

# Consolidated Practice Direction for Divisional Court Proceedings

Effective July 1, 2014 This Practice Direction applies to Divisional Court proceedings, effective July 1, 2014. It *supersedes* all Practice Directions for Divisional Court proceedings issued prior to July 1, 2014, which are hereby revoked. Counsel and parties are advised to refer to the relevant parts of the separate [Consolidated Provincial Practice Direction](#) and [region-specific Practice Directions](#) which may affect Divisional Court proceedings. All Superior Court of Justice Practice Directions are available on the Court's website at: [www.ontariocourts.ca/scj](http://www.ontariocourts.ca/scj).

## Part I: Proceedings to be heard by a Single Judge

### A. Application

1. This part applies only to motions, applications, and appeals before a single judge. It does not apply to matters to be heard by a Divisional Court panel.
2. The following proceedings in Divisional Court are directed for a hearing before one judge of the Divisional Court:
  - a. appeals under s. 19(1)(c) and s. 31 of the *Courts of Justice Act* and motions to quash such appeals;
  - b. applications for leave to appeal and requests for interim relief.
3. Paragraphs 4-11 of this Practice Direction apply **only** to the Toronto Region.

### B. Proceedings in the Toronto Region

4. In the Toronto Region only, the following proceedings are directed to be brought in Divisional Court for a hearing before a single judge of that court sitting as a Judge of the Superior Court of Justice:
  - a. motions under rule 62.02 for leave to appeal the interlocutory order of a Superior Court of Justice judge;
  - b. applications for judicial review under s. 6(2) of the *Judicial Review Procedure Act*.

The notice of motion under rule 62.02 and the notice of application under s. 6(2), together with all other material, will be filed with the Divisional Court at Osgoode Hall.

#### *Confirmation of Hearing*

5. In the case of appeals to a single judge, motions for leave to appeal and other motions incidental to appeals or applications, counsel should contact the Divisional Court office by telephone, (416) 327-6202, to arrange a hearing date. In all three-judge proceedings, a hearing date must be obtained from the Registrar by telephone, (416) 326-5400.
6. Notwithstanding that a matter is set down for a hearing, and unless otherwise ordered by a judge, the papers will not be forwarded to the presiding judge and, unless otherwise ordered, the matter will not be heard on the date scheduled unless counsel for the moving party or applicant, by 2:00 p.m. three days prior to the scheduled hearing date, files all necessary material and confirms that the motion or application is to proceed as scheduled as required under the *Rules of Civil Procedure* (see rules 37.10.1 and 38.09.1).
7. Counsel for the moving party or applicant may confirm the hearing date by delivering the Confirmation Forms (Form 37B or Form 38B) to the Divisional Court office at Osgoode Hall or by fax transmission to (416) 327-5549.

8. It is expected that a factum will be filed by each party on any matter. The presiding judge may decline to hear a matter if a factum has not been filed.
9. It is the responsibility of counsel to see that the material is filed as directed.
10. Counsel are reminded that all motions for leave to appeal must include, in the motion record, a copy of the signed and entered order from which leave to appeal is sought.

*Time Estimates on Argument*

11. When an application under s. 6(2) of the *Judicial Review Procedure Act* or an appeal under s. 19(1)(c) and 21(2) of the *Courts of Justice Act* will require more than one hour for hearing, counsel should advise the Registrar of their best estimate when the appointment is given.

## **Part II: Factums in the Divisional Court**

12. Counsel and parties should refer to rules 61.11, 61.12 and 68.04(3) and (6) of the *Rules of Civil Procedure* which deal with factums on appeals and applications for judicial review. These rules require a “concise summary” of fact and law. If in counsel’s opinion a factum of more than 30 pages is necessary counsel should arrange an appointment with a judge of the Divisional Court through the Registrar of the Court, before filing.

## **Part III: Books of Authority**

13. It is of great assistance to the Divisional Court to have books of authority filed by counsel containing copies of the authorities to which they intend to refer on the hearing of the matter. Such books of authorities:
  - a. Should include only the cases to which counsel actually intend to refer in the oral argument. The particular passages in the cases to which counsel wish to refer should be clearly marked.
  - b. Should be prepared jointly in accordance with this direction. Where counsel are unable to agree, then such case books should indicate whether they are filed by the appellant or the respondent. There should be consultation between counsel to avoid any duplication of the authorities included in their respective case books.
  - c. Should have a tab for each case (either numerical or by letters), should include an index of the authorities and indicate the tab where the authority is reproduced. It is not necessary to number the pages in the case-book so long as the photocopies show the page numbers of each authority.
  - d. Should be filed, if possible, not later than the Monday of the week preceding the hearing of the matter as they are of great assistance to the judges in preparing for the hearing.

## **Part IV: Filing Electronic Versions of Documents in Civil Appeals and Judicial Review Applications**

### **A. Application**

14. This part is intended to establish a uniform approach to filing electronic documents for appeals and judicial review applications to the Divisional Court, so that the documents may be readily accessed by the Court. It will also allow judicial officials to prepare more productively for their cases and facilitate judicial decision making.
15. This part applies to civil appeals, including appeals from administrative tribunals, and judicial review applications in the Divisional Court.

16. This part does not apply to motions and does not apply to family appeals to the Divisional Court.
17. Parties filing electronic versions of material for Divisional Court proceedings must still file typed or printed copies of such material in accordance with Rule 61 of the *Rules of Civil Procedure*.

### **B. Appeals – Factums and Transcripts**

18. Parties are required to file electronic versions of their factums and transcripts in appeals to the Divisional Court, in accordance with Rule 61 of the *Rules of Civil Procedure*.

### **C. Judicial Review Applications – Factums and Transcripts**

19. The Court encourages parties to file electronic versions of their factums and transcripts in judicial review applications to the Divisional Court.

### **D. Other Materials**

20. In addition, the Court encourages parties, or tribunals where applicable, to file electronic versions of all materials (e.g. appeal book and compendiums, case books, application records, record of proceedings) in appeals and judicial review applications to the Divisional Court.
21. Parties are also encouraged to give the electronic versions of documents that are filed electronically with the Court to all other parties to the proceeding.

### **E. Method of Filing Electronic Documents**

22. Parties may file electronic documents on CD, DVD or USB key. Three copies of the CD, DVD or USB key should be filed with the Court where the matter is being heard by a panel of three judges.
23. The CD, DVD or USB key should be accompanied by a covering letter which identifies the materials contained on the CD, DVD or USB key.

**USB Key:** The cover letter should include a list of the files contained on the USB key, along with the title of proceedings, Court File #, Counsel Name(s), where applicable, and Party Name. If possible, the key should be labelled with the short style of cause and the Court File #.

**CD or DVD:** The CD or DVD should be labelled with the title of proceedings, Court File #, Counsel Name(s), where applicable, and Party Name. Include a list of the files contained on the CD or DVD in a cover letter.

24. The electronic documents should be filed together with the hard copy of the factum filed with the Court.

### **F. Format of Electronically Filed Documents**

25. The electronic documents must be submitted in either Microsoft Word format (.doc or .docx) or text searchable PDF format.
26. The electronic version of factums or any other material filed in a Divisional Court appeal or judicial review application must be formatted and contained in one file and be virtually identical to the official printed version that is also filed with the Court. For example, a single file for a factum should contain the front and back pages, the index, the text and the schedules. Do not submit separate electronic files for the different sections of a factum or other document.

## G. Naming of Electronically Filed Documents

27. The file names for electronic versions of factums, transcripts and other documents filed must start with the Divisional Court appeal or judicial review application file number, followed by one of the character codes set out below. Any other parties not included in this list should include their full name together with the title of the document they are filing.

### *Appeals*

FAP	Factum of Appellant
FRE	Factum of Respondent
FXA	Factum of Cross-appellant
FXR	Factum of Cross-respondent
FOI	Factum of Intervener
FOAC	Factum of Amicus Curiae
AFAP	Amended Factum of Appellant
AFRE	Amended Factum of Respondent
FSE	Further Submissions – Appellant
FSR	Further Submissions – Respondent
ABC	Appellant’s Appeal Book and Compendium
RBC	Respondent’s Compendium
EXB	Exhibit Book
BOA	Book of Authorities of Appellant
BOR	Book of Authorities of Respondent

### *Transcripts*

TRN	Transcript
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### *Judicial Review Applications*

FAPL	Factum of Applicant
FRP	Factum of Respondent
FIN	Factum of Intervener
ROP	Record of Proceeding
APAR	Application Record of Applicant
APRR	Application Record of Respondent
APINR	Application Record of Intervener
BAAP	Book of Authorities of Applicant

**H. Failure to Comply with this Practice Direction**

28. Please note that the Divisional Court may reject any electronic version of a factum or transcript that does not conform to the procedures set out in paragraphs 14-27 of this Practice Direction.

**Part V: Judges' Book of Authorities**

29. A **Judges' Book of Authorities** containing authorities frequently relied on is supplied to each Judge who sits in Divisional Court. There will be additions to, and deletions from, the book from time to time. An up-to-date list of the authorities in the Judges' Book will be available as of July 1, 2014, on the Court's website.
30. In preparing books of authorities, counsel need no longer include authorities contained in the Judges' Book. However, extracts from those authorities which counsel intend to refer to the court should be included in the factum or book of authorities.

Dated: April 11, 2014

Heather J. Smith

Chief Justice

Superior Court of Justice (Ontario)

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