

A Practitioner's Guide to the New CA Rules

Presented by Caitlin Ohama-Darcus

nst NATHANSON,
SCHACHTER &
THOMPSON LLP

In Three Chapters...

Chapter 1: Beginning the Appeal

Chapter 2: Steps to the Hearing

Chapter 3: Interlocutory Tools

(plus: costs & transitional provisions)

2021 Court of Appeal Statistics (Civil)

- In 2021, 678 civil appeals were filed; 640 were disposed of;
- Of the 678 civil appeals filed:
 - 581 were brought as of right; 97 required leave to appeal;
 - 25% involved at least one self-represented litigant;
- There were a total of 1132 chambers motions (civil & criminal);
- Only 11 family law appeals and 19 civil appeals were case managed by a justice or Registrar.

Source: 2021 Court of Appeal Annual Report
(https://www.bccourts.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2021_CA_Annual_Report.pdf)

CHAPTER 1: BEGINNING THE APPEAL

What has not changed:

- The time limit to bring an appeal: “not more than 30 days after the order is pronounced” (New Rule 6);
- The requirement to file and serve a notice of appeal (New Rule 6; New Form 1);
- The time limit to file a notice of an appearance: “not more than 10 days after being served the notice of appeal” (New Rule 7; New Form 2)
- When leave is required: “limited appeal order” or if required by enactment (New Rule 12).

CHAPTER 1: BEGINNING THE APPEAL

INTERPRETATION

- New Rules 1 and 2
- *Interpretation Act*, R.S.B.C. 1996, c. 238 = no longer your only source when it comes to timing definitions
- Including:

Interpretation – timing

- 2** If the time for doing an act under these rules falls or expires on a day other than a business day, the time is extended to the next business day.

CHAPTER 1: BEGINNING THE APPEAL

FILING THE NOTICE OF APPEAL

- You must file and serve a notice of appeal regardless of whether leave to appeal is (or may be) required
- Correction: New Rule 6(b) should refer to “Rule 4(1)”

How to appeal

- 6** (1) A person who wishes to appeal an order must do the following within the time limit set out in subrule (2):
- (a) file a notice of appeal in Form 1 that names as a respondent each person
 - (i) who was a party to the proceedings in the court appealed from, and
 - (ii) whose interests could be affected by the relief sought in the notice;
 - (b) serve, in accordance with Rule 4 (2) [*permitted methods of service*], on each respondent named in the notice of appeal a copy of the filed notice of appeal.
- (2) The time limit for filing and serving a notice of appeal of an order is the following:
- (a) unless paragraph (b) applies, not more than 30 days after the order is pronounced;
 - (b) if another enactment specifies a time limit within which the appeal must be commenced, that time limit.

CHAPTER 1: BEGINNING THE APPEAL

STYLES OF PROCEEDINGS (NEW FORM 1)

- The Appellant now always comes first

1. PARTIES TO THE APPEAL

Appellant(s)
List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Respondent(s)
List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

CHAPTER 1: BEGINNING THE APPEAL

WHEN TO BRING A CROSS APPEAL (NEW RULES 8-10)

- “15 days after being served a notice of appeal”
(regardless of whether leave is or may be required!)

How to bring a cross appeal

- 9 To bring a cross appeal, a respondent must do the following not more than 15 days after being served a notice of appeal:
 - (a) file a notice of cross appeal in Form 3;
 - (b) serve a copy of the filed notice of cross appeal
 - (i) on each party, and
 - (ii) on any other respondent named in the notice of cross appeal.



A respondent can no longer wait to bring a cross appeal *after* an application for leave to appeal has been heard and determined (Old Act, s. 15)

CHAPTER 1: BEGINNING THE APPEAL

LEAVE TO APPEAL & LIMITED APPEAL ORDERS

- New limited appeal orders (New Rule 11)
 - New Rule 11(a)(i) and (b)(i): order for particulars
 - New Rule 11(a)(x): evidence on applications
 - New Rule 11(c): interim relief under *FLA* or *Divorce Act*
- Express provision to apply for leave to appeal if “the party bringing the appeal or cross appeal does not know whether leave of the court is required to bring the appeal or cross appeal” (New Rule 12(c))

CHAPTER 1: BEGINNING THE APPEAL

SUBSEQUENT RELATED ORDERS (NEW RULE 17)

- Including:

How to appeal a subsequent related order after an appeal is brought


- 17 (1) In this rule, “**subsequent related order**”, in relation to an order that is under appeal, means an order that
- (a) is made after the order that is under appeal, and
 - (b) involves the same parties and the same cause or matter.
- (2) This rule applies to a party who is
- (a) an appellant, or
 - (b) a respondent who brings a cross appeal.
- (3) A party may appeal a subsequent related order under this rule
- (a) before a notice of hearing of appeal is filed for the order that is under appeal, or
 - (b) after a notice of hearing of appeal has been filed, if permitted by a justice or the registrar on application.

- Process for “subsequent related orders”
before and after notice of hearing

CHAPTER 2: STEPS TO THE HEARING

CHAPTER 2: STEPS TO THE HEARING

What has not changed:

- Appeal records, appeal books, factums, replies
 -  There are new, special provisions for cross appeals factums!
- Time limit for appeal record (and a book of transcripts, if any): “60 days after filing a notice of appeal” (New Rules 23 and 24)
- Time limit for appellant’s factum and appeal book: “30 days after filing the appeal record” (New Rule 25)
- Time limit for respondent’s factum: “30 days after being served an appellant’s factum”
- Same timeline for books of authorities

CHAPTER 2: STEPS TO THE HEARING

TRANSCRIPTS (NEW RULE 24)

- Express provision for transcripts other than testimony
- Discretion to dispense with requirement under sub(4)

Transcripts of proceedings in court appealed from

- 24**
- (1) In this rule, “**book of transcripts**” means a book of transcripts that
 - (a) includes the transcripts required under subrule (3), and
 - (b) meets the requirements for transcripts set out in subrule (4).
 - (2) An appellant must file and serve a book of transcripts
 - (a) not more than 60 days after filing a notice of appeal, or
 - (b) if leave to appeal is required, not more than 60 days after leave to appeal is granted.
 - (3) Unless a justice or the registrar orders otherwise, a book of transcripts must contain the following from the proceedings under appeal:
 - (a) transcripts of all oral testimony, if any was given;
 - (b) transcripts other than testimony, if they are necessary to resolve the issues under appeal.
 - (4) Transcripts that are filed in the court must be prepared
 - (a) by an official reporter from the official record of the court appealed from, and
 - (b) in accordance with the British Columbia Court Transcription Manual.
 - (5) The registrar may dispense with a requirement under subrule (4).
 - (6) Despite subrule (3), an appellant may exclude any portion of a transcript from a book of transcripts with the agreement of the other parties.

CHAPTER 2: STEPS TO THE HEARING

FACTUMS & APPEAL BOOKS ON CROSS APPEALS

- New Rules 29 and 30

Filing (in this order)	Deadline	Rule
Appellant's factum (main appeal)	30 days after appeal record filed	New Rule 25(1)
Respondent's cross appeal factum	30 days after appellant's factum (main appeal)	New Rule 29 *Do not file respondent's factum under New Rule 25(2)
Appellant's Reply (if any) (main appeal)	7 days after respondent's cross appeal factum	New Rule 29(2)(b) *Do not use New Rule 25(3)
Appellant's cross appeal response factum	14 days after respondent's cross appeal factum	New Rule 29(2)(a)
Cross-appellant's reply (if any)	7 days after appellant's cross appeal response factum	New Rule 29(3)

(All credit for this very helpful chart goes to my colleague Emily Hansen!)

CHAPTER 2: STEPS TO THE HEARING

SETTING AN APPEAL FOR HEARING (NEW RULES 32-35)

- No more certificates of readiness

When an appeal is ready for hearing

- 32** An appeal is ready for hearing on
- (a) the date the appellant has filed both
 - (i) the appellant's factum, and
 - (ii) a copy of each order being appealed, in the form that the order was entered in the court appealed from, or
 - (b) the date specified by a justice or the registrar as the date the appeal is ready for hearing.

Division 2 – Obtaining an Appeal Hearing Date

Appellant must obtain appeal hearing date

- 33**
- (1) After an appeal is ready for hearing, an appellant must, without delay,
 - (a) obtain a hearing date for the appeal, and
 - (b) inform the registrar if the parties disagree on the length of time required for the hearing of the appeal.
 - (2) After obtaining a hearing date under subrule (1), the appellant must, without delay, file and serve a notice of hearing of appeal in Form 5 that has attached a copy of each order being appealed, in the form that the order was entered in the court appealed from.

CHAPTER 2: STEPS TO THE HEARING

CONDENSED BOOKS (NEW RULE 37)

- Two types: evidence; authorities
- Including:

Condensed book of evidence and condensed book of authorities

37 (1) In this rule:

“condensed book of authorities” means a book that contains excerpts of authorities

- (a) that are included in the party’s filed book of authorities, and
- (b) that the party intends to refer the court to during the hearing of an appeal;

“condensed book of evidence” means a book that contains materials

- (a) that were filed in an appeal, and
- (b) that a party intends to refer the court to during the hearing of the appeal.

(2) A party may submit a condensed book of authorities or a condensed book of evidence, or both, to the court at the hearing of an appeal by providing a copy of the condensed book to all of the following persons at the commencement of the hearing:

- (a) each justice in the division of the court hearing the appeal;
- (b) each other party at the hearing of the appeal.

- Plus, specific completion instructions!

CHAPTER 2: STEPS TO THE HEARING

EXPEDITED APPEALS (NEW RULE 31)

- Formerly in a Practice Directive
- Requires a written request to the Registrar

Expediting appeals

- 31** (1) A party may request to expedite an appeal by doing the following:
- (a) submitting a written request that meets the requirements set out in subrule (2) to the registrar;
 - (b) serving on each party a copy of the written request,
- (2) A written request to expedite an appeal must succinctly state
- (a) the nature of the appeal,
 - (b) the reasons for the request,
 - (c) whether the other parties consent to expediting the appeal,
 - (d) the proposed terms for expediting the hearing of the appeal, including
 - (i) a schedule for the steps required to bring the appeal to hearing, and
 - (ii) an estimate of the time required for the hearing of the appeal, and
 - (e) a list of proposed dates for the hearing of the appeal.
- (3) A party may oppose a written request under subrule (1) by doing the following not more than 2 business days after being served the written request:
- (a) submitting a written response to the registrar;
 - (b) serving on each party a copy of the written response.

CHAPTER 2: STEPS TO THE HEARING

HEARING BY FIVE JUSTICES (NEW RULE 43)

- Formerly in a Practice Directive
- Now found in the following provision:

Having appeal heard by more than 3 justices

- 43** (1) A party may request that an appeal be heard by more than 3 justices by doing the following at least 6 weeks before the appeal hearing date:
- (a) submitting a written request stating the reasons for the request to the registrar;
 - (b) serving on each party a copy of the written request.
- (2) A party may oppose a written request under subrule (1) by doing the following not more than 5 days after being served the written request:
- (a) submitting a written response to the registrar;
 - (b) serving on each party a copy of the written response.

CHAPTER 3: INTERLOCUTORY TOOLS

CHAPTER 3: INTERLOCUTORY TOOLS

CASE MANAGEMENT (NEW RULES 47 AND 48)

Division 2 – Case Management

Case management

- 47** (1) A party may request that an appeal be referred to case management by
- (a) submitting a written request to the registrar, and
 - (b) serving on each party a copy of the written request.
- (2) A justice or the registrar may, on request of a party or on the justice's or registrar's own initiative, do one or both of the following:
- (a) direct that the parties attend case management before a justice or the registrar, either
 - (i) in person, or
 - (ii) by telephone, video conference or other means of telecommunication authorized by the chief justice;
 - (b) direct that case management be conducted in writing.
- (3) A party must participate in case management as directed under subrule (2).
- (4) Despite subrule (3), a party is not required to attend case management before a justice or the registrar if the party's lawyer attends.

CHAPTER 3: INTERLOCUTORY TOOLS

CASE MANAGEMENT (NEW RULES 47 AND 48) - cont'd

Powers of a justice on case management

- 48** (1) During case management for an appeal, a justice may make orders or give directions, with or without a party making an application, for the purposes of managing the conduct of the appeal, including the following:
- (a) simplifying or isolating issues on appeal;
 - (b) setting the time for the hearing of the appeal;
 - (c) setting a schedule for the steps required to bring the appeal to hearing;
 - (d) requiring that 2 or more appeals be heard together;
 - (e) permitting substitutional service;
 - (f) allowing a factum to include additional pages;
 - (g) requiring that monies be paid in and out of court;
 - (h) amending, in any manner, any documents filed in the court;
 - (i) granting permission to hear an application on shorter notice than otherwise required under these rules;
 - (j) granting cross-examination on an affidavit;
 - (k) settling the contents of an appeal record, appeal book or transcript.
- (2) During case management, a justice or the registrar may refer a matter to be heard by the court or a justice in chambers if the justice or registrar considers it to be in the interests of justice.

CHAPTER 3: INTERLOCUTORY TOOLS

APPLICATIONS GENERALLY

- New Rules 52-66, plus New Rule 13 (*Leave to appeal*), New Rule 18 (*Adding a respondent on appeal*), and New Rule 20 (*Application for a stay of proceedings or execution*)

Application hearing date must be obtained

- 53** Before filing a notice of application or any other document for the purposes of commencing an application, a person who wishes to bring an application must obtain a hearing date for the application.

Notice of application

- 54** A person who wishes to bring an application must file and serve the following documents at least 5 business days before the application hearing date:
- (a) a notice of application in Form 4;
 - (b) the person's supporting affidavits, if any;
 - (c) the person's written argument, if any.

Responding to applications

- 55** A person who is served a notice of application may, for the purposes of responding to the application, file and serve the following documents at least 2 business days before the application hearing date:
- (a) the person's supporting affidavits, if any;
 - (b) the person's written argument, if any.



Application Timelines

Are you preparing a notice of application to be heard in CA chambers?

1. **Identify the type of application** (e.g. leave to appeal? security? new evidence? varying an order of a justice? intervenor status?)
2. **Review New Rules to determine if there are provisions specific to that type of application**

BE AWARE: Some application types have timelines that are different from the general application timelines described on the previous slide.



CHAPTER 3: INTERLOCUTORY TOOLS

URGENT APPLICATIONS (NEW RULE 57)

- Be aware: you still need to start by obtaining a hearing date

Urgent applications

- 57** (1) In this rule, “**urgent application**” means an application made under subrule (2) for permission to bring another application on shorter notice.
- (2) In case of urgency, a person may apply for permission to bring an application on shorter notice than otherwise required under these rules by
- (a) obtaining a hearing date for the application, and
 - (b) filing an urgent application in Form 7.
- (3) On an urgent application, a justice or the registrar may do one or more of the following:
- (a) order that an application be heard on shorter notice than otherwise required under these rules, including
 - (i) setting the date for hearing the application, and
 - (ii) setting the date by which documents in relation to the application must be filed and served;
 - (b) impose conditions or give directions related to the urgent application, including that notice be served on another party.
- (4) If an order is made under subrule (3), the party who brought the urgent application must serve notice of the order on each party.

CHAPTER 3: INTERLOCUTORY TOOLS

INTERVENER STATUS (NEW RULE 61)

- New spelling! (no longer “intervenor status”)
- Time limit to apply: “14 days after the appellant files the appellant’s factum”
- Process for applying:
 - (2) To apply for leave to intervene in an appeal, a person must do the following no later than 14 days after the appellant files the appellant’s factum:
 - (a) obtain a hearing date for the application;
 - (b) file and serve the following documents:
 - (i) a notice of application in Form 4;
 - (ii) a memorandum of argument prepared in accordance with the completion instructions.
- Page limit for intervener’s factum: 10 pages

CHAPTER 3: INTERLOCUTORY TOOLS

ADJOURNING AN APPLICATION (NEW RULE 65)

- Note the 2 PM deadline!

Adjourning applications before hearing date

- 65** (1) Before the hearing date of an application,
- (a) the person bringing the application may seek to adjourn the hearing by filing a requisition in accordance with this rule, or
 - (b) with the consent of the person bringing the application, a person responding to the application may seek to adjourn the hearing by filing a requisition in accordance with this rule.
- (2) A requisition referred to in subrule (1) must be
- (a) completed in Form 9, and
 - (b) filed before 2 p.m. on the business day before the application hearing date.
- (3) Unless a justice or the registrar directs otherwise, an application stands adjourned if a requisition in respect of the application is filed in accordance with subrules (1) and (2).
- (4) For certainty, if an application does not stand adjourned under subrule (3),
- (a) the parties to the application must attend the hearing of the application, and
 - (b) a party to the application may request an adjournment at that hearing.
- (5) If the hearing of an application is adjourned under this rule without setting a new application hearing date, the person bringing the application may set a new application hearing date by filing and serving, at least 5 business days before the new application hearing date, a requisition in Form 9 setting out the new hearing date and time.

CHAPTER 3: INTERLOCUTORY TOOLS

VARYING THE ORDER OF A JUSTICE (NEW RULE 62)

- Some types of orders cannot be varied

Varying an order of a justice

- 62** (1) In addition to an order referred to in section 29 (2) (a) [*varying orders of a justice*] of the Act, the following are prescribed under section 29 of the Act as orders that may not be varied:
- (a) an order or direction under Rule 48 (1) granting or refusing relief in a case management conference;
 - (b) an order for shorter notice in bringing an application than otherwise required under these rules;
 - (c) an order to expedite an appeal.
- (2) A person who wishes to apply to have the court, under section 29 of the Act, vary an order other than an order referred to in subrule (1) must do the following not more than 7 days after the order is made:
- (a) obtain a hearing date for the application;
 - (b) file and serve a notice of application to vary an order of a justice in Form 8.
- (3) A person who files a notice of application under subrule (2) must, not more than 14 days after filing the notice of application, file and serve an application book prepared in accordance with the completion instructions.
- (4) A person who wishes to respond to an application book filed under subrule (3) must file and serve, not more than 7 days after being served the application book, a response book prepared in accordance with the completion instructions.

ADDENDA:

COSTS & TRANSITION PROVISIONS

ADDENDUM: COSTS

NEW RULE 69 & SCHEDULE 1

- Two scales of ordinary costs: A \$110; B \$170

Scale for Ordinary Costs	Old Rules (Appendix B, s.3)	New Rules (Rule 69)
A/1	Scale 1: \$60/unit	Scale A: \$100/unit
B/2	Scale 2: \$80/unit	Scale B: \$170/unit
3	Scale 3: \$100/unit	--

ADDENDUM: TRANSITION PROVISIONS

NEW RULES 90-94

Application of rules to pre-existing appeals and applications for leave to appeal

- 91** (1) Except as otherwise provided in this Part, these rules apply to
- (a) a pre-existing appeal, or
 - (b) a pre-existing application for leave to appeal.
- (2) The following rules do not apply to a pre-existing appeal or pre-existing application for leave to appeal:
- (a) Rule 11 (a) (i) and (x) and (b) (i) and (v) [*limited appeal orders*];
 - (b) Rule 29 (5) [*factums on cross appeal*];
 - (c) Rule 69 [*assessment of ordinary costs*].

DEFINITIONS (NEW RULE 90):

“pre-existing appeal” means either of the following:

- (a) an appeal that was commenced before the effective date;
- (b) an appeal that relates to a pre-existing application for leave to appeal;

“pre-existing application for leave to appeal” means an application for leave to appeal that was commenced before the effective date;

“pre-existing cross appeal” means a cross appeal that was commenced before the effective date.

“Top 5 Takeaways” (for Civil Appeals)

1. You can now find most answers to your procedural questions in the Rules;
2. When it comes to the key steps in an appeal (appeal record, factum, etc.), the big timelines are unchanged; but be aware of cross appeals;
3. For interlocutory applications, check for specific provisions based on application type;
4. For any existing appeals or cross appeals, pay close attention to the transition provisions; and
5. Case management = a helpful tool!