

# **Appeals in the Child Welfare Context**

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## APPEALS IN THE CHILD WELFARE CONTEXT

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### INTRODUCTION

This paper is intended to be a broad overview of the process and substance of an appeal in the child welfare context. This paper will present the practical steps in the conduct of an appeal as well as some of the current case law relating to appeals in the child welfare context.

### PRACTICAL STEPS

The starting point on any appeal is the filing of the Notice of Appeal. The regulations<sup>1</sup> provide that a notice of appeal shall be filed within 30 days after the making of the Order<sup>2</sup>, and that the Notice of Appeal will be in form 40<sup>3</sup>. The Notice of Appeal must be served on all guardians and former guardians of child(ren) as well the Director and the child if the child is over the age of 12 or the subject of a secure services order. All Service must be personal, unless otherwise directed by the Court of Queen's Bench<sup>4</sup>.

Further the duty to order the transcripts lies with the Appellant<sup>5</sup> and transcripts of the appeal must be filed and served on all parties within 3 months of the filing of the Notice of Appeal, unless an order extending that time, was granted prior to the expiry of the 3 month period. It is worth noting that the from time to time, the Director has agreed to extend this deadline notwithstanding the three month period has elapsed and that generally the Justices of the Court of Queen's Bench have been willing to grant consent orders in this regard.

While the regulations set a limit of 30 days for the time to file and serve the Notice of Appeal, it should be noted that there is the possibility of filing a Notice of Appeal outside of the appeal period where the proper circumstances exist. In the case of *Lynch v. Checker Cabs Ltd.*<sup>6</sup>, the Alberta Court of Appeal cited with approval the test for setting extending the time for filing a Notice of Appeal as

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<sup>1</sup> ALBERTA REGULATION 39/2002, Child, Youth and Family Enhancement Act, COURT RULES AND FORMS REGULATION

<sup>2</sup> Rule 5.1(3)

<sup>3</sup> Rule 5.1(1)(a)

<sup>4</sup> Rule 5.1 (2)

<sup>5</sup> Rule 5.4(1)

<sup>6</sup> [2000] A.J. No. 1175, 277 A.R. 175