions from a judge and a judge may direct that there will be a case conference prior to the hearing of your motion or appeal.

As part of this process, the time for the delivery of court materials may be determined or changed as set out in directions from the Court. Other issues may be addressed, as set out in the judge's directions. Directions are normally sent to the parties by email.

Case Center

Case Center is an online document sharing platform which allows the Divisional Court to electronically view your court materials. The Divisional Court uses Case Center for both remote and in-person hearings. After you have brought an appeal or motion for leave to appeal, you will receive an email to register for Case Center and upload your materials. There is no fee to use Case Center.

Filing materials with the court is not the same as uploading to Case Center. In order for the Court to view your materials, you must complete both steps according to the timeline in the [Consolidated Practice Direction for Divisional Court Proceedings](#) or as directed by a judge. Generally, your materials must be uploaded four weeks before your scheduled hearing date.

Information about how to use Case Center is available on the court's website: <https://www.ontariocourts.ca/scj/casecenter/>.

When uploading documents to Case Center, you should ensure that you follow the naming rules set out in Schedule B of the [Consolidated Practice Direction for Divisional Court Proceedings](#).

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 Divisional Court to order that the decision be suspended until the Court hears the appeal, you must request 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*.

Preparing for an Appeal

Before the appeal is heard, each party is required to prepare several court 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 obtain transcripts of the hearing, if necessary, and prepare:

- 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; and
- A respondent’s Compendium.

Transcripts

Transcripts may be required where a party believes that what transpired at the hearing being challenged is relevant to the appeal, such as oral testimony of a witness that was significant to the outcome of the decision. If the judge or decision-maker delivered any rulings orally, they will likely also need to be transcribed. Usually, a transcript is needed.

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. For some

tribunals, the tribunal provides an audio recording and the appellant must arrange for the transcript to be prepared.

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. This certificate must be filed with the Divisional Court.

Factums

A Factum is a concise summary of a party's case. Each party will have to file and serve a Factum, which should be no more than 9,200 words and 40 pages in length, double-spaced, 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 you are asking the court to make, including any order for costs;
- **Certificate:** A statement (i) that an order under [r. 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 raise, 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:** A statement (i) that an order under [r. 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, as follows:

1. a table of contents describing each document by its nature and date;
2. a copy of the notice of appeal and of any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
3. a copy of the order or decision appealed from as signed and entered;
4. a copy of the reasons of the court or tribunal appealed from, with a further typed or printed copy if the reasons are handwritten;
5. 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;
6. a copy of the pleadings or notice of application or of any other document that initiated the proceeding or defines the issues in it;
7. a copy of any transcript of evidence that is referred to in the appellant's Factum;
8. a copy of any exhibits that are referred to in the appellant's Factum;
9. a copy of any other documents relevant to the hearing of the appeal that are referred to in the appellant's Factum;
10. a copy of the certificates or agreement respecting evidence referred to in [r. 61.05](#);
11. a copy of any order made in respect of the conduct of the appeal; and
12. a signed certificate (Form 61H) 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:

1. a table of contents describing each document by its nature and date;
2. a copy of any excerpts from a transcript of evidence that are referred to in the respondent's Factum;
3. a copy of any exhibits that are referred to in the respondent's Factum; and
4. 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:

1. a table of contents describing each exhibit by its nature, date and exhibit number or letter;
2. any affidavit evidence, including exhibits, that the parties have not agreed to omit;
3. transcripts of evidence used on a motion or application that the parties have not agreed to omit; and
4. 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 your 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 provided to the court in one of two ways. First, if the decision is available on a free public website like CanLII.org, you may provide a hyperlink to that decision in your factum.

Alternatively, you may file an electronic book of authorities. In your Book of Authorities, you should provide the full text of all relevant court decisions. You must also include the relevant excerpts from any other sources you rely on. However, if the text is available on a free public website, then you may simply provide a hyperlink to that text in the table of contents of the Book of Authorities without providing the full text.

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

Service and Filing of Appeal Materials

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

- the Appeal Book and Compendium;
- the Exhibit Book;
- the transcripts, if required;
- electronic version of the transcripts, if required; and
- the appellant's Factum.

Once the materials are served, the appellant must file electronic versions of the materials, which should be accompanied by an Affidavit of Service (Form 16B) confirming that it was served on each party. Instructions for filing materials with the court can be found online [here](#). There may be fees associated with filing certain documents.

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 appellant’s materials have been served on the respondent, the respondent must also serve and file electronic versions of the responding materials with the court, which should be accompanied by an Affidavit of Service (Form 16B) confirming that it was served on each party.

The deadlines in the Rules of Civil Procedure are often changed by a case management judge as discussed above under Case Management. The process for providing a proposed schedule is set out in the [Consolidated Practice Direction for Divisional Court Proceedings](#).

Dismissal for Failure to comply with the Court schedule or for Delay: If the appellant does not meet the deadlines for the appellant’s court documents, the respondent may ask the case management judge to dismiss the appeal or, depending on the length of delay, ask the Registrar to dismiss the appeal for delay under [r. 61.13](#).

Standard of Review

The standard of review is an important feature of any appeal and should be addressed in 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.

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*.

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 the standard of palpable and overriding error unless the judge has erred in applying a legal principle, in which case 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 or where there was insufficient weight given to relevant considerations.

Statutory Appeals

Unless the applicable standard has been prescribed by statute, the same standard of review applied in civil appeals of a judge's decision will be applied in statutory appeals of an administrative decision-maker's decision.

Procedural Fairness

On all issues of procedural fairness, the standard of review is correctness. Where an appeal challenges the fairness of the process used to reach a decision, the court will consider what level of procedural fairness is necessary in the circumstances and whether that level has been met. In determining the appropriate level of procedural fairness, the court will look at the relevant factors, including the following:

- the nature of the decision being made and the 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.

The Appeal Hearing

The court office will provide the parties with the appeal hearing date. Once a hearing date has been set, the parties will have the opportunity to make oral submissions about the appeal to three-judge panel or single judge of the Divisional Court hearing the appeal. The parties can expect the presiding judge(s) to have read the court 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 Facts. The judges may ask questions about the arguments of the parties.

The oral hearing begins with the appellant's submissions, after which the respondent(s) will make their oral submissions. The appellant may then make brief reply submissions but should only address new matters raised by the respondent. The appellant should not make reply submissions if they repeat arguments made during the appellant's initial submissions. The presiding judge(s) direct(s) the conduct of the hearing, and the hearing may proceed in a manner that is different from what is described above.

Powers of the Divisional Court on Appeal

Once the Divisional Court has heard an appeal, it may decide to 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 hearing, 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.

As set out above, the appellant should include the order that they are requesting in their notice of appeal and in their factum.

The Decision

Motions for leave to appeal are heard in writing and the decision is released to the parties in writing.

For appeals, the parties may receive an oral decision from the panel or single judge on the day of the hearing. Otherwise, the decision will be reserved and released to the parties at a later date in writing.

Appendix: Relevant Legislation and Links

Statutes and Regulations

[Assessment Act, R.S.O. 1990, c. A.31](#)

[Business Corporations Act, R.S.O. 1990, c. B.16](#)

[Child, Youth and Family Services Act 2017, SO 2017, c. 14, Sched. 1](#)

[Consolidated Practice Direction for Divisional Court Proceedings](#)

[Construction Act, R.S.O. 1990, c. C.30](#)

[Co-operative Corporations Act, R.S.O. 1990, c. C.35](#)

[Courts of Justice Act, R.S.O. 1990 c. C.43](#)

[Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, S.O. 1991, c. 18](#)

[Licence Appeal Tribunal Act, 1999, S.O. 1999, c. 12, Sched. G](#)

[Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched. B](#)

[Ontario Works Act, 1997, S.O. 1997, c. 25, Sched. A](#)

[Residential Tenancies Act, 2006, S.O. 2006, c. 17](#)

[Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

Cases

[Housen v. Nikolaisen, 2002 SCC 33, \[2002\] 2 S.C.R. 235](#)

[Stoiantis v. Spirou, 2008 ONCA 553](#)

Forms

[Affidavit of Service \(Form 16B\)](#)

[Appellant's Certificate Respecting Evidence \(Form 61C\)](#)

[Certificate of Completeness of Appeal Book and Compendium \(Form 61H\)](#)

[Notice of Appeal \(Form 61A\)](#)

[Notice of Listing for Hearing \(Form 68B\)](#)

[Notice of Motion for Leave to Appeal \(Form 37A\)](#)