



# Guide to Civil Appeals to the Court of Appeal of New Brunswick

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**FOR SELF-REPRESENTED APPELLANTS**

JUNE 2022

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## Introduction

This is a guide for self-represented litigants in civil appeals to the [Court of Appeal of New Brunswick](#). It is not for use in legal submissions and does not bind the Court of Appeal.

**This guide is provided for information only.** It is not legal advice. It does not replace the advice of a lawyer and is not meant to discourage you from talking to a lawyer. **For legal advice, contact a lawyer or the New Brunswick Legal Aid Services Commission.**

This guide is intended to help you during the appeal process, whether you wish to appeal or to respond to an appeal. It is general in nature and outlines the usual process for civil appeals involving self-represented litigants.

Nothing in this guide should be interpreted in a manner that is inconsistent with Rule [62](#) of the New Brunswick [Rules of Court](#), which applies to civil appeals to the Court of Appeal, or with any other rule, statute or regulations that may apply.

This guide tries to use plain language wherever possible, but it also provides definitions of legal words and expressions in **section 1: Understanding legal terms**. Instruction sheets on how to fill out a Notice of Motion for Leave to Appeal (Form 62A) and a Notice of Appeal (Form 62B) are included for quick reference as **Schedule A** to this guide.

Hyperlinks have been added throughout this guide. Underlined text in blue links to an email address, or to reference material that is available online. To open a target email or document on a computer, press the “Ctrl” button on your keyboard while clicking the link.

For more information, you may contact the Registrar:

By mail:

Registrar  
Court of Appeal of New Brunswick  
Justice Building  
427 Queen Street, Room 201  
P.O. Box 6000  
Fredericton, New Brunswick E3B 5H1  
Tel.: (506) 453-2452  
Fax: (506) 453-7921  
Email: [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca)

By prepaid registered mail or prepaid courier:

Registrar  
Court of Appeal of New Brunswick  
Justice Building  
427 Queen Street, Room 201  
P.O. Box 6000  
Fredericton, New Brunswick E3B 1B6  
Tel.: (506) 453-2452  
Fax: (506) 453-7921  
Email: [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca)

Please note that registry staff does not give legal advice.

## 1. Understanding legal terms

The following definitions apply in this guide.

**“Act”** means a written law that has been passed by the Parliament of Canada or a provincial or territorial legislature; also called legislation or statute;

**“action”** means a proceeding started by issuing a Notice of Action under Rule [16](#) of the New Brunswick [Rules of Court](#);

**“affidavit”** means a document that is signed by a person, called a deponent or an affiant, and contains statements of fact within the person’s personal knowledge and sworn or affirmed by the person to be true. If a rule allows it, the document may contain statements as to the person’s information and belief and specify the person’s source of information and the person’s belief. A lawyer, notary public, or commissioner for taking affidavits must witness the person’s signature and sign the affidavit next to that signature;

**“appellant”** means a party who is bringing an appeal; a party to an appeal who is opposed to the respondent to the appeal;

**“applicant”** means a party who is making an application to a court; the author of an application;

**“application”** means a proceeding an applicant starts by issuing a Notice of Application under Rule [16](#) of the New Brunswick [Rules of Court](#), including to request that a court give its opinion, advice or direction on a question that affects the rights of the parties to the proceeding, or make an order directing that something be done in favour of the applicant;

**“civil appeal”** means an appeal brought to the Court of Appeal in a civil proceeding, including a family proceeding, or a proceeding under the [Divorce Act](#), R.S.C. 1985, c. 3 (2nd Supp.);

**“costs”** means a court order that the losing party in a court case pay an amount of money to the successful party as full or partial compensation for the time and money spent on the case. This amount may include all or part of court fees, disbursements, and legal fees;

**“court appealed from”** includes a court, commission, board, committee, tribunal or other adjudicative body whose order or decision may be appealed to the Court of Appeal;

**“intended appeal”** means a proposed appeal for which leave of the Court of Appeal is sought;

**“interlocutory”** means relating to a step taken by a party or a judge in the course of a broader proceeding, such as an interlocutory order or decision made by a judge during a court dispute between parties before the final resolution of the dispute at trial;

**“leave”** means a court’s permission to proceed with certain types of applications, motions or appeals, or to proceed in a certain way;

**“legislation”** has the same meaning as “Act”;

**“motion”** means a request made by a moving party in the form of an interlocutory motion or a preliminary motion brought under Rule [37](#) of the New Brunswick [Rules of Court](#) to ask a court to decide an issue before or during a proceeding and to order that something be done in favour of the moving party;

**“moving party”** means a party who is bringing a motion before a court; the author of a motion;

**“perfected appeal,”** in relation to a civil appeal, means an appeal that complies with Rule [62.15](#) of the [Rules of Court](#) and may be scheduled for hearing;

**“proceeding”** means, in general, an action or application;

**“Registrar”** means the Registrar of the Court of Appeal and includes a deputy registrar of that court;

**“regulations”** means laws that are adopted under the authority of an Act and set out specific information or procedures to implement the Act;

**“respondent”** means a party who is responding to an application, a motion or an appeal;

**“self-represented litigant”** means a person who is a party to a court process, including a person who appears in court, without representation from a lawyer; and

**“statute”** has the same meaning as “Act.”

## 2. Deciding to appeal

If you intend to take a civil appeal to the Court of Appeal of New Brunswick, you should know the process involves many steps. It takes time and effort, and costs money. If you are not successful on appeal, or you discontinue (abandon) your appeal, you may be ordered to pay “costs” to compensate the other party. Before you get started, there are things you should consider.

### A. Understanding the appeal process

In the [hierarchy of New Brunswick courts](#), the Court of Appeal is the highest court in the province. It consists of the Chief Justice of New Brunswick and other judges, known as [Justices](#). It usually sits in Fredericton and has a Registrar, whose office provides administrative services to the Court. The Court of Appeal hears appeals in criminal and civil matters. In civil matters, the Court of Appeal hears appeals from:

- (a) judgments that are made in the Court of Queen’s Bench or by one of its judges;
- (b) decisions that may be appealed to the Court of Appeal, such as decisions of the Probate Court, or of certain provincial commissions, boards, committees, tribunals, or other adjudicative bodies; and
- (c) orders, decisions, rulings, allowances and disallowances of the Registrar that may be appealed to a judge of the Court of Appeal under [Rule 62.30](#) of the [Rules of Court](#).

However, the Court of Appeal does not hear appeals from judgments of:

- (a) the [Federal Court](#),
- (b) the [Tax Court of Canada](#),
- (c) the Courts Martial, or
- (d) federal tribunals.

A civil appeal to the Court of Appeal is not a new trial or hearing. In fact, the Court of Appeal rarely receives new evidence, including witness testimony. Instead, it reviews the record and the decision appealed from, and it considers the arguments made on appeal. To be successful on appeal, you cannot simply say the decision should have been in your favour. You must convince the Court of Appeal that the court appealed from made an error in law or in principle, or an obvious and significant error of fact. Some appeals are even limited to questions of law. See the Court of Appeal’s website for more information: [Frequently Asked Questions](#).

When deciding an appeal, the Court of Appeal may:

- (1) allow the appeal and
  - (a) reverse (overturn, change to the contrary) the decision appealed from,
  - (b) vary (change in part) the decision appealed from, or
  - (c) set aside the decision appealed from and order that a new trial or hearing be held in the court appealed from (for a new decision to be made by that court); or
- (2) dismiss the appeal.

The Court of Appeal may also order the unsuccessful party to an appeal to pay money in the form of “costs” to the other party to the appeal.

A civil appeal to the Court of Appeal is generally the last recourse for a party, except in rare cases where the [Supreme Court of Canada](#) accepts to hear a further appeal. In the [Canadian appeal process](#), the Supreme Court is the highest court in the country. For more information on the role of the Supreme Court in the Canadian judicial system, see the following sections of that court’s website: [The Canadian Judicial System](#) and [Role of the Court](#).

## **B. Complying with appeal procedures**

In New Brunswick, the *Rules of Court* apply to the Court of Queen’s Bench and the Court of Appeal. These rules are regulations that are made under the [Judicature Act](#), R.S.N.B. 1973, c. J-2. They “prescribe” (impose by regulation) the procedure and time limits to follow, along with the forms to use, in these courts. Rules [62](#) and [62.1](#) of the *Rules of Court* apply to civil appeals to the Court of Appeal. Rules [3](#) (Time), [4](#) (Court Documents), [59](#) (Costs) and [78](#) (Fees) also apply to these appeals. In some situations, other rules, such as Rules [18](#) (Service of Process) and [37](#) (Procedure on Motions), may apply.

The *Rules of Court* may be found by clicking here: [Rules of Court](#). They include official “forms of court” that official “forms of court” may be found by clicking here: [forms of court](#). These forms cannot be filled out directly on a computer. Unofficial “fillable” versions of some of these forms are also available on the Court of Appeal’s website: [Forms of Court](#).

The parties to an appeal submit forms and other documents for “filing” with the Registrar, who reviews these documents before they may be accepted as “filed.” The Registrar has the authority to reject a document, or a part of it, for any of the reasons listed in Rule 62.29.1. The Registrar also accepts payment of filing fees prescribed by Rule 78.02. The Department of Justice and Public Safety of New Brunswick provides information on court fees on its website: [Court Fees – Court of Appeal](#). The Court of Appeal additional information on its website: [Fees](#).



From time to time, the Registrar issues practice directives or protocols on procedural matters relating to appeals to the Court of Appeal. They may be found on the Court of Appeal's website: [Practice Directives](#) and [Protocols](#).

### **C. Representing yourself on appeal**

Representing yourself in a civil appeal comes with responsibility.

In New Brunswick, an annotated version of the *Rules of Court* is available on the Court of Appeal's website: see the [Annotated Rules of Court](#). In addition, our courts provide information for self-represented litigants on their website: see the [Self-represented litigant](#) page. You may also find resources, including self-help guides and other materials to download or order, on the Public Legal Education and Information Service of New Brunswick (PLEIS-NB) website by clicking here: [PLEIS-NB](#). Additional information on family law is available on PLEIS-NB's separate family law website by clicking here: [Family Law NB](#).

Information for self-represented litigants is available on the Canadian Judicial Council's website by clicking here: [Representing yourself in court](#). You may also find general information on civil appeals in the appeals sections of the [Civil Law Handbook for Self-Represented Litigants](#) (see section 11, at pages 80-83, and the section on New Brunswick, at page 99) and the [Family Law Handbook for Self-Represented Litigants](#) (see section 14, at pages 135-138, and the section on New Brunswick, at pages 162-163). The Canadian Judicial Council is a national organization, and most of its resources are not specific to our province.

If you appeal without the help of a lawyer, you must follow proper procedure throughout, ensure all your documents are filed on time and otherwise comply with the *Rules of Court*, and pay the applicable fees. Otherwise, your documents may be rejected, and your appeal may even be dismissed. Ultimately, no matter which resources you use, your appeal is your responsibility.

Judges and registry staff have no obligation to assist a self-represented person who is disrespectful, frivolous, unreasonable, vexatious, abusive, who makes no reasonable effort to prepare his or her own case, or who otherwise abuses the court process.

## **In short**

In the civil context, the [Court of Appeal of New Brunswick](#) hears appeals from decisions of the Court of Queen's Bench in family and other civil matters, from decisions of some provincial tribunals, and from some orders, decisions and rulings of the Registrar.

An appeal to the Court of Appeal is not a new trial or hearing. In general, there is no new evidence on appeal. The Court of Appeal reviews the decision appealed from to determine whether an important error was made. Some appeals are limited to questions of law.

The civil appeal process is lengthy and can be costly. Rule [62](#) of the [Rules of Court](#), in particular, applies to that process and imposes strict requirements. Although some resources are available, you are responsible for managing your own case. You must submit the correct forms, take the necessary steps on time, and behave appropriately. Your failure to do so may affect your rights.

### 3. Determining whether leave is needed to appeal

Not all decisions may be appealed to the Court of Appeal. An appeal exists “by right” if the appellant has an automatic right to appeal, or “with leave” if the appellant must get permission from a judge of the Court of Appeal to appeal. This section explains how to tell whether leave to appeal is needed under Rule [62.03](#) of the [Rules of Court](#) or a statute and, if so, how to ask for leave to appeal.

#### A. Determining whether an appeal is by right or with leave

A judge of the Court of Appeal has the power to determine whether leave is needed to appeal. However, when considering a civil appeal, you should first determine whether the appeal may be brought by right or with leave because different procedures and time limits apply. The table below outlines these two types of appeals. It is followed by detailed information on appeals with leave (those outlined in the right column of the table).

Appeals by right	Appeals with leave
<p><b>What may be appealed by right</b></p> <p>Some decisions may be appealed to the Court of Appeal without leave (permission) of that court or one of its judges. Generally, these decisions are:</p> <ul style="list-style-type: none"> <li>• judgments, orders, or decisions of the Court of Queen’s Bench, except where a statute says otherwise. For example, leave is required to appeal to the Court of Appeal from a decision of the Court of Queen’s Bench on a small claims appeal by way of a new hearing or by application; and</li> <li>• decisions of a court or tribunal that are not subject to leave to appeal under a statute.</li> </ul>	<p><b>What may be appealed with leave only</b></p> <p>Some decisions cannot be appealed to the Court of Appeal unless that court or one of its judges has granted leave (given permission). These decisions are:</p> <ul style="list-style-type: none"> <li>• orders or decisions referred to in Rule 62.03(1) of the <i>Rules of Court</i>: <ul style="list-style-type: none"> <li>○ an interlocutory order or decision,</li> <li>○ an order or a decision as to costs only, or</li> <li>○ an order made with the consent of the parties; and</li> </ul> </li> <li>• decisions of a court or tribunal if a statute says they may be appealed with leave.</li> </ul>

## 1) Appeals from decisions or orders referred to in Rule 62.03 of the *Rules of Court*

### a) interlocutory orders or decisions

Some decisions are “final” in nature, while others are “interlocutory” in nature. A final order or decision deals with the final rights of the parties and resolves a main issue in dispute, while an interlocutory order or decision is a preliminary or secondary order or decision that is made during a proceeding. An example of an interlocutory order is an interim parenting order (formerly known as an interim custody order) of a judge of the Court of Queen’s Bench, Family Division. On the contrary, an example of a final decision is the judge’s decision granting divorce and awarding shared parenting time and decision-making responsibility.

### b) orders or decisions as to costs only

An order or a decision as to costs only deals exclusively with an award of costs.

### c) orders made with the consent of the parties

An order made with the consent of the parties (a “consent order”) is an order confirming an agreement they reached.

## 2) Statutory appeals with leave

In some cases, a decision of a court or tribunal may be appealed only if leave is granted. This information may come from the statute that creates or governs the court or tribunal. In addition, the appeal may be limited to certain questions, such as questions of law alone or questions of jurisdiction. This provides some finality to the decision-making process.

### **B. Asking for leave to appeal**

To ask for leave to appeal from an order or a decision under Rule 62.03, here is what you must do:

- (a) file a Notice of Motion for Leave to Appeal (**Form 62A**), with an affidavit in support, with the Registrar and pay the \$50.00 filing fee;
- (b) get a date from the Registrar’s office for the hearing of the motion;
- (c) under Rule 62.03(2), serve **Form 62A** on each respondent within **7 days** from the date of the order or decision (or the date the order or decision is filed in the clerk’s office, if later) unless the judge hearing the motion orders otherwise;
- (d) provide the Registrar with proof of service (by affidavit or Acknowledgement of Receipt Card (**Form 18A**));

- (e) prepare a Record on Motion (with an index that refers to page numbers) containing the documents listed in Rule 62.03(3);
- (f) under Rule [37.05](#), file the Record on Motion with the Registrar at least **48 hours** before the hearing of the motion (see Rule [3.01](#) of the [Rules of Court](#) and **subsection 5b: Calculating time limits** of this guide); and
- (g) provide the other parties either with a copy of the Record on Motion or, if they already have all the documents, with a copy of the index.

If you are asking for leave to appeal an interlocutory order or decision, you may also apply for an extension of the time to file and serve a Notice of Appeal (**Form 62B**). Under 62.03(1.1), this is done in case the judge hearing the motion for leave determines the order or decision is not interlocutory, and leave to appeal is not needed. You may ask for this extension within the Notice of Motion for Leave to Appeal itself.

In general, when you intend to appeal from a tribunal or a court other than the Court of Queen's Bench, you should refer to the appropriate statute and regulations, in addition to Rules 37 and 62.03, to find out whether you need leave to appeal and, if so, when and how to apply. Time limits may vary from statute to statute. This applies, for example, when appealing with leave to the Court of Appeal from a decision of the Court of Queen's Bench on a small claims appeal, and from a decision of the Financial and Consumer Services Tribunal.

Motions for leave to appeal are decided by a judge of the Court of Appeal sitting alone. The judge will grant leave, or not, to have a proposed appeal heard by a panel of judges (three or, in some cases, more judges). To make this decision, the judge will consider the factors listed in Rule 62.03(4): (a) whether another decision conflicts with an issue raised by the proposed appeal; (b) whether the judge thinks the decision or order may not be correct; and (c) whether the judge thinks the proposed appeal raises issues that are important enough to be resolved by the Court of Appeal.

If the judge issues an order granting leave to appeal, you then have **7 days** from the date of that order to file and serve a Notice of Appeal (**Form 62B**), with proof of service, under Rule 62.05(b) unless the judge orders otherwise.

### **In short**

You do not necessarily have the right to appeal to the Court of Appeal from a decision of a court or tribunal in a civil matter. Before appealing, you should determine whether, or not, you need leave (permission) of the Court of Appeal or a judge of that court. If you do, you must request leave to appeal by motion under Rules [37](#) and [62.03](#) of the [Rules of Court](#), and/or as required by any statute or regulations that may apply. The judge hearing your motion for leave to appeal may allow or dismiss the motion based on factors such as those set out in Rule 62.03(4).

## 4. Appealing from certain courts and tribunals

The process for appealing or, if necessary, for getting leave to appeal may be different whether the appellant intends to appeal from the Court of Queen's Bench, another court (such as the Probate Court), or a tribunal. When considering an appeal from a court or tribunal, you must follow the process that applies specifically to that court or tribunal. Information on appeals from certain courts and tribunals is provided below.

### A. Appeals from courts

#### 1) Court of Queen's Bench

An appeal may be taken **by right** from a final judgment, order or decision of a judge of the Trial Division or the Family Division of the [Court of Queen's Bench](#). As mentioned above, leave is needed to appeal interlocutory orders or decision, decisions as to costs only, and orders made with the consent of the parties under Rule [62.03](#) of the [Rules of Court](#).

#### 2) Probate Court

The [Probate Court](#) of New Brunswick is established under the [Probate Court Act](#), S.N.B. 1982, c. P-17.1, to deal generally with the probate of wills, the administration of estates, and testamentary matters in the province. Although it is separate from the Court of Queen's Bench, the Probate Court is presided by a judge of the Court of Queen's Bench. The Probate Court has a registrar and other court officials. Its procedure is set out in the [Probate Rules](#), N.B. Reg. 84-9, and its judicial districts are set out in the [Judicial Districts and Probate Offices for the Probate Court of New Brunswick Regulation - Probate Court Act](#), N.B. Reg. 84-74.

Under section 34 of the *Probate Court Act*, an appeal to the Court of Appeal may be taken **by right** from any order, determination or judgment of the Probate Court if:

- (a) a party or person taking part in the action or other proceeding (i.e., the claimant or personal representative) brings the appeal; and
- (b) the order, determination or judgment affects property that is worth more than \$1,000.

In other cases, an appeal to the Court of Appeal may be taken **with leave** of a judge of that court if:

- (a) under section 34 of the *Probate Court Act*, a party or person taking part in the action or other proceeding (i.e., the claimant or personal representative) appeals any order, determination or judgment of the Probate Court affecting property that is worth \$1,000 or less; or

- (b) under section 35 of the *Probate Court Act*, a person who is “beneficially interested” in an estate appeals an order, determination or judgment of the Probate Court that was not appealed by the claimant or personal representative who has the right to appeal it under section 34 of the *Probate Court Act*.

This does not apply to orders for directions made by the Probate Court under subsection 66(2) or (4) of the *Probate Court Act*. An appeal to the Court of Queen’s Bench with leave of a judge of that court is available under subsection 66(7) in relation to those orders.

Leave to appeal from an order, determination or judgment of the Probate Court is sought by Notice of Motion for Leave to Appeal (**Form 62A**) under Rules [37](#) and 62.03 of the *Rules of Court*.

### 3) Small Claims Court

The Small Claims Court of New Brunswick is established under the [Small Claims Act](#), R.S.N.B. 2012, c. 15. Adjudicators are appointed to the Small Claims Court to hear and decide cases for debt or damages, or for the recovery of personal property, for a maximum amount of \$20,000. A decision or ruling of an adjudicator of the Small Claims Court cannot be appealed directly appeal to the Court of Appeal. A party to a small claim may appeal an adjudicator’s decision or ruling to the Court of Queen’s Bench by way of a new hearing or by application. The decision of the Court of Queen’s Bench may then be appealed to the Court of Appeal but only if leave is granted and only on a question of law alone.

Section 44 of the [General Regulation – Small Claims Act](#), N.B. Reg. 2012-103, governs leave to appeal to the Court of Appeal in those cases. Under subsection 44(1), a “request for leave to appeal” to the Court of Appeal must be:

- (1) made by Request for Leave to Appeal in **Form 18** (not by Notice of Motion for Leave to Appeal in **Form 62A**); and
- (2) filed with the Registrar within **30 days** after the decision of the judge of the Court of Queen’s Bench is filed.

The \$50.00 filing fee prescribed by Rule [78.02\(a\)](#) of the *Rules of Court* must also be paid.

The appellant must set out the grounds of appeal in the Request for Leave to Appeal form and attach a written argument along with a copy of the documents the appellant intends to use. Within **30 days** from the date on which the request for leave to appeal is sent, the respondent may file a written argument and a copy of the documents the respondent intends to use.

A judge of the Court of Appeal will decide whether, or not, to grant leave to appeal on the sole basis of the written arguments and other documents received. However, if the judge considers a hearing should be held, a hearing of the request for leave will be held, and each party will have 30 minutes to make an oral argument unless the judge gives the party additional time.



Section 45 of the *General Regulation - Small Claims Act* governs the Notice of Appeal. If leave to appeal is granted, the appellant must:

- (a) within **30 days** after the Registrar has sent notice that leave is granted, file a Notice of Appeal in **Form 19** (not a Notice of Appeal in **Form 62B**) with the Registrar; and
- (b) at his or her own expense, order a transcript of evidence from the court stenographer.

**Forms 16 to 19** are prescribed by the *General Regulation - Small Claims Act* (not by the *Rules of Court*) in Portable Document Format (PDF) only and cannot be completed on a computer. PLEIS-NB provides Small Claims Court forms – including **Forms 16 to 19** – as a convenient PDF that may be completed online and printed for signing and filing. However, these are not the official forms. You will find these “fillable” forms on PLEIS-NB’s website by clicking here: [PLEIS-NB Small Claims Court Forms](#).

For more information on appeals related to small claims, please see sections 39 to 49 of the *General Regulation - Small Claims Act*. You may also consult a PLEIS-NB fact sheet on these appeals, and the “Appeals” section of the PLEIS-NB guide titled “Small Claims Court: A Guide for Claimants, Defendants and Third Parties,” by clicking here: [Small Claims Court Fact Sheet: Appealing a Decision](#) and [PLEIS-NB Small Claims Court Guide](#). These references are provided for your information only. PLEIS-NB is not affiliated with the Court of Appeal.

Since the *Small Claims Act* is meant to provide a fast, simple, informal, and inexpensive process for the determination of small claims, the bar to get leave to appeal to the Court of Appeal is high. The decision made by a judge of the Court of Queen’s Bench following an appeal by way of new hearing or by application will therefore stand unless you, as the appellant, convince the Court of Appeal that:

- (1) if leave is granted, you have a reasonable chance of success on appeal on a question of law, or
- (2) the matter raises an issue that is important enough to be resolved by the Court of Appeal.

Even if these criteria are met, the judge of the Court of Appeal who considers your request for leave to appeal may deny leave if he or she thinks there are good reasons for doing so.

## **B. Appeals from tribunals**

Some decisions of commissions, boards, committees, tribunals or other adjudicative bodies are not subject to “appeal” to the Court of Appeal. They are instead subject to “review” by the Court of Queen’s Bench. For example, the [Human Rights Act](#), R.S.N.B. 2011, c. 171, does not provide the right to appeal decisions of the New Brunswick Human Rights Commission. In the absence of a statutory appeal, a decision of an administrative body (such as the Human Rights Commission) or a government official may be challenged by judicial review. This happens when a party applies

to the Court of Queen's Bench under Rule [69](#) for review of an administrative decision. If there is a statutory appeal route, however, you must pursue it.

### 1) Workers' Compensation Appeals Tribunal

The [Workers' Compensation Appeals Tribunal](#) of New Brunswick (the "Appeals Tribunal") is established under the [Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act](#), S.N.B. 1994, c. W-14 (the "WHSCC & WCAT Act").

The Appeals Tribunal decides two types of cases:

- (1) under section 21 of the *WHSCC & WCAT Act*, it hears [appeals](#) from:
  - (a) decisions, orders or rulings made by the Workplace Health, Safety and Compensation Commission ("WorkSafeNB") under the *WHSCC & WCAT Act*, the [Workers' Compensation Act](#), R.S.N.B. 1973, c. W-13, or the [Firefighters' Compensation Act](#), S.N.B. 2009, c. F-12.5 (subject to a **one-year limit** to appeal to the Appeals Tribunal),
  - (b) decisions of the Chief Compliance Officer under the [Occupational Health and Safety Act](#), S.N.B. 1983, c. O-0.2 (subject to a **7-day limit** to appeal to the Appeals Tribunal), and
  - (c) decisions of the Chief Compliance Officer dealing with administrative penalties (subject to a **7-day limit** to appeal to the Appeals Tribunal); and
- (2) under section 22.1 of the *WHSCC & WCAT Act*, it may reconsider a decision, order or ruling it already made, or rescind, alter or amend (cancel or change) the decision, order or ruling, if certain conditions are met.

The Appeals Tribunal's decisions, orders and rulings, whether they are made on appeal from WorkSafeNB or on reconsideration, are final. However, under subsections 21(12) and 22.1(2) of the *WHSCC & WCAT Act*, they may be appealed **by right** to the Court of Appeal on a ground involving a question as to the Appeal Tribunal's jurisdiction (a question about what the Appeals Tribunal has the right to decide under its statute) or any question of law. In these cases, leave to appeal is not needed, but the appeal is limited to an alleged jurisdictional error or error in law.

To appeal to the Court of Appeal from a decision, order or ruling of the Appeals Tribunal, you must:

- (1) within **30 days** after receiving the notice of decision, order or ruling, apply to the Appeals Tribunal for a "statement of facts" under subsection 23(1) of the *WHSCC & WCAT Act*;
- (2) within **30 days** after receiving the statement of facts, start your appeal by filing a Notice of Appeal (**Form 62B**) and paying the \$50.00 filing fee as required by Rules 62.05(1), 62.06(1) and 78.02(a) of the *Rules of Court*; and

- (3) within **15 days** after the Notice of Appeal is issued, serve a copy on the Commission and the Appeals Tribunal and file the original Notice of Appeal with the Registrar along with proof of service in compliance with Rule 62.06(3).

Under subsection 23(2) of the *WHSCC & WCAT Act*, the statement of facts must include:

- (a) a copy of the written decision, order or ruling of the Appeals Tribunal,
- (b) a transcript of the proceedings before the Appeals Tribunal, and
- (c) the evidence accepted by the Appeals Tribunal.

The statement of facts will form the record on appeal according to subsection 23(3) of the *WHSCC & WCAT Act*. There is no need to include a copy of that statement of fact in the Appeal Book described in Rule 62.13. See, on this topic, the practice directive and attached decision on the Court of Appeal's website: [Memorandum from the Registrar on Appeals from Decisions of the Workplace Health, Safety and Compensation Commission](#) and [Decision on Motion](#).

## 2) Financial Consumer Services Tribunal

The [Financial and Consumer Services Tribunal](#) of New Brunswick (the "Tribunal") is established under the [Financial and Consumer Services Commission Act](#), S.N.B. 2013, c. 30 (the "*FCSC Act*"), and hears appeals, reviews, applications and enforcement proceedings under financial and consumer services legislation.

Final decisions of the Tribunal may be appealed to the Court of Appeal **with leave** of a judge of that court under subsection 48(1) of the *FCSC Act*. However, under subsection 14(5) of the *FCSC Act*, the Tribunal's decisions relating to public access to information are not subject to appeal.

To ask for leave, under subsections 48(2) and (3) of the *FCSC Act*, you must:

- (1) within **30 days** after the later of the date the decision is made and the date the reasons (the written justification) for the decision are issued, apply to a judge of the Court of Appeal for leave to appeal by Notice of Motion for Leave to Appeal (**Form 62A**) as required by Rule 62.03 of the *Rules of Court*; and
- (2) within this **30-day period**:
  - (a) serve a copy of the application for leave to appeal and supporting documents to the other parties to the intended appeal, and
  - (b) file copies of these documents with the registrar of the Tribunal.

The Tribunal's registrar will provide the Court of Appeal with:

- (a) the decision that was appealed to, or reviewed by, the Tribunal,
- (b) the decision of the Tribunal, together with any statement or reasons for the decision,
- (c) the record of the proceedings before the Tribunal, and
- (d) all written arguments made to the Tribunal or other material that is relevant to the appeal.

There will be no need to order a transcript of evidence under Rule 62.11.

An appeal from a decision of the Tribunal does not “stay” the execution of the decision. In other words, the decision is not suspended (put on hold) until the appeal is disposed of (decided). Under subsection 48(4) of the *FCSC Act*, the decision takes effect immediately unless the Tribunal or the Court of Appeal grants a stay of the decision until the disposition of the appeal.

### **Conclusion**

When you ask for leave to appeal to the Court of Appeal, it is your responsibility to comply with the *Rules of Court*, and any statute or regulations that may apply.

### **In short**

When appealing an order or a decision of the Court of Queen’s Bench, refer to Rule [62.03\(1\)](#) of the [Rules of Court](#) to determine whether you should ask for leave to appeal. When appealing from another court, such as the [Probate Court](#) or the Small Claims Court, or from a tribunal, such as the [Workers’ Compensation Appeals Tribunal](#) or the [Financial and Consumer Services Tribunal](#), also refer to the statute and regulations that apply to that court or tribunal to find out whether you need leave to appeal and what you should do.

## 5. Starting an appeal

In general, Rule [62](#) of the [Rules of Court](#) prescribes when and how to start a civil appeal in the Court of Appeal. However, in small claims appeals and under certain statutes, such as the [Financial and Consumer Services Commission Act](#), S.N.B. 2013, c. 30, different time limits apply.

### A. Issuing a Notice of Appeal

Under Rule 62.05(1), an appeal is started with a form called “Notice of Appeal.” The Notice of Appeal (**Form 62B**) is used to notify the Court and the other party that there is an appeal. Specifically, it provides a description of the decision or order appealed from, and the contact information of the persons involved in the appeal. The Notice of Appeal must include the grounds of appeal (the reasons for the appeal) and the relief sought (what the Court is being asked to do). Under Rule 62.05(2), a Notice of Appeal must be issued:

- (a) if leave to appeal is needed, within **7 days** from the date of the order of a judge of the Court of Appeal granting leave, or
- (b) if leave to appeal is not needed, within **30 days** from the date of the order or decision appealed from (or the date the order or decision is filed, if later).

Rule 62.06(1) prescribes how to “issue” the Notice of Appeal. Within the time limit that applies, you must deliver to the Registrar:

- (a) the original Notice of Appeal and a copy of that original, and
- (b) payment of the \$50.00 filing fee prescribed by Rule [78.02\(a\)](#).

There are two ways to deliver these to the Registrar:

- (a) in person in the office of the Registrar, or
- (b) by prepaid registered mail or prepaid courier addressed to the Registrar of the Court of Appeal, Justice Building, 427 Queen Street, Room 201, P.O. Box 6000, Fredericton, N.B. E3B 5H1.

If you wish to file your documents in person in the office of the Registrar, please check the [Court of Appeal’s website](#) for any [Updated COVID-19 Directive](#) that may apply. You may need to make an appointment with registry staff.

The Registrar will return the original Notice of Appeal to you with a Court of Appeal file number and a date of issue. This is the number you will use on other documents related to your appeal.

Within **15 days** after the date of issue, you must also do the following under Rule 62.06(3):

- (1) serve a copy of the Notice of Appeal on anyone whose interests may be affected;
- (2) file with the Registrar:
  - (a) the original Notice of Appeal, and
  - (b) proof (by affidavit or Acknowledgement of Receipt Card (**Form 18A**)) that a copy of the Notice of Appeal has been served on each respondent; and
- (3) forward a copy of the Notice of Appeal:
  - (a) to the clerk of the judicial district in which the proceeding originated (for example, the Clerk of the Court of Queen's Bench in the Judicial District of Moncton if you are appealing a decision of a judge of the Court of Queen's Bench following a trial that was held in Moncton), or
  - (b) to the court appealed from.

Under Rule 62.10, along with a copy of the Notice of Appeal, you must serve a Certificate of Appellant (**Form 62F**) on each respondent. See **section 7: Identifying and ordering the evidence needed on appeal** of this guide.

## B. Calculating time limits

Time limits for proceedings in the Court of Appeal are calculated according to Rule [3.01](#). When there is a time limit for doing something, such as filing an appeal, these rules apply:

- (1) The period starts on the day after the first day and ends on the last day;
- (2) Saturdays, Sundays, and holidays
  - (a) are counted if the period is seven days or more, but
  - (b) are not counted if the period is under seven days; and
- (3) If it ends on a Saturday, a Sunday, or a holiday when the office of the Registrar is closed, the period expires on that office's next business day.

Holidays are defined in Rule [1.04](#) and section 38 of the [Interpretation Act](#), R.S.N.B. 1973, c. I-13. Holidays, as defined, include Saturdays, Sundays, and statutory holidays in New Brunswick.

These rules apply to all time limits under the *Rules of Court*, including:

- (a) the **48-hour** limit prescribed by Rule [37.05](#) to file a Record on Motion before the hearing of a motion;
- (b) the **7-day** limit prescribed by Rule 62.03(2) to ask for leave to appeal;
- (c) the **30-day limit** prescribed by Rule 62.05(2)(a) to start an appeal; and
- (d) the **15-day limit** prescribed by Rule 62.06(3) to serve a Notice of Appeal.

#### Examples:

If a motion is scheduled to be heard on Tuesday, May 10, 2022, at 2 p.m., the Record on Motion must be filed no later than Friday, May 6, 2022, at 2 p.m. May 7<sup>th</sup> and 8<sup>th</sup> are not counted in the 48-hour period because holidays include weekends for the purposes of calculating time limits.

The 30-day period for appealing a decision or an order starts the day after the date of the decision or order (or the date the order or decision is filed, if later) and ends on the 30<sup>th</sup> day. This 30<sup>th</sup> day is the deadline to appeal. If the 30<sup>th</sup> day falls on a holiday, the deadline is that office's next business day.

### **C. Asking for an extension of time**

Under Rule 3.02, you may ask the Court of Appeal for an extension of time to file or serve your Notice of Appeal (except in workers' compensation appeals, where this is not available)). This is done by Notice of Motion (**Form 37A**) with an affidavit in support or, if all parties to the proposed appeal consent, by Consent Order. You may bring your motion before or after the prescribed time limit expires. A judge of the Court of Appeal hearing the motion may extend the prescribed time if it is appropriate to do so in the circumstances. However, if you do not apply for an extension of time, or if your application for the extension you needed is dismissed, your Notice of Appeal may be rejected for lateness.

### **D. Asking for a stay of execution or a stay of proceedings**

As Rule 62.26(1)(a) confirms, an appeal does not operate as a stay of execution or of proceedings under the decision or order appealed from. In other words, appealing does not suspend the execution of the decision or order under challenge, or the proceedings before the court appealed from, until the appeal is decided. The decision or order appealed from is enforceable unless an order states it is not.

Under Rule 62.26(2), a motion for a stay of execution or a stay of proceedings may be made before the judge appealed from, the Court of Appeal, or a judge of that court. This motion may be brought by Notice of Motion (**Form 37A**) with an affidavit in support under Rules [37](#) and 62.26 after the Notice of Appeal has been issued. The powers of the Court of Appeal or a judge of that court on a motion for a stay are described in Rule 62.26(3). Before a stay is granted under Rule

62.26, the moving party must convince the Court that (a) the appeal is a serious challenge to the decision in the court below; (b) the moving party will suffer irreparable harm without the stay; and (c) the balance of convenience favours the stay being granted. Otherwise, the moving party may be ordered to pay costs to the respondent if the motion is dismissed.

### **In short**

In general, a civil appeal is started when a Notice of Appeal (**Form 62B**) is issued. Under Rule [62.05\(2\)](#) of the [Rules of Court](#), the Notice of Appeal must be issued:

- (a) if leave to appeal is needed, within **7 days** of the order granting leave to appeal, or
- (b) if leave to appeal is not needed, within **30 days** from the date of the order or decision appealed from (or the date the order or decision is filed, if later).

Certain appeals, such as small claims appeals and appeals from the [Financial and Consumer Services Tribunal](#), are subject to different requirements.

To issue your Notice of Appeal, within the time limit prescribed by Rule 62.05(2) or any extended time allowed by a judge of the Court of Appeal, you must provide the Registrar with the original and a copy of the Notice of Appeal, along with payment of the \$50.00 filing fee if not already paid, by:

- (a) filing these in the office of the Registrar, or
- (b) sending these to the Registrar by prepaid registered mail or prepaid courier.

The Registrar will return the original Notice of Appeal showing a court file number and the date of issue. Under Rules 62.06(3) and 62.10, within **15 days** after that date of issue, you must:

- (a) serve a copy of the Notice of Appeal on all persons whose interests may be affected by the appeal,
- (b) serve a Certificate of Appellant (**Form 62F**) on each respondent,
- (c) file the Notice of Appeal and proof of service with the Registrar, and
- (d) forward a copy of the Notice of Appeal to the Judicial District of the Court of Queen's Bench where the case originated or to the court (or tribunal) appealed from.

If you are out of time, your appeal may be rejected or dismissed. To request more time to take any of these steps, you may bring a motion for an extension of time even after the time limit has



expired (except in workers' compensation appeals, where this motion is not available). This is done by Notice of Motion (**Form 37A**) with a supporting affidavit under Rules [3.02](#) and [37](#), or, with the consent of all parties to the proposed appeal, by Consent Order. If you do not get the extension of time you need, your Notice of Appeal may be rejected for lateness.

A decision or order takes effect immediately. Appealing it does not suspend its application during the appeal. A motion for a stay of execution or of proceedings may be made to the Court of Appeal or a judge of that court under Rules 37 and 62.26. However, there are strict requirements for getting a stay.

## 6. Completing the forms

This section describes how to complete a Notice of Motion for Leave to Appeal (**Form 62A**) or a Notice of Appeal (**Form 62B**). **Schedule A** to this guide also includes separate instruction sheets. To determine whether you should ask for leave to appeal to the Court of Appeal, see **section 3: Determining whether leave is needed to appeal** and **section 4: Appealing from certain courts and tribunals**. Please read this information before you contact the office of the Registrar for assistance.

Under section 17 of the [Official Languages Act](#), S.N.B. 2002, c. O-0.5, you may complete the Notice of Appeal, or any other pleading relating to your appeal, in English or in French.

### A. Choosing a format

The official forms prescribed under the [Rules of Court](#) are in Portable Document Format (PDF) and cannot be filled out on a computer: [Forms of court](#). Unofficial versions of some of these forms, which may be filled out on a computer, are also provided on the Court of Appeal's website: [Forms of Court](#).

The following instructions apply when you use court forms, whether you complete the official forms, or you create your own forms based on official forms.

If you complete a form on a computer, you will still need to print it for filing.

If you complete a form in Word format, do not make major formatting changes to the style and size of characters, or the width of the margins.

When printing a form:

- use quality letter size printer paper (216 mm x 279 mm or 8.5" x 11"), and
- print only on one side of the paper.

If you complete a form by hand, make sure your handwriting is **easy to read**.

You must sign the completed form before filing and serving it.

### B. Completing the forms

The official forms of Notice of Motion for Leave to Appeal and Notice of Appeal specify what to include in each of these forms. The grounds intended to be argued, known as "grounds of appeal," are the reasons for your appeal. The relief sought is what you are asking the Court of Appeal to do. Where indicated, or on attached sheets, you should state clearly, in point form, why you think the order or decision is wrong and should be reversed, varied or set aside.

### C. Amending the Notice of Appeal

Under Rule 62.09(1), an appellant may amend (change) the Notice of Appeal before the appeal is “perfected” (finalized) by:

- (a) serving a Supplementary Notice of Appeal (**Form 62C**) on each party served with the Notice of Appeal; and
- (b) filing the Supplementary Notice of Appeal and proof of service with the Registrar immediately after serving the Supplementary Notice of Appeal.

Once the appeal is perfected as required in Rule 62.15, the Notice of Appeal may not be amended without permission of the Court of Appeal or one of its judges. According to Rule 62.09(2), an appellant is not entitled to rely on a ground of appeal if it is not set out in the Notice of Appeal or a Supplementary Notice of Appeal – unless the Court of Appeal or a judge of that court grants leave to do so on motion brought by Notice of Motion (**Form 37A**).

### In short

The official forms of court under the [Rules of Court](#) may be found here: [Forms of court](#). Unofficial versions of some of these forms, which may be filled out on a computer, are also provided on the Court of Appeal’s website: [Forms of Court](#).

When completing a Notice of Motion for Leave to Appeal (**Form 62A**) or a Notice of Appeal (**Form 62B**), please refer to Rules [62.03](#) or 62.05, and **Schedule A** to this guide. Before an appeal is “perfected” (finalized), an appellant may make changes to a Notice of Appeal under Rule 62.09(1) by filing and serving a Supplementary Notice of Appeal (**Form 62C**). Once the appeal is perfected, an appellant needs permission to rely on a ground of appeal if it is not set out in the Notice of Appeal or a Supplementary Notice of Appeal.

## 7. Identifying and ordering the evidence needed on appeal

The Court of Appeal considers the evidence found in the official record of the court appealed from. New evidence, called “fresh evidence,” may be admitted on appeal by motion to the panel of judges assigned to hear the appeal only if certain legal criteria are met. However, in most cases, the evidence on appeal is limited to the evidence that was admitted at the lower level. Bringing a motion for fresh evidence requires legal knowledge and often requires the help of a lawyer.

### A. Identifying the evidence

Under Rule [62.10](#) of the [Rules of Court](#), the appellant and the respondent must identify all the existing evidence that is needed on appeal in:

- (a) a Certificate of Appellant (**Form 62F**) and a Certificate of Respondent (**Form 62G**), or
- (b) an Agreement Re Evidence Necessary For Use on Appeal (**Form 62H**) if the parties agree on the evidence to use on appeal.

The appellant must serve the Certificate of Appellant on each respondent, along with a copy of the Notice of Appeal (**Form 62B**), within **15 days** after the Notice of Appeal is issued under Rule 62.06. If a respondent does not then serve the appellant with a Certificate of Respondent within **15 days** after being served with a Certificate of Appellant, the respondent is considered to agree with the Certificate of Appellant.

The appellant must include a copy of these certificates or this agreement in the Appeal Book described in Rule 62.13. These forms are designed to identify the exhibits and the portions of witness testimony that are required for the appeal. The parties should produce only the evidence that is needed. Otherwise, the Court of Appeal may impose costs under Rule 62.10(4).

### B. Ordering a transcript of evidence

Rule 62.11 governs transcripts of evidence and exhibits in civil appeals. These are the written record of the testimony heard, and the exhibits that were admitted into evidence, in the proceedings at the lower level.

After complying with Rule 62.10, the appellant is immediately required to do the following under Rule 62.11:

- (a) order in writing all the evidence that is needed on appeal, or
- (b) if needed, change the order submitted to reflect what is in the Certificate of Appellant (**Form 62F**), the Certificate of Respondent (**Form 62G**), or the Agreement Re Evidence Necessary for Use on Appeal (**Form 62H**) referred to in Rule 62.10.

However, it may not be necessary to order a transcript. If you are the appellant, you should first determine whether, or not, a transcript is needed depending on your type of appeal.

### 1) When a transcript is needed

For civil appeals, transcripts of evidence and exhibits are generally needed on appeal. The recording of court proceedings is provided for under the [Recording of Evidence Act](#), S.N.B. 2009, c. R-4.5. This does not apply to proceedings before commissions, boards, committees, tribunals, or other adjudicative bodies. The Department of Justice and Public Safety of New Brunswick prepares transcripts in criminal and family matters. In civil matters (except family) and small claims appeals, private sector stenographers prepare transcripts.

#### a) Family matters

To order the transcript of a proceeding held in the Court of Queen's Bench, Family Division, you must make a request in writing to the Client Services Office of the Court of Queen's Bench in the judicial district where the proceedings took place (for example, the Judicial District of Moncton).

To make this request, you must use the form linked here: [Transcript Order Form](#). After receiving this form, the Department prepares the transcript.

Transcribing fees are prescribed by the [General Regulation – Recording of Evidence Act](#), N.B. Reg. 2009-143. There is a fee of \$3.00 per page. Once you have sent the Transcript Order Form, you will be asked to give a deposit on the transcript. The Department asks for a 90% deposit to start transcribing. The transcript will not be released until it is paid for in full. If your deposit is higher than the cost of the transcript, the Department says it will refund the overpayment to you. See the Department's website for details by clicking here: [Court Fees – Transcripts](#). Questions about the preparation of transcripts by court stenographers should be referred to the Department.

Under Rule 62.11(2), when the transcript is ready, the court stenographer must immediately:

- (1) send the original transcript to the Registrar; and
- (2) notify:
  - (a) the clerk of the Court of Queen's Bench in the Judicial District where the proceeding began, and
  - (b) all parties to the appeal.

Within **15 days** after being notified by the court stenographer that the transcript is ready, the clerk of the Court of Queen's Bench will send the original file and exhibits to the Registrar.

## b) Other civil matters

In civil matters (except family) and small claims appeals, the appellant must identify the private stenographer who will prepare the transcript in the [Transcript Order Form](#). Once the form is sent to the Court Services Office of the Court of Queen's Bench in the judicial district where the proceedings took place, the court will forward a copy of the recording directly to the private stenographer on payment of the \$20.00 fee. The private stenographer will set a separate fee for the transcript.

### 2) When a transcript is not needed

An appellant is not required to order a transcript of evidence if:

- (a) the parties to the appeal agree to use a Statement of Facts instead of a transcript of evidence and the exhibits, as allowed by Rule 62.12, or
- (b) under Rule 62.22(1)(d) or (e), a judge of the Court of Appeal, on motion by a party to an appeal, orders that a transcript is not needed.

If no evidence needs to be transcribed, the appellant must notify the clerk of the court. Within **15 days** of being notified that no transcript of evidence is needed, the clerk must send the original file and exhibits to the Registrar.

In tribunal appeals, the tribunal generally prepares the evidence for the Court of Appeal on request from the appellant. See **section 4: Appealing from certain courts and tribunals** of this guide for specific information on appeals from the [Workers' Compensation Appeals Tribunal](#) and the [Financial and Consumer Services Tribunal](#), and any statute that applies.

### In short

In most appeals, the evidence is limited to the evidence that was admitted by the court appealed from. Under Rule [62.10](#) of the [Rules of Court](#), the parties to an appeal must identify the relevant evidence that is needed on appeal in a Certificate of Appellant (**Form 62F**), a Certificate of Respondent (**Form 62G**), or an Agreement Re Evidence Necessary For Use on Appeal (**Form 62H**).

Under Rule 62.11, an appellant must order, and pay for, a transcript of evidence by a court stenographer or a private stenographer unless no transcript of evidence is needed.

## 8. Preparing an Appeal Book and an Appellant's Submission

Under Rules [62.13](#) and 62.14 of the [Rules of Court](#), an appellant is responsible for preparing an Appeal Book and an Appellant's Submission. These documents enable the Court of Appeal to hear and determine the appeal. They also help the respondent to respond to the appeal. For specific information on appeals from the Workers' Compensation Appeals Tribunal, see **section 4: Appealing from certain courts and tribunal** of this guide in addition to this practice directive and attached decision on the Court of Appeal's website: [Memorandum from the Registrar on Appeals from Decisions of the Workplace Health, Safety and Compensation Commission](#) and [Decision on Motion](#).

The Appeal Book described in Rule 62.13 is a collection of documents that are relevant to the appeal. These documents are:

- (a) an index of the contents;
- (b) a Certificate of Readiness (**Form 62HH**);
- (c) a copy of:
  - (i) the Notice of Appeal,
  - (ii) any Supplementary Notice of Appeal (**Form 62C**),
  - (iii) any Notice of Cross-Appeal (**Form 62D**), and
  - (iv) any Notice of Contention (**Form 62E**);
- (d) a copy of any order granting leave to appeal;
- (e) a copy of any order on how the appeal should proceed;
- (f) a copy of the pleadings, as amended, including particulars and admissions;
- (g) a copy of the order or decision appealed from; and
- (h) a copy of:
  - (i) the Certificate of Appellant (**Form 62F**), and
  - (ii) any Certificate of Respondent (**Form 62G**), or
  - (iii) instead of copies of these certificates, any Agreement Re Evidence Necessary for Use on Appeal (**Form 62H**); and
- (i) a copy of any affidavit evidence; or
- (j) instead of items (h) and (i), any statement of facts agreed to under Rule 62.12.

The "pleadings" referred to above as item (f) are documents in which a party to civil litigation sets out its claims or responds to claims made by the opposing party. Examples of "pleadings"

include the following forms: Notice of Action, Statement of Claim, Notice of Application, Petition for Divorce, Application (Form 81A), Statement of Defence, Reply, Answer, and Answer and Counterpetition. A Notice of Motion and an affidavit do not qualify for inclusion in the Appeal Book as “pleadings.”

The documents referred to as item (g) are listed in Rule 62.13(1)(f). If the court appealed from did not issue an order, you must obtain the “formal judgment of the trial court” from the clerk in the judicial district where the trial took place. Please see Practice Directive No. 9 (May 20, 2011) by clicking here: [Rules 62 & 37](#).

Under Rule 62.22(1)(c), a motion may be brought to get directions from a judge of the Court of Appeal on the form and contents of the Appeal Book. Unless a judge has given different directions, the Appeal Book should be limited to documents that are listed in Rule 62.13. They should relate to the order or decision appealed from and be placed in the proper order.

The Appellant’s Submission described in Rule 62.14 includes:

- (a) an index of the contents (Part I);
- (b) a short statement of the facts the appellant considers relevant to the appeal, with references to the evidence, if needed (Part II);
- (c) a short statement of the specific errors the appellant says were made in the order or decision appealed from (Part III);
- (d) a short statement of the appellant’s legal position and all cases, statutes, and other authorities (legal precedents) on which the appellant relies (Part IV);
- (e) a short statement of the order the appellant is asking the Court of Appeal to make, including whether the appellant is asking for costs (Part V);
- (f) a list of authorities in the order referred to in the Appellant’s Submission (Schedule A);  
and
- (g) the text of the relevant provisions of statutes and regulations (Schedule B).

Rules 62.13 and 62.14 prescribe the form and contents of the Appeal Book and Appellant’s Submission. Rule 62.25 imposes additional requirements as to format for these documents. Unless a judge of the Court of Appeal orders differently, the Registrar may reject documents that do not comply with these requirements.

Under Rule 62.14.1, if an appeal raises a question of law alone, the appellant may ask for leave of the Registrar to file the briefs he or she filed in the court appealed from, using the style of proceeding of the appeal, instead of preparing an Appellant’s Submission.



Rules 62.15(1)(a) and (b) impose requirements for filing and service. Specifically, the appellant must:

- (1) serve a copy of each of the Appeal Book and the Appellant's Submission on each party to the appeal; and
- (2) unless filing is done electronically, file with the Registrar:
  - (a) the original and 4 copies of each document, and
  - (b) a certificate that the Appeal Book and Appellant's Submission have been served.

These steps must be taken within the following time limits:

- (a) if any evidence must be transcribed, within **30 days** after being notified by the court stenographer that the evidence has been transcribed; or
- (b) if no evidence must be transcribed, within **30 days** after the Notice of Appeal is issued.

Under Rule [78.02\(b\)](#), a fee of \$50.00 is payable when filing an Appellant's Submission.

The Appeal Book and the Appellant's Submission may be filed electronically within the time prescribed by Rule 62.15(1) (see Rule 62.20.2). Instead of filing the documents as described above, the appellant files an electronic version, in Portable Document Format (PDF), by emailing a copy to [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca) within this time. Shortly after filing, the appellant must send – by mail or by courier – payment of the \$50.00 filing fee and an exact paper copy of the electronically filed documents to the Registrar. Proof of service (by affidavit, Acknowledgement of Receipt Card (**Form 18A**), or certificate) must also be provided.

### **In short**

Under Rules [62.13](#) and 62.14 of the [Rules of Court](#), an appellant must prepare, serve and file an Appeal Book and an Appellant's Submission, and provide proof of service. The appellant must comply with Rules 62.13, 62.14, 62.25, [78.02](#) and, if applicable, 62.20.2 with respect to these documents. If filing a document electronically, the appellant must provide the Registrar shortly after with an exact paper copy and, in the case of an Appeal Book, payment of the \$50.00 filing fee.

## 9. Preparing a Book of Essential References

Under Rule [62.20.1](#) of the *Rules of Court*, a party to an appeal who intends to refer to evidence at the hearing of the appeal must prepare a Book of Essential References unless parties agree to a Joint Book of Essential References. These documents enable the judges to find the portions of the transcript of evidence or documents mentioned by the parties at the hearing of the appeal.

Rule 62.20.1 prescribes the form and contents of the Book of Essential References or Joint Book of Essential References. Rule 62.25 imposes additional requirements as to format.

Rules 62.20.1(4) and (5) impose requirements for filing and service. At least **15 days** before the hearing of the appeal, a party who prepares a Book of Essential References for himself or herself or a Joint Book of Essential References on behalf of parties must:

- (a) file the original and 4 copies with the Registrar, and
- (b) serve a copy on each party to the appeal.

Under Rule 62.20.2, a party may file electronically a Book of Essential References or Joint Book of Essential References within the time prescribed by Rule 62.20.1(4) or (5), as the case may be. Instead of filing the original and 4 paper copies, the party files an electronic version, in Portable Document Format (PDF), by emailing a copy to [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca) at least **15 days** before the hearing of the appeal. Shortly after filing, the party must send – by mail or by courier – an exact paper copy of the electronically filed Book of Essential References or Joint Book of Essential References to the Registrar.

### In short

Under Rule [62.20.1](#) of the *Rules of Court*, parties to an appeal who intend to use evidence admitted by the court appealed from must prepare a Book of Essential References or Joint Book of Essential References, whichever the case may be, that complies with Rules 62.20.1 and 62.25. At least **15 days** before the hearing of the appeal, this document must be filed with the Registrar either in paper form under Rule 62.20.1(4) or (5), whichever the case may be, or in electronic format under Rule 62.20.2, with an exact paper copy being sent to the Registrar shortly after filing. Within these **15 days**, it must also be served on each party to the appeal.

## 10. Perfecting an appeal

Under Rule [62.15](#) of the *Rules of Court*, an appellant must “perfect” the appeal. Perfecting the appeal means getting it ready for a hearing date to be set. Specifically, the appellant must serve and file an Appeal Book and an Appellant’s Submission:

- (a) if any evidence must be transcribed, within **30 days** after being notified by the court stenographer that the evidence has been transcribed; or
- (b) if no evidence must be transcribed, within **30 days** after the Notice of Appeal is issued.

Within these **30 days**, the appellant must serve a copy of the Appeal Book and the Appellant’s Submission on each party. Also within these **30 days**, the appellant must file with the Registrar:

- (1) either:
  - (a) the original and 4 copies of each of these documents under Rules 62.15(1)(a) and (b), or
  - (b) an electronic version of both documents by email to [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca) under Rule 60.20.2; and
- (2) a certificate that both documents have been served on each party.

The *Rules of Court* do not prescribe any form for this certificate of service. The certificate should state when the parties were served, who served the parties, how the parties were served (personally, or by prepaid registered mail or prepaid courier), how the server was able to identify the party, etc. Proof of service is usually provided by affidavit, with attached proof of delivery by prepaid registered mail or prepaid courier, by Acknowledgement of Receipt Card (**Form 18A**), or by certificate.

Under Rule [78.02\(b\)](#), a fee of \$50.00 is payable when filing an Appellant’s Submission. If the Appellant’s Submission is filed electronically, shortly after filing, the appellant must send – by mail or by courier – payment of the \$50.00 filing fee and an exact paper copy of the electronically filed Appellant’s Submission to the Registrar.

See **section 8: Preparing an Appeal Book and an Appellant’s Submission** and **section 9: Preparing a Book of Essential References** of this guide for details.

Once an appeal is perfected, it will be scheduled for hearing by a panel of judges of the Court of Appeal. Under Rule 62.15.1, if an appeal is not perfected within **4 months** after the order or decision appealed from, a process is triggered and may result in the Registrar or a judge of the Court of Appeal dismissing the appeal with costs to be paid by the appellant.

### **In short**

An appeal is eligible for hearing by a panel of judges once the appellant has “perfected” it as required by Rule [62.15](#) of the [Rules of Court](#):

- (a) if any evidence is to be transcribed, within **30 days** after being notified by the court stenographer that the evidence has been transcribed; or
- (b) if no evidence is to be transcribed, within **30 days** after the Notice of Appeal is issued.

If an appeal is not perfected within **4 months** after the date of the order or decision appealed from, it may be dismissed with costs to be paid by the appellant under Rule 62.15.1.

## 11. Discontinuing an appeal

An appellant may discontinue (abandon) his or her appeal at any time under Rule [62.27](#) of the [Rules of Court](#). This also applies to a cross-appeal.

To discontinue an appeal, an appellant must file a Notice of Discontinuance (**Form 62I**) with the Registrar and serve it on each party to the appeal.

Under Rule 62.27(2), if an appeal is discontinued:

- (1) subject to the result of any cross-appeal, the order or decision appealed from may remain in effect as if a Notice of Appeal had not been issued; and
- (2) the appellant may be ordered to pay costs of the appeal.

Costs of a discontinued appeal are assessed under Rule [59.07\(4\)](#). Rule 59.11 describes the steps to follow. A respondent who is entitled to an assessment of costs must:

- (1) file a bill of costs with the Registrar as the assessing officer;
- (2) get a Notice of Appointment to Assess Costs (**Form 59A**) from the Registrar; and
- (3) serve the notice and a copy of the bill of costs on the appellant and every party interested in the assessment at least **7 days** before the date of the assessment.

Under Rule 59.11(8)(b), the Registrar's assessment may be appealed by motion to a judge of the Court of Appeal in the manner and within the time prescribed by Rule 62.30. See **section 15: Appealing from the Registrar or the Court of Appeal** of this guide for more information.

### In short

An appeal or a cross-appeal may be discontinued at any time by Notice of Discontinuance (Form 62I) under Rule [62.27](#) of the [Rules of Court](#). This ends the appeal or cross-appeal. A party who discontinues an appeal or a cross-appeal is liable to pay costs of the appeal under Rule [59](#).

## 12. Responding to an appeal

This section provides an overview of the steps a respondent to an appeal must follow under the [Rules of Court](#).

### A. Cross-appeal or contention

A respondent may agree entirely with the order or decision appealed from and the reasons given by the court. However, a respondent who disagrees, in part, with the order or decision or the reasons given:

- (a) may cross-appeal, as described in [62.07](#), or
- (b) in the absence of a cross-appeal, must contend, as described in Rule 62.08.

#### 1) Cross-appeal

A respondent may wish to challenge only part of an order or a decision but to ask for the rest to be affirmed on appeal. For example, a respondent may agree with the trial judge's decision on all the issues raised by a Petition for Divorce, except the judge's division of pension funds.

A respondent who disagrees with part of the order or decision appealed from should:

- (a) within **15 days** after being served with a Notice of Appeal, serve a Notice of Cross-Appeal (**Form 62D**) on any party whose interests may be affected; and
- (b) immediately after serving the Notice of Cross-Appeal, file it with the Registrar.

If the appellant got leave under Rule 62.03 to appeal from an order or a decision for which leave to appeal was needed, the respondent does not need leave to cross-appeal that order or decision.

A cross-appeal may be discontinued at any time. See Rule 62.27 of the *Rules of Court* and **section 11: Discontinuing an appeal** of this guide for details.

#### 2) Contention

A respondent may agree with the judge's ultimate decision or order, but may contend (argue) that:

- (a) the order or decision should be affirmed for reasons other than those given, or
- (b) if the appeal is allowed in whole or in part, he or she is entitled to different relief than the relief given by the judge.

In this case, if there has been no cross-appeal, the respondent must serve and file a Notice of Contention (**Form 62E**) as required by Rule 62.08. Specifically, the respondent must:

- (a) within **15 days** after being served with a Notice of Appeal (**Form 62B**), serve the Notice of Contention on any party whose interests may be affected; and
- (b) immediately after serving the Notice of Contention, file it with the Registrar.

### **B. Respondent's Submission**

Every respondent must prepare a Respondent's Submission as required by Rule 62.19. However, under Rule 62.19.1, if the appeal raises a question of law alone, the respondent may seek leave of the Registrar to file the briefs he or she filed in the court appealed from, using the style of proceeding of the appeal, instead of preparing a Respondent's Submission.

The Respondent's Submission described in Rule 62.19 includes:

- (a) an index of the contents (Part I);
- (b) a statement of the facts in Part II of the Appellant's Submission the respondent accepts as correct and those the respondent does not accept as correct, and a short statement of any additional facts on which the respondent relies, with references to the evidence, if needed (Part II);
- (c) the respondent's position on each issue raised by the appellant, followed by a short statement of the argument, law, and authorities on which the respondent relies (Part III);
- (d) additional issues raised by the respondent, each of which must be followed by a short statement of the argument, law, and authorities on which the respondent relies (Part IV);
- (e) a short statement of the order the respondent is asking the Court of Appeal to make, including whether the respondent is asking for costs (Part V);
- (f) a list of authorities appearing in the order referred to in the Respondent's Submission (Schedule A); and
- (g) the text of the relevant provisions of statutes and regulations (Schedule B).

Rule 62.19 prescribes the form and contents of the Respondent's Submission. Rule 62.25 imposes additional requirements as to format. Unless a judge of the Court of Appeal orders differently, the Registrar may reject a Respondent's Submission if it does not comply with these requirements.

Rule 62.20 prescribes how to file and serve a Respondent's Submission. To comply, unless filing electronically, each respondent must:

(a) file the original and 4 copies with the Registrar, and

(b) serve a copy on each party to the appeal.

The respondent must take these steps no later than **the 20<sup>th</sup> day of the month before the month in which the appeal is eligible to be heard**. Under Rules 62.15(2) and 62.17, once an appeal is perfected, it is eligible to be heard in the second month – except July, August or December – after the month in which the appeal is perfected. For example, if an appeal is perfected in September, it becomes eligible to be heard in November of the same year. In this case, the Respondent's Submission is to be filed and served on or before October 20<sup>th</sup>. Likewise, if an appeal is perfected in May, it becomes eligible to be heard the following September. The Respondent's Submission must be filed and served on or before August 20<sup>th</sup>.

Under Rule [78.02\(c\)](#), a filing fee of \$25.00 is payable when a Respondent's Submission is filed.

The Respondent's Submission may be filed electronically within the time prescribed by Rule 62.20 (see Rule 62.20.2). Instead of filing the original and 4 copies as described above, the respondent files an electronic version, in Portable Document Format (PDF), by emailing a copy to [nbca-canb@gnb.ca](mailto:nbca-canb@gnb.ca) no later than **the 20<sup>th</sup> day of the month before the month in which the appeal is eligible to be heard**. Shortly after filing, the respondent must send – by mail or by courier – payment of the \$25.00 filing fee and an exact paper copy of the electronically filed Respondent's Submission to the Registrar.

The Registrar may reject a Respondent's Submission if it does not comply with the *Rules of Court*. If the Respondent's Submission is rejected, the respondent may not be entitled to present an oral argument at the appeal hearing unless decided otherwise by the Court of Appeal or a judge thereof.



## In short

A respondent to an appeal,

- (a) within **15 days** after being served with a Notice of Appeal (**Form 62B**),
  - (i) should serve and file a Notice of Cross-Appeal (**Form 62D**) under Rule [62.07](#) of the [Rules of Court](#) if he or she disagrees with part of the order or decision appealed from, or
  - (ii) must serve and file a Notice of Contention (**Form 62E**) under Rule 62.08 if he or she disagrees with the reasons given for the order or decision, or seeks different relief should the appeal be allowed; and
  
- (b) no later than **the 20<sup>th</sup> day of the month before the month in which the appeal is eligible to be heard**, must file and serve, as required by Rule 62.20, the Respondent's Submission described in Rule 62.19.

A respondent must prepare, file and serve a Respondent's Submission and comply with Rules 62.19, 62.20, 62.25 and [78.02](#). The Respondent's Submission may be filed electronically as described in Rule 62.20.2, with an exact paper copy and the \$25.00 filing fee being sent to the Registrar shortly after filing. Under Rule 62.19.1, if an appeal raises a question of law alone, the Registrar may allow a respondent to file previous submissions, as amended, instead of a Respondent's Submission.

### 13. Preparing for the appeal hearing

Once an appeal is perfected as required by Rule [62.15](#) of the *Rules of Court*, it may be set down (scheduled) for hearing by the Court of Appeal. An appeal is heard by a panel of three judges or, in exceptional cases, by a larger panel. Judges hear appeals during “sittings” of the Court. Regular sittings begin on the second Tuesday of each month (except July, August and December, when the Court does not hold regular sittings) according to Rule 62.16.

Under Rule 62.17, the Registrar prepares a [List of Cases](#) under the Chief Justice’s instructions. Unless the Chief Justice orders differently, a perfected appeal is scheduled for hearing in the second month following the month in which it is perfected (except July, August and December). For example, if an appeal is perfected in September, it will be scheduled for hearing in November. If an appeal is perfected in May, it will be scheduled for hearing in September. A party to an appeal may ask for an early hearing of the appeal under Rule 62.18. The Court of Appeal or a judge of that court may, with the Chief Justice’s approval, order an early hearing and give directions.

The Registrar provides the parties to an appeal with a copy of the List of Cases for the month in which their appeal is scheduled to be heard. This list shows the date and time of the appeal hearing and may also show the names of the panel members assigned to hear the appeal, and the number of the courtroom where the hearing will take place.

Appeals are usually heard in person in the Court of Appeal, in Fredericton. However, under Rule 62.02.1, the Chief Justice may order an appeal be heard by videoconference. Please check the [Court of Appeal’s website](#) for any [Updated COVID-19 Directive](#) that may apply. Although the Chief Justice decides how an appeal is heard, you may ask to appear by video by contacting the Registrar, Caroline Lafontaine, at (506) 453-2452 or [caroline.lafontaine@gnb.ca](mailto:caroline.lafontaine@gnb.ca), as soon as possible before the hearing date.

A hearing is an opportunity for the parties to an appeal to make oral arguments to the panel of judges who will decide the appeal. In preparation for the hearing, the panel reads the transcript of evidence, the Appeal Book, and the submissions filed by the parties. When the hearing starts, the panel already knows what the case is about and what the parties will argue.

Rule 62.14.2 imposes a time limit for oral argument. Unless a judge or the panel orders differently, each party to an appeal has 45 minutes to make the main argument, and an appellant has 10 minutes to reply. You should spend your time at the hearing making your argument rather than reading documents you have already filed. If a judge asks you a question, you should do your best to answer. If you are a respondent, do not repeat what the appellant said in argument. You should instead explain why you think the order or decision appealed from should be upheld.

The panel may decide the appeal at the end of the hearing, or reserve its decision, in which case the parties will be advised of the decision at a later date.

Hearings before the Court of Appeal are public unless a statutory provision or an order of the Court requires that a hearing be held *in camera* (closed to the public). Members of the public or the accredited news media may attend these hearings in person (subject to any COVID-19 restrictions in place) or, in consultation with the Registrar, by video or telephone conference.

### **In short**

Once perfected, an appeal is placed on the [List of Cases](#) described in Rule [62.17](#) of the [Rules of Court](#). These cases are scheduled to be heard by a panel of judges of the Court of Appeal. Appeals are usually heard in person in Fredericton, but they may be heard by video or telephone conference. A party to an appeal may appear by video or telephone conference if arrangements are made in advance with the Registrar and the Chief Justice approves of those arrangements. At the hearing, a party has limited time to make oral arguments and should use that time wisely. The panel may decide the case at the hearing or reserve its decision.

## 14. Getting a decision

When a panel of judges of the Court of Appeal hears an appeal, it may give its decision either orally at the hearing, or later in writing. When a written decision on an appeal is issued, it may be either in the form of a disposition (the result of the appeal) with reasons (the detailed justification) to follow, or in the form of a full judgment with reasons.

Under Rule [62.28](#) of the [Rules of Court](#), the Registrar either notifies the parties in writing of the result of the appeal when the Court gave its decision orally, or sends copies of the written decision or order to the parties or their lawyers, the court appealed from, and any other person as authorized by the Chief Justice. It may take months before a decision under reserve is made and written by the panel, and the written decision is sent by the Registrar. Make sure the Registrar has your correct address even after the hearing, or you may not be informed of the result of your appeal.

Decisions of the Court of Appeal are available to the public in the interest of open justice and to provide guidance to lower courts on legal questions. The Court publishes its judgments and rulings on motions in English and French on its website: see [decisions](#) and [rulings on motions](#). In general, the Court's decisions are also published by the Canadian Legal Information Institute (CanLII) on its website: [Court of Appeal of New Brunswick – CanLII](#). They may also be found through paid subscriptions to legal research databases.

In some cases, the Court of Appeal prioritizes the privacy interests of participants in the justice system over the public interest in open justice and protects sensitive personal information from being disclosed in its decisions. This is the case when publication of certain information is restricted by law. In family cases, the Court's practice is to use initials for the names of the parties and their children instead of their full names in its decisions.

### **In short**

The Court of Appeal issues its decisions either orally immediately after the hearing, or more often in writing at a later date. After a decision is issued, the Registrar is responsible for sending the decision or order in writing to the parties to the appeal and the court or tribunal appealed from. Decisions of the Court of Appeal are published on the Internet.

## 15. Appealing from the Registrar or the Court of Appeal

Decisions of the Registrar and certain decisions of the Court of Appeal may be appealed. This section outlines which appeals may be available.

### A. Decision of the Registrar

The Registrar has the general authority to reject a document, in whole or in part, with or without allowing the party who submitted it for filing to change it. The Registrar may exercise this authority for specific reasons, including non-compliance with the [Rules of Court](#). See, on this topic, the [Court of Appeal's website](#) for a [memo from the Registrar](#) on her authority to reject documents under Rule [62.29.1](#) of the *Rules of Court*.

The Registrar is also specifically authorized to reject an Appeal Book if it does not comply with Rule 62.13 or is hard to read. Unless a judge of the Court of Appeal orders differently, the Registrar may also reject an Appeal Book, an Appellant's Submission, a Respondent's Submission or a Book of Essential References if it does not comply with Rule 62.25.

Decisions of the Registrar, including decisions made under Rule 62.13(2), 62.25(4) or 62.29.1, may be appealed. Under Rule 62.30, a person who is affected by a decision of the Registrar relating to a matter in the Court of Appeal may appeal from the decision to a judge of the Court of Appeal. To do so, the person must serve a Notice of Motion (**Form 37A**) with an affidavit in support:

- (a) within **15 days** after the date of the decision and **2 days** before the hearing of this appeal, or
- (b) within any other period allowed by a judge of the Court of Appeal.

A judge's decision on appeal from a decision of the Registrar may not be appealed.

### B. Decision of a judge of the Court of Appeal

Judges of the Court of Appeal may make orders or decisions dealing with the application of Rule 62. For example, a single judge may (a) decide whether leave to appeal should be granted; (b) strike out (order removed from the record) a document, in whole or in part, without giving the party who filed it permission to change it; or (c) give directions on appeal. Under Rule 62.20.3, an order or decision made by a single judge of the Court of Appeal under Rule 62 may not be appealed to the Court of Appeal.

### C. Judgment of the Court of Appeal

There is no automatic right to appeal to the [Supreme Court of Canada](#) from a decision of the Court of Appeal in a civil case. Leave to appeal must be obtained. Under section 40 of the [Supreme](#)

[Court Act](#), R.S.C. 1985, c. S-26, the Supreme Court may grant leave to appeal a final judgment of the Court of Appeal. Sections 25 and 26 of the [Rules of the Supreme Court of Canada](#), SOR/2002-156, describe how to apply for leave to appeal to the Supreme Court. According to paragraph 58(1)(a) of the *Supreme Court Act*, an application for leave to appeal is to be served on the other parties to the case and filed with the registrar of the Supreme Court within **60 days** of the date of the judgment appealed from.

The Supreme Court grants leave to appeal only in rare cases, such as where a case involves a matter of public interest, or some important question of law. Few applications are allowed. If you wish to apply for leave to appeal to the Supreme Court, please see that court's website by clicking [here](#) and try to consult a lawyer as soon as possible.

Under section 37 of the *Supreme Court Act*, an appeal to the Supreme Court may be taken from a final judgment of the Court of Appeal if the Court of Appeal is of the opinion that the appeal involved a question that should be submitted to the Supreme Court for decision. There are strict criteria to get leave of the Court of Appeal to appeal from one of its final judgments to the Supreme Court. Throughout the country, section 37 of the *Supreme Court Act* is rarely used nowadays because courts of appeal have generally decided that the Supreme Court should determine which cases it will hear.

### **In short**

Rule [62.30](#) of the [Rules of Court](#) entitles a person who is affected by a decision of the Registrar to appeal the decision to a judge of the Court of Appeal. Under Rule 62.20.3, there is no right to appeal a decision made by a single judge of the Court of Appeal under Rule 62.

In civil cases, leave is needed to appeal a decision of the Court of Appeal to the [Supreme Court of Canada](#) under section 37 or 40 of the [Supreme Court Act](#), R.S.C. 1985, c. S-26. Although some resources are available on the Supreme Court's [website](#), a lawyer should be consulted at that stage.

## Schedule A

This Schedule contains instruction sheets on how to complete a Notice of Motion for Leave to Appeal (Form **62A**) and a Notice of Appeal (**Form 62B**). Please refer to them before contacting the office of the Registrar for assistance.

## **Instruction sheet: Notice of Motion for Leave to Appeal (Form 62A)**

The official English version of **Form 62A**, as prescribed by the [Rules of Court](#), may be found by clicking here: [Form 62A](#). An unofficial “fillable” version of this form is also available on the Court of Appeal’s website: [Forms of Court](#).

### ***(Court, Court File Number, Style of Proceeding)***

The name of the court, court file number and style of proceeding (which sets out the names of the parties) identify a case within the court system. This top part of **Form 62A** should look like this:

Court File No. \_\_\_\_\_

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

**NAME OF INTENDED APPELLANT,**

Intended Appellant (Plaintiff/Defendant),

- and -

**NAME OF INTENDED RESPONDENT,**

Intended Respondent (Plaintiff/Defendant).

### **NOTICE OF MOTION FOR LEAVE TO APPEAL (FORM 62A)**

#### **Court File No.**

Leave this space blank. Do not insert a number. Upon receipt of your Notice of Motion for Leave to Appeal, the Registrar will insert a file number here. Once a file number has been assigned, include that number on every court form you use in the Court of Appeal.



## Names of intended appellant and intended respondent

Give the names of the intended appellant and the intended respondent in block letters. In parentheses, as shown, specify whether a party was the plaintiff or defendant, or the applicant or respondent, in the proceedings below.

**The plaintiff (or as may be) will apply under Rule 62.03 to the Honourable the Chief Justice of New Brunswick, or such other Judge of the Court of Appeal as may be designated by the Chief Justice, in the Justice Building, Queen Street, Fredericton, N.B., on the . . . . . day of . . . . . . . . . ., 20 . . . ., at . . . . a.m. (or p.m.) for leave to appeal from the order (or decision) of the Honourable . . . . . Justice . . . . ., dated the . . . . day of . . . . ., 20 . . . ., (state the relief sought, any irregularity complained of or any objection intended to be relied on, specifying the grounds intended to be argued, including reference to any statutory provision or rule intended to be invoked);**

You must state why you intend to appeal by setting out, in point form, why you think the decision or order you wish to appeal from is wrong. You must also state what you want the Court of Appeal to do, including whether you want the Court of Appeal to order costs in your favour. You must specify any section in legislation or any subrule of the *Rules of Court* on which you intend to rely.

**(Where the plaintiff (or as may be) applies for leave to appeal from an interlocutory order or decision) The plaintiff (or as may be) will apply in the alternative for an extension of time to issue and serve a Notice of Appeal in the event that the judge hearing the motion rules that the order (or decision) is not interlocutory;**

This is useful if you intend to apply for leave to appeal from an interlocutory order or decision under Rule 62.03(1)(a). See **section 3: Determining whether leave is needed to appeal** of this guide for details.

**Upon the hearing of the motion the following affidavits or other documentary evidence will be presented: (List the affidavits or other documentary evidence to be used.)**

List, in point form, each affidavit and/or other written document that you plan to use as evidence to support your application for leave to appeal at the hearing of the motion.

## Date and signature

If you are not represented by a lawyer, give the name of the town/city where the form is dated, and date and sign the form.

**Name of solicitor for plaintiff (or as may be) (or Name of plaintiff (or as may be), where not represented by a solicitor)**

Write your name if you are not represented by a lawyer.

**Name of solicitor's firm (*if applicable*)**

If you are not represented by a lawyer, leave this space blank.

**Address for service**

Give your mailing address (i.e., the address at which the other party and the Registrar may deliver documents to you). If you do not provide the Registrar with the correct contact information, or if you do not inform the Registrar and the intended respondent of changes to that information, you will not receive important information about your motion.

**E-mail address (*if any*)**

Give your email address. If you do not have one, leave this space blank.

**Telephone number**

Give your telephone number.

**Fax number (*if any*)**

Give your fax number. If you do not have one, leave this space blank.

## Instruction sheet: Notice of Appeal (Form 62B)

The official English version of **Form 62B**, as prescribed by the [Rules of Court](#), may be found by clicking here: [Form 62B](#). An unofficial “fillable” version of this form is also available on the Court of Appeal’s website: [Forms of Court](#).

### ***(Court, Court of Appeal File Number, Style of Proceeding)***

The name of the court, court file number and style of proceeding (which sets out the names of the parties) identify a case within the court system. This top part of **Form 62B** should look like this:

Court of Appeal File No. \_\_\_\_\_

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

**NAME OF APPELLANT,**

Appellant,

- and -

**NAME OF RESPONDENT,**

Respondent.

### **NOTICE OF APPEAL (FORM 62B)**

#### **Court of Appeal File No.**

Leave this space blank. Do not insert a number. Upon receipt of your Notice of Appeal, the Registrar will insert a file number here. Once a file number has been assigned, include that number on every court form you use in the Court of Appeal.

#### **Names of appellant and respondent**

Give the names of the appellant and the respondent in block letters.

**The appellant appeals to the Court of Appeal from the decision (or order) of . . . . . (the court appealed from). . . . . dated the . . . . . day of . . . . . , 20. .**

Give the name of the court from whose decision or order you are appealing (the name of the court appealed from), and the date of that decision or order.

**The appellant asks that the decision (or order as may be) be reversed (or as may be).**

or

**The appellant asks that the decision (or order as may be) be varied (set out the nature of the variance requested).**

or

**The appellant asks that the decision (or order as may be) be set aside and that a new hearing or trial be held (or as may be).**

Specify which of the following three options you choose.

**The appellant's grounds for this appeal are as follows: . . . . . (set out the grounds clearly but briefly) . . . . .**

Rule [62.05\(1\)](#) of the *Rules of Court* requires that a Notice of Appeal set out, among other things, the grounds of appeal. The grounds of appeal are the reasons why you are appealing the decision or order. Give the reasons why you wish to have the decision reversed, varied, or set aside. You should give your reasons clearly and briefly. Try to summarize, in point form, why you intend to argue the court appealed from reached the wrong decision, stating each error (if you think there were more than one) you think it committed. This is not the place to write a long argument since you will have an opportunity to present your case in writing in the Appellant's Submission, and orally at the hearing, if your appeal proceeds.

#### **Date and signature**

- A. Name of the town/city where the form is dated and signed.
- B. Your lawyer must date (in year/month/day format) and sign the form. If you are not represented by a lawyer, you must sign the form. If you cannot write, you must affix your mark in the presence of a witness. The name and address of the witness must be given.

**Name of solicitor for appellant (or Name of appellant, where not represented by a solicitor)**

Provide the name of your lawyer or your name if you are not represented by a lawyer.

**Name of solicitor's firm (*if applicable*)**

Provide the name of your lawyer's firm. If you are not represented by a lawyer, leave this space blank.

**Address for service**

Give your mailing address (i.e., the address at which the other party and the Registrar may deliver documents to the appellant). If you do not provide the Registrar with the correct contact information, or if you do not inform the Registrar and the respondent of changes to that information, you will not receive important information about your appeal.

**E-mail address (*if any*)**

Provide your email address. If you do not have one, leave this space blank.

**Telephone number**

Provide your telephone number.

**Fax number (*if any*)**

Provide your fax number. If you do not have one, leave this space blank.

## Schedule B

### Civil Appeal Flowchart: General Procedure

**Intended appellant determines whether leave to appeal to the Court of Appeal is required**  
[Rule 62.03(1) of the *Rules of Court* or applicable statute and regulations]:

**If leave to appeal required:**

Intended appellant must seek leave by taking these steps:

- file Notice of Motion for Leave to Appeal (**Form 62A**) with supporting affidavit with Registrar,
- obtain hearing date from Registrar,
- serve **Form 62A** within **7 days** from date of decision sought to be appealed (except in appeals from Financial and Consumer Services Tribunal) [Rule 62.03(2)],
- pay \$50.00 filing fee,
- file Record on Motion at least **48 hours** before hearing of motion [Rule 37.05], and
- attend hearing on motion.

**If leave to appeal granted:**

Appellant must issue Notice of Appeal (**Form 62B**) within **7 days** of date of order granting leave unless appellant obtained extension of time (except in small claims appeals) [Rules 62.03(1.1) and 62.05(2)(b)]

**If leave to appeal not required:**

Appellant must issue Notice of Appeal (**Form 62B**) within **30 days** of decision appealed from (except in workers' compensation appeals) and pay \$50.00 filing fee [Rules 62.05(1), 62.05(2)(a), 62.06(1) and 78.02(a)].

In **workers' compensation appeal** (where leave to appeal not required), appellant must:

- apply to Appeals Tribunal for statement of facts within **30 days** after receipt of notice of decision,
- file Notice of Appeal (**Form 62B**) within **30 days** of receipt of statement of facts, and
- pay \$50.00 filing fee

[s. 23 of *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* and Rules 62.05(1), 62.05(2)(a), 62.06(1) and 78.02(a)]

**Within 15 days of issuing Form 62B, appellant must:**

- serve all affected parties with copy of **Form 62B** and Certificate of Appellant (**Form 62F**),
- file **Forms 62B** and **62F** with Registrar, with proof of service, and
- send copy of **Form 62B** to clerk of original judicial district or court appealed from [Rule 62.06(3)].

**Within 15 days after being served with Form 62B, respondent may:**

- cross-appeal using Notice of Cross-Appeal (**Form 62D**) [Rule 62.07], or
- contend using Notice of Contention (**Form 62E**) [Rule 62.08].

**Within 15 days after being served with Form 62F:**

- respondent:
  - serves Certificate of Respondent (**Form 62G**) on appellant, or
  - is considered to have confirmed **Form 62F**; or
- parties file Agreement Re Evidence Necessary for Use on Appeal (**Form 62H**) [Rule 62.10].

After compliance with Rule 62.10 (except in tribunal appeals such as workers' compensation appeals):

- appellant must **immediately**:
  - order all evidence required on appeal, or
  - if evidence already ordered, change order to comply with certificates or agreement described in Rule 62.10 [Rule 62.11]; or
- parties may agree to Statement of Facts [Rule 62.12].

**Within 30 days of transcript of evidence being prepared or, if no transcript required, within 30 days of Form 62B being issued, appellant must perfect appeal by taking these steps [Rule 62.15]:**

- prepare Appeal Book [Rules 62.13 and 62.25], including Certificate of Readiness (**Form 62HH**), and Appellant's Submission [Rules 62.14 and 62.25],
- serve Appeal Book and Appellant's Submission on each party,
- file with Registrar:
  - unless documents filed electronically [Rule 62.20.2(1)], original and 4 copies of Appeal Book and Appellant Submission, and
  - certificate of service of Appeal Book and Appellant's Submission; and
- pay \$50.00 filing fee [Rule 78.02(b)].

**Amending grounds of appeal:**

**Before appeal is perfected**, appellant may amend grounds of appeal in **Form 62B** by:

- serving Supplementary Notice of Appeal (**Form 62C**) on each party, and
- filing with Registrar:
  - **Form 62C**, and
  - proof of service [Rule 62.09(1)].

**Once appeal is perfected** [Rule 62.15(2)], if appeal neither dismissed nor discontinued, appellant must apply for leave by Notice of Motion (**Form 37A**) to amend grounds of appeal in **Form 62B** [Rules 37 and 62.09].

**If appeal not perfected within 4 months of decision appealed from**, Registrar sends Request for Status Report (**Form 62J**) [Rule 62.15.1(1)].

Within **30 days** of **Form 62J**, appellant or appellant's lawyer must:

- respond to Registrar, and
- send copy of response to other parties or their lawyers [Rule 62.15.1(2)].

If Notice of Status Hearing (**Form 62K**) issued and appeal not perfected as required [Rule 62.15] or discontinued by Notice of Discontinuance (**Form 62I**) [Rule 62.27] before status hearing, self-represented parties and lawyers must attend, and represented parties may attend, status hearing [Rule 62.15.1(6)]. Appeal may be dismissed at status hearing [Rule 62.15.1(7)(c)].

If date set for perfecting appeal and appeal not perfected by that date, appeal will be dismissed [Rule 62.15.1(8)]. Appellant whose appeal is dismissed must pay costs, unless judge orders otherwise [Rule 62.15.1(9)].

**By day 20 of month before month in which appeal is eligible for hearing**, respondent must prepare Respondent's Submission [Rules 62.19 and 62.25] and:

- unless Respondent's Submission filed electronically [Rule 62.20.2(2)], file original and 4 copies with Registrar,
- serve each party, and
- pay filing fee of \$25.00 [Rules 62.20 and 78.02(c)].

Attend appeal hearing

Registrar to send copies of written order and decisions of Court of Appeal [Rule 62.28]