

## APPEALS

### RULE 61

#### APPEALS TO THE COURT OF APPEAL

##### APPLICATION OF THE RULE

**61.01** Rules 61.01.1 to 61.15 apply to all appeals to the Court of Appeal and, with necessary modifications, to proceedings in the Court of Appeal by way of,

- (a) special case under Rule 22.03, subject to any directions given under subrule 22.03(2); and
- (b) references under section 7 and subsection 11(2) of the *Judicature Act*.

**61.01.1(1)** Service of facta and transcripts of evidence may be made electronically.

(2) Electronic service of facta and transcripts of evidence, with proof of service, is complete service.

(3) Electronic submission to the Court clerk of facta and transcripts of evidence is required. Electronic submission may be effected by email, memory stick (USB port), or other approved means.

(4) Electronic submission of application records and appeal books is permitted. This is in addition to the requirements for service and filing of bound paper appeal books stated in Rule 61.07(3)(a) and (b).

(5) The pages of each document filed with the Registrar and submitted to the Court clerk by a party shall be consecutively numbered.

(6) Each party shall file with the Registrar a bound paper copy of each document that is submitted electronically.

##### APPLICATION FOR LEAVE TO APPEAL

###### **Application for Leave**

**61.02 (1)** Where an appeal to the Court of Appeal requires the leave of that court, a party seeking leave shall apply to the Court of Appeal. The notice of application for leave shall,

- (a) state that the application will be heard on a date to be fixed by the registrar;
- (b) set out the specific questions the applicant proposes the court should answer if leave is granted; and
- (c) be filed with proof of service in the office of the registrar, within five days after service.

### **Application Record, Factum and Transcripts**

- (2) On an application for leave to appeal, the applicant shall serve,
  - (a) an application record containing, in consecutively numbered pages arranged in the following order,
    - (i) 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,
    - (ii) a copy of the notice of application,
    - (iii) a copy of the order or decision from which leave to appeal is sought, as signed and entered,
    - (iv) a copy of the reasons of the court or tribunal from which leave to appeal is sought with a further typed or printed copy if the reasons are handwritten,
    - (v) a copy of all affidavits and other material used before the court or tribunal from which leave to appeal is sought,
    - (vi) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves, and
    - (vii) a copy of any other material in the court file that is necessary for the hearing of the application;
  - (b) a factum consisting of a statement of the specific questions the applicant proposes the court should answer if leave is granted, and a concise statement, without argument, of the facts and law relied on by the applicant; and
  - (c) relevant transcripts of evidence, if they are not included in the application record.
- (3) The applicant shall file four copies of the application record and one copy of the factum and transcripts, if any, with proof of service, within thirty days after the filing of the notice of application for leave to appeal.
- (4)(a) Where the responding party is of the opinion that the applicant's application record is incomplete, the responding party may serve

a respondent's application record containing, in consecutively numbered pages arranged in the following order,

- (i) 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
  - (ii) a copy of any material to be used by the responding party on the application and not included in the application record;
- (b) The responding party may serve a factum consisting of a concise statement, without argument, of the facts and law relied on by the responding party within 15 days after service of the moving party's application record;
- (c) The responding party shall file four copies of its application record and one copy of the factum and transcripts, if any within two days following service.

#### **Date for Hearing**

- (5) The registrar shall fix a date for the hearing of the motion which shall not, except with the responding party's consent, be earlier than fifteen days after the filing of the moving party's motion record, factum and transcripts, if any.

#### **Time for Delivering Notice of Appeal**

- (6) Where leave is granted, the notice of appeal shall be delivered within seven days after the granting of leave.

### **COMMENCEMENT OF APPEALS**

#### **Time for Appeal and Service of Notice**

- 61.03** (1) An appeal to the Court of Appeal shall be commenced by serving a notice of appeal (Form 61A) together with the certificate required by subrule 61.04(1) and a designation of address for service (Form 16A.1) on every party whose interest may be affected by the appeal, other than,
- (a) a defendant who was noted in default; or
  - (b) a respondent who has not delivered a notice of appearance, unless he or she was heard at the hearing with leave,
- and on any person entitled by statute to be heard on the appeal, within thirty days after the date of the filing of the order appealed from, unless a statute or these rules provide otherwise.

#### **Title of Proceeding**

- (2) The title of the proceeding in an appeal shall be in accordance with Form 61B.

### **Notice of Appeal**

- (3) The notice of appeal (Form 61A) shall state
  - (a) the relief sought;
  - (b) the grounds of appeal; and
  - (c) the basis for the appellate court's jurisdiction, including reference to:
    - (i) any provision of a statute or regulation establishing jurisdiction;
    - (ii) whether the order appealed from is final or interlocutory;
    - (iii) whether leave to appeal is necessary and if so whether it has been granted; and
    - (iv) any other facts relevant to establishing jurisdiction.
- (4) The notice of appeal, with proof of service, shall be filed in the office of the registrar within ten days after service.

### **CERTIFICATE OR AGREEMENT RESPECTING EVIDENCE**

#### **Appellant's Certificate Respecting Evidence**

- 61.04** (1) In order to minimize the number of documents and the length of the transcript required for an appeal, the appellant shall serve with the notice of appeal an appellant's certificate respecting evidence (Form 61C) setting out only those portions of the evidence that, in the appellant's opinion, are required for the appeal. Such certificate shall comply with Rule 61.04(5).

#### **Respondent's Certificate Respecting Evidence**

- (2) Within fifteen days after service of the appellant's certificate, the respondent shall serve on the appellant a respondent's certificate respecting evidence (Form 61D), which shall comply with Rule 61.04(5), confirming the appellant's certificate or setting out any additions to or deletions from it.
- (3) A respondent who fails to serve a respondent's certificate within the prescribed time shall be deemed to have confirmed the appellant's certificate.

#### **Agreement Respecting Evidence**

- (4) Instead of complying with subrules (1) to (3), the parties may, within thirty days after service of the notice of appeal, make an agreement respecting the documents to be included in the appeal book and the transcript required for the appeal. Such certificate shall comply with Rule 61.04(5).

### **Matters to be omitted from transcript**

- (5) Unless such matter relates to a ground of appeal or a judge otherwise orders for any reason, the following are to be omitted from a transcript filed on an appeal:
  - (a) proceedings on the challenge of the array or of jurors for cause;
  - (b) opening address of the trial judge;
  - (c) the opening and closing addresses/argument of counsel;
  - (d) proceedings in the absence of the jury and all argument in the absence of the jury (excepting objections to a charge and the trial judge's ruling thereon together with any reasons for the ruling), and all argument where there is no jury; and
  - (e) objections to the admissibility of evidence, excepting only a notation that an objection was made. However, the ruling of the trial judge, including reasons for the ruling, will be transcribed.

### **Requesting Transcripts**

- (6) The appellant shall within thirty days after filing the notice of appeal file proof that the appellant has,
  - (a) requested a transcript of all oral evidence that the parties have not agreed to omit, subject to any direction under subrule 61.07(4) (relief from compliance);
  - (b) provided the transcriber with a list of the names and addresses of all parties to the appeal; and
  - (c) informed the transcriber of the responsibilities of the transcriber under subrule 61.04(8).
- (7) A party who has previously requested a transcript of oral evidence shall forthwith modify their order in writing to comply with the certificates or agreement.
- (8) When the evidence has been transcribed, the transcriber shall forthwith give written notice to all parties and to the registrar. The party requesting the transcript shall instruct the transcriber to forthwith submit an electronic copy of the transcript to the Court clerk.

### **Costs Sanctions for Unnecessary Evidence**

- (9) The court may impose costs sanctions where evidence is transcribed or exhibits are reproduced unnecessarily.

### **CROSS-APPEALS**

**61.05** (1) A respondent who,

- (a) seeks to set aside or vary the order appealed from; or
- (b) will seek, if the appeal is allowed in whole or in part, other relief or a different disposition than the order appealed from,
- (c) will contend that the order appealed from should be affirmed on grounds other than those relied upon in the court or tribunal appealed from,

shall, within fifteen days after service of the notice of appeal, serve a notice of cross-appeal (Form 61E) on all parties whose interests may be affected by the cross-appeal and on any person entitled by statute to be heard on the appeal, stating the relief sought and the grounds of the cross-appeal,

- (2) The notice of cross-appeal, with proof of service, shall be filed in the office of the registrar within ten days after service.
- (3) Where a respondent has not delivered a notice of cross-appeal, no cross-appeal may be heard except with leave of the court hearing the appeal.

### **AMENDMENT OF NOTICE OF APPEAL OR CROSS-APPEAL**

#### **Supplementary Notice to be Served and Filed**

**61.06** (1) The notice of appeal or cross-appeal may be amended without leave, before the appeal is perfected, by serving on each of the parties on whom the notice was served a supplementary notice of appeal or cross-appeal (Form 61 F) and filing it with proof of service.

#### **Argument Limited to Grounds Stated**

- (2) No grounds other than those stated in the notice of appeal or cross-appeal or supplementary notice may be relied on at the hearing, except with leave of the court hearing the appeal.

#### **Relief Limited**

- (3) No relief other than that sought in the notice of appeal or cross-appeal or supplementary notice may be sought at the hearing, except with the leave of the court hearing the appeal.

### **PERFECTING APPEALS**

### **Time for Perfecting**

- 61.07** (1) The appellant shall perfect the appeal by complying with subrules (2) and (3),
- (a) where no transcript of evidence is required for the appeal, within thirty days after filing the notice of appeal; or
  - (b) where a transcript of evidence is required for the appeal, within sixty days after receiving notice that the evidence has been transcribed.

### **Record and Exhibits**

- (2) The appellant shall cause to be forwarded to the registrar the record and the original exhibits from the court or tribunal from which the appeal is taken.

### **Material to be Served and Filed**

- (3) The appellant shall,
- (a) serve on every other party to the appeal and any person entitled by statute or an order under Rule 13.03 (intervention in appeal) to be heard on the appeal,
    - (i) the appeal book referred to in Rule 61.08,
    - (ii) the transcript of evidence, and
    - (iii) the appellant's factum referred to in Rule 61.09;
    - (iv) an electronic version of the transcript of evidence and the appellant's factum;
  - (b) file with the registrar, with proof of service,
    - (i) four copies of the appeal book and one copy of the transcript and factum served under clause (a); and
    - (ii) an electronic version of the evidence and the appellant's factum.
  - (c) serve on every person served under clause (a), and file with the registrar a certificate of perfection stating that the record, exhibits, appeal book, transcript and appellant's factum have been filed, and setting out the name, address and telephone number of the lawyer for,
    - (i) every party to the appeal, and
    - (ii) any person entitled by statute or an order under Rule 13.03 (intervention in appeal) to be heard on the appeal,or, where a party or person acts in person, their name, address for service and telephone number.

### **Relief from Compliance**

- (4) Where compliance with the rules governing appeal books or transcripts of evidence would cause undue expense or delay, a judge of the Court of Appeal may give special directions.

### **Notice of Listing for Hearing**

- (5) When an appeal is perfected, the registrar shall place it on the list of cases to be heard at the appropriate place of hearing and shall mail a notice of listing for hearing (Form 61G) to every person listed in the certificate of perfection.

### **Early Hearing of Appeals**

- (6) On motion by any party to an appeal, the Court of Appeal or a judge thereof may, in special circumstances, order an early hearing of an appeal and may give any necessary directions.

## **APPEAL BOOK**

- 61.08** (1) The appeal book shall contain, in consecutively numbered pages arranged in the following order, a copy of,
- (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) the notice of appeal and any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
  - (c) the order or decision appealed from, as signed and entered;
  - (d) 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 any reasons for it;
  - (f) the pleadings, notice of application, notice of motion, or any other document that initiated the proceeding or defines the issues in it;
  - (g) any affidavit evidence, including exhibits, that the parties have not agreed to omit;
  - (h) all documentary exhibits filed at a hearing or marked on an examination that the parties have not agreed to omit, arranged in order by date and not by exhibit number or, where there are documents having common characteristics, arranged in separate groups in order by date;
  - (i) the certificates or agreement respecting evidence referred



to in Rule 61.04;

- (j) any order made in respect of the conduct of the appeal;
  - (k) any other document relevant to the hearing of the appeal;  
and
  - (l) a certificate (Form 61H) signed by the appellant, the appellant's lawyer, or on the lawyer's behalf by someone he or she has specifically authorized, stating that the contents of the appeal book are complete and legible.
- (2) The registrar may refuse to accept an appeal book if it does not comply with these rules or is not legible.
- (3) With the concurrence of the parties and the Court, an appeal book in electronic form shall be sufficient for use by the parties and the Court throughout an appeal. The appellant shall thereupon be required to serve the appeal book electronically only, to file one bound paper copy, and to submit the appeal book electronically to the Court clerk.

### **APPELLANT'S FACTUM**

- 61.09(1)** The appellant's factum shall be signed by the appellant, the appellant'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 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 the issues;
  - (c) Part III, containing a concise summary of the facts relevant to the issues on the appeal, with such reference to the evidence by page and line 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 of Appeal will be asked to make, including any order for costs;
  - (f) Schedule A, containing a list of the authorities referred to;  
and
  - (g) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws,

in paragraphs numbered consecutively throughout the factum.

- (2) (a) Subject to subrule 61.09(2)(c), the length of the factum shall not exceed 35 pages.
- (b) The registrar may refuse to accept a factum that exceeds the limit or is inconsistent with the standards set out in Rule 4.01 regarding, without limitation, double-spacing or font size.
- (c) Permission to exceed the page limit may be sought by bringing a request in writing to the registrar of the Court of Appeal, or on direction of the registrar to a judge of the Court of Appeal, in either case setting out the reason for and scope of the request for permission.

## **RESPONDENT'S FACTUM**

### **Filing and Service**

- 61.10** (1) Every respondent shall prepare a respondent's factum, serve every other party to the appeal, and any other person entitled by statute or an order under Rule 13.03 to be heard on the appeal, and shall file with the registrar one copy of the respondent's factum with proof of service on all other parties to the appeal.

### **Time for Delivery**

- (2) A respondent's factum shall be delivered within thirty days after service of the appeal book, transcript of evidence and appellant's factum.

### **Contents**

- (3) The respondent's factum shall be signed by the respondent, 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 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 evidence by page and line as is necessary;
  - (b) Part II, containing a concise overview statement describing the nature of the case and the issues;
  - (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 the authorities relating to that issue;
  - (d) Part IV, containing a statement of any additional issues

raised by the respondent, the statement of each issue to be 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 of Appeal will be asked to make, including any order for costs;
- (f) Schedule A, containing a list of the authorities referred to; and
- (g) Schedule B, containing the text of all relevant provisions of statutes, regulations and by-laws that are not included in Schedule B to the appellant's factum,

in paragraphs numbered consecutively throughout the factum.

- (3.1) (a) Subject to subrule 61.10(3.1)(c), the length of the factum shall not exceed 35 pages.
- (b) The registrar may refuse to accept a factum that exceeds the limit or is inconsistent with the standards set out in Rule 4.01 regarding, without limitation, double-spacing or font size.
- (c) Permission to exceed the page limit may be sought by bringing a request in writing to the registrar of the Court of Appeal, or on direction of the registrar to a judge of the Court of Appeal, in either case setting out the reason for and scope of the request for permission.

### **Cross-Appeal**

- (4) Where a respondent has served a notice of cross-appeal under Rule 61.05,
  - (a) the respondent shall prepare a factum as an appellant by cross-appeal and deliver it with or incorporate it in the respondent's factum; and
  - (b) the appellant shall deliver a factum as a respondent to the cross-appeal within ten days after service of the respondent's factum.

## **ABANDONED APPEALS**

### **Delivery of Notice of Abandonment**

- 61.11** (1) A party may abandon their or its appeal or cross-appeal by delivering a notice of abandonment (Form 61K).

### **Deemed Abandonment**

- (2) A party who

- (a) serves a notice of appeal or cross-appeal and does not file it within ten days after service; or
  - (b) being an appellant, has not filed proof that a transcript of the evidence that the parties have not agreed to omit was requested within the time prescribed by Rule 61.04(6); or
  - (c) being an appellant, has not perfected the appeal within the time prescribed by Rule 61.07(1) or by an order of the Court of Appeal or a judge thereof;
- or
- (d) being a respondent who has served a notice of cross-appeal, has not delivered a factum in the cross-appeal within thirty days after service of the appeal book, transcript of the evidence and appellant's factum

unless the appointed time for carrying out a step is otherwise determined by the registrar before or after the time for performing the step has elapsed, shall be deemed to have abandoned the appeal or cross-appeal; and a notice of abandonment or deemed abandonment (Form 61 I) may be sent by the registrar to the appellant and respondent.

#### **Effect of Abandonment**

- (3) Where an appeal or cross-appeal is abandoned or is deemed to have been abandoned, the appeal or cross-appeal is at an end, and the respondent or appellant is entitled to costs of the appeal or cross-appeal unless a judge of the Court of Appeal orders otherwise.
- (4) A person affected by a notice of abandonment or deemed abandonment of the Registrar may make a motion to a judge of the Court of Appeal to set it aside or vary it by a notice of motion that is served forthwith after the notice of abandonment comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion.

#### **CROSS-APPEAL WHERE APPEAL ABANDONED OR DEEMED ABANDONED**

- 61.12** (1) Where an appeal has been abandoned or deemed abandoned, the registrar shall serve notice of such abandonment or deemed abandonment on a respondent who has cross-appealed.
- (2) A respondent who has been served with a notice under subrule (1) may,
    - (a) within fifteen days thereafter, deliver a notice of election

to proceed (Form 61L); and

- (b) make a motion to a judge of the Court of Appeal for directions in respect of the cross-appeal.
- (3) Where the respondent does not deliver a notice of election to proceed within fifteen days, the cross-appeal shall be deemed to be abandoned without costs unless a judge of the Court of Appeal orders otherwise.

## **MOTIONS IN COURT OF APPEAL**

### **Rule 37 Applies Generally**

- 61.13** (1) Rule 37, except Rules 37.02 to 37.04 (jurisdiction to hear motions, place of hearing, to whom to be made), and Rule 37.16 (motion before commencement of proceeding), applies to motions in the Court of Appeal, with necessary modifications.

### **Motion to Receive Evidence**

- (2) A motion to have the Court of Appeal receive further evidence shall be made to the panel hearing the appeal.

### **Motion to be Heard by More than One Judge**

- (3) Where a motion in the Court of Appeal is to be heard by more than one judge, the notice of motion shall state that the motion will be heard on a date to be fixed by the registrar.

### **Motion Record and Factum**

- (4) On a motion referred to in subrule (3),
  - (a) the moving party,
    - (i) shall serve a motion record, and an electronic version of the appellant's factum, and a factum consisting of a concise argument stating the facts and law relied on by the moving party.

### **Contents of Motion Record**

- (ii) The motion 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;
  - (b) a copy of the notice of motion;
  - (c) a copy of all affidavits to be used by the maker of the motion;
  - (d) a list of all relevant extracts from any transcripts of evidence;

- (e) a copy of any material in the court file that is necessary for the hearing of the motion;
  - (f) a factum, consisting of a concise statement, without argument, of the facts and law relied on by the party;
  - (g) a memorandum of authorities, if needed, listing any relevant case law, statute, regulation or rule that the moving party intends to rely on or refer to; and
  - (h) draft of any proposed order;
- (iii) shall file four copies of the moving party's motion record and factum, with proof of service, within 30 days after filing the notice of motion;
- (b) the responding party,
- (i) may, if the responding party is of the opinion that the moving party's motion record is incomplete, serve a responding party's motion record and an electronic version of the respondent's factum.

#### **Contents of Motion Record**

- (ii) The motion 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;
  - (b) a copy of any material to be used by the responding party on the motion and not included in the motion record of the party making the motion;
  - (c) a factum, consisting of a concise statement, without argument, of the facts and law relied on by the responding party;
  - (d) a memorandum of authorities, if needed, listing any relevant case law, statute, regulation or rule that the responding party intends to rely on or refer to; and
- (iii) shall file four copies of the responding party's motion record and factum, with proof of service, and an electronic version of the appellant's factum, within 25 days after service of the moving party's motion record and factum; and

- (c) a party who intends to refer to a transcript of evidence at the hearing shall ensure that it is included in the motion record, and that an electronic version of the transcript is served and filed.

#### **Review of Single Judge's Order**

- (5) A person who moves to set aside or vary the order of a judge of the Court of Appeal under subsection 6(4) of the *Judicature Act* shall do so by notice of motion that is served within ten days after the order is made and states that the application will be heard on a date to be fixed by the registrar.

#### **Motions for Leave to Appeal to the Supreme Court of Canada**

- (6) A motion to the Court of Appeal for leave to appeal to the Supreme Court of Canada from an order or decision of the Court of Appeal may be made by notice of motion.

#### **Registrar to Dismiss for Delay**

- (7) If the moving party has not served and filed the motion record and other documents in accordance with subrule (4),
  - (a) the responding party may make a motion to the Registrar, on 10 days notice to the moving party, to have the motion dismissed for delay;
  - (b) the Registrar may serve notice on the moving party that the motion will be dismissed for delay unless the motion record and other documents are served and filed within 10 days after service of the notice.
- (8) The Registrar shall make an order in Form 61J dismissing the motion for delay, with costs, if the moving party,
  - (a) in the case of a motion under clause (7)(a), does not serve and file the motion record and other documents before the hearing of that motion, or within such longer period as a judge of the appellate court allows;
  - (b) in the case of a notice under clause (7)(b), does not serve and file the motion record and other documents within 10 days after the notice is served, or within such longer period as a judge of the appellate court allows.

#### **Review of Registrar's Order**

- (9) A person affected by an order or decision of the registrar dismissing a motion for delay may make a motion to a judge of the Court of Appeal to set it aside or vary it by a notice of motion that is served forthwith after the order or decision comes to the person's attention and names the first

available hearing date that is at least three days after service of the notice of motion.

### **Security for Costs**

- 61.14** (1) In an appeal where, on motion by the respondent, it appears that,
- (a) there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Prince Edward Island to pay the costs of the appeal;
  - (b) an order for security for costs could be made against the appellant under Rule 56.01; or
  - (c) for other good reason, security for costs should be ordered,
- a judge of the Court of Appeal may make such order for security for costs of the proceeding and of the appeal as is just.
- (2) If an order is made under subrule (1), Rules 56.04, 56.05, 56.07 and 56.08 apply, with necessary modifications.
- (3) If an appellant fails to comply with an order under subrule (1), a judge of the Court of Appeal on motion may dismiss the appeal.

### **Application of Other Rules**

- 61.15** The other provisions of these rules, when, and to the extent not inconsistent with this rule, apply, with any necessary modifications, to any proceeding on appeals or motions for leave to appeal in the Court of Appeal.

*Doiron v. Doiron*, 2020 PECA 8

The time for filing an appeal in a divorce matter shall be measured from the date the order appealed from is filed, not the date on which it is made, pronounced, delivered, or becomes effective.

*Thomas v. Thomas Estates*, 2016 PECA 13

The court denied an application for an extension of time to commence two appeals. The court again cited the applicable factors:

1. Does the appeal have merit?
2. Was there a *bona fide* intention to appeal?
3. Is there a reasonable excuse for a delay in not filing within the prescribed time?
4. Are there exceptional or special circumstances justifying the extension of time?

Additionally, the court treats the question of whether the “*justice of the case*” requires that an extension be given as the governing principle and employs all of the mentioned factors, as well as prejudice to the other party, as factors. This approach facilitates a full assessment of the competing interests.



*Robinson v. Willis & Fogarty*, 2013 PECA 13

The respondents made a motion for security for costs on appeal pursuant to Rule 61.14(1)(b). The appellants were the plaintiffs in the matter. The Court found as the respondents were entitled to an order for security for costs pursuant to Rule 56.01, Rule 61.14(1)(b) would entitle the respondents to an award of costs.

*100875 P.E.I. Inc. v. Curran & Briggs*, 2010 PECA 8

Pursuant to Rule 61.14(1), the respondent made a motion for security of costs on appeal. Rules 61.14(1)(b) and (c) did not apply to the motion. Pursuant to Rule 61.14(1)(a), the respondent must establish that the appeal is frivolous and vexatious and that the appellant did not have sufficient assets in P.E.I. to pay an order for costs.

*Ayangma v. French School Board & Ano.*, 2009 PECA 10

The appellant's motion for relief from compliance with Rule 61.04(5) to provide a transcript was denied, as was his motion to have the respondent pay for the cost of that part of the transcript that remained to be prepared.

*Ayangma v. Govt. PEI and Ano.*, 2006 PESCAD 23; (2006), 260 Nfld. & P.E.I.R. 234

The respondents made a motion pursuant to Rule 61.14 for an order for security for costs against the appellant. The respondents were entitled to an order for security for costs pursuant to Rule 61.14(1)(b) only if they were entitled to such an order under Rule 56.01. Rule 61.14(1)(b) is confined to making an order for security for costs against a plaintiff/appellant. As the appellant was the plaintiff, and as the requirements of Rule 56.01 were satisfied, an order requiring the appellant to post security for costs was issued.

*Bentham v. Bentham* (1999), 170 Nfld. & P.E.I. R. 273 (P.E.I.S.C.-A.D.)

Application for an extension of time to file a Notice of Appeal. The decision of Mitchell J.A. in *Bryant v. Fenton* (1998) 166 Nfld. & P.E.I. R. 109 (P.E.I.S.C.-A.D.) was applied. Despite the fact the time for filing an appeal had elapsed twelve months prior to the application, an extension was granted on certain conditions.

*Bryant v. Fenton* (1998), 166 Nfld. & P.E.I. R. 109 (P.E.I.S.C.-A.D.)

The appellant sought an order, pursuant to Rule 3.02, to extend the time prescribed by Rule 61.07(1) for perfecting an appeal. Although a motion had been made to the Prothonotary pursuant to Rule 61.11(1) to dismiss the appeal, the Court extended the time for perfecting the appeal because it is desirable to have appeals decided on their merits and because the respondent would not suffer any prejudice by the granting of the extension. The appellant was, however, ordered to pay the costs of the respondent in making the motion for dismissal.

*Canada (Attorney General) v. Clory & Georgetown Shipyards Inc.*, (1997), 149 Nfld. & P.E.I.R. 183 (P.E.I.S.C.-A.D.)

The defendants appealed from a finding of liability and damages. Although no formal order had been taken out, the plaintiff argued time for filing a notice of appeal had expired.

The Court held it is the filing date of the formal order taken out under Rule 59 that triggers the commencement of the period of time permitted for filing a notice of appeal.

*Pitre v. Turner et al.* (1997), 149 Nfld. & P.E.I.R. 359 (P.E.I.S.C.-A.D.)

A respondent on cross-appeal applied for an order for security for costs pursuant to Rule 61.15. The appellant on the cross appeal argued the Rule did not apply to a cross-appeal. The Court held Rule 61.16 provides that all provisions of Rule 61 applied, with necessary modification, to any proceeding in an appeal, including a cross-appeal. The motion for

security for costs must be filed within the 15 days of the filing of the Notice of Appeal. As that was not done and because the respondent by cross-appeal had not shown sufficient reason for the delay, the motion was dismissed.

*Paton v. Shaw* (1996), 140 Nfld. & P.E.I.R. 265 (P.E.I.S.C.-A.D.)

The appellant made application to be relieved of the obligation of preparing and paying for the transcription of the evidence at trial on the ground he was impecunious. The application was denied because the appellant had not discharged the onus of establishing his impecuniosity nor did he establish that he had an arguable case on appeal.

*Benson v. Labourers International Union of North America et al.* (1996), 142 Nfld. & P.E.I.R. 81 (P.E.I.S.C.-A.D.)

Rule 61.05 provides for two categories of cross-appeal: First, Rule 61.05(a) is independent from the issues or the outcome of the main appeal; second, Rule 61.05(b) and (c) provides for the situation where the respondent contests the main appeal filed by the appellant but wishes to obtain certain relief in the event the appellant is successful on the main appeal. Here, the cross-appeal came within the second category and as the respondent was successful in defending the main appeal, the court found it unnecessary to deal with the merits of the cross-appeal.

*Dyne Holdings Ltd. et al. v. Royal Insurance Co. of Canada et al.* (1996), 138 Nfld. & P.E.I.R. 318 (P.E.I.S.C.-A.D.)

Where the respondent is seeking to have the court affirm the judgment under appeal on grounds other than those relied upon in the court below, there is a requirement to file a cross-appeal in accordance with Rule 61.05(1)(c) and 61.05(3).

*Vitex Foods Ltd. v. Haldemann* (1993), 110 Nfld. & P.E.I.R. 87 (P.E.I.S.C.-A.D.)

An appeal was abandoned because the issues raised were, as the result of circumstances, moot. The respondent will not be entitled to costs where it was the respondent's actions which rendered the issues moot. In the exercise of its discretion on the matter of costs, it is proper for the court to consider the circumstances that resulted in the appeal being abandoned.