PRINCE EDWARD ISLAND COURT OF APPEAL

How to Commence and Respond to a Family Law Appeal

January 20, 2023

OVERVIEW

Following the trial of a family court or divorce matter in the Supreme Court, the unsuccessful party usually has the right to appeal from the decision and order to the Court of Appeal. An appeal is not a rehearing but provides for a hearing to consider whether there are errors in the initial decision that should be cause to overturn.

An appeal is carried out in writing using the proper forms under the Rules. Generally, an appeal is to be commenced within 30 days after the filing of the order being appealed. The document filing stage should take two – three months. There is an appeal hearing before three judges. This is followed by a written decision usually within one – two months.

An appeal book, containing the record from the trial court is filed in paper, and the factum (argument) and transcript are filed electronically.

INTRODUCTION

This information is intended to assist by outlining the procedure in appealing a family law matter to the Prince Edward Island Court of Appeal. The first section provides information about the appeal process generally. This is followed by procedures, and then a glossary of terms used in appeals.

For more information about how to conduct an appeal and procedures in the Court of Appeal, please refer to the following:

- www.courts.pe.ca
- Rule 61 of the **Rules of Civil Procedure**
- Court Forms
- Prince Edward Island Court of Appeal Practice Directions
- ***Divorce Act***, R.S.C., 1985, c. 3
- **The Annotated Divorce Act**, by James MacDonald and Ann Wilton (Thomson Reuters)
- ***Family Law Act***, R.S.P.E.I. 1988, Ch. F-2.1
- ***Children's Law Act***, R.S.P.E.I. 1988, Chapter C-6.1
- ***Child Protection Act***, R.S.P.E.I. 1988 Ch. C-5.1

The information provided is a guide. It is not intended to be a substitute for legal advice. Court staff are unable to provide legal advice on how to conduct or respond to an appeal.

It is advisable to seek legal advice. Although you may choose to represent yourself, it is not recommended as the process of conducting an appeal can be complicated. The issues on an appeal usually involve questions of law.

Legal advice for self-represented litigants

If you choose to represent yourself, before proceeding with an appeal, it would be helpful to speak to a lawyer or obtain legal information. You can contact a lawyer of your choice, or any of the following:

1) P.E.I. Lawyer Referral Service (www.legalinfopei.ca):

   Community Legal Information
   53 Grafton St., #202
   Charlottetown, PE C1A 1K8
   Toll free: 1-800-240-9798; 902-892-0853

2) P.E.I. Family Legal Aid (www.princeedwardisland.ca/en/information/family-law):

   Charlottetown Family Office
   Suite B, 1 Harbourside Access Road
   PO Box 2000
   Charlottetown, PE C1A 7N8

Phone: 902-368-6656 (inquiries)
Phone: 902-368-6540 (office)
Fax: 902-620-3083

Summerside Family Office (
2nd Floor, 120 Heather Moyse Drive
Summerside, PE C1N 5Y8

Phone: 902-888-8066
Fax: 902-438-4071

Information on qualification for legal aid for an appeal can be found on the Legal Aid PEI website (legalaid@gov.pe.ca). This states in summary:

Can I get legal aid to appeal a court decision?

Different eligibility tests are applied depending on whether you are requesting assistance to respond to an appeal that has been filed by the Crown or other opposing party, or whether you are the party wishing to file an appeal. The legal aid eligibility test is higher if you are the party requesting to file an appeal. Few cases are appealed and even fewer appeals are successful. You may request legal aid to advise you about whether you should file an appeal. If it is determined that you have good grounds for appeal, a legal aid lawyer may file an appeal on your behalf and represent you in the appeal court.

If my application for legal aid is refused, can I ask to have the decision reviewed?

Yes, Legal Aid is always willing to review and reconsider a refused application. You may ask intake staff or the lawyer who notified you of the refusal to refer your file to the Director of Legal Aid for a review. If your circumstances have changed or if there is additional information that you wish to have considered, you should provide that information along with your request for a review.

3) Summary Legal Advice Clinic

Sir Louis Henry Davies Law Courts
42 Water St.
Charlottetown, PE
Contact: Kerrilee McConnell, Court Services Manager
902-368-6005

What is an Appeal?

An appeal is the legal step taken by a party who lost at trial to have a higher court, the Prince Edward Island Court of Appeal, determine whether mistakes were made by the trial judge. The Court of Appeal will only intervene if the trial judge made a factual or legal error that materially affected the outcome of the case. It is not enough that a party be dissatisfied with a decision.

An appeal is not a new trial or rehearing of your case. An appeal is based on a review of the written record of what occurred at trial. The Court of Appeal does not hear oral evidence except in exceptional circumstances.

The Court of Appeal can dismiss an appeal and thereby confirm the decision of the lower court; allow the appeal and order a new trial; allow the appeal and vary the order of the trial court; or allow the appeal and substitute its own decision.

What matters should be considered in deciding whether to appeal?

In order to successfully appeal, it is necessary to show that the trial judge's decision was unreasonable or cannot be supported by the evidence, or that the judge made a mistake in interpreting or applying the law or the trial process. The appellant has to show that the judge made a mistake and explain the mistake and how it affected the decision. Sometimes this is a difficult hurdle.

An appeal takes time. The Court of appeal strives to have all appeals proceed in a timely manner. It expedites family law appeals, especially appeals relating to child protection. However, it takes time for all parties involved to obtain, prepare, and file the documents that are required for an appeal. The appeal hearing is scheduled as soon as the parties are ready, and usually takes place in one morning. Generally, after a hearing the court reserves its decision and then provides prepared reasons for judgment within one or two months. Overall, it may be several months from the time of filing the notice of appeal until a decision is rendered.

An appeal can be a costly undertaking. In order for an appeal to be presented effectively it is recommended that you retain a lawyer. In addition to legal fees, if the trial evidence is in issue, there is the cost of producing the trial transcript. There are also filing fees for filing court documents. Please refer to the ***Court Fees Act*** for a list of fees for specific documents. Also refer to the ***Fees Regulations*** and ***Waiver Regulations***. In addition to these expenses, you should be aware that an unsuccessful party on appeal could be ordered to pay a

contribution toward the costs of the successful party. This may include all or part of court fees, the cost of the transcript, and a contribution toward the successful party's legal fees.

How is an appeal commenced?

Generally, an appeal is initiated by serving and filing one copy of a notice of appeal in Form 61 A of Rule 61, and one copy of an appellant's certificate respecting evidence (Form 61 C). Proof that copies of both the notice of appeal and the certificate respecting evidence have been served on the respondent must be filed with the Court of Appeal. Proof of service should be in the form of an affidavit of service (Form 61 B) as to when, where, and how the documents were served.

The notice of appeal must state:

1. the relief sought; and
2. the grounds of appeal.

A respondent served with a notice of appeal may cross-appeal.

A notice of appeal or cross-appeal may be amended without permission before the appeal is perfected by serving a supplementary notice of appeal or cross-appeal (Form 61 F) on each of the parties on whom the Notice was originally served.

No ground, other than those stated in the notice of appeal or cross-appeal or supplementary notice of appeal or cross-appeal may be relied on at the hearing of the appeal except with permission of the Court of Appeal.

When is leave to appeal required?

In most cases leave to appeal is not required. Two instances where leave to appeal is required, as provided for in s. 5 of the ***Judicature Act***, are an appeal from an order relating to an order for costs and an order made on consent of the parties.

What is the time period for commencing an appeal?

A notice of appeal must be served (brought to the attention of) on the respondent within 30 days after the date of the filing of the order being appealed. The same is true for an appeal from an order made pursuant to the ***Divorce Act***. The time to appeal is measured from the date the order appealed from is filed, not the date on which it is made, pronounced, delivered, or becomes effective.

What are the options if the time to appeal has expired?

If the time to file an appeal has expired, a person wishing to appeal has two options:

(a) attempt to get consent from the other party (respondent,) for late service and/or filing of the notice of appeal (**Rules of Civil Procedure** Rule 3.02(4)); or
(b) make application to the Court of Appeal for an order extending the time for service and/or filing the notice of appeal.

A notice of application following **Rules of Civil Procedure** Form 14 E must be prepared and served on the respondent(s), and then filed in the Court of Appeal with proof of service.

The applicable factors that a judge considers in deciding whether to grant an extension of time are:

i) was there a *bona fide* intention to appeal?
ii) does the appeal have merit?
iii) is there a reasonable excuse for a delay in not filing within the prescribed time?
iv) are there exceptional circumstances justifying the extension of time?

The judge considering a motion for extension of time also questions whether the "*justice of the case*" requires that an extension be granted and the prejudice that may result to the other party.

What are the transcript requirements and timelines?

The transcript is the printed version of the proceedings at trial and is prepared by a certified court transcriber.

Not every appeal may require a transcript. Rule 61.04(2) and 61.04(5) set out the requirements respecting evidence. The parties may agree on the transcript that is required for the appeal or they may seek relief from compliance from a judge of the Court of Appeal pursuant to Rule 61.07(4).

You may need the transcript to help in preparing your factum (your written argument as to how the judge in the court below made an error). All or a portion of the transcript may be needed to explain to the Court of Appeal how the judge made an error, especially with respect to the assessment of the evidence.

It is the duty of the court transcriber to provide written notice to the Court of Appeal registrar and the parties as soon as the transcript is prepared.

One copy of the transcript must be bound in red covers, and if more than one volume, the pages must be clearly numbered consecutively. One copy must be filed with the court and one copy shall be filed electronically.

How to perfect an appeal

The appellant must perfect the appeal within 30 days of the filing of the notice of appeal in a case where no transcript is necessary or, in the case where a transcript is necessary, within 60 days of receiving notice that the evidence has been transcribed. Perfecting the appeal involves serving and filing the Appeal Book and Factum as set out below.

Appeal Book

What is contained in an Appeal Book?

The Appeal Book contains copies of all documents that were before the trial judge.

The Appeal Book must be bound front and back in buff colored covers:

- have consecutively numbered pages throughout;
- have a table of contents describing each document included;
- contain the following:
  - (a) notice of appeal and any notice of cross-appeal or supplementary notice of appeal or cross-appeal;
  - (b) the order appealed from;
  - (c) the reasons of the judge;
  - (d) the pleadings or notice of application or any other document that initiated the proceedings or defines the issues in it;
  - (e) any affidavit evidence including exhibits attached thereto that the parties have not agreed to omit;
  - (f) all documentary exhibits the parties have not agreed to omit;
  - (h) the certificates of agreement respecting evidence;
  - (i) any order made respecting the conduct of the appeal;
  - (j) any other document relevant to the hearing of the appeal;
  - (k) a certificate of completeness (**Rules of Civil Procedure** Form 61 H).

The Registrar may refuse to accept an Appeal Book that does not comply with the **Rules of Civil Procedure** or is not legible.

The appellant must file four copies of the Appeal Book with the Court of Appeal Registrar. Rule 61.08(3) provides that if both the parties and the Court agree, an appeal book in electronic form shall be sufficient for use by the parties and the Court throughout an appeal.

In the latter case, the appellant is required to serve the appeal book electronically only, to file one bound paper copy, and to submit the appeal book electronically to the Court Registrar.

Appeal Factum

A factum is the written argument that is provided to the judges of the Court of Appeal prior to the hearing of the appeal. The factum explains what your appeal is about, outlines the issues, and points out the errors made by the trial judge.

The Appellant's Factum must be signed by the appellant or counsel for the appellant. In paragraphs numbered consecutively throughout, the factum must contain the following:

1. Part I, a statement identifying the appellant, the court appealed from, and the result in that court;
2. Part II, containing a concise overview statement describing the nature of the case and the issues;
3. Part III, a concise summary of the relevant facts with such reference to the transcript of evidence by page and line as is necessary;
4. Part IV, a statement of each issue raised, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
5. Part V, a statement of the order sought including any order for costs;
6. Schedule A, a list of the authorities referred to; it is usual practice to file and exchange a copy of the authorities with the references relied upon highlighted. A list of authorities which are commonly cited and not required by the court to be copied and provided can be obtained from the Court's website or from the Registrar of the Court of Appeal.
7. Schedule B, containing the text of all relevant statutes, regulation and bylaw.

The factum is to be typed in 10 or 12 pitch font size, may be single or double spaced, and shall not exceed 35 pages.

Can an extension of time be obtained if an appellant is unable to perfect the appeal on time?

An appellant who is not able to perfect the appeal on time has two (2) options:

1. obtain the consent of the other party to extend the time; or
2. file a motion to be heard in the Court of Appeal asking for an extension of time to perfect the appeal.

When is an appeal *"perfected?"*

The transcript, appeal book, and factum must all be served on the respondent before they are filed, and proof of service must be filed with the Court of Appeal Registrar when the documents are presented for filing.

Rule 61 requires the parties to exchange and file an electronic version of all factums and transcripts. In addition, facta are to include reference to case or statutory authorities by citation, hyperlink and refer to both the page and paragraph. It is necessary to file one bound paper copy of both the transcript and facta. Once the three documents have been filed, the appellant must file a Certificate of Perfection which states that the record, exhibits, appeal book, transcript, and appellant's factum have been filed. The Certificate of Perfection also has to set out the name, address and telephone number of the lawyer for every party to the appeal.

If a party does not have a lawyer, the Certificate of Perfection should set out the name, address for service, and the telephone number of that party. When this is all completed and filed, the appeal is said to be "*perfected.*" It is at this time that the Registrar can set the appeal down for a hearing.

RESPONDING TO A NOTICE OF APPEAL

What information is required to be contained in the Respondent's Factum?

The respondent must also file a factum. It must be served, and one paper copy filed within 30 days after service of the appeal book, transcript, and appellant's factum. An electronic version must be exchanged between the parties and sent to the appellant with proof of service on the other party.

The respondent's factum must be bound front and back with a green cover and be signed by the respondent or their counsel and shall consist of the following set out in consecutively numbered paragraphs:

1. Part I, a statement of the facts in the appellant's summary of relevant facts that the respondent accepts as correct and those with which the respondent disagrees and a concise statement of any additional facts relied on with such reference to the transcript by page and line as is necessary;
2. Part II, containing a concise overview statement describing the nature of the case and the issues.
3. Part III, the position of the respondent with respect to each issue raised by the appellant followed by a concise statement of the related law and authorities;

4. Part IV, a statement of any additional issues raised by the respondent followed by concise statement of the related law and authorities;
5. Part V, a statement of the order sought by the respondent including any order as to costs;
6. Schedule A, a list of authorities; it is usual practice to file and exchange a copy of the authorities with the references relied upon highlighted. A list of authorities which are commonly cited and not required by the court to be copied and provided can be obtained from the Court's website or from the Court of Appeal.
7. Schedule B, texts of all relevant provisions of statutes, regulation, and bylaws not included in schedule B of the appellant's factum.

The factum must be typed in 10 or 12 pitch font size, may be single or double spaced and shall not exceed 35 pages.

How to cross-appeal?

A respondent may cross-appeal by serving the appellant with a Notice of Cross-Appeal (Form 61 E) which states the relief sought and the grounds for the cross-appeal. The notice of cross-appeal with proof of service must be filed with the Court of Appeal within ten (10) days after service.

A respondent who cross-appeals must prepare a factum as "*appellant by cross-appeal*" and either serve and file it with proof of service with, or incorporate it in, the respondent's factum.

The appellant must serve and file with proof of service as "*respondent to the cross-appeal*" within ten (10) days after service of the respondent's factum.

How an appeal or cross-appeal may be discontinued or become abandoned?

A party may discontinue or abandon their appeal or cross appeal by serving and filing a Notice of Abandonment (**Rules of Civil Procedure** Form 61 K).

A party is deemed to have abandoned their appeal or cross-appeal if they:

- do not file the notice of appeal; or
- do not request a transcript; or
- do not perfect the appeal; or
- do not file a factum within the times required by **Rules of Civil Procedure** Rule 61; or

- fail to provide security for costs when ordered to do so by the Court of Appeal or by a judge of the Court of Appeal under **Rules of Civil Procedure** Rule 61.14.

When an appeal or cross-appeal is deemed abandoned, the Registrar shall send a notice to the appellant and the respondent.

Where an appellant abandons or is deemed to have abandoned an appeal, the appellant shall serve notice of that on the respondent. If the appeal is deemed abandoned by the registrar, the deputy registrar shall send a Notice of Abandonment or Deemed Abandonment to all parties. The respondent may within 15 days thereafter serve on the appellant and file with proof of service a notice of election to proceed with the cross-appeal (**Rules of Civil Procedure** Form 61 L).

Motions/applications in the Court of Appeal

Most motions/applications (e.g., extension of time, relief from compliance with Rules governing appeal books, or transcripts) in the Court of Appeal are heard by a single judge. Motions for leave to appeal or to receive new evidence are heard by the panel which will hear the appeal. **Rules of Civil Procedure** Rule 37 applies to motions to a single judge in the Court of Appeal, and Rule 38 applies to applications made to the Court of Appeal. However, the judge hearing the motion or application may refer the motion to the full panel. Furthermore, where the motion or application is decided by a single judge, the unsuccessful party may apply to a full panel (three judges) to have the decision set aside or varied.

Can new evidence be introduced at the appeal hearing?

The Court of Appeal will not receive new evidence unless the party seeking to introduce it is successful in obtaining an order from the Court of Appeal allowing for the introduction of fresh evidence. A party wishing to introduce further evidence on appeal must make a motion to the panel (three judges) hearing the appeal. This motion is generally heard immediately prior to the hearing of the appeal. The test for obtaining an order to admit fresh evidence is quite stringent and is set out in the Supreme Court of Canada case, ***R. v. Palmer***, [1980] 1 S.C.R. 759 (SCC). The proposed fresh evidence must satisfy these criteria:

(a) the evidence could not have been adduced at trial;
(b) the evidence is highly relevant, in the sense that it bears upon a decisive or potentially decisive issue at trial;
(c) the evidence is credible, in the sense that it is reasonably capable of belief; and
(d) if believed, the evidence reasonably, when taken with the other evidence at trial, be expected to have affected the result at trial.

A motion to introduce new evidence must be in compliance with **Rules of Civil Procedure** Rule 37 and Rule 61.13. The panel will decide if new evidence will be considered.

What happens to the order of the lower court when an appeal is commenced?

The order remains in effect, unless a judge grants a "*stay*" (or postponement) of its effect. You may apply to a judge of the Court of Appeal who may order that all or part of the proceedings from the lower court be stayed or held in abeyance until the appeal is decided. Rule 63 of the **Rules of Civil Procedure** provide for a Stay Pending Appeal.

What happens in a Court of Appeal hearing?

A panel of three judges hears all appeals. An appeal hearing is very different from a trial. It is not a new trial; there are no witnesses called in an appeal hearing; and there is no jury.

Before the appeal hearing, the appeal judges review the reasons for the decision of the judge appealed from, all relevant evidence presented in the lower court, and the written arguments set out in the factums.

At the hearing, the parties have an opportunity to make oral argument to the Court. These arguments are based on the arguments outlined in the factums.

To commence the hearing, the Court clerk calls the Court of Appeal to order and calls the case. The appellant first addresses the Court setting out his or her argument which is based on the factum. The respondent then does the same. The appellant then has a limited right to reply. The purpose of reply is to address issues raised by the respondent that were not addressed during the appellant's initial submissions.

The judges usually ask questions as the oral argument is presented.

What should I call a Court of Appeal judge?

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.*"

What should I wear when I go to court?

The justices, lawyers, and court clerk wear black gowns for appeals and chambers matters.

All parties, members of the public and the media should be appropriately attired.

May I observe other appeal hearings in preparation of my appeal?

Court of Appeal proceedings are generally open to the public, except in rare cases. In some cases, a publication ban is in effect. In family law cases, the names are not published where there are child custody issues involved.

FOLLOWING THE APPEAL:

What happens after an appeal?

Most often the Court will reserve the decision. This means that they will take time to deliberate about the arguments and provide written reasons later in the form of a judgment. Where there is urgency, the Court of Appeal may give its decision orally the day the appeal is heard.

When the judgment is ready to be released, the Deputy Registrar of the Court of Appeal will contact counsel for the parties or a self-represented litigant directly by telephone or email and explain the judgment release process. The parties are contacted 48 hours in advance of the filing and release of a judgment. At nine a.m. on the morning of filing the judgment, the parties may pick up their copy of the decision or have it sent to them by mail or email.

Once the judgment is given, the parties must prepare an order. Usually the successful party prepares a draft order and obtains the consent of the other party regarding the form of the Order. Where one party has counsel and the other party is self-represented, the Court usually requests counsel to prepare a draft order. This order is signed by the Court of Appeal judges and filed with the Court of Appeal Registry.

What happens after the appeal?

The Court of Appeal may dismiss the appeal (which means that it confirms the decision of the lower court); allow the appeal and change the order of the lower court; or allow the appeal and order a new trial.

What are costs? When are they ordered? When are they payable?

It is common for the Court of Appeal to order the unsuccessful party to pay costs to a successful party. This enables the successful party to recover a portion of the expenses incurred. The decision to award costs and the amount of the costs awarded are in the discretion of the court. Costs are usually ordered on a partial indemnity basis; substantial indemnity costs are reserved to sanction cases of reprehensible conduct. Costs are usually payable thirty days following the judgment.

May I appeal a Court of Appeal decision?

In most cases, a party may seek leave to appeal to the Supreme Court of Canada in Ottawa. First, a party has to apply to the Supreme Court of Canada for leave or permission to file a notice of appeal. Information on appealing a decision to the Supreme Court of Canada is available on the Supreme Court of Canada website at scc-csc.gc.ca.

For more information contact the:
Prince Edward Island Court of Appeal
42 Water Street,
Charlottetown, PE
C1N 7N8

Telephone number: 902-368-6024
Facsimile number: 902-368-6774
Website: courts.pe.ca

Glossary of some commonly used terms

Affidavit:
A statement written down and sworn or affirmed to be true. An affidavit must be signed before a notary public or commissioner of oaths.

Appeal:
Examination by a higher court of the decision of a lower court. The higher court may affirm, vary or reverse the original decision.

Appellant:
The person or party bringing the appeal to court.

Appeal Book:
Filed copies of the lower court exhibits and affidavits, bound in a volume.

Appeal Record:
Filed copies of the pleadings, order and reasons for judgment of the lower court, and the notice of appeal, bound in a volume.

Appeal allowed:
The Court had decided in favour of the appellant (the party bringing the appeal).

Appeal dismissed:
The Court has decided in favour of the respondent (the party against whom the appeal is brought) and against the appellant.

Application:
See *Motion*

Application (Motion) for Leave to Appeal:
The procedure for requesting the Court's permission to hear an appeal.

Book of Authorities:
A list and photocopies of past legal cases that are relevant to the issues and are referred to in the factum. The Court of Appeal publishes a list of frequently cited cases in the Court of Appeal Practice Directions, which parties may refer to without copying and filing the case report.

Chambers:
A matter relating to an appeal during the course of an appeal proceeding heard in a courtroom usually before a single judge of the Court of Appeal.

Costs:
Money spent to carry out or defend an appeal which a party is allowed to recover. The unsuccessful party is usually ordered to pay part of the expenses associated with the successful party's litigation.

Cross-Appeal:
An appeal filed by a respondent where the respondent wants to appeal something from the judgment of the lower court and the appellant has already commenced an appeal.

Entering an Order:
Once an order has been pronounced, a document (order) is prepared that sets out the decision of the court or judge. This order must be filed with the Registry and distributed in accordance with the Rules.

Exhibits:
Evidence that was relied upon by the lower court or tribunal.

Factum:
A bound volume filed with the Court that is made up of the following parts: index, chronology, opening statement, statement of facts, issues on appeal, argument, and nature of the order sought.

Judgment:
Final decision of the Court in a legal proceeding. The terms "judgment" and "decision" are interchangeable. A judgment may be written or given orally in court.

Leave:
Permission of a judge in chambers or a panel of judges to take a step, in certain types of cases, to proceed with the appeal (for example, "leave of the court" must be obtained to commence an appeal).

Motion:
An application (request) to the Court for an order or judgment which occurs during the course of a court proceeding. Motions are a common occurrence and can be made for many purposes, including asking for extensions of time to file an appeal or to introduce fresh evidence. A motion must be brought by notice and include an affidavit giving details of the motion.

Motion (Application) for Leave to Appeal:
The procedure for requesting the Court's permission to hear an appeal.

Notice of Appeal:
The form completed by the appellant to start the appeal process.

Notice of Motion:
The form completed by the appellant or respondent to being a process in Chambers.

Order:
A decision of a Court or other decision-making body. It may or may not be the final outcome of the matter.

Panel:
The panel of three judges of the Court who will hear the appeal.

Party:
The party who brings the proceeding to the Court of Appeal is called the appellant. The appellant appeals the decision of a lower court. The party against whom an appeal is brought and who must respond to the appellant's case is called the respondent.

Remedy:
Remedies can be monetary, declaratory or injunctions. Monetary remedies (damages) are most common. The Court of Appeal "remedies" include affirming or reversing the original decision, varying in total or in part the judgment of the lower court, and in some cases, ordering a new trial.

Reserved judgment:
When a judge or judges do not immediately give their decision but issue a written decision at a later date.

Respondent:
The person who is in response to, or in opposition to the proceeding, following specific rules set out in the Rules (or any other applicable statute).

Rules of Civil Procedure:
Rules governing practices or procedures before the court that involve individuals, organizations or governments. They are rules of practice which have been enacted pursuant to the *Judicature Act*. Generally, the Rules do not refer to criminal cases. Rule 70 applies to divorce actions, and Rule 71 applies to family law proceedings.

Serve or Service:
The delivery of a document, which has been filed with the court, to another party to the proceeding. The Rules set out procedures that must be followed when serving documents,

for example, the manner of the service (e.g., priority mail, personal by hand) and the time frame within which service should occur.

Statute:
A law or Act enacted or passed into law by Parliament or a legislature.

Stay:
To postpone the judgment or order pending a decision.

Transcriber:
A transcriber is a person who types and prepares a record of the proceedings. A court transcriber is certified by the court to do so.

Transcript:
A typed record of the oral proceedings (trial or motion) before the court under appeal, including the evidence given by the witnesses who testified at the trial or proceeding.