PRACTICE DIRECTIONS
PRINCE EDWARD ISLAND COURT OF APPEAL

1. INTRODUCTION TO THE PRACTICE DIRECTIONS

(a) These Practice Directions complement the Rules of Civil Procedure by providing direction and guidance on matters of practice and procedure regarding appeals in the Court of Appeal. The Rules of Civil Procedure take precedence over these Practice Directions.

(b) These Practice Directions are comprehensive. They contain all supplementary directions to Rule 61 - Appeals to the Court of Appeal and other Rules applicable to practice in the Court of Appeal. They replace and supercede the Practice Notes appended to the Rules of Civil Procedure. The Practice Notes no longer apply to practice in the Court of Appeal.

(c) These Practice Directions are effective October 1, 2013.

(d) These Practice Directions were last revised effective September 1, 2017.

2. PROTOCOLS IN THE COURT OF APPEAL

(a) Opening and closing court

Procedure on opening and closing sittings and chambers of the Court of Appeal

At the appointed time the Clerk of the Court will check the courtroom to ensure that counsel are in their places and everything is ready. The Clerk will then advise the Judges and will enter the courtroom immediately ahead of the Judges and say – "*ORDER - ALL RISE*."

The Judges and the Court Clerk will then take their respective places and while everyone is standing the Court Clerk will formally announce the opening of the court:

Opening for Chambers**:**

Her Majesty's Prince Edward Island Court of Appeal for the hearing of motions and applications is now in session. All persons having anything to do thereat may attend and they shall be heard. GOD SAVE THE QUEEN. Chief Justice (Justice) _____ presiding.

Opening for Court:

Her Majesty's Prince Edward Island Court of Appeal is now open, and all persons having anything to do thereat may attend and they shall be heard. GOD SAVE THE QUEEN. Chief Justice (Justice) _____ presiding.

After the Opening by the Clerk:

X The Judges will bow to counsel and counsel will respond.
X Everyone is then seated, except the Clerk.
X The Clerk will call the matter to be heard, announce counsel and be seated.
X The presiding Judge will then commence the proceeding.

Adjournment

At the conclusion of the matter and at the end of the day, the Clerk will announce *ALL RISE*.

If the matter has concluded, the Clerk will announce:

HER MAJESTY'S PRINCE EDWARD ISLAND COURT OF APPEAL NOW STANDS ADJOURNED.

If the matter is to be continued on another day, the Clerk will announce:

THIS CASE NOW STANDS ADJOURNED UNTIL (give date and time).

The Judges will then bow and counsel respond, and then the Judges will retire, with everyone else remaining in their place until the Judges have left the courtroom.

(b) Addressing the Court and judges

In a hearing, and in their Chambers, judges of the Court of Appeal should be addressed and referred to as "Chief Justice" and "Justice" (surname) or "Justices," in gender-neutral terms. The Court should be referred to as "The Court."

Counsel, self-represented litigants, parties and witnesses are requested to refrain from addressing judges as My Lady, My Lord, Your Ladyship, Your Lordship or Your Honour.

In written correspondence, the proper address is "The Honourable (name), Chief Justice of Prince Edward Island" or "The Honourable (name), Justice of the Prince Edward Island Court of Appeal."

(c) Decorum

Gowns are to be worn by counsel for all court appearances. Self-represented litigants and parties should wear business attire. Members of the public and the media should be neatly and respectfully attired.

(d) The Bar and Counsel table

Only members of the Bar and self-represented litigants engaged in presentation of a motion, application or appeal are permitted in the area of the court beyond the Bar and at counsel tables, unless permission for such presence is granted by the presiding judge. Counsel may request permission from the Court by identifying the person and giving the reason for the request.

3. CASE MANAGEMENT

(a) Role of Court Clerk/Office Administrator of the Court of Appeal

Under direction from the Chief Justice, the Court Clerk/Office Administrator, Ms. Sheila Gallant (telephone: 902-368-6024; email: sfgallant@gov.pe.ca; facsimile: 902-368-6774) manages progress of appeals from the notice of appeal to release of judgment. Counsel and self-represented parties should communicate with the Court Clerk regarding matters of scheduling or motions on an appeal. Should counsel or a self-represented party wish to involve the Chief Justice or his designated judge in a matter of case management, such person should inform the Court Clerk, who will inform the Chief Justice or his designate of the request and issue for consideration.

(b) Management Conference

The Chief Justice or his designate may convene a case management conference with all counsel and self-represented litigants at any time.

(c) Settlement

At the request of all parties to an appeal or their counsel, the Court Clerk will arrange a settlement conference. Due to the court composition and required panel for an appeal usually being the same, it would usually be the Prothonotary who would facilitate a settlement conference.

The parties may jointly request a settlement conference, by contacting the deputy registrar. A request for such a conference does not operate to suspend the obligation of the parties to comply with the requirements of Rule 61, and will not result in an adjournment of the appeal. Except for such an agreement and draft order emanating from a settlement conference, all deliberations in the process will remain confidential and be without prejudice to the parties' legal positions.

4. FILING OF MATERIAL FOR USE ON APPEAL

(a) Electronic version

Rule 61 requires the parties to exchange and file an electronic version of all factums and transcripts on appeals and motions in the Court of Appeal. The following guidance will assist the parties in fulfilling this requirement:

(i) **Effective September 1, 2017, Rule 61** – Appeals to the Court of Appeal requires parties to submit facta and transcripts of evidence in electronic format and permits parties to submit application records and appeal books in electronic format. In addition, facta are to include reference to case or statutory authorities by citation, hyperlink, and pinpoint reference to the paragraph or page. Filing with the registrar one bound paper copy of all documents and four copies of the application records and appeal books continue to be required.

This initiative will substantially reduce the amount of paper in appeals, and will enable counsel, the parties and the court to work with most documents in electronic format.

(ii) The Court will accept an electronic version of any computer generated material prepared for an appeal, including the appeal book or application record, transcript of evidence, the facta.

(iii) The Appellant shall deliver or cause to be delivered a copy of the transcript in electronic form to the Court Clerk Sheila Gallant.

(iv) Each party shall forward a copy of its factum in electronic form to the Court Clerk. The transcript may be transmitted by email to sfgallant@gov.pe.ca or by memory stick, or other approved means.

(v) It is preferable to have the electronic version of the material in PDF; however, the Court will accept other formats.

(b) Case Law: neutral citation

The neutral citation is to be provided for any case law cited in submissions to the Court of Appeal.

Canadian courts in all jurisdictions use the neutral citation for case law. When a court assigns a neutral citation, the reference is conspicuously located near the top of the decision. It looks like this: ***Smith v. Smith,*** 2006 PECA 435.

The Neutral Citation allows easy electronic access to the decision.

Parallel citations from report series or electronic databases may also be included. The Neutral Citation shall be the first used, as in the following example: ***Smith v. Jones,*** 2006 PECA 435, 87 D.L.R. (4th) 334, [2006] P.E.I.J. No. 198 (QL).

(c) Case law: hyperlinks and pinpoint references

Pinpoint references should be made to paragraph numbers where available, preceded by "at para." or "at paras.," as in the following example: ***Smith v. Jones***, 2006 PECA 435, at paras. 34 and 36-39.

Facta are to include reference to case or statutory authorities by citation with pinpoint reference and hyperlink. The hyperlink must link to a publicly-accessible website for the authority, such as CanLII, WorldLII, or a similar website for the applicable court, tribunal, or lawmaker. Electronic secondary sources must also be hyperlinked in the same manner, if available. In the event that an authority is not publicly-accessible by hyperlink, then a PDF of the authority may be appended to the facta and a hyperlink included to the PDF of the authority. A hyperlink may look like the following examples:

Smith v. Jones, 2017 PECA 1, at para.1.

Smith v. Jones, 2017 PECA 1 at para.1, https://www.Canlii.org/en/pe/pescad/doc/2017/2017peca1/2017peca1.html.

5. BOOK OF AUTHORITIES

(a) General practice

Note: Effective September 1, 2017, books of authorities are no longer to be filed. Books of authorities are now replaced by references to relevant authorities within the factum, supported by neutral citation, hyperlink, pinpoint reference to the applicable passage. The following practice direction is retained for guidance where relief from compliance is sought and obtained.

Under Rule 61.09(e) and 61.10(e), the appellant's and respondent's facta are to contain a list of authorities referred to in the facta. Although not required, the Court and other counsel appreciate receiving a copy of those cases. As a result, it is customary for parties to exchange and file an accompanying Book of Authorities.

A Book of Authorities should include only cases referred to in that party's factum.

The Book of Authorities should contain separately filed cases by consecutively numbered tabs.

Filing excerpts from cases
When a case authority is cited for a limited purpose rather than as a precedent of broader application, counsel may in their discretion limit filing of that case to the specific passage relied upon along with surrounding context and the headnote rather than photocopying the whole case report.

Counsel may file a Joint Book of Authorities.

Respondent's reduced Book of Authorities
Where an appellant has filed a Book of Authorities, a respondent referring to the same authority should limit photocopying and filing to specific passage or passages relied upon with surrounding context, and need not file the whole case.

(b) Highlighting/Referencing

When a Book of Authorities is filed, all authorities cited should have the relevant portion highlighted or clearly marked by underlining, sidelining, or highlighting in color.

The Registrar will inspect authorities, and will not accept for filing authorities that are not highlighted/referenced.

(c) List of Commonly Cited Authorities

In the interest of reducing cost and wasted paper, the Court has determined that frequently cited cases from the Supreme Court of Canada should not be photocopied and filed.

Counsel should include quotations from any case relied upon directly in their factum.

LIST OF COMMONLY CITED AUTHORITIES

The following Supreme Court of Canada cases referred to in a factum should not be included in a book of authorities.

Criminal:

R. v. Beaudry, 2007 SCC 5; [2007] 1 S.C.R. 190
R. v. Biniaris, 2000 SCC 15; [2000] 1 S.C.R. 381; [2000] S.C.J. No. 16 (Q.L.)
R. v. Burns, [1994] 1 S.C.R. 658, 89 C.C.C. (3d) 193, 29 C.R. (4th) 113 sub. nom.
R. v. C.A.M., [1996] 1 S.C.R. 500; [1996] S.C.J. No. 28 (Q.L.)
R. v. Dinardo, 2008 SCC 24; [2008] 1 S.C.R. 788
R. v. Francois, [1994] 2 S.C.R. 827, 91 C.C.C. (3d) 289, 31 C.R. (4th) 201 (S.C.C.)
R. v. Grant, 2009 SCC 32
R. *v. Gagnon,* 2006 SCC 17; [2006] 1 S.C.R. 621
R. v. Harrison, 2009 SCC 34
R. v. Khan, [1990] 2 S.C.R. 531; [1990] S.C.J. No. 81 (Q.L.)
R. v. Lacasse, [2015] 3 S.C.R. 1089, 2015 SCC 64 (S.C.C.)
R. v. L.M., 2008 SCC 31
R. v. M. (R.E.), 2008 SCC 51; [2008] 3 S.C.R. 3
R. v. McDonnell, [1997] 1 S.C.R. 948
R. v. Nasogaluak, [2010] 1 S.C.R. 206
R. v. Palmer, [1980] 1 SCR 759
R. v. Proulx, 2000 SCC 5;[2000] 1 S.C.R. 61; [2000] S.C.J. No. 6 (Q.L.)
R. v. Sheppard, 2002 SCC 26; [2002] 1 S.C.R. 869
R. v. Shropshire, [1995] 4 S.C.R. 227; [1995] S.C.J. No. 52 (Q.L.)
R. v. Stinchcombe, [1991] 3 S.C.R. 326; [1991] S.C.J. No. 83 (Q.L.)
R. v. Suberu, 2009 SCC 33
R. v. W.(D.)[D.W.], [1991] 1 S.C.R. 742; [1991] S.C.J. No. 26 (Q.L.)
R. v. (W.R.), [1992] 2 S.C.R. 122, 74 C.C.C. (3d) 134, 13 C.R. (4th) 257 (S.C.C.)
R. v. Yebes, [1987] 2 S.C.R. 168; [1987] S.C.J. No. 51 (Q.L.)

Civil and Administrative

Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61
Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2011 SCC 53, [2011] 3 S.C.R. 471 (***"Mowat"***)
CUPE v. New Brunswick Liquor Corp., [1979] 2 S.C.R. 227

Dr. Q v. The College of Physicians and Surgeons of British Columbia, 2003 SCC 19
Dunsmuir v. New Brunswick, 2008 SCC 9; [2008] 1 S.C.R. 190
Friend's of Old Man River Society v. Canada (Minister of Transport), [1992] 1 SCR 3
Gordon v. Goertz, [1996] 2 S.C.R. 27
Guarantee Co. Of North America v. Gordon Capital Corp., [1999] 3 S.C.R. 423
Hickey v. Hickey, [1999] 2 S.C.R. 518; [1999] S.C.J. No. 9 (Q.L.)
Housen v. Nikolaisen, 2002 SCC 33; [2002] 2 S.C.R. 235
Hunt v. Corey Canada Inc., [1990] 2 S.C.R. 959
Law v. Canada (Minister of Employment and Immigration), [1999] 1 SCR 497
Law Society of New Brunswick v. Ryan, 2003 SCC 20; [2003] 1 S.C.R. 247
McLean v. British Columbia (Securities Commission), 2013 SCC 67
Moge v. Moge, [1992] 3 S.C.R. 813; [1992] S.C.J. No. 107 (Q.L.)
Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62
Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals, 2011 SCC 59
Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982
RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311
St. Anne Nackavic Pulp and Paper Co. v. Canadian Paper Workers Union, Local 219, [1986] 1 S.C.R. 704
Van de Perre v. Edwards, 2001 SCC 60; [2001] 2 S.C.R. 1014
Weber v. Ontario Hydro, [1995] 2 S.C.R. 929
Willick v. Willick, [1994] 3 S.C.R. 670

(*Book of Authorities last revised: June 14, 2016*)

6. APPLICATIONS AND MOTIONS IN CRIMINAL MATTERS

(a) Introduction

This practice direction contains suggestions as to how applications for production of third party records, disclosure, and for fresh evidence may be handled in the Court of Appeal. It is not binding on the Court or the parties. The approaches suggested may either be adapted or reframed in light of the circumstances of a particular case. Reference should be made for the procedure which governs the applications to Rule 82.17 of the Criminal Appeal Rules which is contained in the Rules of Civil Procedure.

(b) Application for Third Party Production

Generally speaking, the Criminal Code provisions relating to third party records should be applied, with all necessary changes, to applications for third party production on appeal which would have fallen within the ambit of the Code provisions had the production been sought at trial.

The panel, or a judge designated by the Chief Justice, may hold a case conference to determine whether a proper application for production has been filed, and to address issues relating to service of notice on all appropriate parties, the time for hearing the application by the panel, whether portions of the application must be heard in camera, and all other preliminary procedural matters.

In the case of a self-represented applicant, the Chief Justice or judge designated by him, may direct the Crown to take responsibility for ensuring that proper notice of the application has been given.

The panel or a judge designated by the Chief Justice should take the steps necessary to ensure that third parties affected by the application have the opportunity to obtain legal representation.

In determining the timing for the application of third party records, the panel or a judge designated by the Chief Justice should consider whether there are issues on appeal which will not or are unlikely to be affected by the disposition of the third party records application.

If there are, consideration should then be given to whether it would be in the interests of justice to bifurcate the argument of the appeal by directing that all or some of the issues not dependent on the third party records should be argued before or at the same time as the application for production.

In making that determination, consideration should be given to the likely outcome of the appeal if the appellant were to succeed on the issues related on the third party records as compared to the likely outcome if the appellant were to succeed on the other issues.

Generally speaking, if success on the issues related to the third party records would be unlikely to lead to any disposition of the appeal more favourable to the appellant than success on the other issues, the application for production should be set down to be argued immediately after the argument of the other grounds of appeal or at some later date. Otherwise, a date for hearing the application before a panel should be set, and that date should be before the date set for hearing of the appeal.

The third party records which are the subject of the application should be available for the panel on the date set for the hearing of the application so that if the panel decides to order production to the Court that may occur forthwith.

Generally speaking, if production is ordered to the Court, counsel should be given the opportunity to make additional submissions as to whether production should be ordered to the defence and to the Crown. The panel may direct that such additional submissions be submitted in writing.

If a panel orders records produced to the defence, the panel should hear submissions to determine whether a fresh evidence application will be required and, if so, to give directions as to the timing and form of that application.

(c) Application for disclosure

The applicant should prepare an itemized list, and the Crown should state its position with respect to each item. If necessary, the panel or a judge designated by the Chief Justice may convene a hearing to clarify what is being sought, what is objected to, and on what basis.

The Registrar will establish a time for the hearing of the application for disclosure pending the appeal. In deciding whether the application should be heard within the appeal hearing or prior to the hearing of the appeal, the panel or a judge designated by the Chief Justice should take into account the factors referred to above in the section on production.

If a panel orders further disclosure to the defence, the panel should consider convening a hearing to determine whether a fresh evidence application will be required and, if so, to give directions as to the timing and form of that application.

(d) Application to adduce fresh evidence

On an application to adduce fresh evidence, the Chief Justice or a judge designated by him should consider whether it would be appropriate to convene a hearing of the panel to clarify what is proposed by way of fresh evidence, whether the admission of the evidence is objected to, and on what basis.

The panel should consider whether it would be desirable to give directions as to the material to be filed for an application to adduce fresh evidence. In general, the application to adduce fresh evidence will be heard at the same time as the argument of the appeal on its merits. However, if persuaded that it would be more efficient to do so, the panel may direct that the fresh evidence application be dealt with prior to the date set for the hearing of the appeal on its merits.

(e) Ineffective Counsel

Protocol for motion for fresh evidence on appeal involving an allegation of ineffective or incompetent trial counsel.

Overview

In a criminal appeal from conviction or sentence, the appellant may raise as a ground of appeal that their trial counsel was ineffective or incompetent and that a miscarriage of justice resulted. The onus is on the appellant to establish the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. This is initiated by an appellant's motion to adduce fresh evidence and accompanying affidavit. The motion process gives the court and trial counsel notice of the allegations and provides counsel with a reasonable opportunity to respond. Trial counsel will usually provide a response to such evidence, by affidavit. The Court of Appeal can then consider the allegations and the response in a hearing of the appellant's motion to adduce fresh evidence.

A useful discussion of the issues raised in appeals involving allegations of ineffective trial counsel can be found in the Supreme Court of Canada decision in ***R. v. G.D.B.***, 2000 SCC 22.

Protocol

1. All Notices of Appeal are reviewed by the Deputy Registrar. This review includes a search for grounds of appeal that contain an allegation of ineffective counsel.
2. If Crown counsel becomes aware that an appellant is alleging ineffective counsel, Crown counsel will notify the Deputy Registrar.
3. If the grounds of appeal include an allegation of ineffective trial counsel, the Deputy Registrar will forward the Notice of Appeal to trial counsel.

4. The Deputy Registrar will also notify the Chief Justice, who will consider providing directions or appointing a judge to provide directions regarding the appellant bringing forth a motion for fresh evidence. Directions could be preceded by an inquiry about whether the Court should assign legal assistance for the appellant pursuant to ***Criminal Code*** s.684.
5. The Deputy Registrar will provide trial counsel with a copy of the motion for fresh evidence and all correspondence and documents filed with the Court of Appeal on the motion.
6. On a conference for directions or a hearing of a motion for directions, trial counsel will advise the judge whether they intend to participate in the motion for fresh evidence. In particular, counsel will advise the court whether they intend to file affidavit evidence or respond otherwise to the appellant's motion for fresh evidence.
7. Should the response of trial counsel involve disclosure of potentially privileged information, counsel should bring a motion for directions regarding waiver of privilege sought.
8. Trial counsel may apply for intervenor status in an appeal. In some circumstances, the nature of the allegations may result in standing being granted.

Effective September 1, 2016

7. APPEAL HEARINGS

(a) Court Sittings

The Court of Appeal holds regular sittings commencing on the second Tuesday in each month, except in July and August. Appeal hearings will usually occur during the second and third weeks of each month, commencing at 9:30 a.m. Appeal hearings may also be scheduled by the Registrar in the other weeks and at other times, in consultation with the Chief Justice or judge presiding over the appeal.

The Court of Appeal schedules motions weekly. The Registrar may schedule motions at any time in consultation with the Chief Justice, subject to the schedule of the court and judges.

(b) General practice - oral hearing

The general practice is that the parties attend and present argument in an oral hearing.

(c) Hearing without oral argument

(i) General

The hearing of some motions, applications, and appeals can take place, or be participated in, without counsel or a party being present and making oral argument. Hearing by written submission, or by video or audio conference, can result in saving of cost and time. Hearings by these alternate modes can occur where specifically authorized by the Rules of Civil Procedure, and also with leave, as applicable, of a judge or the Court. Arrangements to make or respond to a motion, application, or appeal by such alternate modes may be made through the Court Clerk at 902-368-6024**.**

(ii) Hearing in writing

Hearing without oral argument is available on an application for leave to appeal in accordance with Rule 37.12.1.

(iii) Appeal by video or audio conference

Available in accordance with Rule 38.13.

The Chief Justice or a presiding judge may direct that any matter in the Court of Appeal be heard by way of video conference, or that any motion be heard by way of a telephone conference.

(d) Expedited hearings

(i) Most civil appeals are heard within six months of perfection. However, the Court recognizes that some appeals must be heard more quickly. The following appeals will be expedited, without an order for expedition:

(a) Family law appeals;
(b) Sentencing appeals;
(c) Appeals that may delay the progress of an ongoing proceeding.

Other appeals may be expedited by a judge of the court on being satisfied on motion or case management that the urgency of the matter is such that an early hearing date is necessary.

(ii) Counsel should advise the Deputy Registrar at 902-368-6024 that an appeal meets one of these criteria and the proposed schedule of events leading to appeal.

(iii) The Court is prepared to hear an expedited appeal if counsel or a self-represented litigant consent to or are made subject to an order for abridgment of time for perfecting an appeal and/or filing of respondent's factum. Rule 3.02 – Abridgment of Time applies.

(e) Court orders

Counsel for the successful party should draw an appropriate order and request the other party to confirm its consent as to the form of the order.

8. POST-HEARING SUBMISSIONS

(a) General rule

The general rule is that all submissions are contained in the factum and oral argument submitted at the hearing, and that the appeal hearing is complete at the end of the oral hearing.

(b) Exceptions

Post-hearing submissions are exceptional. As such, they must be either (i) at the request of the Court; or (ii) justified, and made with leave of the Court. Following is guidance for when an exception to the general rule will be considered:

(i) From time to time, after the hearing of an appeal has been concluded the court may wish to receive further submissions from counsel in respect of one or more issues. Counsel will be advised of any such request and will be given a time within which to serve and file material.

(ii) Occasionally counsel may become aware of a newly decided authority that may have an impact on the appeal. Counsel may file the authority, without submissions.

If counsel wish to make a submission as to the impact of such new authority, they should include a request to do so in a covering letter addressed to the Deputy Registrar and copied to other counsel. Counsel will be advised as to whether the court is prepared to entertain further submissions, and if so, as to a time within which to serve and file submissions.

(iii) In exceptional circumstances, counsel may seek to make additional or new submissions to the court while an appeal is reserved or after the decision has been released. The request should be made in writing to the attention of the Deputy Registrar, and should outline the essentials of the argument and the reasons that it was not made at the hearing of the appeal. Opposing parties may respond in writing to the request, expeditiously (in any event, within seven days). The Deputy Registrar will advise counsel as to whether further submissions will be entertained. This process is not to be viewed as a substitute for proper preparation of the factum and full argument at the hearing of the appeal.

9. RELEASE OF JUDGMENTS

The following protocol and procedure is followed for the release of written judgments given in the Prince Edward Island Court of Appeal:

(i) When a judgment is ready for release, the court clerk will e-mail or telephone the parties or their lawyers or lawyers' secretaries forty-eight (48) hours in advance of the judgment being filed.

(ii) Where a party is self-represented, the court clerk will explain the judgment release process.

(iii) After the parties involved are notified, a notice will be placed on the Court Website giving the name of the case and the release date for the judgment.

(iv) On the release date, the judgment will be filed at nine a.m. and a copy will be provided to each party.

(v) After the judgment has been filed at nine a.m. on the release date, the judgment will be added to the Court website as soon thereafter as possible. Once on the website, the decision becomes available for public access.

10. COPIES OF DECISIONS AND RECORDINGS

The Court publishes its written decisions on the internet, subject to minimal privacy considerations.

For oral decisions, the Court provides a copy of a typed transcript of the decision to the parties in an appeal, but not to the public.

A CD of proceedings in the Court of Appeal is available to the parties at reasonable cost. The recordings in a CD are not for rebroadcast and are subject to any applicable publication ban or order.

Media may receive a CD of a decision or proceeding on the payment of the required fee on the same basis that media may record Court of Appeal proceedings. Only dialogue between counsel or a party as applicable, and the Bench, and the formalities of the opening and closing of the court may be used in any text publication. There shall be no publication of any private conversations that may have been recorded by the court's digital recording system. Broadcast of any recording of any Court of Appeal proceeding is prohibited.

A request for a recording of a decision or proceeding in the Court of Appeal may be made to the Clerk of the Court of Appeal (1-902-368-6024) on the following form.:

> I request a CD of the proceedings for the appeal of _____ v. _____ heard by the Court of Appeal on _____. I agree to comply with the Court of Appeal rules with respect to the use of the material stated in its Policy respecting Media and Public Access to Court Proceedings, and to familiarize myself and comply with any publication ban or order that may be in effect with respect to this proceeding.
>
> _____ (signature)
>
> _____(date)
>
> _____ (print name)

1. The Court Clerk does not prepare transcripts of evidence but will provide a CD of the evidence to any party upon request.

2. The following procedure is to be followed when requesting copies of the evidence:

   (a) Counsel or a self-represented party makes a written request to the Court Clerk for a CD;

   (b) The cost of each CD is $20.;

   (c) Upon payment of the fee, the Court Clerk will provide the CD to the person making the request;

(d) If the transcript is to be used on an appeal or for any other court purpose, the parties must comply with s. 55(3) of the Evidence Act;

(e) If the parties are unable to reach an agreement under s. 55(3), a judge of the Court shall be immediately informed and the parties shall seek directions from a judge;

(f) Where the parties have reached an agreement under s. 55(3), the transcripts will be produced forthwith.

3. An audio recording of court proceedings may be used only:

(a) for the preparation of a typed transcript;

(b) to permit the solicitor or party of record to review the testimony; or

(c) to verify or supplement notes made for the purpose of preparation of material for broadcast or publication.

4. An audio recording of a court proceeding shall not, either in whole or in part, be used for broadcast, audio reproduction or re-taping.

11. COSTS IN THE COURT OF APPEAL

(a) General practice

(i) The usual practice is that a judge or a court hearing a motion or an appeal will fix the costs of the proceeding (Rule 57.01(3)).

(ii) Counsel should have a draft bill of costs, including quantum, available for submission upon request at the hearing of a motion or an appeal.

(iii) Counsel for a party who may be entitled to costs is to prepare and exchange their proposed bills of costs, and be prepared to file it upon request at the time of the appeal hearing. This bill will be complete up to the day before the hearing, and will include an estimate of the counsel fee for the hearing. The bill should refer to the Costs Guide set out in clause(b) below (formerly Practice Note 21).

(iv) If the decision on the motion or appeal is to be released orally immediately after the hearing, counsel will be given an opportunity to make brief oral submissions regarding costs.

(v) Where the court determines it is preferable to defer submissions on quantum of costs to a time following release of the decision, then the Court will usually provide directions with the reasons for judgment for submissions on costs.

(b) Costs guide

(1) Where costs are awarded on appeals, motions or applications, usually they will be fixed and made payable forthwith (meaning within 30 days).

(2) Costs on motions and applications will usually be awarded on the basis of the Costs Guide set out below.

Costs Guide

In order to assist parties in making costs submissions under Rule 57, and in completing Form 57B, the following guide is suggested. This guide includes the maximum rates that the court will normally consider when fixing partial indemnity costs. The maximum rates within each category are intended to apply only to complicated matters and to more experienced counsel. Counsel are reminded that, to the degree that partial indemnity rates are helpful in making costs submissions, they should utilize rates in their submissions that fall within the range established by these maximums that are appropriate to the particular

matter after giving due consideration to the factors set out in Rule 57.01(1).

Guide
Fee items which may be included in an award of costs include notice of appeal; perfecting appeal; respondent's factum; attendances on setting down an appeal, pre-hearing conference, settlement conference, preparation for hearing, attendance on appeal or motion hearing, preparation of order, and other procedures authorized by the Rules of Civil Procedure.

Law Clerks and students-at-law	maximum of $50.00/hr
Lawyer (less than 5 years)	maximum of $90.00/hr
Lawyer (more than 5 but less than 10 years)	maximum of $120.00/hr
Lawyer (10 or more but less than 20 years)	maximum of $140.00/hr
Lawyer (20 years and over)	maximum of $160.00/hr

(c) Self-represented litigants

A self-represented litigant can receive an award of costs. As in any case, costs are in the discretion of the court.

Costs payable to a self-represented litigant and related limitations are discussed in previous court decisions:

- for reasonable expenditures for related legal advice and services, even if full representation is not obtained, as a disbursement, not to exceed the amount that would be allowed as fees if such costs were part of a costs award to a represented litigant (***Ayangma v. Prince Edward Island (Attorney General)*** 2004 PESCAD22, at paras. 5-10; ***D.E.M. v J.M.M.*** 2011 PECA 16, at para.2).

- for one's own time expended, only to the extent a self-represented litigant can show lost opportunity cost, i.e. that the time the self-represented person spent on the appeal, which would normally be time spent by a lawyer, actually caused the self-represented litigant to suffer a financial loss due to necessary time off work, use of vacation days, or time away from business. The self-represented litigant must show the amount of money claimed was actually lost be handling the

appeal (***Ayangma v. Prince Edward Island (Attorney General)*** 2004 PESCAD 22, at para.16; ***Pierlot Family Farm Ltd. v. Polstra 2006*** PESCAD 13, at paras. 2 and 11; ***D.E.M. v. J.M.M.*** 2011 PECA 16, at para.2).

- the factors in Rule 57.01 apply to all costs orders.

- other reasonable disbursements are usually awarded if proven (***Pierlot Family Farm Ltd. v. Polstra*** 2006 PESCAD 13, at para.6; ***D.E.M. v. J.M.M.*** 2011 PECA 16, at para.5).

(d) Assessment of costs by Prothonotary

1. When a party is having costs assessed by the Prothonotary pursuant to an order, the party shall file with the Prothonotary through the Court of Appeal registry a bill of costs and a copy of the order or other document giving rise to the party's entitlement to costs.

2. The Prothonotary will usually issue a certificate not later than 30 days after the completion of the assessment hearing or not later than 45 days in the event the assessment amount is objected to under Rule 58.10, unless an extension is granted on motion to a judge. Such a certificate on costs shall be effective when the order is made.

(e) Security for costs

When applying for security for costs, the Court recommends that counsel use the following precedent affidavit and draft bill of costs. Only the material that relates to calculation of the costs is included.

Court File No. 92-CQ-2887

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

POLAR PRODUCTIONS AND SPORTS CONSULTANTS INC.

Plaintiffs

- and -

AULT FOODS LIMITED, carrying on business as THE SPORTS NETWORK, TEN ENTERPRISES and JLL BROADCAST GROUP

Defendants

NOTICE OF MOTION

The Defendants will make a motion to the Court on Thursday, the 15th day of April, 1992 at 10:00 a.m., or as soon after that time as the motion can be heard, at 145 Queen St. West, in the City of Toronto.

THE MOTION IS FOR an Order for security for costs.
THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff is ordinarily resident outside Ontario.
2. The Plaintiff is a corporation and there is good reason to believe that the Plaintiff has insufficient assets in Ontario to pay the costs of the Defendants.
3. Rule 56 of the rules of Civil Procedure.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:
1. The Affidavit of C. Clifford Lax.
2. The Affidavit of Peter Pleckaitis

DATE: March 24, 1992

GOODMAN & GOODMAN
250 Yonge Street
Suite 2400
Toronto, Ontario M5B 2M6
Solicitors for the Defendants

TO: MORRIS COOPER
Cumberland Court
99 Yorkville Avenue
Toronto, Ontario M5R 2K5
Solicitors for the Plaintiffs

EXHIBIT "A"
DRAFT BILL OF COSTS

Pleadings			$1,000.00
Affidavit of Documents		Clerk - 10 hrs x $50	$500.00
		Counsel - 2 hr. x $150	$300.00
Motions	Security for Costs		$1,000.00
	Strike Jury Notice		$1,000.00
	Refusals		$1,000.00
Discoveries	Preparation - Counsel - 20 hrs. x $140		$2,800.00
	Attendance - four days - 32 hrs. x $140		$4,480.00
Trial	Preparation		
	- 1st counsel 20 hrs. x $160		$3,200.00
	- 2nd counsel 40 hrs. x $140		$5,660.00
	- student 50 hr. x $50		$2,500.00
	Attendance (10 days)		
	1st counsel ($1,600 day)		$16,000.00

2nd counsel ($1,400 day)	$14,000.00
student ($500 day)	$5,000.00
TOTAL FEES:	**$58,440.00**

Disbursements

Statement of Defence	$70.00
Transcript - 1st copy, 175 pages x 2 days x $3.75	$1,312.50
- 2nd copy, 175 pages x 2 days x $.75	$262.50
- Court copy, 175 x 2 x $.75	$262.50
Form and Reporter fee per hour ($34 x 7hrs. 2 days)	$476.00
TOTAL DISBURSEMENTS:	**$2,383.50**
TOTAL FEES AND DISBURSEMENTS:	**$60,823.50**
HST at 14%	$
TOTAL	$

12. PUBLIC AND MEDIA ACCESS

(a) Open court principle

The open court principle is a hallmark of a democratic society. Few members of the public have opportunity to attend court in person. Most people rely on media reports about what is taking place. Accordingly, the media plays an important role in informing the public about the courts.

As a general principle courts are open to the public. The general principle is subject to some exceptions. Sometimes public access to court proceedings and court records is restricted. This occurs where it is deemed necessary to protect other social values of prime importance. Access may be limited by a law or by a presiding judge. Depending on the situation, a proceeding may be closed in whole or in part and publication of information may be prohibited or delayed. Proceedings under the ***Child Protection Act*** are closed to the public. A few proceedings under the ***Criminal Code*** are subject to restrictions, where the identity of a complainant or a victim needs to be protected. In family matters, the trial judge has discretion to exclude the public where the judge deems there is a justified need to protect against disclosure. The ***Judicature Act*** allows a court or a judge to order that the public be excluded from a hearing when there is possibility of serious harm or injustice to any person.

(b) Electronic devices in the Courtroom

This policy sets out directions regarding the use of electronic devices in the Court of Appeal.

Definitions:
"Electronic Device" includes all forms of computers, personal electronic and digital devices, and mobile, cellular and smart phones.

"Authorized Persons" mean only members of the Bar, law clerks, law students, law enforcement officers, self-represented litigants, and members of the media.

Discretion of Presiding Judge Retained:
Notwithstanding anything in this policy, the use of an Electronic Device in the Court of Appeal is subject to the direction or order of the presiding judge who retains the discretion to allow or prohibit possession and use of any Electronic Device.

Use of Electronic Devices by the Public is Prohibited
Members of the public are not permitted to use electronic devices in the courtroom, unless the presiding judge orders otherwise.

Permitted use of Electronic Devices by Authorized Persons
An Authorized Person may use an Electronic Device in silent mode and in a discreet and unobtrusive manner in the Court, unless the presiding judge orders otherwise. Use of an electronic device is subject to the following restrictions:

i) The Electronic Device cannot interfere with courtroom decorum or otherwise interfere with the proper administration of justice.

ii) The Electronic Device cannot interfere with the Court recording equipment or other technology in the courtroom.

iii) The Electronic Device cannot be used to send publicly accessible live communication of any information that is subject to a publication ban or a witness exclusion order. Any Authorized Person or other person having received special permission who uses an Electronic Device to transmit only communication from the courtroom has the responsibility to identify and comply with any publication ban or other restriction imposed either by statute or court order.

iv) The Electronic Device cannot be used to take any photograph or video, unless the presiding judge has granted permission to do so.

v) Only Authorized Persons are permitted to use an Electronic Device to make an audio recording of the proceeding, and such use is only for the purpose of note-taking. No audio recording may be sent from the Electronic Device.

vi) Talking on an Electronic Device is not permitted in the courtroom. Phones shall not be answered, but may be set on vibrating mode, unless that operation interferes with court recording equipment or court proceedings.

An Authorized Person may use an Electronic Device to transmit information from the courtroom to a publicly accessible medium (e.g. via Twitter, Facebook, or live blog).

Other members of the public who wish to transmit text-based communication may apply to the judge, through the court staff, for permission to use an Electronic Device in this manner, but may only use

the Electronic Device upon such permission being formally granted and received.

In determining whether to permit live text-based forms of communication by other members of the public, the Presiding Judge will consider whether it might interfere with the proper administration of justice.

Sanctions

Any person who uses an Electronic Device in a manner inconsistent with this policy or in contravention of any order that the Presiding Judge determines to be unacceptable may be subject to one or more of the following sanctions:

i) a direction to turn off the device;
ii) a direction to leave the courtroom;
iii) a citation and prosecution for contempt of court;
iv) prosecution for any violation of a publication ban, sealing order, or other restriction on publication;
v) other order of the court.

Questions

Questions about this policy may be directed to the Court Services Manager (or her designate), or to the Court Clerk in a particular proceeding.

(c) Media in the Courthouse

This policy promotes the objectives of media access for interviews and picture taking[1]. Accredited media and journalists will, upon request, be provided with a designated space in the courthouse for media interviews.

Court staff may require accredited media to display their accreditation at any time or at all times in order to easily identify those persons who are permitted to have access or to perform permitted uses of electronic devices.

Accredited media and other Authorized Persons are permitted to use electronic devices in courtrooms in accordance with Policy Direction 12(b) above. Restrictions protect the integrity and decorum of court proceedings and privacy interests. Other members of the public cannot use electronic devices in the courtroom.

[1] This policy on media access is consistent with the policies adopted by many other Canadian jurisdictions and by the Lord Chief Justice of England and Wales.

The Court policy regarding use of electronic devices is subject to the direction or order of the presiding judge, who retains discretion to allow or prohibit use of any Electronic Device.

In order to ensure the fair administration of justice, protect the integrity of court proceedings, and respect for the rights of litigants and witnesses, the following rules apply to media activity in the courthouse, including media filming, picture taking and interviewing[2].

i) Obstructing or hindering the free movement of persons in public areas, including by stopping in front of them or by blocking their passage, is prohibited.

ii) Pursuing individuals with cameras or microphones is prohibited.

iii) Requesting an interview from a person is permitted, except while that person is in the courtroom or exiting the courtroom.

iv) Filming, picture taking, or interviewing in the general vicinity of court rooms or near entrance and exit doors is prohibited.

v) Filming, picture taking, and interviewing are permitted only within designated areas in the public section of the courthouse.

Designated areas for picture taking are: (i) ground level in the public area, and (ii) second level in the public foyer, subject to (iv) above.

Designated areas for interviews are rooms or spaces authorized by the Court Services Manager or her designate, including the ground level jury room when unoccupied.

vi) Where the person consents to give an interview, the member of the media and such person must move to the designated area.

vii) Safety instructions, security zones and cautious use of the stairs must always be respected.

viii) Any person may contact the security service of the courthouse to have the rules enforced.

Cameras in the Courtroom

Media operation of television and still cameras is allowed in the courtroom during a hearing of the Court of Appeal is allowed in

[2] This list is based on the Quebec Superior Court policy that was found to be **Charter**-compliant in ***Canadian Broadcasting Corp. v. Canada (A.G.)***, 2011 SCC 2.

accordance with this policy, unless for special circumstances, the presiding judge otherwise orders.

Media cameras shall not be operated in any manner that interferes with the court process: no flashes, no bright lights, no distracting movements or sounds.

Cameras are allowed for the purpose of photographing the proceedings, the Court and those seated at counsel tables. Photographing of spectators is prohibited and shall be avoided. Where spectators necessarily appear in the background, they shall not be focused upon or highlighted. Any images obtained as a result of photographing court proceedings shall not be used for stock footage.

Any videotaping of proceedings shall be by way of one or more fixed cameras, at a position or positions agreed upon by the Court. The cost of any installation shall be borne by the media interested in obtaining video images of proceedings. Once installed, the system will be available for use by all authorized media.

Documents and computer screens on counsel tables, the Clerk's desk, or the Bench shall not be photographed in such a manner that the text can be magnified, read or deciphered.

Prior to the scheduled start of proceedings, camera persons will be allowed to take photographs from in front of the Bar in accordance with these rules.

(d) Wireless

Introduction:
Wireless internet connection is available in the Charlottetown courthouses. There are two networks, which are separate from each other. Both networks are designed to be secure.

Guest network:
Members of the media, counsel, law clerks, self-represented litigants, and law enforcement officers, who wish to have access to the Courts' wireless "guest" network will make a request to the Court administration when they enter the courthouse. Court administration will provide a username and password that will enable connection. The guest account is time sensitive, meaning Court administration will define the amount of time the account can be active. For example, if counsel need wireless access for two hours or two days for a trial in which they are participating, the account would be set up for two hours or two days.

Once the account exceeds the time specified, the account will expire and is no longer of any use to that person.

This service is free of charge.

The wireless guest service is provided to assist persons participating in court proceedings. Any unauthorized or illegal use of the service can be tracked to the guest log in and associated electronic device. Traffic may be monitored by Government or its agents for that purpose.

Court network:

The Court network is internal, and contemplates ongoing connection.

Judges and court staff can have their government issued electronic devices added to a list which will be granted access to the Court wireless network. Only government issued devices will be able to connect to the Court network.

Disclaimer:

The Court and guest wireless services only provide connectivity. The Court is not responsible for the availability, performance, or security of the wireless networks, or for any device using a network. The owner of any electronic device is solely responsible for his or her own technical support.

(e) Access to Court documents

General Rule and Exceptions

The general rule is that court documents are a matter of public record.

In ***Canadian Broadcasting Corp. v. The Queen***, 2011 SCC 3 (**CBC #2**), the Supreme Court of Canada advised that access and public access to exhibits is a corollary to the open court principle. In the absence of a specific statutory provision, it is for the presiding judge to determine how exhibits can be used so as to ensure that a trial or appeal is orderly. The decision of Justice Mitchell (then of the Supreme Court of Prince Edward Island) in ***RE: CBC Application (R. v. Dingwell***), 2012 PESC 14, sets out the underlying principles, and provides some guidance to the media and the public for the future.

This general rule is subject to exception where a legislative provision or court order restricts public access. Curtailment of public access is only justified where there is a need to protect certain social values of importance. For instance, broad legislative restrictions exist that restrict access to court documents in regard to matters involving child protection,

youth criminal justice, warrants/Informations to Obtain; documents sealed by order of a judge (the sealing order can be reviewed), and in some family law proceedings.

Court files and documents are held in the custody of the Registrar of the Court at the Sir Louis Henry Davies Law Courts.

Except where access is restricted, the public and media may search the file indices and review documents. Any such review of information must be made at the court registrars in the presence of court staff. In no case is a member of the public permitted to remove or alter a court document.

Photocopies of documents will be made by court staff for a fee upon reasonable request.

(f) Publication Bans

The general rule is that the media is entitled to public information about proceedings in court.

There are exceptions. To protect the fairness and integrity of a trial, the privacy and safety of a victim or witness, or the identity of a young offender, the court may, and sometimes must, impose bans on the publication of information.

There are two sources of authority for publication bans: (i) the inherent discretion of the presiding judge to control court proceedings for the purpose of ensuring a fair trial; and (ii) statutory provisions that permit or require publication bans, e.g. ***Criminal Code of Canada***, ***Youth Criminal Justice Act***.

When considering whether to issue a discretionary publication ban, a judge must weigh the competing Charter-protected interests before imposing a ban on publication of information regarding a matter before the court. The judge must consider submissions by the media (freedom of expression) and by the person seeking the ban (right to a fair trial; security of the person), and then impose the minimal ban necessary to protect the fundamental rights in jeopardy.

The law regarding publication bans is complex. Members of the media covering legal proceedings should be familiar with the requirements, and when in doubt should seek legal advice. Members of the media are responsible to ensure that all persons acting on their behalf respect all publication bans. There are serious consequences for breaching a publication ban.

A publication ban ordered by another court with respect to a party or witness in a proceeding which is the subject of an appeal hearing is

deemed to be in effect in the Court of Appeal, unless revoked by an order of the Court, and such ban shall be observed in all broadcasts or other publication of the proceedings in court.

(g) Publication of Court Docket

Upcoming cases in the Court of Appeal and the issues involved are posted on the Court website. The docket is also available from the Clerk of the Court of Appeal – 902-368-6024.

Up-to-date information about the time and location of appeals and trial court proceedings in the Courthouse is available daily from the front desk Commissionaire.

13. ORDERS RESTRICTING MEDIA REPORTING AND PUBLIC ACCESS

1. Unless otherwise provided for in the Rules of Civil Procedure, this practice direction applies to any application or motion in the Court of Appeal for:

   a) the use of pseudonyms,
   b) a publication ban,
   c) a sealing order, or
   d) an order for an in camera hearing,

   under a judge's or the Court's discretionary, legislated or common law authority.

2. "Interested parties" include the parties to the appeal, the electronic and print media, and any other person named by a judge.

3. The Applicant must file with the Deputy Registrar of the Court two copies of the Notice of Motion, the affidavit in support and the proposed order, and, except with leave of a judge, serve the interested parties with a copy of the application or motion, the affidavit and the proposed order, at least three clear days before the application or matter to which the ban or order is to apply.

4. The motion must be made in accordance with Rule 61.13, except as that procedure may be varied by this practice direction.

5. The Applicant may apply to a judge for further directions as to the parties to be served and the manner of service.

6. Any party not constituted as an Interested Party pursuant to paragraph 2 and claiming an interest in the proceedings must apply to a judge for standing to be heard on the application.

7. The information that is the subject of the initial application may not be published without leave of a judge until that application is heard.

8. If satisfied that there has been a failure to comply with the requirements of this practice direction, the judge, may:
   a) dismiss the application
   b) require the party to pay the reasonable costs and expenses incurred because of any noncompliance with this practice directive, or
   c) make any other appropriate order.

14. SELF-REPRESENTED LITIGANTS - STATEMENT OF PRINCIPLES

The Court of Appeal employs the Canadian Judicial Council Statement of Principles, which may be found at: http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf

15. HAGUE CONVENTION PROTOCOL

PROCEDURAL PROTOCOL FOR THE HANDLING OF RETURN APPLICATIONS UNDER THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION PRINCE EDWARD ISLAND SUPREME COURT - FAMILY DIVISION

Preamble

1) The *1980 Hague Convention on the Civil Aspects of International Child Abduction* ("the *1980 Hague Convention*") became the law in Prince Edward Island pursuant to s-s. 28(2) of the ***Custody Jurisdiction and Enforcement Act***.

2) Article 1 of the *1980 Hague Convention* provides the following objectives:

   a) to secure the prompt return of children wrongfully removed to or retained in any contracting state; and
   b) to ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.

3) Article 11 of the *1980 Hague Convention*[2] provides in part as follows:

   The judicial or administrative authorities of contracting states shall act expeditiously in proceedings for the return of children.

4) The Minister of Justice and Public Safety and Attorney General, through Loretta Coady MacAulay, Manager of the Family Law Centre, fulfills the responsibilities of Central Authority pursuant to the *1980 Hague Convention* for Prince Edward Island.

5) To ensure that return applications under the *1980 Hague Convention* are dealt with expeditiously the attached procedural protocol has been developed by the Supreme Court of Prince Edward Island.

PROCEDURAL PROTOCOL

1) The Chief Justice of the Supreme Court of Prince Edward Island will ask Prince Edward Island's Central Authority to advise Justice Cheverie, or in his absence, the Chief Justice, when it becomes aware of an intent to initiate proceedings in Prince Edward Island for the return of a child pursuant to the *1980 Hague Convention on the Civil Aspects of International Child Abduction* ("*the 1980 Hague Convention*").

[2]Schedule to *Custody Jurisdiction and Enforcement Act* R.S.P.E.I. 1988, Cap. C-33

2) Article 16 of the *1980 Hague Convention*[3] provides that where a court has notice of the alleged wrongful removal or retention of a child, the court shall not deal with the merits of rights of custody until an application for return pursuant to the Convention ("return application") has been determined, unless a return application is not filed within a reasonable time after notice is given to the court.

3) When Article 16 is invoked and the Supreme Court of Prince Edward Island receives notice of an alleged wrongful removal or retention on the filing of a return application, notice as contemplated under Article 16 may also be provided by the Central Authority filing a requisition notifying the court of the case. The filing of a Requisition giving notice under Article 16 will be sufficient to open a court file where no file exists. This would subsequently be followed in the normal course by the filing of a return application.

4)(a) The return application will be commenced in the court as a Notice of Application (Form 14E) and the existing Rules of Court, with respect to notice and service under Rule 38, and evidence and procedure, will apply.

(b) Where the Applicant seeks to abridge time or to proceed on an urgent or without notice basis, the Court may permit this where the circumstances warrant proceeding in this way.

(c) When the return application first comes before the court the presiding judge or stand-by judge, as the case may be, will undertake the responsibility of:

(i) establishing appropriate time lines for the filing and service of further materials; and

(ii) setting the application down for hearing

and in carrying out these responsibilities will have regard to the requirement for an expeditious determination of the matter. The trial coordinator has been advised that return applications pursuant to the *1980 Hague Convention* are to be given priority on the setting of times.

(d) Any party, including a left-behind parent, may appear by way of telephone conference or video conference where appropriate and where facilities are available. The Central Authority, through the Minister of Justice and Public Safety and Attorney General, will facilitate any such arrangements for the participation of the left behind parent.

[3] Article 16 of the 1980 Hague Convention provides: After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this convention or unless an application under this convention is not lodged within a reasonable time following receipt of the notice.

6) Article 29 of the *1980 Hague Convention*[1] allows persons to bring return applications directly, rather than through the Central Authority. The Central Authority is to be notified of direct applications.

7) The Central Authority is to be notified of the commencement of any court proceedings respecting custody or private guardianship of, or access to, a child who is the subject of a Requisition giving notice as contemplated by Article 16 or a return application, until such time as the return application is determined by the Court.

March 18, 2011

[1] Article 29 of the *1980 Hague Convention* provides: This Convention shall not preclude any person, institution or body who claims there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Hague Convention Protocol
NETWORK OF CONTACT JUDGES – MEMBERS

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