

**COURT OF APPEAL OF ALBERTA
FACTUM - CHECK/RETURN FORM**

This checklist return form provides an itemized summary of the most common problems when filing documents in the Court of Appeal. However, this form does not include each requirement of the Alberta Rules of Court and Practice Directions. Accordingly, you should rely on the appropriate authority when preparing a document for filing in the Court of Appeal.

- A. **General Format of Document:**
Refer to the General Format - Check/Return Form for formal requirements of all documents.
- B. **Copies Required:**
The Registry will keep the original and 4 copies of each factum.
- C. **Civil Appellant's Factum to be Filed and Served (ARC 538(1)):**
 - (a) on the 60th day or before 60 days have elapsed from the day on which the appeal digest was prepared, or
 - (b) during the 7th month or before 7 months have elapsed after the filing of the notice of appeal,
whichever is the earliest date.
- D. **Civil Respondent's Factum to be Filed and Served (ARC 538(2)):**
Within 45 days after service upon him of the appellant's factum, the respondent shall file and serve his factum, or a letter of intention not to file a factum, unless otherwise ordered.
- E. **Civil Notice of Intention to Vary (ARC 538(3)):**
Where a notice of intention to vary has been given, the appellant may, within 10 days after service upon him of the respondent's factum, file and serve a further factum in reply.
- F. **Civil Factum Not Entitled to Costs if Filed Late (ARC 538(4)):**
When a factum is not filed within the time fixed by these Rules, the party in default shall not be entitled to costs for preparation of the factum unless the court otherwise orders. The Registry will stamp any books filed outside these time periods with a "No Costs" stamp. The party in default may apply for costs at the time of hearing.
- G. **Respondent Not Entitled to Oral Argument if Factum Filed Late (ARC 538(6)):**
When neither a factum nor a letter of intention not to file a factum is filed by a respondent within the time period set out in subrule (2), or as ordered by the court, the party in default may not present oral argument, unless otherwise ordered by the panel.
- H. **Factum Parts and Table of Contents (ARC 540(1)):**
A factum shall consist of the following 4 parts:
 - Part I - Statement of Facts,
 - Part II - Grounds of Appeal,
 - Part III - Points of Law, and**Note:** Relevant standard of review on each issue must be included in

Part III under a separate heading (refer to Part C.11 below).

- Part IV - Nature of Relief Desired.
- I. **Notice of Intention to Vary or Cross Appeal Filed (ARC 540(3)):**

Where a notice of intention to vary has been given, the respondent's factum shall consist of two main headings each of four parts, the first entitled "factum on the appeal" and the second entitled "factum on the cross appeal." (See Part C.1 below for factum length).
- J. **Factum Must Cite Passages to Appeal Record and Extracts of Key Evidence, if Applicable (ARC 540(2.1))**

Any factum filed by any party must cite passages in the oral evidence both to the electronic appeal record and to its Extracts of Key Evidence, if applicable.
- K. **List of Authorities (ARC 540(2)):**

On a separate page at the end of each factum a list of the authorities referred to in the factum shall be set out together with the citations in the order in which they are likely to be referred.
- L. **Statutes, Regulations, Rules, Ordinances or By-Laws (ARC 540(4) & CPD C.2.):**

Where a statute, regulation, rule, ordinance or by-law is relied on so much thereof as may be necessary to the decision of the case, it shall be printed at length as an appendix to the factum, or 5 copies of same shall be filed for the use of the Court.

Note: We suggest that any such legislation be attached as an appendix to the factum only where the combined number of pages between the factum, the extracts of key evidence, the authorities and any other appendices do not exceed 60 pages. Otherwise, if the total exceeds 60 pages, then we suggest that they be filed in a separate book to be filed at the same time as the factum (CPD D.8).
- M. **Paper Size and Binding (ARC 540(5)):**

Paper size must be white 8.5 x 11 inches. The body of the factum must be printed on the left-hand side of the page and bound along the right edge so that the printed pages are to the left. The title page, table of contents and list of authorities must be printed on the right-hand side of the page and bound along the left edge so that the printed pages are to the right.
- N. **Cover Colors (ARC 540(7)):**

The cover of the appellant's factum must be colored buff and the cover of the respondent's factum must be colored green.

Note: The cover of a cross-appellant's factum would be green and the cover of a cross-respondent's factum would be buff. 1st intervener use blue, 2nd intervener use orange, and 3rd intervener use purple.
- O. **Irrelevant Material (ARC 540(8)):**

A factum shall not contain irrelevant matter nor reproduce matter that appears in the appeal record, if a reference to it will reasonably suffice.
- P. **Fresh Evidence (ARC 516.2):**

Except with leave of the Court or a judge, no motion by a party to adduce new evidence in the Court of Appeal may be made unless the party has filed and served a notice of motion on or before the day when that party's factum is due

- ❑ Q. **Criminal Conviction Appeals Deemed Abandoned (ARC 840(6.1) & Part E.8(a)):** Conviction appeals shall be deemed abandoned where four (4) calendar months have passed since the appeal records have been readied and the appellant has failed to file and serve the appellant's factum on the respondent (see ARC 840(6.1) for more details).

Consolidated Practice Directions of the Court of Appeal (CPD) - Part C:

1. ❑ **A Factum Must Not Exceed 30 Pages:**
The Registrar has been instructed to refuse factums over 30 pages long (exclusive of case tables or statutes) without a judge's fiat.
2. ❑ **A Cross-Appellant's Factum Must Not Exceed 40 Pages:**
A respondent who is also a cross-appellant will be allowed to file a factum totalling up to 40 pages (including both parts of his or her factum on the appeal, and on the cross-appeal).
Note: For E-Appeals only: page limit will be calculated by subtracting the title page and table of contents from the last page of the body of the factum (excluding the list of authorities).
3. ❑ **An Appellant's Reply Factum on a Cross-Appeal Must Not Exceed 10 Pages**
4. ❑ **Impugned Rulings and Critical Exhibits:**
If the appellant appeals any rulings made during the trial, the appellant shall include the impugned rulings as an appendix to the factum. Include as an appendix to the factum any exhibit critical to the appeal, e.g. the very contract sued on. See previous "Note" under item K. above.
5. ❑ **Provide Tab or Page Number when Citing Authorities:**
Where an authority cited is reproduced in the book of authorities, give its tab number or page number when citing it in the factum. When citing a case from an electronic database on the list of authorities, provide a parallel reported citation, if available, in a recognized format. Provide a parallel neutral citation, if the court deciding the case has issued one. Examples: 2005 SCC 100, or 2004 NSCA 50. If a pinpoint reference is required, provide the paragraph numbers, if available, or the page numbers from a printed source.
6. ❑ **Signature and Time Estimate Must be Included in the Factum:**
Every factum must immediately **before** the signature of counsel, provide an estimate of the length of counsel's argument even if the maximum time of 45 minutes is the estimate.
7. ❑ **Indicate Which Party Filed the Factum:**
Factums should indicate precisely which party filed them, especially if there are multiple respondents.
8. ❑ **Print Size and Line Spacing:**
Print in the factum should be 12 point or larger. (Its capital letters are 2.9 mm or higher). Lines should not be single spaced, they should be one and a half spaced or double spaced. Quotations may be single spaced. Each margin must be at least one inch.
9. ❑ **No Oral Argument Requests:**
The Court will entertain applications to hear and decide some appeals by reading the appeal record (including transcripts), factums, extracts of key evidence and

books of authorities alone, without any oral argument. To have the Court consider this option, all parties to the appeal or their counsel must sign letters agreeing to this procedure (see C.8 of the CPD for further information).

10. **Relevant Standard of Review:**

An appellant's factum must state the relevant standard of review on each issue raised in the appeal in a separate section of Part III (Points of Law). A respondent's factum must state whether the respondent agrees with the standard suggested by the appellant for each issue in question. Among other resources, see Hon. Roger P. Kerans & Kim W. Willey, *Standards of Review Employed by Appellate Courts*, 2nd ed. (Edmonton: Juriliber, 2006).

11. **Table of Contents Required:**

Include a table of contents at the beginning of each factum. **Note:** Subheadings for each standard of review in Part III (Points of Law) must be set out in the table of contents.

Consolidated Practice Directions of the Court of Appeal - Part D

1. **Separate Book of Authorities:** Authorities cannot be bound with a factum unless they are under 30 pages (refer to the Book of Authorities Check/Return Form for requirements).

Note: If the Extracts of Key Evidence, any other appendices and the factum together do not exceed a total of 60 pages, the Extracts of Key Evidence may be included as an appendix to the factum or the book of authorities. (refer to the Extracts of Key Evidence Check/Return Form for requirements).

2. **Name Precise Paragraph Numbers or Page Numbers on which you Rely:** In the factum, name the precise paragraph numbers or page numbers on which you rely in each authority.

Consolidated Practice Directions of the Court of Appeal - Part E.8(c):

1. **Second, Supplementary Factums in Criminal Appeals:** These factums are not to be accepted for filing without leave of either the Motion's Court or the Criminal List Manager.

Calgary Registry: (403) 297-2206

Edmonton Registry: (780) 422-2416

Form Revised: July 23, 2009

Access this form on the Alberta Court's website at www.albertacourts.ab.ca under Court of Appeal > Publications & Forms > Check/Return Forms > Factum