

Part 14: Appeals

What this Part is about: This Part governs appeals to the Court of Appeal.

Part 14: Appeals

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Information note

Words and phrases used in this Part that have defined meanings in the Appendix *[Definitions]* or Rule 14.1 *[Definitions]* include

- appeal
- appellant
- case management officer
- Civil Appeal Hearing List
- commencement document
- costs award
- court appealed from
- court clerk
- decision
- defendant
- enactment
- fast track appeal
- file
- judge
- judgment
- judicial centre
- lawyer
- litigation representative
- master
- Minister
- official court reporter
- order
- panel
- party
- plaintiff
- pleading
- procedural order
- property
- record
- Registrar
- remedy
- respondent
- rules
- standard appeal
- *Unscheduled Civil Appeals List*

Part 14: Appeals

Division 1 The Right to Appeal

Subdivision 1 Interpretation and Application

Definitions

14.1(1) In this Part,

- (a) “appeal” means an appeal to the Court of Appeal governed by this Part;
- (b) “appellant” means a person who under an enactment or these rules
 - (i) files an application for permission to appeal to the Court of Appeal, or
 - (ii) files a notice of appeal;
- (c) “case management officer” means a person appointed as a case management officer under the *Court of Appeal Act*;
- (d) “Civil Appeal Hearing List” means the list referred to in rule 14.33(1) [*Scheduling standard appeals*] that identifies selected appeals that have been scheduled for oral argument and the date on which each oral argument is to be heard;
- (e) “court appealed from” means the court, person or tribunal from which an appeal has been brought;
- (f) “decision” means the whole or any part of the decision of the court, person or tribunal from which an appeal lies and includes a judgment, order, decision, verdict, direction, determination or award and, where the context requires, includes the verdict or finding of a jury;
- (g) “fast track appeal” means an appeal that must be managed in accordance with rule 14.14 [*Fast track appeals*];
- (h) “file” means to present the correct document and obtain an acknowledgment by the Registrar of the Court of Appeal that the document is part of the Court of Appeal Record;
- (i) “judge”, when used in reference to the Court of Appeal, includes the Chief Justice of Alberta, the justices of appeal and the supernumerary judges of the Court of Appeal;
- (j) “panel” means three or more judges of the Court of Appeal unless the Chief Justice, in case of emergency, declares that two judges may form a panel;
- (k) “party” means a party to an appeal or an application under this Part and includes an intervenor where the context requires;

- (l) “Registrar” means a person appointed as a Registrar of the Court of Appeal under the *Court of Appeal Act* and includes a Deputy Registrar of the Court of Appeal and any person designated by a Registrar or the Chief Justice of Alberta to act for a Registrar;
 - (m) “respondent” means, unless the context otherwise requires, the person who, under an enactment or these rules,
 - (i) is named as a respondent to an application for permission to appeal, or
 - (ii) is named as a respondent to an appeal;
 - (n) “standard appeal” means an appeal other than a fast track appeal;
 - (o) “Unscheduled Civil Appeals List” means the list referred to in rule 14.33(2) [*Scheduling standard appeals*] that identifies all the appeals that have not been scheduled for oral argument, which are to be spoken to at the next calling of the List.
- (2) Where a respondent files a notice of cross appeal, unless this Part otherwise provides, the rules relating to appeals apply to the cross appeal and, in particular,
- (a) references to an appeal include a cross appeal;
 - (b) references to an appellant include a respondent who files a notice of cross appeal;
 - (c) references to a respondent include an appellant who is named as a respondent in a notice of cross appeal;
 - (d) references to parties to an appeal include parties to a cross appeal.

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Application of general rules

14.2(1) Subject to this Part, to any enactment, and to any direction by an appeal judge, if this Part does not deal with a matter, other Parts of these rules apply to appeals, with any appropriate modifications.

(2) Where a rule in this Part provides that a specific rule in another Part applies to appeals, the specific rule applies with any appropriate modifications.

(3) Rule 13.5(1) [*Variation of time periods*] does not apply to a time period or deadline referred to in this Part.

(4) Subject to any appropriate modifications or any direction by an appeal judge, when applying the provisions of any other Part to an appeal under this Part,

- (a) a reference to the court clerk or a court officer is to be read as a reference to the Registrar;
- (b) a reference to a plaintiff is to be read as a reference to an appellant;
- (c) a reference to a defendant is to be read as a reference to a respondent;
- (d) a reference to the court or a judge are to be read as a reference to an appeal judge;

- (e) a reference to a pleading or commencement document includes a reference to a notice of appeal, a notice of cross appeal or an application for permission to appeal.

(5) In this Part, “appropriate modifications” means those changes and modifications to the use and interpretation of these rules necessary or appropriate for a rule in another Part to apply to and to be used in appellate practice.

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When these rules apply

14.3 If a person has a right to appeal to the Court of Appeal under an enactment or these rules or is granted permission to appeal to the Court of Appeal, the appeal must be made and managed in accordance with this Part.

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Subdivision 2 Appeals as of Right

Right to appeal

14.4(1) Except as otherwise provided, an appeal lies to the Court of Appeal from the whole or any part of a decision of a Court of Queen’s Bench judge sitting in court or chambers, or the verdict or finding of a jury.

(2) No appeal is allowed to the Court of Appeal from the dismissal by a Court of Queen’s Bench judge of an application made without notice.

(3) Where an application has been made to the Court of Queen’s Bench without notice and has been dismissed, the applicant may reapply

- (a) on notice, if the dismissal was for lack of notice, or
- (b) by renewal of the application if the dismissal was for reasons other than the lack of notice.

(4) No appeal is allowed directly to the Court of Appeal from a decision of a master in chambers.

(5) No appeal is allowed

- (a) from a judgment granting a divorce, on or after the date on which the divorce takes effect, or
- (b) unless an appeal judge extends the time, from an order made in a divorce proceeding, more than 30 days after the date on which the order was made.

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Information note

Appeals in family law matters are also dealt with in Part 12, Division 11 [[Appeals](#)].

Subdivision 3 Appeals with Permission

Appeals only with permission

14.5(1) Except as provided in this rule, no appeal is allowed to the Court of Appeal from the following types of decisions unless permission to appeal has been obtained:

- (a) a decision of a single appeal judge;
- (b) any pre-trial decision directing adjournments, time periods or time limits;
- (c) any ruling during trial, where the appeal is brought before the trial is concluded;
- (d) a decision made on the consent of the parties;
- (e) a decision as to costs only, but an appeal or cross appeal is not “as to costs only” if a related substantive decision is also being appealed;
- (f) any decision where permission to appeal is required by an enactment;
- (g) any decision in a matter where the controversy in the appeal can be estimated in money and does not exceed the sum of \$25 000 exclusive of costs;
- (h) any decision on security for costs;
- (i) any decision of the Court of Queen’s Bench sitting as an appeal court under rule 12.71 [*Appeal from decision of Court of Queen’s Bench sitting as appeal court*];
- (j) any appeal by a person who has been declared a vexatious litigant in the court appealed from.

(2) Permission to appeal decisions of single appeal judges under subrule (1)(a) must be sought from the same judge who made the decision that is to be appealed.

(3) No appeal is allowed under subrule (1)(a) from a decision of a single appeal judge denying permission to appeal.

(4) No appeal is allowed under subrule (1)(j) from an order denying the vexatious litigant leave to institute or continue proceedings.

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Subdivision 4 Cross Appeals

Cross appeals

14.6(1) A respondent to an appeal may cross appeal any decision on which it could have commenced an appeal, by filing a notice of cross appeal under rule 14.11 [*How to start a cross appeal*].

(2) Subject to subrule (3), where an appeal has been commenced as of right or with permission, the respondent does not need permission to file a cross appeal with respect to any decision described in rule 14.5 *[Appeals only with permission]* if the cross appeal is only intended to vary the decision already under appeal.

(3) Where an enactment provides that an appeal may be commenced in the Court of Appeal with permission, a respondent who wishes to cross appeal must apply for permission to cross appeal.

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Division 2 The Appeal Process

Subdivision 1 Starting an Appeal or Cross Appeal

How to start an appeal

14.7 Appeals must be started

- (a) where an enactment or these rules give a right of appeal, by filing a notice of appeal under rule 14.8 *[Filing a notice of appeal]*, or
- (b) where permission to appeal must be obtained, by applying for permission under rule 14.44 *[Application for permission to appeal]*, and if permission is granted, by then filing a notice of appeal under rule 14.8 *[Filing a notice of appeal]*.

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Information note

The general right to appeal is found in rule 14.4 *[Right to appeal]*, specific rights to appeal are found in various statutes. Rule 14.5 *[Appeals only with permission]* and some statutes require permission to appeal in some cases.

Filing a notice of appeal

14.8(1) In this rule, “date of decision” means the later of

- (a) the date that the judgment, order or other decision being appealed is made, or
- (b) if reasons are given after a judgment, order or other decision being appealed is made, the date the reasons are issued.

(2) An appellant must

- (a) file with the Registrar 3 copies of a notice of appeal that meets the requirements of rule 14.12 *[Contents and format of notices of appeal and cross appeal]* and Form AP-1,
 - (i) within the time for commencing an appeal stated in an enactment,

- (ii) if the appellant is granted permission to appeal, within 10 days after the date permission is granted, or
- (iii) if subclauses (i) and (ii) do not apply, within one month after the date of decision,

and

- (b) for every other party to the appeal, file and serve one additional copy of the notice of appeal within the time periods mentioned in clause (a).

(3) Where permission to appeal is required, an application for permission to appeal in accordance with rule 14.44 [*Application for permission to appeal*] must be filed, served and returnable within the time periods mentioned in subrule (2)(a).

(4) The appellant must serve a filed copy of the notice of appeal on every party to the decision that is the subject of the appeal and any person or body that these rules, an enactment or the direction of an appeal judge require to be served.

(5) Appeals arising in the judicial centres of Calgary, Drumheller, Lethbridge, Medicine Hat or Red Deer must be filed at the office of the Registrar of the Court of Appeal in Calgary, and appeals arising in all other judicial centres must be filed at the office of the Registrar of the Court of Appeal in Edmonton.

(6) Despite subrule (5), in urgent situations an appellant may make arrangements with a Registrar to file a notice of appeal in either office of the Registrar of the Court of Appeal or to file a notice of appeal electronically.

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Appeals from several decisions

14.9 A separate notice of appeal must be filed for each decision that is appealed, except where

- (a) the appeal concerns several decisions made by the court appealed from that arise out of the same hearing,
- (b) the appeal concerns a substantive decision, and a ruling on costs for the same hearing,
- (c) the appeal is of a decision that varies, confirms, explains, or provides for the enforcement of a previous decision, and the previous decision is also being appealed, or
- (d) a case management officer otherwise orders.

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Notice to Court of Queen's Bench

14.10 Where the appeal is from a decision of the Court of Queen's Bench, the appellant must file a copy of the notice of appeal with that court within the time specified in rule 14.8(2) [*Filing a notice of appeal*].

AR 41/2014 s4

How to start a cross appeal

14.11 A respondent who contends that the decision of the court appealed from should be varied must, within the time for filing an appeal or within 10 days of service of the notice of appeal, whichever is later,

- (a) file with the Registrar
 - (i) 3 copies of a notice of cross appeal in Form AP-2, or
 - (ii) where permission to cross appeal is required under rule 14.6(3) *[Cross appeals]*, an application for permission to cross appeal, and
- (b) for every other party to the appeal and cross appeal, file and serve an additional copy of the notice of cross appeal or application.

AR 41/2014 s4

Subdivision 2
Notices of Appeal and Cross Appeal

Contents and format of notices of appeal and cross appeal

14.12(1) A notice of appeal must be in Form AP-1 and a notice of cross appeal must be in Form AP-2.

(2) A notice of appeal must contain the following information:

- (a) the parties' names, in the same order used in the style of cause in the court appealed from, with an indication of the status of each on the appeal and in the court appealed from;
- (b) the name and file number used in the court appealed from;
- (c) whether the whole or only part of the decision is appealed, and if only part is appealed, which part;
- (d) whether the appeal is required by these rules to be, or it is anticipated the appeal will be, managed as a fast track appeal;
- (e) whether the action under appeal was the subject of a restricted access order under Part 6 *[Resolving Issues and Preserving Rights]*, Division 4 *[Restriction on Media Reporting and Public Access to Court Proceedings]*, or of any statutory restriction on publication;
- (f) the relief claimed.

(3) A notice of appeal or cross appeal must include

- (a) where permission to appeal was required, particulars of or a copy of the order granting permission to appeal, and
- (b) particulars of or a copy of the judgment, order or other decision being appealed.

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Subdivision 3 Types of Appeals

Standard appeals

14.13(1) All appeals that are not fast track appeals are standard appeals.

(2) A case management officer may direct that any appeal must or must not be managed as a fast track appeal.

AR 41/2014 s4

Fast track appeals

14.14(1) Fast track appeals are appeals from a decision, or part of a decision, that does not finally determine all or some significant part of the substantive rights in issue.

(2) Unless otherwise ordered, appeals from the following kinds of decisions are to be dealt with as fast track appeals:

- (a) a ruling by a judge made during a trial;
- (b) a decision as to custody, access, parenting or support of a child;
- (c) a decision concerning support for a present or former spouse or adult interdependent partner made without a trial being held;
- (d) a decision concerning only costs or liability to pay fees or costs;
- (e) a decision denying summary judgment.

(3) Unless otherwise ordered, appeals from the following kinds of decisions are not fast track appeals:

- (a) a decision granting summary judgment or striking out a statement of claim, statement of defence or third party notice;
- (b) a decision refusing to open a default judgment or a noting in default;
- (c) a decision permitting or directing default judgment;
- (d) a decision staying an action indefinitely;
- (e) a decision dismissing an action on procedural grounds;
- (f) certification of or failure to certify a class proceeding.

AR 41/2014 s4

Subdivision 4 Appeal Record

Ordering the Appeal Record

14.15(1) Subject to rule 14.20 [*Contents of Appeal Record – appeals from tribunals*], the appellant must

- (a) within 10 days after filing a notice of appeal, order or commence preparation of the Appeal Record,

- (b) order from Transcript Management Services or any other commercial preparer a transcript of
 - (i) all oral evidence,
 - (ii) subject to subrule (iii), only such part of the argument as is necessary to dispose of the appeal,
 - (iii) all oral argument in a chambers hearing, if that hearing did not exceed one-half day, and
 - (iv) any oral reasons for the decision under appeal and for any other ruling that will be an issue on the appeal,and
- (c) within 5 days after ordering the Appeal Record and transcripts, file a copy of the order and serve a filed copy on the respondent.

(2) Unless the Appeal Record is being prepared by the appellant, a copy of any amendment to, or countermand of, the instructions to prepare the Appeal Record or transcripts must be filed and served on the respondent within a reasonable time after the amendment is made or the countermand given.

AR 41/2014 s4

Information note

Transcripts of the oral argument at a trial are not required unless relevant, for example if a dispute exists about whether a particular issue was raised, or whether some fact or issue was conceded. Where formal reasons for judgment are issued by the court, transcripts of oral reasons are generally not required.

Filing the Appeal Record – standard appeals

14.16(1) Subject to rules 14.18 [*Contents of Appeal Record – standard appeals*] and 14.21 [*Format of Appeal Record – standard appeals*], the appellant in a standard appeal must file 5 copies of the Appeal Record, consisting of

- (a) Part 1 — Pleadings,
- (b) Part 2 — Final Documents, and
- (c) Part 3 — Transcripts, consisting of
 - (i) one paper and one electronic copy, if an electronic copy is available, or
 - (ii) 5 paper copies, if no electronic copy is available.

(2) In addition to the copies required under subrule (1), the appellant must serve on every other party to the appeal a copy of the Appeal Record and an electronic copy of the Transcripts.

(3) The Appeal Record and Transcripts must be

- (a) prepared promptly and filed and served forthwith after they are prepared, and

- (b) filed not later than 4 months from the date on which the notice of appeal was filed,

or the appeal will be struck by the Registrar.

AR 41/2014 s4

Filing the Appeal Record – fast track appeals

14.17(1) Rule 14.16 [*Filing the Appeal Record – standard appeals*] applies to fast track appeals, except that

- (a) the Appeal Record may be prepared in compliance with rule 14.22 [*Format of Appeal Record – fast track appeals*],
- (b) subject to subrule (2), unless otherwise ordered by a case management officer, the Appeal Record and Transcripts must be filed and served on the other parties to the appeal immediately after they are prepared, and not later than one month from the date on which the notice of appeal was filed, and
- (c) unless otherwise ordered, electronic copies of Transcripts need not be filed.

(2) If the Transcripts are not available when the Appeal Record is filed and served in accordance with subrule (1), the Table of Contents of the Appeal Record must mention that, and the Transcripts must be filed and served as soon as possible.

AR 41/2014 s4

Contents of Appeal Record – standard appeals

14.18(1) The Appeal Record for standard appeals must meet the requirements of rule 14.21 [*Format of Appeal Record – standard appeals*] and must contain the following:

- (a) a Table of Contents at the beginning of every volume, listing separately each document and showing the page number where the document can be found;
- (b) Part 1 — Pleadings, which must contain the relevant pleadings in the action in chronological order, including
 - (i) the relevant pleadings, but the last version only of any pleading that was amended before trial,
 - (ii) any amendments to pleadings made at trial, and
 - (iii) if the appeal concerns a decision arising from an application, a copy of the application;
- (c) Part 2 — Final Documents, which must include
 - (i) the written or transcribed reasons
 - (A) that led to the decision being appealed, including the reasons for any decision rendered during the trial that is relevant to the disposition of the appeal, and

- (B) of any prior decision of a judge, master or tribunal that led to the decision now appealed,
 - (ii) the formal judgment, order or decision appealed,
 - (iii) any restricted access order,
 - (iv) any prior order, reference to which is required to resolve the appeal,
 - (v) the order granting permission to appeal, if any,
 - (vi) the notice of appeal,
 - (vii) the notice of cross appeal, if any,
 - (viii) when an enactment or these rules requires service on the Minister or the Minister of Justice and Attorney General for Canada, or both, proof of that service, and
 - (ix) if there is no oral record that can be transcribed for Part 3, a notation to that effect in the Table of Contents.
- (d) Part 3 — Transcripts, which must contain the following information:
- (i) a table of contents at the beginning of every volume, listing separately each part of the transcript, the name of each witness and questioner and showing the page number where the part or the testimony of the witness or questioner begins;
 - (ii) all oral evidence, but only such part of the argument that is necessary to determine the appeal or that is required by rule 14.15(1)(b)(iii) [*Ordering the Appeal Record*];
 - (iii) in the case of an appeal from a judgment in a jury trial, the answers given to any questions from the jury, the judge's charge to the jury and the address to the jury of each party.
- (2) Where any document required for the Appeal Record is not available at the time of its preparation, a note to that effect must be inserted in the Appeal Record in its place, and sufficient copies of the unavailable document must be filed as soon as possible or included in or appended to another document required to be filed.
- (3) A case management officer may set or vary the contents or format of the Appeal Record as the nature of the appeal requires, including giving directions respecting transcripts.

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Information note

If, for example, the formal judgment under appeal (or the order granting permission to appeal) is not available at the time of preparation of the Appeal Record, a copy can be appended to the factum, or included in the Extracts of Key Evidence under rule 14.27(2) [*Filing Extracts of Key Evidence*].

Contents of Appeal Record – fast track appeals

14.19 Rule 14.18 [*Contents of Appeal Record – standard appeals*] applies to fast track appeals, except that rule 14.22 [*Format of Appeal Record – fast track appeals*] applies to the format of the Appeal Record for fast track appeals.

AR 41/2014 s4

Contents of Appeal Record – appeals from tribunals

14.20(1) Where the appeal is from the decision of a person or body other than a court, the contents, format and filing of the Appeal Record must follow the format for standard appeals as set out in rule 14.18 [*Contents of Appeal Record – standard appeals*], except that, subject to any direction of a case management officer,

- (a) the contents of the Appeal Record must be prepared with appropriate changes, as the circumstances require, in order to ensure that the information required to resolve the appeal is before the Court, and
- (b) the Transcripts need only consist of any existing transcripts of evidence before the person or body whose decision is being appealed.

(2) A single appeal judge may make any order required to obtain production of records from the person or body whose decision is being appealed.

AR 41/2014 s4

Format of Appeal Record – standard appeals

14.21(1) The Appeal Record must

- (a) be printed single-sided and bound together along the right edge of the page so that the printed text is to the left of the binding;
- (b) number the Pleadings starting with page P1, and the Final Documents with page F1;
- (c) have red cardstock covers, front and back;
- (d) be divided into numbered volumes of approximately 200 pages each.

(2) The Transcripts must

- (a) be prepared by an official court reporter or comply with the *Transcript Fees and Format Regulation* (AR 167/2010);
- (b) be prepared in an electronic format approved by the Registrar and uploaded before the paper copy is filed;
- (c) be paginated and printed double-sided;
- (d) have grey cardstock covers, front and back;
- (e) be divided into numbered volumes of approximately 200 pages each.

(3) With the consent of all parties, or by order, an Appeal Record may be completed in electronic format.

AR 41/2014 s4

Format of Appeal Record – fast track appeals

14.22 Rule 14.21 [*Format of Appeal Record – standard appeals*] applies to fast track appeals, except

- (a) if less than 200 pages in length, the Appeal Record may be all in one volume, with red covers, and a comprehensive index;
- (b) the items in the Appeal Record may be separated by tabs, and consecutively numbered within each tab, rather than continuously numbered.

AR 41/2014 s4

Division 3
Preparing Written Argument and Scheduling
Oral Argument of Appeals

Subdivision 1
Factums

Filing factums – standard appeals

14.23(1) The appellant in a standard appeal must file 5 copies of an appellant's factum that meet the requirements of rules 14.25 [*Contents of factums*] and 14.26 [*Format of factums*], and must file and serve one additional copy on every other party to the appeal before the earlier of

- (a) 2 months after the filing of the Appeal Record, and
- (b) 6 months after the filing of the notice of appeal

or the appeal will be struck by the Registrar.

(2) The respondent in a standard appeal must, within 2 months of service of the appellant's factum

- (a) file 5 copies of
 - (i) a respondent's factum that meets the requirements of rule 14.25 [*Contents of factums*] and rule 14.26 [*Format of factums*], or
 - (ii) a letter of intention not to file a factum,and
- (b) for every other party to the appeal file and serve an additional copy of the factum or letter of intention.

(3) A respondent that does not file a factum will not be permitted to present oral argument unless the panel orders otherwise.

(4) Where a cross appeal has been filed, the appellant must file and serve a reply factum, or a letter of intention not to file a reply factum, within 10 days of service of the respondent's factum.

AR 41/2014 s4

Filing factums – fast track appeals

14.24(1) Rule 14.23 [*Filing factums – standard appeals*] applies to fast track appeals, except that

- (a) the appellant’s factum must be filed and served before the earlier of
 - (i) 20 days after the Appeal Record is filed, and
 - (ii) 2 months after the notice of appeal is filed,or the appeal will be struck by the Registrar,
and
- (b) the respondent’s factum or letter of intention not to file a factum must be filed and served before the earlier of
 - (i) one month after service of the appellant’s factum, and
 - (ii) 10 days before opening day of the sittings at which the appeal is scheduled to be heard.

(2) A party that files a cross appeal in a fast track appeal must within 5 days of filing apply to a case management officer for the establishment of a timetable and other necessary requirements for the appeal.

AR 41/2014 s4

Contents of factums

14.25(1) A factum must include the following:

- (a) Table of Contents, including page numbers;
- (b) Part 1 — Facts: in the appellant’s factum, a statement of facts (including, if desired, a concise introductory statement of the legal issues raised), and in the respondent’s factum, its position on the facts as stated by the appellant, and any other facts considered relevant;
- (c) Part 2 — Grounds of Appeal: in the appellant’s factum, a concise statement of the grounds for appeal, and in the respondent’s factum, its position in regards to the stated grounds, and any other points that may properly be put in issue;
- (d) Part 3 — Standard of Review: a statement on the relevant standard of review;
- (e) Part 4 — Argument: a discussion addressing the questions of law or fact raised by the appeal;
- (f) Part 5 — Relief Sought: a statement of the relief sought, including any special direction with respect to costs;
- (g) the estimated time required for the oral argument, within the limits set out in rule 14.32(4) [*Oral argument*];
- (h) Table of Authorities: a list of the legal authorities referred to in the factum, that meets the requirements of rule 14.31(a) [*Format of Books of Authorities*];

- (i) an Appendix containing extracts from any statute, enactment or rule necessary for the disposition of the appeal, unless they are reproduced elsewhere in the materials to be filed.
- (2) Where a cross appeal has been filed, the respondent's factum must consist of 2 sections, each of 5 parts as required by subrule (1), entitled "factum on the appeal" and "factum on the cross appeal", prepared in accordance with subrule (1) with any appropriate modifications.
- (3) An intervenor's factum must be prepared in the same form as a respondent's factum, with any appropriate modifications.
- (4) A case management officer may vary the format or filing of, or dispense with the preparation of, a factum.

AR 41/2014 s4

Information note

Rule 14.87 [*Requirements for all documents*] contains format requirements for all documents. Rules 14.29(d) [*Format of Extracts of Key Evidence*] and 14.31(f) [*Format of Books of Authorities*] permit placing the extracts from statutes, enactments and rules in the Book of Authorities, and permit attaching authorities and Extracts of Key Evidence to the factum if they are not bulky.

Format of factums**14.26(1)** Factums must be

- (a) formatted using at least 12 point font, one-inch margins and at least 1.5 line spacing, except for quotations, and
 - (b) be printed single-sided and bound together along the right hand edge of the page so that the printed text is to the left of the binding.
- (2) Parts 1 to 5 of a factum must not exceed in length
- (a) 30 pages for the parties in a standard appeal,
 - (b) 40 pages for a respondent who has filed a cross appeal in a standard appeal,
 - (c) 10 pages for an appellant's factum in response to a cross appeal,
 - (d) 30 pages for an intervenor, or
 - (e) 12 pages for every party in a fast track appeal.
- (3) Factums must contain precise references to the location, page numbers and paragraph numbers or lines of the Appeal Record, Extracts of Key Evidence and authorities referred to.
- (4) Each factum must have cardstock covers, front and back, prepared as required by rule 14.87(2) [*Requirements for all documents*], in the following colours:

- (a) appellants, including appellants who are cross respondents — beige or ivory;
- (b) respondents, including respondents who are cross appellants — green;
- (c) intervenors — blue.

AR 41/2014 s4

Subdivision 2 Extracts of Key Evidence

Filing Extracts of Key Evidence

14.27(1) Each party to an appeal must file Extracts of Key Evidence that meet the requirements of rule 14.29 [*Format of Extracts of Key Evidence*],

- (a) containing extracts of the transcripts, exhibits and other material on the record needed to resolve the issues in the appeal,
- (b) excluding any evidence, exhibits and other materials unlikely to be needed, and
- (c) not containing any comment, argument, trial briefs, legal authorities or new evidence.

(2) If any document required by rule 14.18 [*Contents of Appeal Record – standard appeals*] is not available at the time of preparation of the Appeal Record, a copy must be included in the Extracts of Key Evidence or appended to the factum.

(3) A party preparing Extracts of Key Evidence must file with the Registrar, when or before filing that party’s factum, 5 copies of the Extracts of Key Evidence, and must file and serve one additional copy on every other party to the appeal.

AR 41/2014 s4

Information note

If, for example, the formal judgment under appeal (or the order granting permission to appeal) is not available at the time of preparation of the Appeal Record, a copy can be appended to the factum, or included in the Extracts of Key Evidence under rule 14.27(2) [*Filing Extracts of Key Evidence*].

Record before the Court

14.28(1) Subject to any enactment, all evidence or exhibits received by the court appealed from are an official part of the Appeal Record, notwithstanding that no copy is filed with the Court of Appeal.

(2) If an exhibit cannot be readily reproduced and will be referred to in argument, the Extracts of Key Evidence must be accompanied with a letter to the Registrar requesting that the original exhibit be made available at the hearing of the appeal.

(3) An appeal judge may direct, on any conditions that the judge considers to be appropriate, that any records before the court appealed from be transmitted to the Court of Appeal.

AR 41/2014 s4

Format of Extracts of Key Evidence

14.29 Extracts of Key Evidence must

- (a) have a table of contents at the beginning of every volume, listing separately each document, including each exhibit to any affidavit, and showing the page number where the document can be found;
- (b) be numbered sequentially throughout, commencing with
 - (i) page A1 for the appellant's Extracts,
 - (ii) page R1 for the respondent's Extracts, and
 - (iii) page I1 for the intervenor's Extracts;
- (c) have cardstock covers, front and back, prepared as required by rule 14.87(2) [*Requirements for all documents*], in the following colours:
 - (i) appellants, including appellants who are cross respondents — yellow;
 - (ii) respondents, including respondents who are cross appellants — pink;
 - (iii) intervenors — blue;
- (d) be bound in volumes of approximately 200 pages each, provided that if the Extracts of Key Evidence do not exceed 30 pages, they may be included as an appendix to the factum, or in the Book of Authorities.

AR 41/2014 s4

Information note

Key passages in extracts of key evidence may be highlighted or otherwise identified. They may be copied with the printed page on the right, and double sided copying is acceptable. The key parts of illegible or small print documents should be typed out, and both the original and the typescript should be reproduced.

Subdivision 3 Books of Authorities

Filing Books of Authorities

14.30(1) Each party to an appeal shall prepare, if necessary, a Book of Authorities

- (a) containing extracts of any statutes, regulations or bylaws necessary for deciding the appeal,

- (b) including the headnote and relevant pages (or, only when appropriate, the entirety) of any authority likely to be referred to during oral argument or essential to the disposition of the appeal, and
- (c) excluding well-known authorities, authorities of secondary importance and other non-essential authorities not likely to be referred to during oral argument.

(2) Each party must file with the Registrar, when or before filing that party's factum, 5 copies of its Book of Authorities that meets the requirements of rule 14.31 [*Format of Books of Authorities*] and must file and serve one additional copy on every other party to the appeal.

AR 41/2014 s4

Information note

The appellant should include in its Book of Authorities only authorities that are likely to be referred to during the oral argument, and other parties should not reproduce authorities already filed. Joint Books of Authorities are encouraged, in which case they should be filed 10 days after the filing of the last respondent's factum. Background authorities (for example on the standard of review) should not be reproduced in full, or at all unless necessary.

Format of Books of Authorities

14.31 Books of Authorities must

- (a) have a comprehensive Table of Authorities, reproduced at the beginning of every volume,
 - (i) listing separately each authority, and
 - (ii) providing any neutral citation assigned to the authority by the court that decided it, and at least one print citation where available,
- (b) separate or identify each authority, by tabs or otherwise,
- (c) except in the case of fast track appeals, highlight or otherwise identify in legible form the key passages in the authority to be relied on,
- (d) where the authority has been reproduced from an electronic source, contain paragraph or page numbers from an official or printed source, or otherwise identify the various parts of the authority,
- (e) have cardstock covers, front and back, prepared as required by rule 14.87(2) [*Requirements for all documents*], in the same colour as the party's factum, and
- (f) be bound in volumes of approximately 200 pages each, provided that if the Book of Authorities does not exceed 30 pages, the authorities may be included as an appendix to the factum or with the Extracts of Key Evidence.

AR 41/2014 s4

Information note

Authorities should not be cited to proprietary electronic databases, as the Court and other parties may not have access to them. Official neutral citations must be used whenever available. Double sided copying is acceptable.

**Subdivision 4
Scheduling Oral Argument****Oral argument**

14.32(1) Unless otherwise directed,

- (a) all appeals will be set down on the Civil Appeal Hearing List for an oral hearing, and
- (b) the appeal and any cross appeal will be argued at the same time.

(2) On agreement of all parties, but subject to any contrary direction, the Court of Appeal may hear and decide an appeal without oral argument.

(3) The Court of Appeal may proceed with the hearing of an appeal when scheduled, even if

- (a) a party does not appear at the scheduled time, or
- (b) any party has failed to file its factum.

(4) Unless the panel otherwise permits, oral argument must not exceed 45 minutes for each separately represented party in the appeal, with any consolidated appeals to be treated as one appeal.

(5) If present, the Chief Justice of Alberta presides at the sittings of the Court, but otherwise the senior judge not being a supernumerary judge presides.

AR 41/2014 s4

Information note

Parties who wish to dispense with oral argument, and have the appeal decided based on the written argument, should contact a case management officer for directions.

Scheduling standard appeals

14.33(1) No later than 20 days after the deadline for the filing of the last factum in a standard appeal,

- (a) the parties must contact the Registrar to schedule the oral hearing, and
- (b) the Registrar must, after consulting with the parties, schedule the appeal at a suitable time on the Civil Appeal Hearing List.

(2) Any standard appeal that has not been scheduled for an oral hearing and placed on the Civil Appeal Hearing List before

- (a) the earlier of
 - (i) 2 months after the deadline for the filing of the last factum in the appeal, and
 - (ii) 9 months after the filing of the notice of appeal,or
- (b) any deadline stipulated by a case management officer or a single appeal judge

must be placed by the Registrar on the Unscheduled Civil Appeals List and be spoken to by the parties at the next calling of the List.

(3) All the parties to each appeal on the Unscheduled Civil Appeals List must appear at the time scheduled for the calling of the List, and

- (a) unless adjourned, appeals on the Unscheduled Civil Appeals List will be scheduled for oral hearing and placed on the Civil Appeal Hearing List, or
- (b) directions may be given for advancing the appeal.

(4) If the appellant in an appeal referred to in subrule (3) does not appear at the time scheduled for the calling of the List, the appeal may be struck.

AR 41/2014 s4

Scheduling fast track appeals

14.34(1) The Registrar must schedule fast track appeals in accordance with these rules.

(2) The Registrar must place on the Civil Appeal Hearing List

- (a) any fast track appeal for which the Appeal Record and the appellant's factum and Extracts of Key Evidence have been filed 20 or more days before the opening of the sittings, and
- (b) any fast track appeal that a case management officer directs to be scheduled for hearing.

(3) Despite subrule (2), the parties may, no less than 20 days before the opening of the sittings, consent to an adjournment of the oral hearing of a fast track appeal to no later than the next sitting of the Court, provided that the appeal has not previously been adjourned more than once.

AR 41/2014 s4

Rescheduling appeals

14.35(1) Subject to Rule 14.34(3) [*Scheduling fast track appeals*], a scheduled oral hearing may not be adjourned or rescheduled unless the appeal has been discontinued or settled or a case management officer permits the hearing to be adjourned or rescheduled.

(2) A case management officer may at any time set down or reschedule an appeal, or place any appeal on or remove any appeal from the Civil Appeal Hearing List or the Unscheduled Civil Appeals List.

AR 41/2014 s4

Division 4 Applications

Subdivision 1 Deciding Applications

Case management officers

14.36(1) Unless an enactment or these rules otherwise provide, a case management officer, at the direction of the Court, may assist the Court with respect to the management of matters before the Court as authorized by section 14 of the *Court of Appeal Act*.

(2) A case management officer may consult with an appeal judge or refer any issue to a single appeal judge or a panel of the Court of Appeal.

(3) Any person affected by an administrative direction of a case management officer may apply to a single appeal judge to have it rescinded, confirmed, amended or enforced.

AR 41/2014 s4

Information note

Parties who wish to dispense with oral argument, and have the appeal decided based on the written argument, should contact a case management officer for directions. All of the materials should be filed simultaneously, unless the application must be filed first to preserve a time limit. If in urgent matters the applicant wishes to abridge the time limits, a case management officer should be contacted for directions. The *Court of Appeal Act* provides that case management officers may assist with the business of the Court without the attendance of a judge, including with such matters as:

- (a) categorizing an appeal as a fast track appeal or a standard appeal;
- (b) enforcing, staying, shortening, or extending times and deadlines;
- (c) setting, approving and modifying timetables;
- (d) permitting filing of deficient documents, amending documents, and varying the contents or format of documents to be filed;
- (e) restoring appeals by consent;
- (f) calling the appeal lists, and setting, adjourning and re scheduling matters for hearing.

Single appeal judges

14.37(1) Unless an enactment or these rules otherwise require, a single appeal judge may hear and decide any application incidental to an appeal, including those that could have been decided by a case management officer.

(2) For greater certainty, a single appeal judge may

- (a) grant permission to appeal, unless an enactment requires that an application for permission to appeal must be heard by a panel of the Court of Appeal,
- (b) declare an appeal to be struck, dismissed or abandoned for failure to comply with a mandatory rule, prior order or direction of the Court of Appeal,
- (c) when a notice of appeal or an application for permission to appeal is not filed within the time limit, strike the appeal or application or extend the time to appeal or to seek permission to appeal,
- (d) dismiss an appeal if it has not been significantly advanced in over 6 months and significant prejudice has resulted to a party,
- (e) grant leave to intervene, and
- (f) refer any application to a panel of the Court of Appeal.

AR 41/2014 s4

Court of Appeal panels

14.38(1) A panel of the Court of Appeal may decide any application, including those that could have been decided by a single appeal judge.

(2) The following applications must be heard by a panel of the Court of Appeal:

- (a) an application to allow or dismiss an appeal on the merits;
- (b) an application for new evidence, unless a panel of the Court of Appeal directs that the application be heard by a single appeal judge;
- (c) an application to reargue or reopen an appeal;
- (d) an application for directions required to give effect to any decision of the Court of Appeal, unless a panel of the Court of Appeal directs that the application be heard by a single appeal judge;
- (e) an application to reconsider a prior precedential decision of the Court.

AR 41/2014 s4

**Subdivision 2
How to Apply****Case management officers**

14.39 A request for administrative directions from a case management officer may be made informally, subject to any directions of the case management officer.

AR 41/2014 s4

Applications to single appeal judges

14.40(1) Subject to Subdivision 3, an application to a single appeal judge must be made by filing 3 copies of

- (a) an application that meets the requirements of rule 14.53 [*Format of applications*],
- (b) any accompanying affidavit, if required,
- (c) other material to be relied on, even if previously filed, and
- (d) a memorandum of argument,

prepared in compliance with Subdivision 5.

(2) Subject to rule 6.4 [*Applications without notice*] and rule 14.44 [*Application for permission to appeal*], the applicant must file and serve one additional copy of the application and other materials on every other party to the appeal at least 10 days before the application is scheduled to be heard.

AR 41/2014 s4

Information note

All of the materials should be filed simultaneously, unless the application must be filed first to preserve a time limit. If in urgent matters the applicant wishes to abridge the time limits, a case management officer should be contacted for directions.

Responses to applications to single appeal judges

14.41 The respondent to an application to a single appeal judge must, at least 5 days before the scheduled hearing of the application,

- (a) file 3 copies of a reply memorandum of argument and any accompanying affidavit (if required) and any other materials to be relied on, prepared in compliance with Subdivision 5, and file and serve additional copies on every other party, or
- (b) file 3 copies and serve a letter indicating that no additional materials will be filed by the respondent.

AR 41/2014 s4

Applications to court of appeal panels

14.42(1) Subject to Subdivision 3, an application to a panel of the Court of Appeal must be made by filing 5 copies of

- (a) an application that meets the requirements of rule 14.53 [*Format of applications*],
- (b) any accompanying affidavit, if required,
- (c) other material to be relied on, even if previously filed, and
- (d) a memorandum of argument,

prepared in compliance with Subdivision 5.

(2) For every other party to the appeal, the applicant must file and serve one additional copy of the application and other materials at least 20 days before the application is scheduled to be heard.

AR 41/2014 s4

Information note

All of the materials should be filed simultaneously, unless the application must be filed first to preserve a time limit. If in urgent matters the applicant wishes to abridge the time limits, a case management officer should be contacted for directions.

Responses to applications to court of appeal panels

14.43 The respondent to an application to a panel of the Court of Appeal must, at least 10 days before the scheduled hearing of the application,

- (a) file 5 copies of a reply memorandum of argument and any accompanying affidavit (if required), prepared in compliance with Subdivision 5, and file and serve additional copies on every other party to the appeal, or
- (b) file 5 copies and serve a letter indicating that no additional materials will be filed by the respondent.

AR 41/2014 s4

Subdivision 3 Rules for Specific Applications

Application for permission to appeal

14.44(1) An application for permission to appeal must comply with rules 14.5(2) [*Appeals only with permission*] and 14.40 [*Applications to single appeal judges*] and

- (a) must be filed and served and must be returnable within the period specified in any enactment or these rules, or
- (b) if there is no time for filing permission to appeal specified in any enactment or these rules, must be filed and served and returnable within the time for filing appeals set out in rule 14.8 [*Filing a notice of appeal*].

(2) An application for permission to appeal that has not been heard within 6 months from the date of the filing of the application is deemed to have been abandoned unless a case management officer otherwise directs.

(3) Applications to preserve a time limitation may be brought on the notice a single appeal judge directs.

AR 41/2014 s4

Application to admit new evidence

14.45(1) An application to admit new evidence must be filed and served prior to the filing of, and prior to the deadline for filing, the applicant's factum.

(2) In addition to the documents required by rule 14.42(1) [*Applications to court of appeal panels*], the applicant must file

- (a) 5 copies of the proposed new evidence, and
- (b) 5 envelopes large enough to contain a copy of the new evidence, marked "New Evidence" and with the appeal number and style of cause.

AR 41/2014 s4

Application to reconsider a previous decision

14.46 An application to reconsider a previous decision of the Court of Appeal must be filed and served and must be returnable prior to the filing of, and prior to the deadline for filing, the applicant's factum.

AR 41/2014 s4

Application to restore an appeal

14.47 An application to restore an appeal that has been struck, dismissed or deemed abandoned must be filed and served and must be returnable

- (a) for a standard appeal, within 6 months, and
- (b) for a fast track appeal, within 3 months,

after having been struck, dismissed or deemed abandoned.

AR 41/2014 s4

Stay pending appeal

14.48 An application to stay proceedings or enforcement of a decision pending appeal may be made

- (a) to the judge who made that decision, or
- (b) to a single appeal judge, whether or not the application was made to the judge who made the decision, and whether or not that application was granted or dismissed.

AR 41/2014 s4

Information note

The preferred practice is to apply first to the judge who made the decision, but the rule does not preclude a direct application to a single appeal judge.

Subdivision 4 Deciding Applications

Failure to respond

14.49 A respondent who fails to respond to an application or who elects not to file a memorandum in response to an application may not present oral argument at the hearing of the application unless the single appeal judge or the panel of the Court of Appeal otherwise permits.

AR 41/2014 s4

Time limits for oral argument

14.50 Unless otherwise permitted,

- (a) subject to clause (b), oral argument on an application, including a reply, before a single appeal judge or a panel of the Court of Appeal may not exceed 15 minutes for each party to the application,
- (b) oral argument on an application for permission to appeal, including a reply, may not exceed 30 minutes for each party to the application, and
- (c) consolidated applications are to be treated as one application for the purpose of this rule.

AR 41/2014 s4

Applications without oral argument

14.51 On agreement of all parties, but subject to any contrary direction, a single appeal judge or a panel of the Court of Appeal may hear and decide applications without oral argument.

AR 41/2014 s4

Applications not heard within 3 months

14.52 Subject to rule 14.44(2) [*Application for permission to appeal*], if an application is not heard within 3 months after the date the application is filed, the application is deemed to be abandoned unless a case management officer otherwise directs.

AR 41/2014 s4

Subdivision 5 Format of Applications and Responses

Format of applications

14.53 An application to a single appeal judge or a panel of the Court of Appeal must be in Form AP-3 and must

- (a) state briefly the grounds for filing the application,
- (b) identify the material or evidence intended to be relied on,
- (c) refer precisely to any applicable provision of an enactment or rule, and
- (d) state the remedy sought.

AR 41/2014 s4

Format of memoranda**14.54** Memoranda filed on an application

- (a) must not be longer than 10 double-spaced pages on an application for permission to appeal and 5 double-spaced pages for any other application,
- (b) may in addition attach a chronology, where that is relevant to the application, and
- (c) in an application for permission to appeal, must include a copy of the reasons for the decision proposed to be appealed.

AR 41/2014 s4

**Division 5
Managing the Appeal Process****Subdivision 1
Responsibilities of the Parties
and Court Assistance****Responsibility of parties to manage an appeal**

14.55(1) The parties to an appeal are responsible for managing the appeal and for planning its resolution in a timely and cost-effective way.

(2) The parties may seek advice and direction for managing the appeal from a case management officer as provided for in rule 14.36 [*Case management officers*].

AR 41/2014 s4

Orders to facilitate appeal

14.56 If an appeal is not being managed in an appropriate way, a single appeal judge may make a procedural order, an order under Part 4 [*Managing Litigation*], Division 2 [*Court Assistance in Managing Litigation*], an order expediting the appeal, or any other appropriate order, or a case management officer may make any appropriate direction.

AR 41/2014 s4

**Subdivision 2
Parties to an Appeal****Adding, removing or substituting parties to an appeal**

14.57 A party or person may be added, removed or substituted as a party to an appeal in accordance with rule 3.74 [*Adding, removing or substituting parties after close of pleadings*].

AR 41/2014 s4

Intervenor status on appeal

14.58(1) In addition to persons having a right to intervene in law, a single appeal judge may grant status to a person to intervene in an appeal, subject to any terms and conditions and with the rights and privileges specified by the judge.

(2) A person granted intervenor status in the court appealed from must apply again to obtain intervenor status on an appeal.

(3) Unless otherwise ordered, an intervenor may not raise or argue issues not raised by the other parties to the appeal.

AR 41/2014 s4

**Subdivision 3
Settlement Using Court Process****Formal offers to settle**

14.59(1) No later than 10 days before an appeal is scheduled to be heard, a party may serve on the party to whom the offer is made a formal offer to settle the appeal or any part of the appeal in accordance with Part 4 [*Managing Litigation*], Division 5 [*Settlement Using Court Process*].

(2) A valid formal offer to settle an appeal may be accepted in accordance with rule 4.25 [*Acceptance of formal offer to settle*].

(3) Unless a valid formal offer to settle an appeal is withdrawn under rule 4.24(4) [*Formal offers to settle*], the valid formal offer to settle an appeal remains open for acceptance until the earlier of

- (a) the expiry of 2 months after the date of the offer or any longer period specified in the offer, and
- (b) the start of the oral hearing of the appeal.

(4) Where a formal offer to settle an appeal is made, costs of the appeal must be awarded in accordance with rule 4.29 [*Costs consequences of formal offer to settle*].

AR 41/2014 s4

**Subdivision 4
Judicial Dispute Resolution on Appeal****Judicial dispute resolution of an appeal**

14.60 An arrangement for a judicial dispute resolution process on appeal may be made in accordance with Part 4, [*Managing Litigation*] Division 3, [*Dispute Resolution by Agreement*] Subdivision 2.

AR 41/2014 s4

Information note

The judicial dispute resolution process in the Court of Appeal is set out in the Consolidated Practice Direction.

Suspension of time periods

14.61(1) Once a date has been scheduled for judicial dispute resolution, time limits in respect of the appeal are suspended until an order or direction is made under subrule (2).

- (2) If judicial dispute resolution is not successful,
- (a) the appeal judge conducting the judicial dispute resolution will set time limits for filing and serving any remaining materials on the appeal, or
 - (b) if no order is made under clause (a) a case management officer may provide a direction setting the time limits for filing and serving any remaining materials on the appeal.

AR 41/2014 s4

**Subdivision 5
Delay in Advancing Appeals****Dismissal for delay**

14.62 A panel of the Court of Appeal may dismiss an appeal if it is satisfied that delay in advancing the appeal has resulted in significant prejudice to a party.

AR 41/2014 s4

Powers of a single appeal judge

14.63 If delay occurs in the advancement of an appeal, a single appeal judge may

- (a) make a procedural order or otherwise give directions to expedite the appeal, or
- (b) dismiss the appeal, if it has not been significantly advanced for over 6 months and significant prejudice has resulted to a party.

AR 41/2014 s4

Failure to meet deadlines

14.64 An appeal must be struck by the Registrar if

- (a) the appellant has failed to file the Appeal Record within the time period set out in these rules,
- (b) the appellant has failed to file its factum
 - (i) before the expiry of the deadline for filing the factum in a standard appeal set out in rule 14.23(1) [*Filing factums – standard appeals*], or
 - (ii) by the deadline for filing the factum in a fast track appeal set out in rule 14.24(1)(a) [*Filing factums – fast track appeals*],

- (c) a standard appeal has not been placed on the Civil Appeal Hearing List before the earlier of
 - (i) 6 months after the deadline for the filing of the last factum in the appeal, and
 - (ii) 12 months after the filing of the notice of appeal,or
- (d) a fast track appeal has not been placed on the Civil Appeal Hearing List within 6 months of the filing of the notice of appeal.

AR 41/2014 s4

Restoring appeals

14.65(1) An appeal or application for permission to appeal that has been struck by operation of these rules or the provisions of any order, or by failure of any party to appear when required, may be restored

- (a) with the filed written consent of the parties or by order of a single appeal judge on application under rule 14.47 [*Application to restore an appeal*], and
- (b) on the payment of the fee for an application to restore an appeal in Schedule B.

(2) An order or written consent restoring an appeal must set deadlines and directions for the filing of any outstanding materials, and if the appellant fails to comply with any of those deadlines or directions, the appeal is deemed to have been struck again.

(3) An appeal or application is deemed to have been abandoned if no application to restore an appeal or application for permission to appeal has been filed, served and made

- (a) for a standard appeal, within 6 months after having been struck, dismissed or deemed abandoned, and
- (b) for a fast track appeal, within 3 months after having been struck, dismissed or deemed abandoned.

AR 41/2014 s4

Subdivision 6 Discontinuing an Appeal

Discontinuance

14.66(1) The appellant may discontinue the appeal by filing and serving a notice to discontinue in Form AP-4, and the respondent is entitled to a costs award for having responded to the appeal.

(2) The discontinuance of an appeal does not operate as a discontinuance of a cross appeal.

AR 41/2014 s4

Subdivision 7 Security for Costs

Security for costs

14.67(1) A single appeal judge may order a party to provide security for payment of a costs award pursuant to Part 4, *[Managing Litigation]* Division 4 *[Security for Payment of Costs Award]*.

(2) Where a party does not provide security as ordered, the appeal is deemed to have been abandoned and the other party is entitled to a costs award.

AR 41/2014 s4

Division 6 Deciding Appeals and Applications

Subdivision 1 Effect of Filing an Appeal

No stay of enforcement

14.68 Unless otherwise ordered under rule 14.48 *[Stay pending appeal]* or provided by law, the filing of an appeal or an application for permission to appeal does not operate as a stay of proceedings or enforcement of the decision under appeal.

AR 41/2014 s4

Intermediate acts valid

14.69 Unless otherwise ordered by the court appealed from, an appeal does not invalidate any intermediate act or proceeding taken.

AR 41/2014 s4

Subdivision 2 Basis on Which Appeals Are Decided

No new evidence without order

14.70 Unless an order is granted under rule 14.45 *[Application to admit new evidence]* permitting the reliance on new evidence, appeals will be decided on the record before the court appealed from.

AR 41/2014 s4

Interlocutory decisions

14.71 An interlocutory order of the court appealed from does not restrict the ability of the Court of Appeal to decide an appeal, despite there having been no appeal from the interlocutory order.

AR 41/2014 s4

Binding precedents

14.72 Unless permission has been granted under rule 14.46 [*Application to reconsider a previous decision*] by a panel of the Court of Appeal, no party may argue that a prior precedential decision of the Court should be reconsidered.

AR 41/2014 s4

Information note

This Rule does not prevent a party from arguing that a prior precedential decision has been overruled by a decision of the Supreme Court of Canada, or by a legislative change. It also does not prevent argument about the ratio decidendi of the prior decision, nor whether it can be distinguished on recognized grounds.

**Subdivision 3
Powers of the Court****Procedural powers**

14.73 In addition to the powers provided for in other Parts of these rules, a single appeal judge or a panel of the Court of Appeal may

- (a) adjourn any appeal or matter, with or without conditions,
- (b) cure any contravention, non-compliance or irregularity in procedure, or permit or direct any amendment or any deviation from the requirements of these rules with respect to the form or filing of any document,
- (c) render judgment at any time,
- (d) render or sign judgment on behalf of another judge or a panel when authorized to do so,
- (e) inspect any property in accordance with an order made under rule 6.26 [*Inspection or examination of property*], and
- (f) hear any appeal or application electronically under rule 6.10 [*Electronic hearing*].

AR 41/2014 s4

Application to dismiss an appeal

14.74 On application, a panel of the Court of Appeal may dismiss all or part of an appeal and may make any order that the circumstances require, including a costs award, if

- (a) the Court of Appeal has no jurisdiction,
- (b) the appeal is moot,
- (c) the appeal is frivolous, vexatious, without merit or improper, or
- (d) the appeal or any step in the appeal is an abuse of process.

AR 41/2014 s4

Disposing of appeals

14.75(1) Unless an enactment otherwise provides, when deciding an appeal, the Court of Appeal may

- (a) receive further evidence,
- (b) draw inferences of fact,
- (c) give any judgment or order that ought to have been made by the court appealed from,
- (d) direct the resumption or continuation of any proceeding before the court appealed from,
- (e) vary or reverse a finding on any question, without interfering with the finding or decision on any other question,
- (f) direct a new trial on the whole or any part of the decision under appeal, or with respect to some or all of the parties, and
- (g) give any other decision or direction required to resolve the appeal.

(2) The Court of Appeal may dismiss an appeal despite an error of law or fact, a misdirection or an erroneous ruling on the evidence where

- (a) no substantial wrong or miscarriage of justice has resulted,
- (b) the decision would have been the same despite the error, or
- (c) despite any irregularity, no significant prejudice has been experienced by any party.

AR 41/2014 s4

Judgment by consent

14.76 Subject to rule 3.35 [*Judgment or order by agreement*], a respondent may consent to the reversal or variation of the decision under appeal.

AR 41/2014 s4

Subdivision 4 Judgments and Orders

Preparation and signature of judgments and orders

14.77(1) Unless otherwise directed, Part 9 [*Judgments and Orders*], Division 1 [*Preparation and Entry of Judgments and Orders*] applies to the preparation and entry of judgments and orders of the Court of Appeal.

(2) The Court of Appeal may authorize a single appeal judge to settle the form of any order or judgment.

(3) A judgment or order may be signed by the judge or the panel who granted it or by the Registrar.

AR 41/2014 s4

Entry of judgments and orders

14.78(1) The Registrar must enter all judgments and orders on the court file, showing the date of entry, and subject to rule 9.6 [*Effective date of judgments and orders*] the judgment is effective as if it were a judgment or order of the court appealed from.

(2) Any interested person may file a copy of the Court's judgment in the court appealed from.

AR 41/2014 s4

Supreme Court of Canada judgments

14.79 The Registrar must

- (a) enter any judgment granted by the Supreme Court of Canada on the file of the Court of Appeal, showing the date of entry, and
- (b) send a copy of the Supreme Court judgment to the clerk of the court appealed from for filing in that court, and the judgment may be acted on as if it were a judgment of that court.

AR 41/2014 s4

Interest on judgments

14.80 If a decision awarding a sum of money is reversed or varied, interest is payable on the amount of the appeal judgment from the date that the decision under appeal was pronounced.

AR 41/2014 s4

**Division 7
General Rules for Appeals**

**Subdivision 1
Service of Appeal Documents
and Representation**

Service of appeal documents

14.81(1) A notice of appeal and an application for permission to appeal may be served

- (a) at the address for service provided in the court appealed from as referred to in rule 11.15 [*Service on person providing an address for service*] or rule 11.17 [*Service on lawyer of record*], or
- (b) otherwise as set out in Part 11, [*Service of Documents*] Division 2 [*Service of Commencement Documents in Alberta*] or Part 11, [*Service of Documents*] Division 5 [*Service of Documents Outside Alberta*].

(2) All other materials required or authorized to be served under this Part may be served in accordance with Part 11, [*Service of Documents*] Division 3 [*Service of Documents, Other than Commencement Documents, in Alberta*].

AR 41/2014 s4

Lawyer of record and litigation representative

14.82 Unless otherwise ordered,

- (a) the lawyer of record in the court appealed from continues as the lawyer of record on the appeal until ceasing to be so in accordance with Part 2, *[The Parties to Litigation]* Division 4, *[Lawyer of Record]* and
- (b) subject to rule 2.21 *[Litigation representative: termination, replacement, terms and conditions]*, a litigation representative under Part 2 *[The Parties to Litigation]* continues in that capacity in the appeal.

AR 41/2014 s4

**Subdivision 2
Restricted Access Orders****Orders restricting access to appeal proceedings**

14.83(1) A restricted access order made by the court appealed from continues in force and applies to the appeal or an application for permission to appeal until otherwise ordered by a single appeal judge.

(2) A single appeal judge may make a restricted court access order under Part 6, *[Resolving Issues and Preserving Rights]* Division 4 *[Restriction on Media Reporting and Public Access to Court Proceedings]* with respect to an appeal or an application for permission to appeal.

AR 41/2014 s4

**Subdivision 3
Rules for All Filed Materials****Place of filing**

14.84 Unless otherwise directed, an appeal must be carried on, and all material must be filed, at the office of the Registrar of the Court of Appeal where the appeal was started under rule 14.8 *[Filing a notice of appeal]*.

AR 41/2014 s4

Method of filing

14.85 The Registrar must assign an appeal number to each appeal and endorse that number and the date of filing on any document filed in the appeal.

AR 41/2014 s4

Non-compliant appeal materials

14.86 Appeal materials may, by order of a single appeal judge or by direction of a case management officer, be dispensed with, varied as to form or amended in accordance with rule 13.17 *[Amendments to records other than commencement documents, pleadings or affidavits]*.

AR 41/2014 s4

Requirements for all documents

14.87(1) All materials prepared for an appeal must

- (a) be succinct, legible and divided into a single series of consecutively numbered paragraphs,
- (b) include the names of the parties in a style of cause in Form AP-6,
 - (i) as set out in the notice of appeal, unless amended,
 - (ii) listed in the same order in which they were listed in the style of cause in the court appealed from, and
 - (iii) including the status of the party in the appeal and in the court appealed from,
- (c) identify the nature of the material, the name of the party filing it, and that party's status on the appeal,
- (d) provide an address for service,
- (e) provide the name, address and contact information of the person who prepared the material,
- (f) be divided into volumes of approximately 200 pages each, and
- (g) be 8.5" x 11" in size.

(2) The Appeal Record, factums, Extracts of Key Evidence and Books of Authorities must have a cover page in Form AP 5 that include the name of the Court of Appeal, the location of the office of the Registrar of the Court of Appeal and the appeal number assigned by the Registrar.

AR 41/2014 s4

Subdivision 4 Costs of Appeals

Cost awards

14.88(1) Unless otherwise ordered, the successful party in an appeal or an application is entitled to a costs award against the unsuccessful party.

(2) The provisions of Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions*], Division 2 [*Recoverable Costs of Litigation*] and Schedule C apply to appeals.

(3) Unless otherwise ordered, the scale of costs in an appeal shall be the same as the scale that applies to the order or judgment appealed from.

AR 41/2014 s4

Information note

Reasons for judgment of the Court of Appeal will not make any specific direction about costs unless an exception is to be made to the presumption in rule 14.88(1) that the successful party is entitled to costs of the appeal. Any request for a specific direction as to costs must be made within two months of the pronouncement of the decision.

**Subdivision 5
Fees on Appeal****Fees and allowances**

14.89(1) In every appeal there must be paid to the Registrar or other appropriate person, at the time of filing, the fees specified in Schedule B, unless the Registrar waives the fee, in whole or in part, in accordance with guidelines, if any, established or adopted by the Minister of Justice and Solicitor General for persons unable to pay fees.

(2) Part 13 [*Technical Rules*], Division 5 [*Payment of Fees and Allowances, and Waivers of Fees*] applies to appeals.

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**Subdivision 6
Sanctions****Sanctions**

14.90(1) In addition to the sanctions set out in Part 10 [*Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions*], Division 4 [*Sanctions*],

- (a) unless otherwise ordered, a party is not entitled to assess costs or recover disbursements in respect of a procedural step in which the party has
 - (i) failed to comply with a deadline set out in this Part,
 - (ii) filed a document that fails to comply in a substantial respect with the requirements of these rules, or
 - (iii) filed a document that is carelessly or inadequately prepared or that contains illegible material or text;
- (b) in the case of any non-compliance with a rule or a direction or order, a single appeal judge or a panel of the Court of Appeal may strike from the record any document, including a notice of appeal or cross appeal, or provide directions for the management of the appeal.

(2) Where an appeal has been struck by operation of these rules or the provisions of any order or because of the failure of any party to appear when required, or has been deemed to have been struck or abandoned, the respondent is entitled to a costs award for having responded to the appeal.

(3) A single appeal judge may order the interim release of the appellant pending the appeal of any order for the imprisonment or other restraint of the liberty of the appellant arising from a civil sanction imposed by the court appealed from.

AR 41/2014 s4

Subdivision 7 The Registrar

Duties of a Registrar

14.91(1) A Registrar must perform the duties required by these rules and the Court of Appeal, including, subject to any direction of the Court,

- (a) establishing and maintaining a court file for each appeal,
- (b) establishing and maintaining lists of appeals, including the Civil Appeal Hearing List and the Unscheduled Civil Appeals List,
- (c) receiving and filing all appeal materials, having control and custody of them, and distributing them to the judges as required,
- (d) attending in court as required and keeping a record of all proceedings before the Court and its judges, including
 - (i) keeping records of particulars of the appeals heard and the judges in attendance,
 - (ii) identifying the appearing parties and their counsel,
 - (iii) keeping records of particulars of the appeal heard and the result of the appeal, and
 - (iv) noting the time occupied in hearing,
- (e) keeping proper accounts of money and property received or dispersed,
- (f) settling and signing judgments and orders in accordance with these rules, and
- (g) at the conclusion of an appeal, returning to the court appealed from any records of that court.

(2) In the absence of a Registrar, a Deputy Registrar or another person appointed by the Court may act in place of the Registrar.

AR 41/2014 s4

Authority of the Registrar

14.92 The Registrar may, with or without consulting with a case management officer or a judge,

- (a) where any document presented for filing is irregular, not readily legible or otherwise carelessly or inadequately prepared,
 - (i) accept the document for filing, with or without advising the party presenting the document of the deficiency,
 - (ii) accept the document for filing and note the deficiency on the face of the document,

- (iii) accept the document for filing on terms, directions or undertakings to be agreed to by the filing party, or
- (iv) in the case of a significant deficiency that prevents the Registrar from filing the document, or that is likely to prejudice a party or interfere with the disposition of the appeal, reject the document;
- (b) refuse to accept a document for filing, or to perform any other official act, where the instructions to the Registrar are not clear;
- (c) endorse a document as having been filed on the date when the document was first tendered for filing;
- (d) subject to any conditions that the Registrar may specify, require personal attendance in an office of the Registrar of the Court of Appeal by a party filing any appeal materials, or accept documents for filing by mail or electronically;
- (e) bring to the attention of the Court for summary determination any appeal that the Registrar determines is frivolous or vexatious or significantly irregular, or that can otherwise be determined on a summary basis.

AR 41/2014 s4