

**RULE 68**  
**PROCEEDINGS FOR JUDICIAL REVIEW**

**HOW COMMENCED**

**68.01** An application under the *Judicial Review Act* shall be commenced by notice of application in Form 68A.

**APPLICABLE PROCEDURE**

**68.02** Rule 38, with necessary modifications, applies to applications under the *Judicial Review Act*.

**HEARING DATE**

**68.03** A notice of application shall state that the application is to be heard on a date to be fixed by the Registrar.

**APPLICATION RECORDS AND FACTUMS**

**Applicant**

- 68.04** (1) The applicant shall deliver an application record and a factum,
- (a) where the nature of the application requires a record of the proceeding before the court or tribunal whose decision is to be reviewed, within thirty days after the record is filed with the Registrar; or
  - (b) where the nature of the application does not require such a record, within thirty days after the application is commenced.
- (2) The applicant's application record shall contain, in consecutively numbered pages arranged in the following order,
- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
  - (b) a copy of the notice of application;
  - (b.1) a copy of the reasons of the court or tribunal whose decision is to be reviewed, with a further typed or printed copy if the reasons are handwritten;
  - (c) a copy of all affidavits and other material served by any party for use on the application;
  - (d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and

- (e) a copy of any other material in the court file that is necessary for the hearing of the application.
- (3) The applicant's factum shall be signed by the applicant, the applicant's lawyer, or on the lawyer's behalf by someone the lawyer has specifically authorized, and shall consist of
- (a) Part I, containing a statement identifying the applicant and the court or tribunal whose decision is to be reviewed and stating the result in that court or tribunal;
  - (b) Part II, containing a concise summary of the facts relevant to the issues on the application, with specific reference to the evidence;
  - (c) Part III, containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities, together with argument, relating to that issue;
  - (d) Part IV, containing a statement of the order that the court will be asked to make, including any order for costs;
  - (e) Schedule A, containing a list of the authorities referred to; and
  - (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws
- in paragraphs numbered consecutively throughout the factum.

**Respondent**

- (4) The respondent shall deliver an application record and a factum within thirty days after service of the applicant's application record and factum.
- (5) The respondent's application record shall contain, in consecutively numbered pages arranged in the following order,
- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
  - (b) a copy of any material to be used by the respondent on the application and not included in the application record.
- (6) The respondent's factum shall be signed by the respondent's lawyer, or on the lawyer's behalf by someone the lawyer has specifically authorized, and shall consist of,

- (a) Part I, containing a statement of the facts in the applicant'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 specific reference to the evidence;
- (b) Part II, containing the position of the respondent with respect to each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities, together with argument, relating to that issue;
- (c) Part III, containing a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities, together with argument, relating to that issue;
- (d) Part IV, containing a statement of the order that the court will be asked to make, including any order for costs;
- (e) Schedule A, containing a list of the authorities referred to; and
- (f) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws that are not included in Schedule B to the applicant's factum,

in paragraphs numbered consecutively throughout the factum.

#### **Copies for Use of the Court**

- (7) The parties shall file one copy of their application records and factums for the use of the court.

#### **Material may be Filed as Part of Record**

- (8) Any material served by a party for use on an application may be filed, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material.

#### **Transcript of Evidence**

- (9) Despite subrule 34.18(2) (time for filing transcript), a party who intends to refer to a transcript of evidence at the hearing shall file two copies of the transcript with the application record and factum.

#### **Early Hearing of Applications**

- (10) On application by any party to a proceeding under this rule, the court may, in special circumstances, order an early hearing of an application and may give any necessary directions.

### **CERTIFICATE OF PERFECTION**

- 68.05** (1) The applicant shall file with the application record a certificate of perfection (Form 68 B),
- (a) stating that all the material required to be filed by the applicant for the hearing of the application has been filed; and
  - (b) setting out, with respect to every party to the application and any other person entitled by statute or by an order under Rule 13 (intervention) to be heard on the application,
    - (i) the name, address, telephone number, and email address of the lawyer for every party or other person, or
    - (ii) the name, address, telephone number, and email address of every party or other person, if acting in person.
- (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68 D) by mail to the parties and the other persons named in the certificate of perfection.

### **DISMISSAL FOR DELAY**

#### **Motion by Respondent**

- 68.06** (1) Where the applicant has not,
- (a) delivered an application record and factum within the time prescribed by subrule 68.04(1); or
  - (b) filed a certificate of perfection as required by subrule 68.05(1),

the respondent may make a motion to the Registrar at the place of hearing, on ten days' notice to the applicant, to have the application dismissed for delay.

#### **Notice by Registrar**

- (2) Where the applicant has not delivered an application record and factum and filed a certificate of perfection within one year after the application was commenced, the Registrar may serve notice on the applicant that the application will be dismissed for delay

unless the applicant delivers an application record and factum and files a certificate of perfection within ten days after service of notice.

### **Registrar to Dismiss where Default not Cured**

- (3) Where the applicant does not cure the default within ten days after service of a notice under subrule (1) or (2) or such longer period as a judge allows, the Registrar shall make an order in Form 68 C dismissing the application for delay.
- (4) Where an application is dismissed pursuant to subrule (3), the application is at an end, and the respondent is entitled to costs, unless the Court or a judge thereof orders otherwise.

### **Review of Registrar's Dismissal**

- (5) A party affected by an order of the Registrar under subrule (3) may make a motion under subrule 61.13(9) to set aside or vary the order.

*PEI Public Schools Branch v. PEI Teachers' Federation*, 2023 PESC 18

An applicant for judicial review sought to include an affidavit which was not before the arbitrator. The court denied the motion, as it fell outside the exceptions for supplementing the record.

*H.P. v. IIDI*, 2022 PESC 1

The court declined to order additional documents to be included in the record, as they were either not relevant to the proceeding, or subject to solicitor-client privilege.

*R. v. Handregan* (1992), 97 Nfld. & P.E.I.R. 330 (P.E.I.S.C.-T.D.)

Generally, the Rules of Civil Procedure intend that proceedings should be upheld and allowed to proceed and not defeated for irregularities or defects where no wrong or injustice will be done to any party thereby.

No precise rules can be laid down as to the exact circumstances which call for the exercise of the discretion of the court as provided in Rule 68.01. The court must be satisfied that the delay will not cause substantial prejudice to anyone when granting an extension of time for commencing an application under the *Judicial Review Act*.

**Note:** There are cases addressing the extension of time for filing an application for judicial review; however, such applications are made pursuant to s. 3(1) of the *Judicial Review Act* and not the Rules of Civil Procedure. They are: *Anne & Gilbert v. Prince Edward Island (Minister of Finance & Municipal Affairs*, 2012 PECA 4; *McKenna's Furniture v. The Office of the Provincial Fire Marshall and Department of Provincial Affairs and Attorney General*. (1997), 152 Nfld. & P.E.I.R. 212

(P.E.I.S.C.-T.D.); *Reiten v. Prince Edward Island (Human Rights Commission)* (1997), 153 Nfld. & P.E.I.R. 327 (P.E.I.S.C.-T.D.); *Concerned Citizens of Borden and Carleton Siding v. Prince Edward Island (Minister of Environmental Resources)* (1994), 119 Nfld. & P.E.I.R. 167 (P.E.I.S.C.-T.D.); and *Thibodeau v. P.E.I. Human Rights Commission* (1993), 110 Nfld. & P.E.I.R. 249 (P.E.I.S.C.-T.D.).