

The Platform for a Civil Appeal

Prepared For: Legal Education Society of Alberta

Court of Appeal Practice

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THE PLATFORM FOR A CIVIL APPEAL

[1] After a civil appeal is commenced, the next task for the appellant is the preparation of the documentary platform on which the appeal will be argued. The platform consists of two key components:

The Appeal Record

The Extracts of Key Evidence

The requirements for each of these components is set out in detail in the *Rules*, and are summarized in the Appendices to this paper.

[2] The appeal platform is key, because it reflects the premise on which appeals are decided: an appeal is usually decided on the record before the trial court. That principle is inherent in R. 14.70:

No new evidence without order

14.70 Unless an order is granted under rule 14.45 [*Application to admit new evidence*] permitting the reliance on new evidence, appeals will be decided on the record before the court appealed from.

Unless fresh evidence is admitted by order (which is rare) the Court of Appeal will decide the appeal based on the evidence before the trial court. The appeal platform is intended to place before the Court the portions of that evidence needed to resolve the appeal.

The Appeal Record

[3] The first document to be prepared after the Notice of Appeal is filed is the Appeal Record. It consists of 4 components, set out in R. 14.16 and 14.18:

Table of Contents

Part 1 – Pleadings,

Part 2 – Final Documents

Part 3 – Transcripts

If the Appeal Record is ordered from Transcript Management, counsel can depend on it for assembling the necessary documents in the correct format. The form for ordering an Appeal Record can be found on the Court website. However, it is increasingly common for counsel to prepare the Appeal Record in house, in which event it is very important that the responsible paralegal and counsel read the *Rules* in detail.

[4] **Table of Contents:** The requirements for the Table of Contents are straightforward and are set out in R. 14.18(1)(a):

(a) a Table of Contents at the beginning of every volume, listing separately each document and showing the page number where the document can be found. It includes the Table of Contents of the transcripts, even though they are separately produced. See the examples at <https://www.albertacourts.ca/court-of-appeal/publications-forms>.

[5] **Part 1 - Pleadings.** The detailed requirements are:

14.18(1)(b) Part 1 – Pleadings, which must contain the relevant pleadings in the action in chronological order, including

- (i) the relevant pleadings, but the last version only of any pleading that was amended before trial,
- (ii) any amendments to pleadings made at trial, and
- (iii) if the appeal concerns a decision arising from an application, a copy of the application;

One commonly overlooked requirement is that only the “last version” of any pleading that has been amended multiple times should be included. (Occasionally the various versions of the amended pleading will be an issue in the appeal, in which case the other versions can be included in the Appeal Record or the Extracts of Key Evidence, whichever is most convenient.)

[6] Generally speaking, interlocutory applications do not form a portion of the appeal record for the appeal from the substantive decision. However, if the outcome of any particular application is relevant to the appeal, it should be included with the other pleadings.

[7] **Part 2 - Final Documents.** This portion of the rule contains a lengthy list of documents, although most appeals will not have all of them:

14.18(1)(c) Part 2 – Final Documents, which must include:

- (i) the written or transcribed reasons
 - (A) that led to the decision being appealed, including the reasons for any decision rendered during the trial that is relevant to the disposition of the appeal, and
 - (B) of any prior decision of a judge, master or tribunal that led to the decision now appealed,