

RULE 63
STAY PENDING APPEAL

EFFECT OF STAY

No Stay of Proceedings

- 63.01** (1) Subject to subrule (2), the filing of a notice of appeal does not operate as a stay of proceedings under the order appealed from, or invalidate any interlocutory order in the proceedings.

Stay by Order

- (2) An order, whether final or interlocutory, may be stayed on such terms as are just by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken.
- (3) A stay granted under subrule (2) may be set aside or varied, on such terms as are just, by a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken.

Generally

- 63.02** (1) Where an order is stayed, no steps may be taken under the order or for its enforcement except,
- (a) by an order of a judge of the court to which an appeal has been made; or
- (b) as provided in subrules (2) and (3).

Entry of Order and Assessment of Costs

- (2) A stay does not prevent the settling, signing and entering of the order or the assessment of costs.

Writ of Execution

- (3) A stay does not prevent the issue of a writ of execution or the filing of the writ in a sheriff's office or land registry office, but no instruction or direction to enforce the writ shall be given to a sheriff while the stay remains in effect.

Certificate of Stay

- (4) Where an order is stayed, the Registrar shall issue, on requisition by a party to the appeal, a certificate of stay (Form 63 A) and, when the certificate has been filed with the sheriff, the sheriff shall not commence or continue enforcement of the order until satisfied that the stay is no longer in effect.
- (4.1) A requisition for a certificate of stay under subrule (4) shall state whether the stay is under subrule 63.01(1) or by order under subrule 63.02(1) and, if by order, shall set out particulars of the order.

Setting Aside Writ of Execution

- (5) A judge of the court to which a motion for leave to appeal has been made or an appeal has been taken may set aside the issue or filing of a writ of execution where the moving party or appellant gives security satisfactory to the court.

DCP (PEI) v. E.W. & Ors., 2020 PECA 15

In an application for a stay of proceedings pending appeal the test is modified in cases involving children. The second and third parts of the test are adjusted and the only consideration is the best interests of the child.

R. v. Doyle, 2016 PECA 9

The motions judge dismissed the appellant's motion for stay pending appeal on the basis that the appeal and motion were premature. The recusal process to be followed is that the application for recusal based on bias should be put to the trial judge, which was done in this case. An appeal of the verdict can then be made to the Court of Appeal and reasonable apprehension of bias can be cited as a ground of appeal.

Morrissey v. Morrissey, 2015 PECA 10

The Court found the appellant satisfied the test for granting interlocutory relief of a stay pending appeal by demonstrating the three-stage test of showing a serious question to be tried; that he would suffer irreparable harm if the application were refused and that he would suffer greater harm from refusal of the remedy pending an appeal decision on the merits than would the respondent if the stay was granted. As a result of the order of the motions judge being stayed, the child support orders contained in the Interim Consent Order as agreed to prior to the motion would continue in effect pending disposition of the appeal.

Noonan Fuels v. Imperial Oil, 2005 PESCAD 20

Stay of proceedings ordered pending the disposition of an appeal from an interlocutory order requiring the disclosure of documents for discovery.

Ayangma v. Government of P.E.I., 2000 PESCAD 5

Plaintiff applied for the stay of an order to pay costs pending the outcome of a further appeal from the assessment of costs. The court held there were exceptional circumstances which warranted the granting of a stay.

Fida Enterprises Ltd. v. Attorney General of Canada, [1998] P.E.I.J. No. 89 (P.E.I.S.C.-A.D.)

Application for stay of proceedings denied because the appellant did not demonstrate the appeal had merit and because the appellant failed to demonstrate there were any special or exceptional circumstances which would warrant the stay.

Georgetown Shipyards Incorporated and Frederick James Clory v. The Attorney General of Canada, [1998] P.E.I.J. No. 37 (Q.L.) (P.E.I.S.C.-A.D.)

Application for stay of proceedings pending appeal denied. Circumstances of the case did not warrant a stay.

United Brotherhood, Local 1338 v. United Brotherhood of America (1997), 148 Nfld. & P.E.I.R. 152 (P.E.I.S.C.-A.D.)

Application for an order staying an interlocutory injunction. Even where an appeal is filed from the order granting the interlocutory injunction, the court should not, unless in exceptional circumstances, usurp the role of the Chambers judge in monitoring the interlocutory injunction by exercising its discretion in favour of granting a stay pending the hearing of the appeal. In this case the failure of the respondents to fulfill the undertaking made upon granting of the interlocutory injunction constituted exceptional circumstances which warranted ordering a conditional stay of proceedings.

P.E.I. Council of the Disabled Inc. v. Pederson (1995), 127 Nfld. & P.E.I.R. 72 (P.E.I.S.C.-A.D.)

Granting a stay of proceedings pending an appeal is a discretionary matter which necessarily will involve the consideration of various factors depending on the circumstances of each case. The essence of these factors is that a stay should only be granted in exceptional or unusual circumstances having regard to the fact that the successful party should not be deprived of the fruits of his/her litigation. Stay granted on conditions.

Johnson v. Murchison, [1994] 1 P.E.I.R. 35 (P.E.I.S.C.-A.D.)

Rule 63.01 provides that the Court may stay an order on such conditions as it deems just. A stay was granted on the condition that the appellants file with the Court a letter of credit from a Canadian chartered bank or other like security satisfactory to the Prothonotary in an amount sufficient to insure prompt payment of the judgment in the event the appeal should be unsuccessful.

Johnston v. Montreal Trust Company of Canada, [1993] 1 P.E.I.R. 125 (P.E.I.S.C.A.D.)

Application to stay proceedings pending an appeal from an order granting summary judgment on the issue of liability only. The stay was denied as the court was of the opinion the proper time for the stay application was after the quantum of damages had been determined.