

Guide to Appeals in Divisional Court

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About this guide:

The information contained in this guide is simply an overview of the relevant legislation and rules of procedure. It is not intended to be a substitute for the *Rules of Civil Procedure*, which should be examined for specific information. Nothing contained, expressed or implied in this guide is intended as, or should be taken or understood as, legal advice. If you have any legal questions, you should see a lawyer.

Special thanks to the Divisional Court, whose [Appeal Information Package](#) provided valuable information for this series of Guides.

Ce guide est également disponible en français.

Where to get more information:

The Ministry of the Attorney General has a series of **guides** to Divisional Court procedures which are available at court offices and the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca:

What is Divisional Court?

Guide to Appeals in Divisional Court

Guide to Serving Documents in Divisional Court Appeals

What can I do if my appeal to the Divisional Court is dismissed for delay or dismissed as abandoned?

Guide to Fees in Divisional Court Appeals

The guide entitled "What is Divisional Court?" includes a helpful overview of Divisional Court services, as well as a glossary of legal terms you may find helpful when reading the other guides.

Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. Please note the forms must be formatted in accordance with the *Rules of Civil Procedure*. You can find tips on completing forms at the end of this guide.

The staff behind the counter at any Divisional Court office are helpful. They will answer your questions about Divisional Court procedures, but keep in mind they cannot give legal advice and they cannot fill out your forms for you.

For more detailed information, you should refer to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. It is a regulation made under the authority of the *Courts of Justice Act*. To view the *Rules* on-line, go to www.e-laws.gov.on.ca and follow these steps:

- Choose English or French
- Click on "Current Consolidated Law"
- Click on the letter "C"
- Click on the plus sign to the left of "Courts of Justice Act"
- Click on "Rules of Civil Procedure"

Introduction

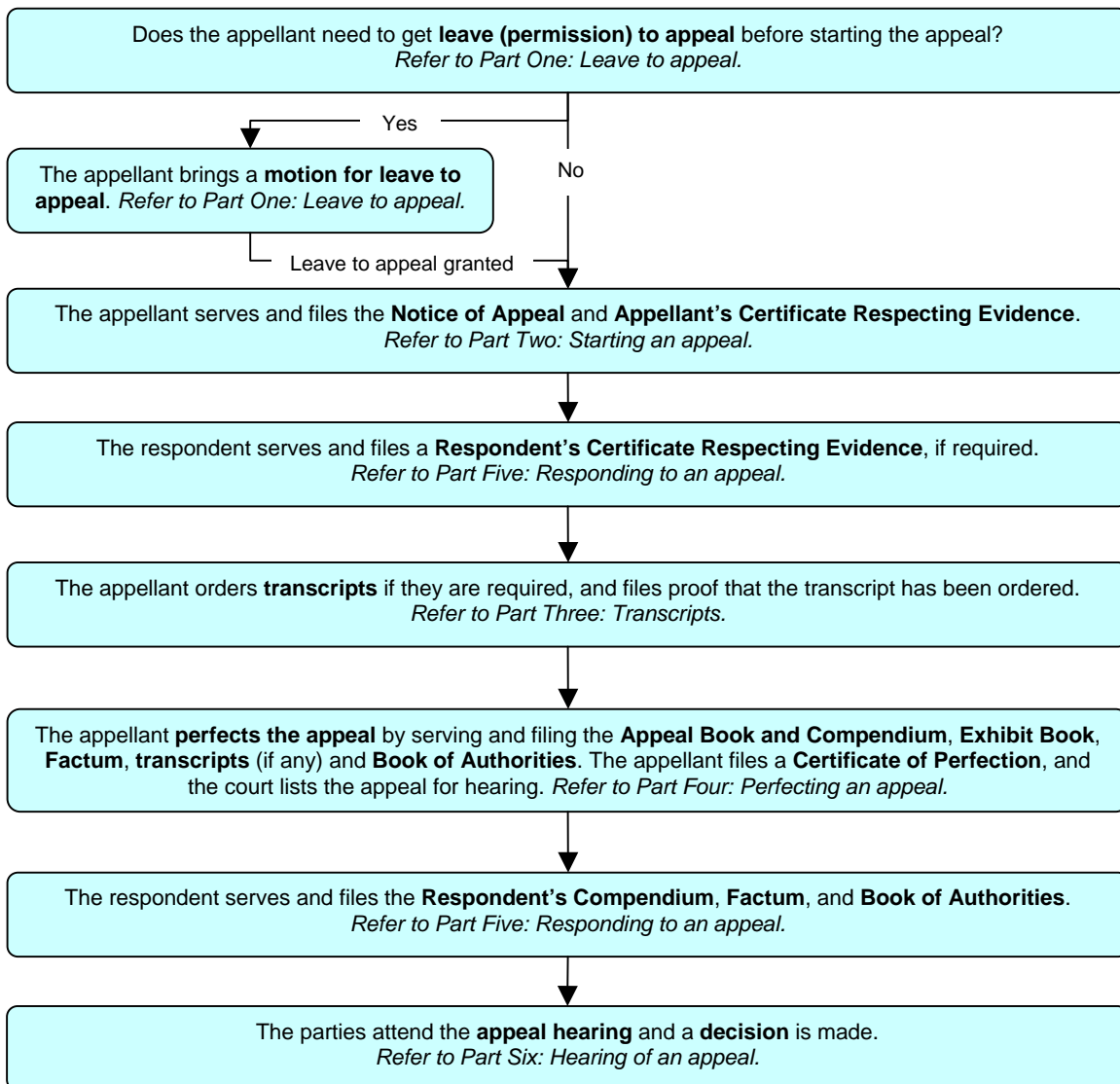
What is an appeal?

In an appeal, the appellant (the person who brings the appeal) argues that the lower court or tribunal made an error sufficient to justify overturning or modifying its decision. The person who responds to the appeal is called the respondent.

An appeal is different from a trial and is not a rehearing of the case. There can be no witnesses and no new evidence (except in very limited circumstances). Not all errors will change the outcome of a case on appeal.

What are the major steps in an appeal?

The major steps in an appeal are summarized in the simplified flow chart below. This guide is divided into parts that describe each of these steps in detail. The flow chart below shows where you can find more information about each step in this guide.



As you read on in this guide, you will notice many of these steps involve serving documents on other parties or paying fees. For more information about serving documents and proof of service, refer to the **Guide to Serving Documents in Divisional Court Appeals**. For more information about fees, refer to the **Guide to Fees in Divisional Court Appeals**.

Do I have an automatic right of appeal to the Divisional Court?

Not in all cases. In some instances, you must first obtain permission (or *leave*) from the court to appeal. For example, you need leave before you can appeal an interlocutory order of a judge of the Superior Court of Justice that does not dispose of the proceeding. You must confirm whether you need leave by consulting either the *Courts of Justice Act* or the legislation that applies to your appeal.

How long do I have to bring my appeal?

Generally, if you are appealing a final order, you have **30 days** after the date the order was made, unless a statute or rule provides otherwise. For example, if you need leave to appeal, you may only have seven days from the date of the order. If you are uncertain about what period of time applies in your case, you should consult a lawyer.

Are there any special considerations that I need to take into account if I am appealing an order made in a family law case?

Yes. If you are appealing an order made in a family law case, you need to be aware that some of the timelines set out in the *Rules of Civil Procedure* are modified by the *Family Law Rules*. The *Family Law Rules* are special rules of procedure for family law cases, and are set out in a regulation made under the authority of the *Courts of Justice Act*, available at www.e-laws.gov.on.ca.

Rule 38 of the *Family Law Rules* applies to appeals in family law cases. Most family law appeals to the Divisional Court are governed by the timelines in the *Rules of Civil Procedure*. However, there are shorter timelines for appeals of orders made under the *Child and Family Services Act*. These shorter timelines help the children involved have the case resolved quickly. For the modified timelines of *Child and Family Services Act* appeals, consult Rule 38 of the *Family Law Rules* and see the following sections in this guide:

- **Part One: Leave to Appeal,**
- **Part Four: Perfecting an Appeal,** and
- **Part Five: Responding to an Appeal.**

Note: All appeals of family law cases require *Rules of Civil Procedure* forms and not family forms.

Part One: Leave to Appeal

What is leave to appeal?

Leave to appeal is simply the *permission* of the court to appeal. When leave is required, you must seek and obtain leave before you can bring your appeal.

When is leave to appeal required?

Leave to appeal is required in two types of circumstances:

1. Leave to appeal may be required by the legislation under which the original decision was made (for example, decisions made under the *Ontario Municipal Board Act*);
2. Under section 19(1)(b) of the *Courts of Justice Act*, leave is required if you want to appeal an interlocutory order of a judge.

The procedure for seeking leave to appeal is slightly different, depending upon whether leave is required under specific legislation or under section 19(1)(b).

How do I obtain leave to appeal when the legislation under which the original decision was made says it is required?

Where leave to appeal is specifically required by the legislation under which a decision was made, you must bring a motion for leave in accordance with Rule 61.03 of the *Rules of Civil Procedure* (after this, referred to as the *Rules*):

- Unless the legislation provides otherwise, you must serve your **Notice of Motion for Leave to Appeal** (Form 37A) on all other parties affected by the decision under appeal (now referred to as “respondents”) within **15 days** after the date of the order being appealed.
- You must file your Notice of Motion for Leave to Appeal within **5 days** after service with proof of service. There is a fee for filing the Notice of Motion for Leave to Appeal, payable at the time it is filed.
- You will also need to serve and file a Motion Record, Factum, and other material, described in Rule 61.03.

How do I obtain leave to appeal an interlocutory order of a judge?

Where leave to appeal is required under section 19(1)(b) of the *Courts of Justice Act* (to appeal an interlocutory order), you must bring a motion for leave in accordance with Rule 62.02 of the *Rules*:

- You must serve your **Notice of Motion for Leave to Appeal** (Form 37A) on all other parties affected by the decision under appeal (now referred to as “respondents”) within **7 days** after the date of the order being appealed.
- You must file your Notice of Motion for Leave to Appeal with proof of service promptly afterward. There is a fee for filing the Notice of Motion for Leave to Appeal, payable at the time it is filed.
- You will also need to serve and file a Motion Record and Factum, described in Rule 62.02.

If you are bringing your motion in Toronto, you should also consult the Divisional Court Practice Direction *Re: Proceedings to be Heard by a Single Judge*, available online at www.ontariocourts.on.ca.

If leave to appeal is granted, what happens?

Within **7 days** of leave being granted, you must serve and file (with proof of service) your **Notice of Appeal** (Form 61A) and **Appellant's Certificate Respecting Evidence** (Form 61C). There will be a fee payable when you file your Notice of Appeal. Your appeal will then continue in the same manner as an appeal where leave is not required.

Are there modified timelines for service of a motion for leave to appeal in *Child and Family Services Act* cases?

Yes. The normal timeline does **not** apply to an appeal of an interlocutory order made under the *Child and Family Services Act*. Under Rule 38(3) of the *Family Law Rules*, the motion for leave to appeal and the appeal are combined and heard together. This means you must serve the **Notice of Motion for Leave to Appeal** (Form 37A) within **30 days** after the order being appealed from, at the same time as you serve the **Notice of Appeal** (Form 61A). The timelines for serving the Notice of Appeal are described in detail in Part Two below.

Part Two: Starting an Appeal

How do I start an appeal to the Divisional Court?

Start by serving and filing one copy of a **Notice of Appeal** (Form 61A) and one copy of an **Appellant's Certificate Respecting Evidence** (Form 61C). The documents must be served on the respondent(s). When you file them with the court, you will also need to file proof of service. There is a fee for filing the Notice of Appeal, payable at the time it is filed.

What does a Notice of Appeal contain?

The Notice of Appeal contains the relief sought, the grounds of the appeal and the basis for the Divisional Court's jurisdiction. For a brief description of the meaning of these terms, see the glossary in the guide **What is Divisional Court?**

What does an Appellant's Certificate Respecting Evidence contain?

An Appellant's Certificate Respecting Evidence is a certificate that sets out only those portions of the evidence from the original hearing the appellant considers necessary for the appeal. See Rule 61.05 of the *Rules* for more information.

Who do I serve?

You must serve all other parties affected by the decision under appeal (now referred to as "respondents"). There are limited situations when you do not need to serve all respondents. See Rule 61.04 for details. If you are appealing a decision of a tribunal or board, you must also serve the relevant tribunal or board within the same timelines.

When do I need to serve these documents?

You must serve the respondents within **30 days** after the date of the order being appealed, unless a statute or the *Rules* provide otherwise. If you are serving on the 30th day, you must do so before 4:00 p.m. If you brought a motion for leave to appeal, refer to Part One of this guide for information about the timelines that apply to your appeal.

What if I don't serve within the 30-day limit?

You are out of time for service as provided for in the *Rules* and court office staff cannot accept your appeal. You may obtain the written consent of the respondent(s) for late service OR bring a motion before a single judge of the Divisional Court asking for an extension of time.

When must I file my Notice of Appeal and Appellant's Certificate?

You must file your Notice of Appeal at the court within **10 days** after service on all named respondents. You can file your Appellant's Certificate at the same time. If you brought a motion for leave to appeal, refer to Part One of this guide for information about the timelines that apply to your appeal.

What if I don't file within the 10-day limit?

You may obtain written consent for late filing from the respondent(s) OR bring a motion for an extension of time before a single judge of the Divisional Court. You should be aware that if, after serving a Notice of Appeal or Notice of Cross-Appeal, you do not file it with the court within 10 days of service, you will be considered to have abandoned the appeal. The respondent(s) is entitled to costs of an abandoned appeal, unless the court orders otherwise.

Where must I file my appeal documents?

Generally, Divisional Court appeals are filed in the region where the hearing or other process took place. This may not be the case if the parties agree otherwise. See section 20(1) of the *Courts of Justice Act*. For more information on where to file your appeal documents see the guide **What is Divisional Court?**

What happens when I file my appeal?

You will be given a Divisional Court file number which must appear on all further documents to be served and filed. Have this file number at hand when contacting the court about your file.

What happens to the order of the lower court or tribunal when I start my appeal?

The order remains in effect, unless a judge grants a “stay” (postponement) of its effect. Generally, unless you bring a motion to seek a stay and it is granted, you must comply with the terms of the order. In certain cases, there is an automatic stay that takes effect upon serving and filing a Notice of Appeal, such as:

- an appeal of any part of an order for the payment of money (except support);
- an appeal of an eviction order made under the *Residential Tenancies Act, 2006*; or
- an appeal of a child protection order made under the *Child and Family Services Act*.

Even where there is an automatic stay, you must inform the court or tribunal that made the order being appealed and the enforcement office in writing of the existence of the stay. It may be necessary to file a **Certificate of Stay** (Form 63A or 63B). See Rule 63 of the *Rules* for more information.

What if I decide not to continue my appeal after I start it?

An appellant may abandon the appeal at any time by serving and filing a **Notice of Abandonment** (Form 61K). The notice must be served and filed with proof of service. If, after serving a Notice of Appeal or Notice of Cross-Appeal, you do not file it with the court within 10 days of service, you will be considered to have abandoned the appeal. The respondent(s) is entitled to costs of an abandoned appeal, unless the court orders otherwise.

Part Three: Transcripts

What is a transcript?

A transcript is a typed version of the oral proceedings of the court or tribunal in the matter you are appealing. If required, a certified transcript is prepared by a court reporter or qualified transcriber using the audio recording of the trial or hearing. Transcripts are prepared in a special format and must conform to the *Rules*. Once a transcript is prepared, it is certified and signed by the court reporter or transcriber as a true and accurate copy of the proceedings.

How do I know if a transcript is required?

A transcript is required if witnesses testified at the hearing and either party believes all or part of the testimony will be relevant to the appeal. Any oral rulings of the decision-maker may also need to be transcribed. If you are unsure whether or not you need a transcript, you should consult a lawyer. The appellant is responsible for the cost of the transcript.

How much do transcripts cost?

Each transcript page costs a prescribed fee and the length of the transcript depends on the length of the hearing you are appealing from and the amount of transcript you require. For more information, refer to the **Guide to Fees in Divisional Court Appeals**.

Do I need to get the whole hearing transcribed?

Not usually. A complete transcript is not normally required for the hearing of an appeal, and unless you request a complete transcript, only the oral testimony of the witnesses and rulings by the decision-maker will be transcribed.

How much time do I have to order the transcript?

Unless you have special directions from a judge, you must obtain a **Certificate of Ordering a Transcript for Appeal** from the court or tribunal that made the order being appealed and file a copy of it with the Divisional Court office within **30 days** from the date the Notice of Appeal was filed.

How do I order the transcript?

It is your responsibility to go back to the court/tribunal/board office that made the order you are appealing and find out whether they made a recording of the evidence at your hearing. Some tribunals and boards prepare a record of proceedings instead of a transcript of evidence. If a reporter was present at your hearing, it is your responsibility to order the transcript from that reporter.

For some tribunal proceedings, on payment of a fee, you may obtain a tape recording or CD (compact disc) of the hearing. You must then take it to a certified court reporting service to have a transcript produced. Such services may be found in legal directories or in the Yellow Pages.

It is your responsibility to ensure the transcript, if required, is ordered in a timely manner. Failure to do so will jeopardize the hearing of your appeal.

Part Four: Perfecting an Appeal

What does it mean to "perfect" an appeal?

An appeal is perfected when all the documents necessary for the hearing of the appeal have been served and filed with the court with proof of service within the time periods set out in the *Rules*. The other documents the appellant must serve and file in order to perfect the appeal are:

- a) an **Appeal Book and Compendium**;
- b) an **Exhibit Book**;
- c) an **Appellant's Factum**; and
- d) transcripts, if any.

It is often also a good idea to file a **Book of Authorities**.

Once the appeal is perfected, you file a **Certificate of Perfection** to certify the appeal is perfected. There is a fee payable when you file a Certificate of Perfection. Once you file your Certificate of Perfection, the Divisional Court can list the appeal for hearing.

All of these documents are described in detail in this section. Each document must be prepared according to the format set out in the *Rules*. Details are provided below and in a quick reference chart at the back of this guide, but for precise guidelines, refer to Rules 4 and 61.09 to 61.12.

Appeal Book and Compendium

The Appeal Book and Compendium is a bound volume(s) that contains a collection of the documents relating to your appeal. It must be bound front and back in buff coloured covers. When you file your Appeal Book and Compendium with the court, you will need to provide three copies if your appeal is before a panel of judges. The pages of the Appeal Book and Compendium must be consecutively numbered, with numbered tabs arranged in the following order:

- a) a table of contents describing each document by its nature and date;
- b) a copy of the notice of appeal and of any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
- c) a copy of the order or decision appealed from as signed and entered;
- d) a copy of the reasons of the court or tribunal appealed from, with a further typed or printed copy if the reasons are handwritten;
- e) if an earlier order or decision was the subject of the hearing before the court or tribunal appealed from, a copy of the order or decision, as signed and entered, and a copy of the reasons for it, with a further typed or printed copy if the reasons are handwritten;
- f) a copy of the pleadings or notice of application or of any other document that initiated the proceeding or defines the issues in it;
- g) a copy of any excerpts from a transcript of evidence that are referred to in the appellant's factum;
- h) a copy of any exhibits that are referred to in the appellant's factum;
- i) a copy of any other documents relevant to the hearing of the appeal that are referred to in the appellant's factum;
- j) a copy of the certificates or agreement respecting evidence referred to in Rule 61.05;
- k) a copy of any order made in respect of the conduct of the appeal; and
- l) a signed **Certificate of Completeness** (Form 61H) stating that the contents of the Appeal Book and Compendium are complete and legible.

Exhibit Book

The Exhibit Book is a bound volume(s) containing exhibits from the original hearing necessary for the consideration of your appeal. Remember, you cannot introduce new evidence without the court's permission. The Exhibit Book must be bound front and back in buff covers. If you believe some exhibits are not needed, you can ask the respondent(s) to agree to omit them. The pages of the exhibit book must be consecutively numbered, with numbered tabs arranged in the following order:

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

Appellant's Factum

The Appellant's Factum is a bound document containing a concise summary of the facts, the law and the arguments you are making in support of your appeal. When you file your Factum with the court, you will need to provide an electronic version in addition to a hard copy. If your appeal is before a panel of judges, you will need to provide three hard copies. The Appellant's Factum must be bound front and back in white covers. It should not be more than 10 pages in length and cannot be more than 30 pages without the approval of a judge. The Factum must be signed at the end. The Appellant's Factum must consist of the following parts (note that for Parts I through V, you must number each paragraph):

- a) **Part I**, containing a statement identifying the appellant and the court or tribunal appealed from and stating the result in that court or tribunal;
- b) **Part II**, containing a concise overview statement describing the nature of the case and of the issues;
- c) **Part III**, containing a concise summary of the facts relevant to the issues on the appeal, with such reference to the transcript of evidence and the exhibits as is necessary;
- d) **Part IV**, containing a statement of each issue raised, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
- e) **Part V**, containing a statement of the order that the court will be asked to make, including any order for costs;
- f) a **certificate** stating:
 - i. that an order under subrule 61.09(2) (original record and exhibits) has been obtained or is not required, and
 - ii. how much time (expressed in hours or fractions of an hour) you estimate will be required for your oral argument, not including reply;
- g) **Schedule A**, containing a list of the authorities referred to; and
- h) **Schedule B**, containing the text of all relevant portions of statutes, regulations and by-laws.

Transcripts

Information about transcripts is provided in **Part Three: Transcripts**. If you are filing a transcript and an electronic version of the transcript was prepared, you must file the electronic version of the transcript with the court, in addition to a hard copy.

Book of Authorities

It is of great assistance to the Divisional Court for the parties to file casebooks containing copies of the cases to which they intend to refer on the hearing of the appeal. These cases are known as "authorities."

The Appellant's Book of Authorities must be bound front and back in white covers. The Respondent's Book of Authorities must be bound front and back in green covers. If the appeal is before a panel of judges, each party should file three copies of its Book of Authorities. The Book of Authorities should include a tab for each case (either numerical or alphabetical), and should include an index of the cases and indicate the tab where the case is reproduced. The particular passages in the cases to which you wish to refer should be clearly marked with highlighting, underlining or sidebars.

The Book of Authorities should include only the cases that you have referred to in the Factum. The Book of Authorities should be filed, if possible, with the Factum, but if not possible, then not later than Monday of the week preceding the hearing of the appeal. If you and the respondent(s) agree, you can file a joint Book of Authorities.

The Divisional Court maintains a Judges' Book of Authorities containing frequently cited authorities. If you are referring to a case in the Judges' Book of Authorities, you do not need to include the full case in your Book of Authorities. However, you should include the extracts you intend to refer the judge(s) to in your Factum or your Book of Authorities. A [list](#) of the authorities in the Judges' Book is available at www.ontariocourts.on.ca and at Divisional Court offices.

Certificate of Perfection

The Certificate of Perfection must:

- a) state that the Appeal Book and Compendium, Exhibit Book, transcripts, if any, and Appellant's Factum have been filed, and
- b) set out, with respect to every party to the appeal, any intervener and any person entitled by statute to be heard on the appeal,
 - i. the name, address and telephone number of the party's or person's lawyer, or
 - ii. if the party or person acts in person, the party or person's name, address for service and telephone number.

Can the appellant file more material after filing the Certificate of Perfection?

Unless there is a judge's order, only a Book of Authorities can be filed by an appellant after perfection.

Can I perfect my appeal and then serve the documents?

No. All documents must be served before they are filed. Proof of service is required at the time of filing.

What is the deadline for perfecting my appeal?

When there is no transcript of evidence required, you must perfect your appeal within **30 days** of when you filed your Notice of Appeal. Where a transcript of evidence is required, you must perfect within **60 days** of receiving notice that the transcript has been completed.

Are there modified timelines for perfecting appeals of orders made under the *Child and Family Services Act*?

Yes. For an appeal of an order made under the *Child and Family Services Act*, there is a modified timeline for perfecting the appeal. When no transcript of evidence is required, you must perfect your appeal within **14 days** after you file your Notice of Appeal, instead of 30 days. Where a transcript of evidence is required, you must perfect within **30 days** of the completion of the transcript, instead of 60 days.

What if I miss the deadline for perfecting under the *Rules*?

Your appeal may be dismissed for delay on ten days written notice to you. If you receive notice from the Registrar that your appeal is dismissed and you believe it to be in error, you should contact the Divisional Court office where you filed your appeal **as soon as possible**. For more information on dismissal for delay, see the guide **What can I do if my appeal to the Divisional Court is dismissed for delay or dismissed as abandoned?**

What can I do if I am unable to perfect on time?

There are two options:

- 1) Obtain the respondent's consent in writing for an extension of time to perfect, OR
- 2) Bring a motion before a single judge of the Divisional Court asking for an extension of time to perfect the appeal.

Part Five: Responding to an Appeal

I have just been served with a Notice of Appeal, what do I do?

Consider seeking legal advice. You or your lawyer will need to prepare responding materials, serve them on the other parties, and file them with the Divisional Court with proof of service within the deadlines set by the *Rules*. You may decide to serve and file a **Respondent's Certificate Respecting Evidence** (Form 61D) confirming the appellant's certificate (described in Part Two: Starting an Appeal) or setting out any additions to or deletions from it. If so, you must serve it within **15 days** after service of the appellant's certificate. If you do not serve a Respondent's Certificate Respecting Evidence, you will be considered to have confirmed the appellant's certificate.

What other responding materials need to be served and filed?

You must serve and file a **Respondent's Factum** and a **Respondent's Compendium**. The content and format of these documents are described below. It is recommended that you review Rule 61.12 of the *Rules* for more detail. You may also file a **Book of Authorities** if you intend to rely on cases not already included in the Appellant's Book of Authorities. For more information, see the section on **Book of Authorities** in **Part Four: Perfecting an Appeal**. There is no fee to file any of these materials.

Respondent's Factum

The Respondent's Factum is a bound document containing a concise summary of the facts, the law and the arguments you are making in response to the appeal. When you file your Factum with the court, you will need to provide an electronic version in addition to a hard copy. If your appeal is before a panel of judges, you will need to provide three hard copies. The Respondent's Factum must be bound front and back in green covers. It should not be more than 10 pages in length and cannot be more than 30 pages without the approval of a judge. You must sign the Factum at the end. The Respondent's Factum must consist of the following parts (note that for Parts I through V, you must number each paragraph):

- a) **Part I**, containing a concise overview statement describing the nature of the case and of the issues;
- b) **Part II**, containing a statement of the facts in the appellant's summary of relevant facts that the respondent accepts as correct and those facts with which the respondent disagrees, and a concise summary of any additional facts relied on, with such reference to the transcript of evidence and the exhibits as is necessary;
- c) **Part III**, containing the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
- d) **Part IV**, containing a statement of any additional issues raised by the respondent, followed by a concise argument with reference to the law and authorities relating to each issue;
- e) **Part V**, containing a statement of the order that the appellate court will be asked to make, including any order for costs;
- f) a **certificate** stating.
 - i. that an order under subrule 61.09(2) (original record and exhibits) has been obtained or is not required, and
 - ii. how much time (expressed in hours or fractions of an hour) you estimate will be required for your oral argument, not including reply;
- g) **Schedule A**, containing a list of the authorities referred to; and
- h) **Schedule B**, containing the text of all relevant portions of statutes, regulations and by-laws that are not included in Schedule B to the appellant's factum.

Respondent's Compendium

The Respondent's Compendium is a bound volume(s) that contains documents referred to in the Respondent's Factum that are not already included in the appellant's Appeal Book and Compendium. It must be bound front and back in buff coloured covers. When you file your Compendium with the court, you will need to provide three copies if your appeal is before a panel of judges. The pages of the Respondent's Compendium must be consecutively numbered, with numbered tabs arranged in the following order:

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

When must the responding materials be filed?

Once the appellant has served the Appeal Book and Compendium, the Exhibit Book, the Appellant's Factum and the transcript (if any), you have **60 days** from the date of service to serve the appellant and any other respondents with responding materials and then file the documents with the Divisional Court office with proof of service. The responding materials must be served **and** filed with proof of service within the 60 day limit.

The deadline for filing a Respondent's Book of Authorities is the same as that for the appellant. If possible, file it with the Factum. If that is not possible, then file it not later than Monday of the week preceding the hearing of the appeal.

Are there modified timelines for appeals of orders made under the *Child and Family Services Act*?

Yes. For an appeal of an order made under the *Child and Family Services Act*, there is a modified timeline for the respondent to prepare responding material. Instead of 60 days, the respondent has **30 days** from the date of service to serve the appellant and any other respondents with responding materials and then to file the documents with the Divisional Court with proof of service.

What can I do if the appellant fails to perfect on time?

You can bring a motion to the Registrar of the Divisional Court, on ten days notice to the appellant, to dismiss the appeal for delay under the following circumstances:

- 1) If a transcript is **not** required and the appellant has failed to perfect within **30 days** of the filing of the Notice of Appeal; OR
- 2) If a transcript is required and the appellant has not filed proof that the transcript has been ordered within **30 days** of the filing of the Notice of Appeal; OR
- 3) If a transcript is required and the appellant has failed to perfect within **60 days** of receiving notice that the transcript is ready (or within **30 days**, in the case of a *Child and Family Services Act* appeal).

Part Six: Hearing of an Appeal

When will the appeal be heard?

When an appeal is perfected, the Registrar of the Divisional Court will place it on the list of cases to be heard and will mail a **Notice of Listing for Hearing** (Form 61G) to every person listed in the Certificate of Perfection. For an estimate of the amount of time before the appeal will be listed, contact the court office where the appeal is filed.

How much time will I get to speak?

The time each party has to speak is strictly limited. A party can request a reasonable amount of time in the factum, but the court may provide less time. The judge or panel hearing the appeal will have prior access to the factums, so consider that when you estimate your request for time.

May I observe other appeal hearings in preparation for the appeal?

Yes. With rare exceptions, court proceedings are open to the public. You can contact the court office to determine when Divisional Court appeals are being heard.

What should I do to get ready for the hearing?

To get ready for the hearing:

- 1) review all the documents and the arguments you intend to make in support of or in response to the appeal;
- 2) make a list of the points you need to make;
- 3) try to anticipate questions that the judge(s) might ask; and
- 4) on your hearing date, dress appropriately and give yourself plenty of time to travel to the courthouse and find your courtroom.

If you have prepared your case well, you will be much more relaxed in court and you will be able to present your case to your best advantage.

How should I behave in court?

When you are in court:

- 1) address any judge in Divisional Court as "Your Honour";
- 2) stand when a judge enters or leaves the courtroom;
- 3) stand whenever you are speaking to a judge or a judge is speaking to you;
- 4) do not interrupt when another party is speaking to a judge unless called upon by a judge or to make a valid objection; and
- 5) do not attempt to have any out-of-court communication with a judge unless the judge specifically orders it.

There are signs posted in the courthouse about other behaviours which are not permitted. You should follow these guidelines to show respect for the court.

What if I cannot attend on the date set for the hearing?

If you cannot attend at your appeal hearing, the appeal may be decided in your absence without your input. Since the date for the hearing is set well in advance, adjournments are rare. If you are unable to attend, contact the court office **as soon as possible** for assistance.

What happens during the appeal hearing?

At the hearing, the judge(s) will hear from the parties. The appellant is first to speak, followed by the respondent(s). The appellant can then reply, but not to repeat anything already covered. The purpose of reply is only to address issues raised by the respondent(s) that the appellant did not address initially. The judge(s) will usually ask questions of all parties throughout the hearing.

Can I introduce new evidence at the appeal hearing?

Generally, you cannot introduce new evidence and there are no witnesses allowed on an appeal. However, in limited situations, you may bring a motion to the judge(s) hearing your appeal to receive further evidence under Rule 61.16(2) and section 134(4)(b) of the *Courts of Justice Act*. Such motions involve specific procedures that are not covered in this guide (see Rule 37). If you are unsure how to proceed, you should consult a lawyer.

Will the judge(s) decide the appeal immediately?

The judge(s) hearing the appeal may decide the appeal immediately or “reserve” the decision (i.e. deliver it at a later time).

What are the potential outcomes of the appeal?

An appeal may be allowed or dismissed. If an appeal is allowed, the panel will set aside the decision under appeal and may order a new hearing or, in appropriate circumstances, substitute its own decision. If an appeal is dismissed, the original decision stands and any stay is lifted.

Can I appeal a decision of the Divisional Court?

Decisions of the Divisional Court may be appealed to the Court of Appeal for Ontario with leave of that court. Refer to section 6 of the *Courts of Justice Act* and Rule 61.03.1 of the *Rules* for more information.

QUICK REFERENCE CHART

Documents filed in Divisional Court Appeals

The information contained in this guide is only an overview of the relevant legislation and rules of procedure. It is not intended to be a substitute for the *Rules of Civil Procedure*, which should be examined for specific information. If the information in this chart conflicts with the *Rules*, the *Rules* govern. Certain special timelines apply to appeals under the *Child and Family Services Act* (CFSA). Rule 38 of the *Family Law Rules* should be examined for specific information.

Document	Required to serve the other party(ies)	Required to file with the court	# copies filed with court	Fee for filing	Deadlines	Colour of covers	Rule	Form
Notice of Appeal	Yes	Yes	1	Yes	Serve within 30 days of the final order; file within 10 days of service. If leave was obtained: Serve and file within 7 days of leave being granted. CFSA: Serve within 30 days of final order, with Notice of Motion for Leave to Appeal.	n/a	61.04	61A
Appellant's Certificate Respecting Evidence	Yes	No, but preferred.	1	No	Same as above.	n/a	61.05	61C
Respondent's Certificate Respecting Evidence	Only required to serve if filed.	No, unless further evidence is sought.	1	No	If needed, within 15 days after service of the Appellant's Certificate.	n/a	61.05	61D
Appeal Book and Compendium	Yes	Yes	1 or 3*	No	No transcript: within 30 days after filing the Notice of Appeal (CFSA: 14 days). Transcript: within 60 days after notice of completion of transcript (CFSA: 30 days).	Buff	61.10	61H
Exhibit Book	Yes, unless parties agree no exhibits required.	Yes, unless parties agree no exhibits required.	1	No	Same as above.	Buff	61.10.1	
Appellant's Factum	Yes	Yes, plus an electronic version.	1 or 3*	No	Same as above.	White	61.11	
Transcript of evidence	Yes, if a transcript is required.	Yes, if a transcript is required. Plus an electronic version if available.	1	No	A Certificate of Ordering a Transcript for Appeal must be filed within 30 days after filing the Notice of Appeal. The transcript itself must be served and filed within 60 days after notice of its completion.	Red	4.09 61.05 61.09	
Certificate of Perfection	No	Yes	1	Yes	No transcript: within 30 days after filing the Notice of Appeal (CFSA: 14 days). Transcript: within 60 days after notice of completion of transcript (CFSA: 30 days).	n/a	61.09	
Respondent's Factum	Yes	Yes, plus an electronic version.	1 or 3*	No	Serve and file within 60 days after service of appeal book and compendium, exhibit book, transcript of evidence (if any), and appellant's factum. CFSA: Serve and file within 30 days of service of the appellant's final documents.	Green	61.12	
Respondent's compendium	Yes, if there is one.	Yes, if there is one.	1 or 3*	No	Same as above.	Buff	61.12	
Appellant's book of authorities	No	No	1 or 3*	No	With the factum, or not later than the Monday of the week preceding the hearing.	White	n/a	
Respondent's book of authorities	No	No	1 or 3*	No	Same as above.	Green	n/a	

* For hearings before a single judge, one copy is required. For hearings before a panel of three judges, three copies are required.

Tips on Completing Forms in Divisional Court

1. **BE NEAT.** These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read.
2. Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. This content is not formatted. It is your responsibility to ensure that the form complies with the *Rules of Civil Procedure* (see for example Rule 4.01 with respect to formatting). Many of the *Rules of Civil Procedure* forms contain the phrase "General heading." General headings are separate forms under the *Rules of Civil Procedure* and must be inserted where this phrase appears, with the proper content.
3. How to **COUNT DAYS FOR TIMELINES** in the *Rules of Civil Procedure*:

When calculating timelines in the *Rules of Civil Procedure*, count the days by excluding the first day and including the last day of the period; where a period of less than seven days is prescribed, holidays (including Saturdays and Sundays) shall not be counted; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

Holidays include:

- any Saturday or Sunday
- New Year's Day
- Family Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day
- any special holiday proclaimed by the Governor General or the Lieutenant Governor

NOTE: If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

4. You can **FILE** your documents by mail or in person. It is best to file documents in person, because if any are incomplete, the clerk may inform you, and you can avoid wasting time mailing the documents back and forth. If you file documents by mail, the date of filing will be the date the documents are stamped upon receipt by the court office. If the court office does not receive the documents, they will be considered not to have been filed, unless the court orders otherwise (see Rule 4.05). **All applicable fees and proof of service must be included with the documents when you mail them.** Documents **cannot** be faxed or e-mailed to the court. Keep a copy of all original documents you forward to the court for your records.
5. Once court staff gives you a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
6. Make enough **COPIES** of your completed forms/documents. Usually you will require one copy for each party who must be served and one copy for your own records. There is a fee to have copies made at the court office. Refer to the **Guide to Fees in Divisional Court Appeals** for more information.
7. **COURT FEES** must be paid to issue and file specific documents. A listing of Superior Court of Justice and Court of Appeal fees can be viewed at the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca or you can refer to the **Guide to Fees in Divisional Court Appeals**. Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance.
8. An **AFFIDAVIT** can be sworn or affirmed before:
 - a Divisional Court staff member who is a commissioner for taking affidavits (there is a fee for this service);
 - a lawyer who is entitled to practise law in Ontario;
 - a notary public; or
 - a person who has been appointed a commissioner for taking affidavits and who is authorized to commission the affidavit.

The affidavit must be signed in the presence of the commissioner, lawyer or notary public before whom it is sworn or affirmed.

NOTE: It is a criminal offence to knowingly swear or affirm a false affidavit.