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COURT OF APPEAL ACT

COURT OF APPEAL RULES PRACTICE NOTES

1. The *Court of Appeal Act*, SNL 2017, c.C-37.002 came into force on January 1, 2018. As a result, the Court has prepared a new set of Practice Notes which will be effective upon publication.
2. Accordingly,
 - (a) all Practice Notes issued by the Supreme Court of Newfoundland and Labrador, Court of Appeal before this publication no longer apply to proceedings in the Court of Appeal, and
 - (b) the following Practice Notes are issued pursuant to rule 4 of the *Court of Appeal Rules*, NLR 38/16.
3. The Index preceding the individual Practice Notes is provided for guidance but does not form part of the Practice Notes.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-01**

CONTENTS OF NOTICE OF APPEAL

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 8
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

In the past, the notice of appeal included a requirement to list the “grounds” of the appeal. Over time, this has led to the submission of notices with extensive “boiler plate” grounds which are of limited use for purposes of understanding the nature of the appeal. As a result, the rule has been changed to require a summary of what the appeal is about and what the issues are.

This approach is intended to encourage meaningful notice to the other parties. This is necessary, among other reasons, to assist opposing parties in determining whether they wish to file a notice of cross-appeal.

As a result of this change in approach, with the focus on what the appeal is about and what the issues are, stating the basis for the appeal, that is, how the court appealed from erred, may be reserved until drafting of the factum. This eliminates the necessity of seeking to amend the notice of appeal to add or reword grounds of appeal as was the case under the former Rules.

Practice Note

1. The notice of appeal requires counsel to focus on what the appeal is about by summarizing the subject matter and setting out the issues which form the basis for the appeal. Care should be taken to draft the document so as to give the opposing party as clear notice as possible early in the appeal process.
2. Section (4) of Form 1 provides a list of particulars which must be considered and, where appropriate, included in the notice of appeal.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-02**

LEAVE TO APPEAL

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rules 8, 33 to 35, and 42
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The Rules have been amended to remove the requirement for leave to appeal with respect to: (1) interlocutory orders (now called “uncompleted matters”); and (2) orders as to costs only. The most substantial change is the manner of dealing with appeals in uncompleted matters. Under the former Rules, it was often uncertain whether an appeal was, in fact, interlocutory or final. In addition, in the vast majority of situations, it was most convenient and expeditious to hear the application for leave at the same time as the appeal, thereby negating the usefulness of the leave requirement. Also in the vast majority of cases, leave was granted.

Accordingly, the rules committee determined that it would be more practical to allow a party to appeal an order in an uncompleted matter without having to obtain leave. There is a presumption that the appellant has good reason for proceeding before the matter is completed in the court appealed from. Consequently, the notice of appeal must include reference to the uncompleted status of the matter and the reason for proceeding at the time (Form 1(4)(b)).

In addition, the rules committee recognized that there may be some circumstances in which an appeal in an uncompleted matter should not proceed until the trial has been completed. Accordingly, rule 35 authorizes an opposing party to apply to have the notice of appeal in an uncompleted matter struck on the basis of prejudice, inconvenience, inefficient use of judicial resources, or for other good reason. The effect would be to delay the appeal until the trial has been completed, without prejudice to the appellant to raise the same issue on a subsequent appeal.

Leave is still required under the new rules where

- (1) required by statute, such as the *Class Actions Act* (rule 33),
- (2) the order under appeal is a consent order (rule 34), and
- (3) an order regarding staying the enforcement of an order under appeal has been made by the Supreme Court of Newfoundland and Labrador (rule 42(4)).

Practice Note

1. Leave to appeal an interlocutory order was rarely denied under the former Rules. This indicates that counsel carefully considered whether it was appropriate to appeal before the trial was completed. It is expected that the same care will be taken under the new Rules. That is, in deciding to bring an appeal in an uncompleted matter or in challenging such an appeal under rule 35, it is expected that counsel will carefully consider the merits of taking action either to commence an appeal or to launch a challenge to that procedure. Fairness and the orderly and expeditious administration of justice must be the focus.
2. Rule 8 requires that a notice of appeal in an uncompleted matter must be filed within ten days after the order or decision appealed from has been filed. Where the court appealed from does not provide for filing an order, the ten day limitation period begins to run seven days after the decision is made.
3. Where leave to appeal is required by statute, rule 33 sets out the procedure. The leave application will be heard separately from the appeal unless the Court, on application or of its own motion, orders that leave and the appeal be heard together. In the latter case, submissions on leave must be included in the appeal factum. Where leave is heard before the appeal, the procedure set out in rule 33(3) applies. Counsel should note the time frames set out in the rule.
4. Under rule 34, where the order under appeal is a consent order, leave to appeal is required. The procedure to follow is set out in rule 30 which deals with applications generally.

5. Leave that may be necessary where a party seeks a stay of enforcement of an order under appeal is discussed in Practice Note CAPN No. 2018-07 dealing with stays.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-03**

APPEALS INVOLVING CHILDREN

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 9
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

Particular concerns arise when an appeal involving children is delayed. The child's circumstances may have changed since the time of the original judgment such that any variation on appeal, even if legally justified on the basis of the trial record, might be counterproductive to the current interests of the child.

It is necessary, then, that parties avoid delay in the appeal process, and provide current information regarding a child, where appropriate.

Practice Note

1. Counsel involved in an appeal from an order affecting the interests of a child should familiarize themselves with the provisions of rule 9, and should comply with its letter and spirit.
2. Rule 9 applies to all appeals and any related proceeding where the interests of a child may be directly affected by the outcome. This includes, but is not limited to, appeals involving
 - (a) custody,
 - (b) access,
 - (c) protective intervention for a child,
 - (d) guardianship of a child or the estate of a child,
 - (e) child support,
 - (f) possession of a matrimonial home,
 - (g) application of a domestic contract, and
 - (h) change of a child's name.

3. Counsel should strive to work cooperatively to perfect the appeal and should take all steps needed to expedite

- (a) the preparation of any necessary transcripts, and
- (b) filing of the appeal book and factums,

notwithstanding that time permitted under the Rules has not expired.

4. Cases in which rule 9 is engaged must be given priority. For example, counsel should

- (a) carefully consider what portions of the transcript are necessary for preparation of the factum and to enable the issues on appeal to be determined,
- (b) undertake any necessary follow-up to ensure timely preparation of any necessary transcript, and
- (c) where appropriate, request preparation of the transcript on an overtime basis.

5. The registrar will monitor the progress of an appeal involving a child. Counsel is expected to provide any assistance and respond to any requests by the registrar in a timely way.

6. Counsel should ensure the provision of current information regarding a child as specified in rule 9, where appropriate. Rule 9(5) authorizes the provision of information regarding any other court proceedings involving a child (Form 9). Rule 9(6) authorizes the provision of current information regarding a child, by affidavit.

7. Further, any orders that have been made relating to a child must be included in the appeal book (rule 52(1)(a)(vii)).

8. In written submissions and at the hearing of an appeal it is important to advise the Court of any concerns regarding identification of parties where children are involved, including any orders or practices followed in the court appealed from.

9. A party may request or the Court of its own motion may direct a prehearing conference where necessary or appropriate to expedite the hearing of an appeal involving a child. Where appropriate, the Court may give interim directions or orders. Where the circumstances warrant, on matters of procedure having no substantive effect, the Court may give directions in the absence of a request or submissions of the parties.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-04**

**CONSTITUTION OF FIVE-JUDGE PANEL FOR POSSIBLE
RECONSIDERATION OF PREVIOUS COURT DECISION**

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 12
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The *Court of Appeal Act* allows three judges to exercise all of the powers of the Court: SNL 2017, c. C-37.002, s. 15. However, the Chief Justice may designate a larger number of judges to sit as a panel in a particular case.

The practice has developed of constituting a panel of five judges where it is apparent that counsel will submit as part of their argument that a previous decision or legal principle stated by the Court should be reconsidered or reversed in accordance with the limited grounds, as discussed in the case law, upon which reconsideration or reversal is permitted.

Counsel do not always make their position with respect to reconsideration or reversal clear in the written argument which they file. Furthermore, argument is sometimes stated in a way that does not expressly invite the Court to reconsider or reverse a previous decision or legal principle, though the result being argued for implicitly would lead to that result.

So that an appropriate panel may be struck, it is important for the Court to know well in advance of the hearing date that reconsideration or reversal of a previous decision or legal principle may be engaged, either expressly or implicitly.

Practice Note

1. When crafting their written submissions, counsel should be alert to the possibility that their arguments, either expressly or implicitly, may involve asking the Court to reconsider or reverse a previous decision or legal principle stated by the Court.
2. At the time of filing their factum, counsel must advise the Court and other parties in writing if they believe that their submissions, including submissions in the alternative, may involve submitting that a previous decision or legal principle stated by the Court should be reconsidered or reversed (rule 12(1)).
3. Where the Chief Justice directs that the appeal will be heard by a panel of 5 judges, every party must file 6 copies of every document (rule 12(2)).
4. Failure to advise the Court and other parties as required by rule 12 may result in a scheduled appeal being delayed until a panel of appropriate size can be constituted and the additional panel members, if any, can familiarize themselves with the appeal materials. In that case, the Court may make an order regarding costs, or a party adversely affected by the failure of a party to notify the Court or the other parties may, on taxation, be able to claim (or offset) the additional costs occasioned by that failure.
5. Where notice of an intention to ask the Court to reconsider or reverse a previous decision or legal principle is given and other parties go to extra expense in filing material with respect to that issue or are required to file additional copies of material and it ultimately appears that it was not appropriate for the Court to address reconsideration or reversal of the previous decision or legal principle in question, that fact may be taken into account on the issue of costs.

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COURT OF APPEAL RULES PRACTICE NOTE – CIVIL PROCEEDINGS CAPN No. 2018-05

SERVICE OF DOCUMENTS

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 28
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The *Court of Appeal Rules* stand alone and are no longer part of the *Rules of the Supreme Court, 1986*. As a result, procedures such as those relating to the service of documents must be found in the new Rules or in practice subsequently developed by the Court.

Practice Note

1. Documents must be served “without delay”.
2. Documents are to be served at the address for service that applied in the court appealed from, unless a new address is provided.
3. A party should retain the necessary proof of service document (rule 28(8)). However, the document should not be filed with the Court unless proof of service becomes an issue during the appeal proceedings.
4. Where necessary, reference may be made to rule 6, which applies when an issue arises that is not covered by the Rules.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-06**

MAKING A REQUEST

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rules 7(k), 8(5)(b), 19(1), 21(1), 30(8), 31(3), 53(5), 57(8), 60(2)
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

In order to facilitate efficient and cost-effective procedures in appeal proceedings, in specified circumstances, the Rules permit a party to make a written request to the Court for directions or an order. A request is intended to take the place of an application, which requires a court appearance.

Parties are encouraged to use the request procedure to the extent possible and appropriate. Making a request will not preclude a party from making an application on the same matter should that prove necessary or appropriate.

A request may be made where permitted by the Rules and, in addition, in circumstances not covered by the Rules where that would be a reasonable procedure acceptable to the Court.

Requests may be made by electronic means by delivering the written request to the Court by email at coaregistry@appeal.court.nl.ca. Parties are asked to use Form 20 whenever making a request or an inquiry necessitating written correspondence with the Court registry.

The Form has three parts: (1) identification of the party and statement of the request; (2) the Court’s response; and (3) a reply to the Court’s response where that is necessary.

Copies of a request should be delivered to other parties so that they have notice and are kept informed about the progress in carrying forward the appeal.

Practice Note

1. A request is made by delivering a written request to the Court registry. A copy should be delivered to the other parties so that they have notice of the request.
2. The Rules set out circumstances when a request is an option for proceeding. However, a party may use the request procedure in circumstances not covered by the Rules where that would be a reasonable procedure and is accepted by the Court.
3. A written request to the Court shall be made on Form 20. Unless the Court otherwise directs, the Form may be filed by electronic means at coaregistry@appeal.court.nl.ca.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-07**

STAYING AN ORDER PENDING APPEAL

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 42
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

Filing a notice of appeal does not operate to stay the enforcement of an order under appeal, except in specialized proceedings pursuant to a statute, such as in bankruptcy. A party wishing to stay the enforcement of the order pending appeal must make an application. There are two options: (1) an application to the Court of Appeal, or (2) an application in the Supreme Court of Newfoundland and Labrador.

Practice Note

1. A party seeking to stay the enforcement of an order under appeal must make a choice to apply to either the Court of Appeal or the Supreme Court of Newfoundland and Labrador.
2. If a party chooses to apply directly to the Court of Appeal for a stay (option 1), and the application is heard by a single judge, a party may seek leave of the Chief Justice to have the matter reheard by a panel of judges (rule 31).
3. Where the Court of Appeal has made an order granting or refusing a stay, and there is a change in circumstances, a party may apply for a review of the order based on that change.
4. If an application to stay the enforcement of an order under appeal is made in the Supreme Court of Newfoundland and Labrador (option 2), that decision may be *appealed* to the Court of Appeal. In that case, *leave to appeal* is required.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-08**

COURT CALENDAR – DESIGNATED HEARING DAYS

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 30(7)
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The Court has had a long-standing practice of designating two consecutive weeks out of each month, from the beginning of September to the end of the following June, to be the period during which appeals will normally be heard.

In addition, two days per month during the same period are designated for the hearing of applications.

This practice enables the parties to anticipate an appropriate schedule for having matters heard by the Court. However, the schedule does not preclude the Court from setting appeals or applications to be heard outside the designated times where necessary or appropriate.

Practice Note

1. The Court will, prior to April 30th in each year, prepare and issue a sitting schedule which shall designate applications days, hearing days and public holidays for the next Court year commencing on the first Monday of September following Labour Day and ending on the Friday nearest the 30th day of the following June.

2. The Court will designate two consecutive weeks out of each month, from the beginning of September to the end of the following June, to be the period during which appeals will normally be heard.

3. The days in each month for the hearing of applications shall be

(a) every second Tuesday beginning with the Tuesday in September following Labour Day to the Tuesday nearest the 15th day of December, and

(b) every second Tuesday beginning with the Tuesday nearest the 10th day of January to the Tuesday nearest the 30th day of June,

unless any such Tuesday is a public holiday, in which case the next following regular Court day will be the designated applications day.

3. The designated schedule does not preclude setting the hearing of an appeal or an application on a day outside the designated schedule where directed or ordered by a judge.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-09**

SETTING THE DATE FOR HEARING AN APPEAL

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 19
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

With a view to reducing costs to litigants by eliminating unnecessary court appearances on routine matters, a party may request that a date be set for the hearing of an appeal, without the need for an application.

In some cases following perfection of an appeal, the parties will delay making a request to set a date for a hearing. While parties may have legitimate reasons for so doing, the Court is concerned that there may be other cases, especially in family matters, where the public interest in the timely administration of justice may not be served by delay.

Even though there are mechanisms within the Rules for dealing with inactive cases through deemed abandonment (rule 17) and failure to proceed with an appeal (rule 16), the Court may adopt a shorter time frame to ensure that cases that are perfected and awaiting a hearing can be advanced, if it is appropriate to do so.

Practice Note

1. Under rule 19(1), a party may obtain a date for the hearing of an appeal without the need for an application. A request is made in writing using Form 6. The following criteria, listed on the Form, must be satisfied:

- (a) all factums, the appeal book, and transcript as required by rule 47 are filed;
- (b) the direction of the Court is not required on any matter before a date is set; and
- (c) there is no circumstance requiring a court appearance.

2. Absent special considerations, the date requested should fall within two months after the request is made.

3. Parties are encouraged to determine, by reference to the Court's published calendar of sitting dates, mutually acceptable dates during the following two months when the parties would be available to appear on the appeal.

4. If necessary, the registrar may attempt to contact the parties to confirm an acceptable date for the hearing of the appeal. If the registrar does not receive a reply from the parties within 3 days of having attempted to contact them, the registrar may proceed to set a date for the hearing in accordance with the requesting party's proposal.

5. The registrar may convene a conference call with all parties, with or without the participation of the Chief Justice or his or her designate, to resolve scheduling arrangements.

6. The registrar may decline to set a date in accordance with this procedure and require that an application using Form 7 be made to the Court where

- (a) it appears that any of the conditions in Form 6 is not satisfied,
- (b) one of the parties objects to setting a date without an application being made,
- (c) the registrar concludes that for any other reason an application should be made.

7. If the registrar sets a date under rule 19(1), the parties will be notified in writing that the appeal will be heard on that date.

8. Parties are encouraged to set hearing dates by means of a request rather than an application.
9. Where a party unnecessarily or unreasonably requests that a date be set by means of the application procedure, the presiding judge may take that fact into consideration in deciding to award costs of the application against that party.
10. A taxing master may take into consideration whether an application to set a date was unnecessarily or unreasonably made in deciding to deny costs of such application to a party who is otherwise entitled to costs following an appeal.
11. In the absence of good reasons to the contrary, an appellant will be expected to request or apply for a date for the hearing of the appeal within 60 days after the respondent's factum is filed.
12. Where 60 days have elapsed since the filing of the respondent's factum, the registrar may contact the parties to inquire as to the reasons for not requesting a hearing date and may require that the reasons be stated in writing.
In the absence of good reasons, the registrar, on the instructions of the Chief Justice, may give notice to the parties that the matter will be called at a subsequent applications date for a judge to determine whether a hearing date should nevertheless be set.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-10**

**DOCUMENTS SUBMITTED AFTER HEARING DATE IS SET
OR REPLACING MATERIALS FILED EARLIER**

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rules 26 and 56
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

In order for counsel and the panel assigned to an appeal to have sufficient opportunity to prepare for the hearing, it is essential that all materials be filed in a timely manner.

It is also important for the Court and parties to consider all relevant judicial authority.

To ensure that the panel and the parties have reference to the correct materials in preparing for a hearing, where replacement materials are filed, it is essential that the Court and the other parties be clearly advised in a timely manner.

Practice Note

1. After a hearing date has been set for an appeal, the registry will mark as received, but will not file, a document subsequently delivered to the Court. The panel assigned to the appeal will determine the extent to which the document may be used for purposes of the appeal.
2. Where a relevant judicial decision becomes available after the hearing date has been set for an appeal, the appellant, or another party, should, without delay, deliver one copy of the decision to each other party and 4 copies to the Court with 4 copies of an appropriate covering letter. Unless it is unavoidable, counsel should not wait until the hearing to provide copies of judicial decisions.

3. Where a party submits a document replacing a document filed earlier, a statement must be placed on the cover of the document clearly indicating

- (1) that it is a replacement, and
- (2) identifying the document that it is replacing.

Four copies of an appropriate covering letter should accompany the replacement document delivered to the Court.

4. A party becoming aware of a decision on point that was not cited or referenced in the written submissions or at the hearing should, without delay, deliver one copy of the decision to each party and 4 copies to the Court with 4 copies of an appropriate covering letter.

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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS**

CAPN No. 2018-11

TRANSCRIPT AND AGREED STATEMENT OF FACTS

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rules 46 to 51
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The filing of unnecessary portions of the transcript increases costs, is a waste of resources and unduly delays the time necessary for the appeal process. In the past, in preparation for an appeal, appellant's counsel frequently requested the preparation of, and filed with the Court, the entire transcript of the evidence taken at trial, and in some cases included the submissions of trial counsel and discussions between the trial judge and counsel.

Panels hearing appeals have found that the full transcript is, in most cases, unnecessary for purposes of determining the issues under appeal. Often, even a portion of the transcript is unnecessary. Under rule 47(2) the portion of transcript to be filed is limited to the portion "that is necessary to enable the issues on appeal to be determined". Where the factum does not refer to the transcript, one must question whether any portion of the transcript should be filed.

Rule 46 provides for counsel to obtain the portion of the transcript "necessary to prepare the factum and to enable the issues on appeal to be determined". In order to prepare the factum, counsel may wish to obtain all or a portion of the transcript. However, it does not follow that all or a portion of the transcript should be filed. Once the factum is written, it should be clear whether the whole, a part, or none of the transcript should be filed. It is for this reason that the transcript is to be filed at the same time as the factum.

To ensure that counsel has reviewed the issues discussed in the factum in order to ascertain what portion, if any, of the transcript is required for purposes of determining the appeal, rule 47(2)(b) requires counsel to file a certificate in Form 5.

To avoid the need for a transcript, the option of proceeding by way of an agreed statement of facts drafted for purposes of the appeal is available.

Practice Note

1. Counsel are expected to review and familiarize themselves with the rules respecting the use of transcripts on appeals and to promote their underlying purpose.
2. The appellant is required to obtain a copy of the audio recording from the court appealed from without delay, and to deliver a copy to each party (rule 46(2)).
3. The next step is for the appellant, without delay, to ascertain whether all or a portion of the transcript is necessary in order to prepare the factum and to determine the issues on appeal. Rule 46 sets out the procedure. It should be noted that rule 46(3) requires the appellant to proceed without delay and to provide the other parties with information regarding preparation of a transcript.
4. Under rule 47, the appellant is required to file only the portions of the transcript “necessary to enable the issues on appeal to be determined”. Should the respondent, or another appellant where there is more than one appellant, determine that additional portions of the transcript are required, those portions may be filed with that party’s factum. A certificate comparable to that required to be filed by the appellant applies with the necessary changes.
5. The appellant is also required to file one electronic version of the transcript where a transcript of the entire evidence has been prepared; or, where only part of the transcript has been prepared, one electronic version of the transcript together with one copy of the audio recording (rule 48). “Electronic version” is defined as a version in a format acceptable to the Court. “Transcript” is defined as a printed transcript of the evidence, which does not include submissions by counsel unless they are necessary for determination of the issues under appeal.
6. Counsel are encouraged to make use of an agreed statement of facts, prepared for purposes of the appeal, where appropriate, such as where the appeal engages issues of law without any dispute as to the facts. Where the matter proceeded on an agreed statement of facts in the court appealed from, that document must in any event be filed in the Appeal Book (rule 52(1)(a)(vi)).
7. A party may apply for an order and directions permitting the use of the electronic rather than a paper version of the transcript, or, in appropriate circumstances, the audio recording (rule 49). The Court may, of its own motion, dispense with the preparation and filing of a transcript and order that the appeal proceed using an audio recording of the proceedings in the court or tribunal appealed from.
8. Where at any time it appears to the Court that delays in the preparation of a transcript or delays for any other reason are unexplained, the registrar, on the instructions of the Chief Justice, may set the matter down for a status hearing or a prehearing conference.

B. Gale Welsh
ACTING CHIEF JUSTICE OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

Kathy Blake
REGISTRAR, COURT OF APPEAL OF
NEWFOUNDLAND AND LABRADOR

Jan 26

**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-12**

APPEAL BOOK, FACTUM AND TRANSCRIPT

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rules 52 to 56
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

Rule 56 provides that the appeal book, factum and transcript, are to be filed at the same time. The purpose is to limit the filing of unnecessary documents for purposes of an appeal. Delaying the filing of the appeal book and transcript until the factum has been prepared should result in the submission of only relevant portions of the record.

To facilitate hearing of the appeal and drafting reasons for a decision, compliance with the technical aspects of the Rules is important. While it does not impact content or merit, failure to conform to the technical requirements of the Rules and provide proper indexing, references and citations creates inconvenience and difficulties for the judges. More common failures include:

Filing extensive transcripts without indexing, dating and tabbing or any other means to locate evidence;

Failure to include citations of cases from legal publications in the Index of Authorities, and providing only a CanLII citation;

Improper use of footnotes;

Failure to number the pages of the appeal book;

Failure to use the correct colour of cover for a document;

Failure to place the Index of Authorities after Part V in the factum;

Failure to bind the factum properly;

Failure to file a clean copy of the decision under appeal;

Failure to follow the order for placing documents in the appeal book and factum.

Filing a factum in excess of 40 pages should be necessary only in rare circumstances. Counsel should have good reason for requesting leave to file a factum exceeding the limit.

Practice Note

1. The appeal book and transcript are to be filed at the same time as the factum. This should ensure that only materials necessary for the appeal will be filed.
2. It is important for counsel and their assistants to be familiar with the technical rules for filing the appeal book, factum and transcript (rules 52 to 56). The registry may refuse to accept materials that are not in substantial compliance, resulting in extra expense and time.
3. It is important to deal with the question of costs in the submissions in the factum. If counsel is submitting that costs, either in its favour or against it, should be ordered other than under column 3 of the scale of costs, that should be made clear along with the reasons supporting the request.
4. Where a party wishes to exceed the 40-page limit for written argument imposed by rule 53(1)(e), a request, not an application, should be made to the Chief Justice. See CAPN No. 2018-06 for the relevant procedure. A copy of the request should be provided to the other parties. The request must state the reasons why it is not possible to comply with the 40-page limit.

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COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

Kathy Blake
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**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-13**

FORMAL ORDERS

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 57
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

It is important to avoid delays in filing formal orders. Rule 57 places the responsibility on the successful party to prepare a draft order which is to be provided to the other parties. The other parties are required to respond to the draft without delay. The parties have 30 days within which to provide a draft to the Court. If there are special circumstances making compliance with the rule difficult or inappropriate, the parties may make a request or an application under rule 57(8).

It should not fall to the Court to ensure compliance with rule 57. Nor should it be necessary for the registrar to remind the parties of their responsibility to provide a draft formal order.

Rule 57(6) provides that the Court shall determine and approve the final formal order. Undue and unexplained delay by the parties in filing a draft formal order may result in the Court proceeding to draft and file the order.

Practice Note

1. In accordance with the Code of Professional Conduct and their general duty to act in a timely way under the Rules, counsel are reminded that they are expected to comply with rule 57 without undue delay in the preparation and submission of a draft formal order reflecting the disposition of an appeal.
2. It is expected that a draft formal order will be submitted within 30 days after the Court's judgment is filed unless a written request or application is made under rule 57(8) to extend the time for submitting the draft or to clarify a point of contention.
3. Reference to the nature of a dissent in a judgment is to be included in the order.
4. Where the parties fail to comply with their responsibilities under rule 57, the Court may proceed to prepare and file the formal order.

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Jan 26

**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-14**

APPEARING IN COURT

DATE ISSUED: January 5, 2018
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Practice Note

1. The proper form of address for judges of the Court of Appeal is “Justice”, “Mr. Justice”, “Madam Justice”, or “Chief Justice”, as the case may be.
2. Gowned dress is to be worn by counsel for all appearances in court.
3. The front counsel table is reserved for counsel with the designation Q.C., unless otherwise directed by the Court.

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Kathy Blake
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Jan 26

**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-15**

FREQUENTLY CITED CASES – CIVIL

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 54(3)
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

Rule 54 requires a party to file copies of case authorities. However, where a case is included in a list of “Frequently Cited Cases” in a practice note, a copy should not be included in the Book of Authorities (rule 54(3)). This is because the members of the panel will have copies of those cases, or portions thereof, readily accessible. Providing an additional copy is unnecessary and inefficient.

Appended to this Practice Note is a list of “Frequently Cited Cases – Civil”, in alphabetical order. There is also a list of the same cases arranged by topic. The lists will be reviewed and updated periodically.

It is important to note that the citations refer to specific paragraphs or pages of the case. It is only those paragraphs or pages, together with the headnote, that will be readily accessible to the judges.

The rationale for limiting the copies in this way is that these cases are generally lengthy and the reason they are frequently cited is to state general principles or legal tests. Accordingly, if a party is relying on additional portions of the case, it will be necessary to include a copy in the Book of Authorities.

Practice Note

1. A copy of the paragraphs or pages of cases referenced in the appended list should not be included in the Book of Authorities (rule 53(1)(h)). Where reliance is placed on paragraphs or pages in addition to those cited in the list, it will be necessary to provide a copy.
2. It is essential that the citation, as required under rule 54(1), be included in the Index of Authorities in the factum (rule 53(1)(g)). This Practice Note affects only copying of cases to be filed. It does not alter the requirement for a correct and complete citation.

3. The inclusion of a case, or portions thereof, on the appended list is simply an indication that it is frequently cited and that a copy is readily accessible to the judges.

4. The appended list will be periodically assessed and updated in accordance with the procedure adopted by the Court.

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APPENDIX TO CAPN NO. 2018-15

(1) ALPHABETICAL LIST OF FREQUENTLY CITED CASES – CIVIL

Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61, [2011] 3 S.C.R. 654 - paras. 22-52 (standard of review of tribunal decisions – after *Dunsmuir*)

Archean Resources Ltd. v. Newfoundland, 2002 NFCA 43, 215 Nfld. & P.E.I.R. 124 - paras. 14-32 (statutory interpretation)

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 -paras. 18-43 (procedural fairness - tribunals)

Bracklow v. Bracklow, [1999] 1 S.C.R. 420 - paras. 16-57 (non-compensatory spousal support)

Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 - para. 44 (exceptions to stare decisis)

Cojocaru v. British Columbia Women's Hospital and Health Centre, 2013 SCC 30, [2013] 2 S.C.R. 357 - paras. 14-76 (adequate reasons in civil cases)

Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190 - paras. 43-64 (standard of review of tribunal decisions)

F.H. v. McDougall, 2008 SCC 53, [2008] 3 S.C.R. 41 - paras. 40-50 (balance of probabilities)

Fahey v. Newfoundland (The Law Society of), 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79 - paras. 8-14 (reinstatement of abandoned appeal)

Fahey v. The Law Society of Newfoundland, 2000 NFCA 19 - para. 3 (extension of time to file notice of appeal)

Faryna v. Chorny, [1952] 2 D.L.R. 354 (BCCA) (credibility)

Gordon v. Goertz, [1996] 2 S.C.R. 27 - paras. 9-16 (custody - material change of circumstances); 49-50 (best interests of the child)

H.L. v. Canada (Attorney General), 2005 SCC 25, [2005] 1 S.C.R. 401 - paras 52-76 (palpable and overriding error)

Hickey v. Hickey, [1999] 2 S.C.R. 518 - paras. 10-12 (standard of review of support orders)

Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235 - paras. 1-37 (standard of review in civil cases, not tribunals)

Hryniak v. Mauldin, 2014 SCC 7, [2014] 1 S.C.R. 87 - paras. 23-33 (proportionality)

J. F. Re, 2005 NLCA 34, 247 Nfld. & P.E.I.R. 354 - para. 9 (state-funded counsel in child-protection proceedings)

Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269 - paras. 30-124 (unjust enrichment)

Langor v. Spurrell (1997), 157 Nfld. & P.E.I.R. 301 (C.A.) - paras. 32-34 (standard of review - discretionary decisions)

Layman v. Layman Estate, 2016 NLCA 13, 375 Nfld. & P.E.I.R. 106 - para. 18 (standard of review of Trial Division decisions reviewing tribunal)

Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co., 2016 SCC 37, [2016] 2 S.C.R. 23 - paras. 46-48 (interpretation of a standard form contract is a question of pure law)

Matchim v. BGI Atlantic Inc., 2010 NLCA 9, 294 Nfld. & P.E.I.R. 46 - paras. 93-109 (new trial or substituting decision - factors)

Metal World Inc. v. Pennecon Energy Ltd., 2014 NLCA 10, 346 Nfld. & P.E.I.R. 302 - paras. 4-19 (reconsideration)

Miglin v. Miglin, 2003 SCC 24, [2003] 1 S.C.R. 303 - paras. 64-91 (separation agreements)

Moge v. Moge, [1992] 3 S.C.R. 813 - pages 858-875 (compensatory spousal support)

New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46 - paras. 56-101 (state-funded counsel in child-protection proceedings)

Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 S.C.R. 708 - paras. 11-22 (adequacy of reasons – tribunal decisions)

R. v. Oakes, [1986] 1 S.C.R. 103 - para. 70 (section 1 of the *Charter*)

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 - pages 333-349 (stays and interlocutory injunctions)

Van de Perre v. Edwards, 2001 SCC 60, [2001] 2 S.C.R. 1014 - paras. 9-15 (standard of review of custody orders)

Willick v. Willick, [1994] 3 S.C.R. 670 - paras. 20-25 (support - material change of circumstances)

Young v. Young, [1993] 4 S.C.R. 3 - pages 134-138 (exceptional costs orders)

(2) Topical List of Frequently Cited Cases – Civil

Tribunal Appeals

Standard of review of tribunal decisions - after Dunsmuir: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 - paras. 22-52

Standard of review of tribunal decisions: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 - paras. 43-64

Procedural fairness – tribunals: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 - paras. 18-43

Standard of review of Trial Division decisions reviewing tribunal: *Layman v Layman Estate*, 2016 NLCA 13, 375 Nfld. & P.E.I.R. 106 - para. 18

Adequacy of reasons – tribunal decisions: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 - paras. 11-22

Supreme Court of Newfoundland and Labrador (General) Appeals

Standard of review in civil cases, not tribunals: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 - paras. 1-37

Palpable and overriding error: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401 - paras 52-76

Standard of review - discretionary decisions: *Langor v. Spurrell* (1997), 157 Nfld. & P.E.I.R. 301 (C.A.) - paras. 32-34

Supreme Court of Newfoundland and Labrador (Family) Appeals

Custody - material change of circumstances; best interests of the child: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 - paras. 9-16; paras. 49-50

Non-compensatory spousal support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 - paras. 16-57

Compensatory spousal support: *Moge v. Moge*, [1992] 3 S.C.R. 813 - pages 858-875

Standard of review of support orders: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 - paras. 10-12

Unjust enrichment: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 - paras. 30-124

Separation agreements: *Miglin v. Miglin*, 2003 SCC 24, [2003] 1 S.C.R. 303 - paras. 64-91

Court of Appeal

Reinstatement of abandoned appeal: *Fahey v. Newfoundland (The Law Society of)*, 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79 - paras. 8-14

Extension of time to file notice of appeal: *Fahey v. The Law Society of Newfoundland*, 2000 NFCA 19 - para. 3

State-funded counsel in child-protection proceedings: *J. F., Re*, 2005 NLCA 34, 247 Nfld. & P.E.I.R. 354 - para. 9

State-funded counsel in child-protection proceedings: *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 - paras. 56-101

Reconsideration: *Metal World Inc. v. Pennecon Energy Ltd.*, 2014 NLCA 10, 346 Nfld. & P.E.I.R. 302 - paras. 4-19

Stays and interlocutory injunctions: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 - pages 333-349

Standard of review of custody orders: *Van de Perre v. Edwards*, 2001 SCC 60, [2001] 2 S.C.R. 1014 - paras. 9-15

Support - material change of circumstances: *Willick v. Willick*, [1994] 3 S.C.R. 670 - paras. 20-25

General

Statutory interpretation: *Archean Resources Ltd. v. Newfoundland*, 2002 NFCA 43, 215 Nfld. & P.E.I.R. 124 - paras. 14-32

Exceptions to stare decisis: *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331 - para. 44

Adequate reasons in civil cases: *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 - paras. 14-76

Balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 - paras. 40-50

Credibility: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA)

Proportionality: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 - paras. 23-33

New trial or substituting decision – factors: *Matchim v. BGI Atlantic Inc.*, 2010 NLCA 9, 294 Nfld. & P.E.I.R. 46 - paras. 93-109
Section 1 of the Charter: *R. v. Oakes*, [1986] 1 S.C.R. 103 - para. 70

Exceptional costs orders: *Young v. Young*, [1993] 4 S.C.R. 3 - pages 134-138

Interpretation of a contract: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23 - paras. 46-48

Jan 26

COURT OF APPEAL CRIMINAL APPEAL RULES (2002)
PRACTICE NOTE – CRIMINAL PROCEEDINGS
CAPN No. 2018-16

FREQUENTLY CITED CASES – CRIMINAL

DATE ISSUED: January 5, 2018
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 27 of the *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)* and rule 4 of the *Court of Appeal Rules*, NLR 38/16.

Background

Rules 14 and 15 of the *Court of Appeal Criminal Appeal Rules (2002)* require a party to file copies of case authorities. However, where a case is included in a list of “Frequently Cited Cases” in a practice note, it is unnecessary to include a copy in the Book of Authorities. This is because the members of the panel will have copies of those cases, or portions thereof, readily accessible. Providing an additional copy is unnecessary and inefficient.

Appended to this Practice Note is a list of “Frequently Cited Cases – Criminal”, in alphabetical order. There is also a list of the same cases arranged by topic. The lists will be reviewed and updated periodically.

It is important to note that the citations refer to specific paragraphs or pages of the case. It is only those paragraphs or pages, together with the headnote, that will be readily accessible to the judges.

The rationale for limiting the copies in this way is that these cases are generally lengthy and the reason they are frequently cited is to state general principles or legal tests. Accordingly, if a party is relying on additional portions of the case, it will be necessary to include a copy in the Book of Authorities.

Practice Note

1. A copy of the case referenced in the appended list should not be included in the Book of Authorities. Where reliance is placed on paragraphs or pages in addition to those cited in the list, it will be necessary to provide a copy.
2. It is essential that the citation be included in the Index of Authorities in the factum. This Practice Note affects only copying of cases to be filed. It does not alter the requirement for a correct and complete citation.
3. The inclusion of a case, or portions thereof, on the appended list is simply an indication that it is frequently cited and that a copy is readily accessible to the judges.
4. The appended list will be periodically assessed and updated in accordance with the procedure adopted by the Court.

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COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

Kathy Blake
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APPENDIX TO CAPN NO. 2018-16

(1) Alphabetical List of Frequently Cited Cases – Criminal

Palmer v. The Queen, [1980] 1 S.C.R. 759 - page 775 (test for the admission of fresh evidence on appeal)

R. v. Adams, 2011 NLCA 3, 303 Nfld. & P.E.I.R. 247 - paras. 7-8 (leave to appeal from summary conviction appeal)

R. v. Anthony-Cook, 2016 SCC 43, [2016] 2 S.C.R. 204 - paras 34-32 and 50-60 (when can a court reject a joint submission on sentencing)

R. v. Babos, 2014 SCC 16, [2014] 1 S.C.R. 309 - paras. 31-47 (stay of proceedings for abuse of process)

R. v. Biniaris, 2000 SCC 15, [2000] 1 S.C.R. 381 - para. 18 (right to appeal from a substituted verdict); para. 23 (application of a legal standard is a question of law); paras. 36-42 (test for unreasonable verdict)

R. v. Cody, 2017 SCC 31 - paras. 20-39, 44-48, 63-65, 67-71 (unreasonable delay)

R. v. Côté, 2011 SCC 46, [2011] 3 S.C.R. 215 - paras. 45-89 (test for exclusion of evidence under s. 24(2) of the *Charter*)

R. v. Dinardo, 2008 SCC 24, [2008] 1 S.C.R. 788 - paras. 24-35 (duty to give reasons)

R. v. Gagnon, 2006 SCC 17, [2006] 1 S.C.R. 621 - para. 10 (credibility findings overturned only if a palpable and overriding error is shown); paras. 13-16, 20-23 (duty to give reasons)

R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353 - paras. 28-44 (test for detention); paras. 71-128 (test for exclusion of evidence under s. 24(2) of the *Charter*)

R. v. Hillier, 2016 NLCA 21, 377 Nfld. & P.E.I.R. 121 - para. 7 (test for granting leave to appeal sentence)

R. v. Hutchings, 2012 NLCA 2, 316 Nfld. & P.E.I.R. 211 - para. 84 (applying the totality principle when sentencing)

R. v. J.M.H., 2011 SCC 45, [2011] 3 S.C.R. 197 - paras. 24-39 (what questions are “questions of law alone”)

R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631 - paras. 46-117 (unreasonable delay)

R. v. Khan, [1990] 2 S.C.R. 531 - pages 538 (when can a person give evidence under oath); 546-548 (test for the admissibility of hearsay evidence)

R. v. Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089 - paras. 36-55 (when a court of appeal may intervene in a sentence appeal); paras. 56-67 (the relevance of sentencing ranges)

R. v. M. (C.A.), [1996] 1 S.C.R. 500 - para. 90 (when a court of appeal may intervene in a sentence appeal)

R. v. McDonnell, [1997] 1 S.C.R. 948 - para. 16 (when a court of appeal may intervene in a sentence appeal)

R. v. Meer, 2016 SCC 5 - all (ineffective assistance of trial counsel)

R. v. Mian, 2014 SCC 54, [2014] 2 S.C.R. 689 - paras. 29-60 (new issues on appeal)

R. v. Murphy, 2011 NLCA 16, 304 Nfld. & P.E.I.R. 266 - para. 27 (breaches of probation - sentencing)

R. v. Nixon, 2011 SCC 34, [2011] 2 S.C.R. 566 - paras. 18-32 (review of prosecutorial discretion); paras 33-54 (stay of proceedings for abuse of process)

R. v. Oakes, [1986] 1 S.C.R. 103 - para. 70 (s. 1 of the *Charter*)

R. v. O'Connor, [1995] 4 S.C.R. 411 - paras. 59-83 (abuse of process at common law and under s. 7 of the *Charter*); 97-187 (process

for getting disclosure in possession of third parties)

R. v. Oland, 2017 SCC 17, [2017] 1 S.C.R. 250 - all (judicial interim release in an appellate court)

R. v. Oxford, 2010 NLCA 45, 299 Nfld. & P.E.I.R. 327 - para. 61 (when can a court reject a joint submission on sentencing)

R. v. Proulx, 2000 SCC 5, [2000] 1 S.C.R. 61 - para. 127 (when is it appropriate to impose a conditional sentence order)

R. v. R.E.M., 2008 SCC 51, [2008] 3 S.C.R. 3 - paras. 8-36 (duty to give reasons)

R. v. R.P., 2012 SCC 22, [2012] 1 S.C.R. 746 - paras. 9-10 (test for unreasonable verdict)

R. v. Ryan, 2008 NLCA 42, 277 Nfld. & P.E.I.R. 167 - para. 9 (test for appointment of counsel under s. 684 of the *Criminal Code*)

R. v. Sheppard, 2002 SCC 26, [2002] 1 S.C.R. 869 - para. 55 (duty to give reasons)

R. v. Shropshire, [1995] 4 S.C.R. 227 - paras. 38-42 (sentencing and the right to silence); paras. 46-48 (when a court of appeal may intervene in a sentence appeal)

R. v. Stinchcombe, [1991] 3 S.C.R. 326 - pages 336-348 (Crown's disclosure obligations)

R. v. Suberu, 2009 SCC 33, [2009] 2 S.C.R. 460 - paras. 21-25 (test for detention); para. 41 (meaning of "without delay" in s. 10(b) of the *Charter*)

R. v. W. (D.), [1991] 1 S.C.R. 742 - pages 757-758 (assessing evidence when accused testifies)

R. v. Yebes, [1987] 2 S.C.R. 168 - pages 180-190 (test for unreasonable verdict)

(2) Topical List of Frequently Cited Cases – Criminal

Appellate Procedure in Criminal Cases

New issues on appeal: *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689 - paras. 29-60

Test for the admission of fresh evidence on appeal: *Palmer v. The Queen*, [1980] 1 S.C.R. 759 - page 775

Test for appointment of counsel under s. 684 of the *Criminal Code*: *R. v. Ryan*, 2008 NLCA 42, 277 Nfld. & P.E.I.R. 167 - para. 9

Leave to appeal from summary conviction appeal: *R. v. Adams*, 2011 NLCA 3, 303 Nfld. & P.E.I.R. 247 - paras. 7-8

Leave to appeal sentence: *R. v. Hillier*, 2016 NLCA 21, 377 Nfld. & P.E.I.R. 121 - para. 7

Ineffective assistance of trial counsel: *R. v. Meer*, 2016 SCC 5 - all

Sentencing Issues

When a court of appeal may intervene in a sentence appeal: *R. v. Shropshire*, [1995] 4 S.C.R. 227 - paras. 46-48; sentencing and the right to silence - paras. 38-42

When a court of appeal may intervene in a sentence appeal: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 - para. 90

When a court of appeal may intervene in a sentence appeal: *R. v. McDonnell*, [1997] 1 S.C.R. 948 - para. 16

When a court of appeal may intervene in a sentence appeal: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089 - paras 36-55; relevance of sentencing ranges -paras. 56-67

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Duty to give reasons: *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621 - paras. 13-16 and 20-23

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Jan 26

**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS
CAPN No. 2018-17**

PRINT SIZE OF CASE AUTHORITIES

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 52, 54
EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

The Court has been receiving copies of judicial decisions that are difficult to read, particularly due to the size of the print. Rule 55 requires specified portions of the factum to be printed in font size 12. A similar rule cannot be applied to the Appeal Book generally since portions of the Book may consist of copies of documents entered as exhibits.

However, copies of electronic versions of judicial decisions could be adjusted for font size before being copied for insertion in the Appeal Book or Authorities. A minimum font size of 12 applied to these documents would facilitate reading and making notes by users of the materials.

Practice Note

Copies of electronic versions of judicial decisions inserted in the Appeal Book or Authorities, including decisions appealed from, shall be in a minimum font size of 12.

B. Gale Welsh
ACTING CHIEF JUSTICE OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

Kathy Blake
REGISTRAR, COURT OF APPEAL OF
NEWFOUNDLAND AND LABRADOR

Jan 26

CITY OF ST. JOHN'S ACT



**ST. JOHN'S MUNICIPAL COUNCIL
NOTICE
ST. JOHN'S HERITAGE DESIGNATION BY-LAW**

TAKE NOTICE that the ST. JOHN'S MUNICIPAL COUNCIL has enacted the following By-Law: St. John's Heritage Designation (85 Military Road, Parcel ID #19756) By-Law

The said By-Law was passed by Council on the 15th day of January, 2018, so as to designate this property as a Heritage Building.

Any person who wishes to view such Regulations may view same at the Office of the City Solicitor of the ST. JOHN'S MUNICIPAL COUNCIL at City Hall, and that any person who wishes to obtain a copy thereof may obtain it at the said office upon the payment of a reasonable charge as established by the ST. JOHN'S MUNICIPAL COUNCIL for such copy.

Dated this 15th day of January, 2018.

CITY OF ST. JOHN'S
Elaine Henley, City Clerk

Jan 26

URBAN AND RURAL PLANNING ACT, 2000

**NOTICE OF REGISTRATION
TOWN OF PORT BLANDFORD
MUNICIPAL PLAN AND
DEVELOPMENT REGULATIONS, 2017**

TAKE NOTICE that the TOWN OF PORT BLANDFORD Municipal Plan Amendment No. 4 and Development Regulations Amendment No. 4, adopted on the 31st day of May 2017, have been registered by the Minister of Municipal Affairs and Environment.

These amendments have changed the zoning of an area of land fronting onto both sides of Southern Shore Road (located east of Clode Sound and south of Route 233) from Residential Rural to Rural Resource to allow for development of a campground.

These amendments come into effect on the day that this notice is published in *The Newfoundland and Labrador Gazette*. Anyone who wishes to inspect a copy of the documents may do so at the Port Blandford Town Office during normal business hours.

TOWN OF PORT BLANDFORD
Vida Greening, Town Clerk

Jan 26

LANDS ACT

**NOTICE OF INTENT, SECTION 7
LANDS ACT, SNL1991 c36 AS AMENDED**

NOTICE IS HEREBY given that an application has been made to the Department of Fisheries and Land Resources, Agriculture and Lands Branch, to acquire title, pursuant to section 7(2) (d) of the said Act, to that piece of Crown lands situated within 15 metres of the waters of Deer Lake, for the purpose of a boathouse and wharf.

The application may intrude on the 15 metre shoreline of the above mentioned water body(s) in various locations. For a detailed map, please see website: <http://www.ma.gov.nl.ca/lands/sec7notifications.html>.

Please note: It may take up to five (5) days from the date of application for details to appear on the website.

Any person wishing to object to the application must file the objection in writing with reasons, within 30 days from the publication of notice on the Department of Fisheries and Land Resources website, Crown Lands, <http://www.ma.gov.nl.ca/lands/index.html>, to the Minister of Fisheries and Land Resources by mail or email to the nearest Regional Lands Office:

- Eastern Regional Lands Office, P.O. Box 8700, Howley Building, Higgins Line, St. John's, NL, A1B 4J6 Email: easternlandsoffice@gov.nl.ca
- Central Regional Lands Office, P.O. Box 2222, Gander, NL, A1V 2N9 Email: centrallandsoffice@gov.nl.ca
- Western Regional Lands Office, P.O. Box 2006, Sir Richard Squires Building, Corner Brook, NL, A2H 6J8 Email: westernregionlands@gov.nl.ca
- Labrador Regional Lands Office, P.O. Box 3014, Station "B", Happy Valley-Goose Bay, NL, A0P 1E0 Email: labradorlandsoffice@gov.nl.ca

(DISCLAIMER: *The Newfoundland and Labrador Gazette* publishes a NOTICE OF INTENT received from the Applicant and takes no responsibility for errors or omissions in the property being more particularly described.)

Jan 26

TRUSTEE ACT

ESTATE NOTICE

IN THE MATTER of the Estate of RALPH GLENDORE CHIPPETT, Late of the City of Corner Brook, in the Province of Newfoundland and Labrador, Retired, Deceased.

In the matter of the Estate of RALPH GLENDORE CHIPPETT, Late of the City of Corner Brook, in the Province of Newfoundland and Labrador, Deceased. All persons claiming to be creditors of or who have any claims or demands upon or affecting the Estate of RALPH GLENDORE CHIPPETT, Late of the City of Corner Brook, in the Province of Newfoundland and Labrador, deceased, are hereby requested to send particulars of the same in writing, duly attested, to the undersigned Solicitors for the Executor of the estate on or before the 1st day of March, 2018 after which date the said Administrator will proceed to distribute the said Estate having regard only to the claims of which he shall then have had notice.

DATED at the City of Corner Brook, in the Province of Newfoundland and Labrador, this 18th day of January, 2018.

POOLE ALTHOUSE
Solicitors for the Administrator
PER: Melissa May

ADDRESS FOR SERVICE:
49-51 Park Street
Corner Brook, NL
A2H 2X1

Tel: (709) 634-3136
Fax: (709) 634-8247

Jan 26

ESTATE NOTICE

IN THE MATTER of the Estate of JANET IDA LORRAINE WHITE, Late of Stephenville, in the Province of Newfoundland and Labrador, Canada, Deceased.

ALL PERSONS claiming to be creditors of or who have any claims or demands either as beneficiaries or next of kin, (by blood, legal adoption or marriage) upon or affecting the Estate of the Late JANET IDA LORRAINE WHITE, the aforesaid Deceased, who died at the Town of Stephenville, Newfoundland and Labrador on or about the 13th day of August, 2017, are hereby requested to send particulars thereof in writing, duly attested, to the undersigned solicitor for the Administrator of the Estate of the said Deceased on or before the 28th day of February, 2018, after which the said Administrator will proceed to distribute the said Estate having regard only to the claims to which he shall then have notice.

DATED at the Town of Stephenville, Province of Newfoundland and Labrador, the 17th day of January, 2018.

STAGG & STAGG LAW OFFICE
Solicitors for the Administrator
PER: Trevor A. Stagg

ADDRESS FOR SERVICE
P.O. Box 214
28 Main Street
Stephenville, NL
A2N 2Z4

Tel: (709) 643-5651
Fax: (709) 643-5369

Jan 26



THE NEWFOUNDLAND AND LABRADOR GAZETTE

**PART II
SUBORDINATE LEGISLATION
FILED UNDER THE STATUTES AND SUBORDINATE LEGISLATION ACT**

Vol. 93

ST. JOHN'S, FRIDAY, JANUARY 26, 2018

No. 4

NEWFOUNDLAND AND LABRADOR REGULATION

NLR 5/18
NLR 6/18



NEWFOUNDLAND AND LABRADOR REGULATION 5/18

Milk Regulations, 1998 (Amendment)
under the
Milk Scheme, 1998
under the
Natural Products Marketing Act

(Filed January 24, 2018)

Under the authority of section 8 of the *Milk Scheme, 1998* and the *Natural Products Marketing Act*, the Dairy Farmers of Newfoundland and Labrador make the following regulations.

Dated at St. John's, January 24, 2018.

John Moores
General Manager
Dairy Farmers of Newfoundland and Labrador

REGULATIONS

Analysis

1. S.22 R&S Minimum price for milk	2. Commencement
---------------------------------------	-----------------

1. Section 22 of the *Milk Regulations, 1998* is repealed and the following substituted:

Minimum price for
milk

22. The minimum price at which milk shall be bought, sold or offered for sale FOB registered processors premises in the province shall be \$116.72 per hectolitre of standard milk containing 3.6

kilograms of butterfat, and for every kilogram in excess of that butterfat content, the minimum price shall be adjusted by the amount of \$5.20 per hectolitre.

Commencement

2. These regulations come into force on February 1, 2018.

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NEWFOUNDLAND AND LABRADOR REGULATION 6/18

Proclamation bringing Act into force
(SNL 2016 cR-10.02) (In force January 24, 2018)
under the
Regulatory Accountability and Reporting Act
(O.C. 2018-005)

(Filed January 24, 2018)

*ELIZABETH THE SECOND, by the Grace of God of the
United Kingdom, Canada and Her Other Realms and Territories
QUEEN, Head of the Commonwealth, Defender of the Faith.*

FRANK F. FAGAN
Lieutenant Governor

ANDREW PARSONS
Deputy Attorney General

TO ALL TO WHOM THESE PRESENTS SHALL COME,

GREETING;

A PROCLAMATION

WHEREAS in and by section 11 of *An Act Respecting Regulatory Accountability and Reporting*, SNL2016, Chapter R-10.02 “(the “Act”) it is provided that the Act shall come into force on a day to be proclaimed by the Lieutenant Governor in Council;

AND WHEREAS it is deemed expedient that the Act shall come into force;

NOW KNOW YE, THAT WE, by and with the advice of Our Executive Council of Our Province of Newfoundland and Labrador, do by this our Proclamation direct that *An Act Respecting Regulatory Accountability and Reporting*, SNL2016 Chapter R-10.02 shall come into force on the date of publication in *The Newfoundland and Labrador Gazette*.

OF ALL WHICH OUR LOVING SUBJECTS AND ALL OTHERS
whom these Presents may concern are hereby required to take notice
and to govern themselves accordingly.

IN TESTIMONY WHEREOF WE have caused these Our Letters to be
made Patent and the Great Seal of Newfoundland and Labrador to be
hereunto affixed.

WITNESS: Our trusty and well-beloved the
Honourable Frank F. Fagan, Member of the Order of
Canada, Chancellor of the Order of Newfoundland
and Labrador, Lieutenant Governor in and for
Our Province of Newfoundland and Labrador.

AT OUR GOVERNMENT HOUSE in Our City of
St. John's this 23rd day of January in the year of
Our Lord two thousand and eighteen
in the sixth year of Our Reign.

BY COMMAND,

JAMIE CHIPPETT
Deputy Registrar General

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Milk Scheme, 1998			
Milk Regulations, 1998 (Amendment) [In force Feb 1/18]	NLR 5/18	Amends NLR 69/98 S.22 R&S	Jan 26/18 p. 19
Regulatory Accountability and Reporting Act			
Proclamation bringing Act into force	NLR 6/18	New	Jan 26/18 p. 21

THE NEWFOUNDLAND AND LABRADOR GAZETTE
January 26, 2018

The Newfoundland and Labrador Gazette is published from the Office of the Queen's Printer.

Copy for publication must be received by **Friday, 4:30 p.m.**, seven days before publication date to ensure inclusion in next issue. Advertisements must be submitted in either PDF format or as a MSWord file. When this is not possible, advertisements must be either, typewritten or printed legibly, separate from covering letter. Number of insertions required must be stated and the names of all signing officers typewritten or printed.

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Web Site: <http://www.servicenl.gov.nl.ca/printer/index.html>

The Newfoundland and Labrador Gazette

Advertising Rates

Prices effective July 1, 2016

Notices	Rate	15%	HST	Total
Lands Act - Notice of Intent - 1 week	\$31.13	\$4.67	\$35.80	
Motor Carrier Act - Notice - 1 week	\$39.90	\$5.99	\$45.89	
Trustee Act - Estate Notice - 1 week	\$34.65	\$5.20	\$39.85	
Trustee Act - Estate Notice - 2 weeks	\$62.37	\$9.36	\$71.73	
Trustee Act - Estate Notice - 3 weeks	\$91.25	\$13.69	\$104.94	
Trustee Act - Estate Notice - 4 weeks	\$118.97	\$17.85	\$136.82	

All other public notices required by law to be published in *The Newfoundland and Labrador Gazette*, eg., Corporations Act, Municipalities Act, Quieting of Titles Act, Urban and Rural Planning Act, etc., are priced according to size: for Single Column \$3.47 per cm or Double Column \$6.93 per cm, plus 15% HST.

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