

F. **Motions**

1. **Motions Court:**

- (a) The Court of Appeal directs that a party filing a notice of motion returnable before a panel of the Court must file an affidavit (if applicable) and a memorandum.
 - (b) The notice of motion and supporting documents must be filed together, in quintuplicate, and except in urgent cases, must be filed and served at least 21 business days before the motion is heard.
 - (c) A respondent to the motion must, at least 14 business days before the motion is heard, file and serve:
 - (i) either a memorandum, or a letter indicating that they will not be filing a memorandum, and
 - (ii) an affidavit (if applicable),all of which must be filed in quintuplicate.
 - (d) Criminal motions that may be heard and decided by the motions court include applications to:
 - (i) dismiss for want of prosecution, and
 - (ii) withdraw as counsel of record.
- [May, 2009]
- (e) Subparts 3 to 7 of this Practice Direction apply.

2. **Justice Chambers:**

- (a) The Court of Appeal directs that a party filing a notice of motion returnable before a justice in chambers must file an affidavit (if applicable) and a memorandum.
- (b) On motions to which Rule 516.1 applies:
 - (i) the notice of motion and supporting documents must be filed together, in triplicate, and except in urgent cases, must be filed and served at least 21 business days before the motion is heard, and

- (ii) a respondent to the motion must, at least 14 business days before the motion is heard, file and serve:
 - (A) either a memorandum, or a letter indicating that they will not be filing a memorandum, and
 - (B) an affidavit (if applicable),all of which must be filed in triplicate.
 - (c) On motions to which Rule 516.1 does not apply:
 - (i) the notice of motion and supporting documents must be filed together, in triplicate, and except in urgent cases, must be filed and served at least 7 business days before the motion is heard, and
 - (ii) a respondent to the motion must, at least 5 business days before the motion is heard, file and serve:
 - (A) either a memorandum, or a letter indicating that they will not be filing a memorandum, and
 - (B) an affidavit (if applicable),all of which must be filed in triplicate.
 - (d) Motions that may be heard and decided by one justice of appeal include applications to:
 - (i) extend time to file or serve a notice of appeal; and
 - (ii) intervene, unless collateral to another motion that must be heard by a three-judge motions panel, with the discretion to refer the application to a full panel.
- [May 2009]
- (e) One justice will sit to hear motions at 9:30 a.m. every Tuesday, Wednesday, and Thursday (statutory holidays excepted) in both Edmonton and Calgary. The only other exception will be the months of July and August at which time one justice will sit to hear motions for both Edmonton and Calgary from whichever city is specified.

- (f) These motions must be pre-booked with the Registry before sending documentation for filing.
- (g) Motions to one justice may be made on other days or times only in cases of true emergency, and by arrangement with the Deputy Registrar.
- (h) Subparts 3 to 9 of this Practice Direction apply.

3. Notices of Motion & Supporting Documentation:

- (a) Every notice of motion must contain, before the signature of counsel/party, the estimate of time required for oral argument (including reply) if under 15 minutes for a regular motion or 30 minutes for an application for leave to appeal.
- (b) Every notice of motion must contain, on the left-hand side of the backer, a Notice to the Respondent which must state the following:

“Notice to the Respondent:

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument on the application, nor be entitled to costs of the application, unless otherwise ordered. Failure to appear may also lead to an order or judgment being made against the respondent in their absence.

Unless otherwise ordered at the hearing, the maximum time for oral argument (including reply) will be 15 minutes per separately-represented party; except for applications for leave to appeal where the maximum time allowed will be 30 minutes per separately-represented party.”

[October, 2005]

- (c) Where a party will be relying on material which has been previously filed, the materials must be contained in or attached to the notice of motion, affidavit, memorandum, or a separate covering letter. The party must provide sufficient copies of those documents to the Registry for distribution purposes, and must serve the other parties with same, all within the time periods set out in this Practice Direction.

4. Contents of Memoranda:

- (a) The memorandum must:

- (i) on a regular motion, be no longer than three double-spaced pages, or
 - (ii) on a leave to appeal application, be no longer than ten double-spaced pages,
and should ordinarily be shorter.
- (b) A party may pick their own format, but should put in the memorandum whatever they consider useful to make the motion intelligible. Those contents would vary from case to case. The Court suggests that the party should ordinarily include the following in this order:
- (i) the relief sought,
 - (ii) a succinct statement of the facts relevant to that relief, including dates of any relevant steps in the proceedings, details of previous applications to the Court, whether the appeal itself has been set down for hearing, and if so when,
 - (iii) the precise statute sections and subsections, subrule numbers, or principles under which the application is made, and
 - (iv) the grounds upon which the relief sought should be granted.
- (c) Memoranda in reply to a motion must include, before the signature of counsel/party, the estimate of time required for oral argument if under 15 minutes for a regular motion or 30 minutes for an application for leave to appeal.
- (d) If time extensions or delay might be relevant, or if the facts are bulky or complex, then counsel should include a chronology. (It need not be counted in the page limit.) Well-known authorities need not be listed or reproduced, but others important to the motion must be.

[October, 2005]

5. Proceed Without Oral Argument:

- (a) A judge/panel will entertain applications to hear and decide some motions by reading the notice of motion and supporting materials, without any oral argument.
- (b) To have the judge/panel consider this option, all parties to the motion or their counsel must sign letters agreeing to this procedure.

- (c) Any judge assigned to the motion will decide whether or not to accept the application. The judge may, at any time, call for full or partial oral argument or further written submissions.
- (d) The judge/panel anticipates that purely written argument will likely be appropriate only in cases which are more straightforward.

6. Scheduling Motions:

- (a) The clerks will not schedule motions on a hearing date too early for the required notice to be given, unless otherwise ordered. Instead, the clerks will insert the next available date for hearing on the notice of motion and schedule it accordingly:
 - (i) the only exception to this direction will be for leave to appeal applications where the leave application must be made before the expiration of a limitation period, and the expiry of that limitation period falls inside the notice period for filing and serving documents set out in 1(b) or 2(b)(i) above, and
 - (ii) in these instances only, the clerks will accept only those leave to appeal applications brought for the purpose of meeting the limitation period and with respect to which the applicant is seeking an adjournment. If the adjournment is granted, the application will be adjourned over to a day which will allow the parties to comply with the notice provision in 1(b) or 2(b)(i) above.
- (b) The clerks will not file a notice of motion unless the applicant provides, at the same time the notice of motion is being filed, the supporting affidavit (if applicable), memorandum and any other supporting materials required for the application. The only exception to this direction will be on leave applications where a preservation of time is being requested.
- (c) Applications to preserve time on leave applications may be scheduled to be heard by the duty judge, in person or by way of telephone or video conference call. Counsel/party must be prepared at that time to discuss filing deadlines for all materials which are to be filed for the leave application, and should take into consideration subpart 8 of this practice direction, as a timetable will be set by the duty judge at that time.

7. Materials Filed Late:

- (a) When materials are not filed within the time fixed by this Practice Direction,

the party in default shall not be entitled to costs of the application, unless otherwise ordered.

- (b) When a respondent fails to file materials within the time fixed by this Practice Direction, the respondent will not be allowed to present oral argument on the application, unless otherwise ordered.
- (c) The late-filed materials will be marked accordingly by the clerk.

8. Applications for Leave to Appeal - Deemed Abandoned:

Where an application for leave to appeal has not been heard within 6 months from the date the notice of motion is filed, the motion will be deemed abandoned, unless otherwise ordered before the expiration of this 6-month period.

9. Leave to Appeal Summary Conviction Appeals:

- (a) One cannot appeal further to the Court of Appeal from the Court of Queen's Bench in a summary conviction matter except with leave on a question of law alone: Criminal Code s. 839. Such leave must be sought beforehand from one justice of appeal in chambers in accordance with subpart 2 of this Practice Direction.
- (b) The applicant's memorandum must contain the information set out in subpart 4 of this Practice Direction and must also:
 - (i) specify the precise question or questions of law alone,
 - (ii) contain material to show that the question may govern the case in question, and
 - (iii) contain the reasons of the Provincial Court judge and the judge of the Court of Queen's Bench.
- (c) No such appeal will be put on the hearing list before leave to appeal is granted.
- (d) There can be no:
 - (i) restoration of an operator's permit (stay of license suspension), or
 - (ii) judicial interim release,before leave to appeal is granted.

- (e) This procedure will also apply to applications for a certificate of importance in prosecutions under Alberta statutes.
- (f) Case law bars any appeal or prerogative relief from a denial of leave to appeal.

[June 2004]

10. Application to Restore an Appeal:

Refer to Form P for the standards required when preparing an Order for Restoration of an appeal. This standard form of order should be used whenever a regular civil appeal or a Part J appeal has been restored.

[May, 2009]