

Appellate Judgments and Costs

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Court of Appeal Practice

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APPELLATE JUDGMENTS AND COSTS

[1] This paper deals with two topics that often arise at the end of an appeal: the drafting of the judgment resulting from the decision, and the costs consequences of the appeal.

Appellate Judgments

[2] With respect to the drafting of judgments, the appeal rules follow the usual format of following the Queen's Bench practice to the extent possible:

14.77(1) Unless otherwise directed, Part 9 [*Judgments and Orders*], Division 1 [*Preparation and Entry of Judgments and Orders*] applies to the preparation and entry of judgments and orders of the Court of Appeal.

Whenever possible, the objective of the rules is to have only one procedure for any particular practice requirement.

[3] The basic guidelines for drafting the judgment are found in R. 9.2. Unless the Court otherwise directs, the successful party is responsible for preparing the draft judgment. The protocol is:

- within 10 days after pronouncement the successful party is to circulate a draft judgment;
- if the successful party fails to do so, any other party may draft the judgment;
- the other parties then have 10 days to approve the draft, or object, providing particulars;
- if the other parties do not respond to the circulated draft within 10 days, upon proof of service the judgment can be presented for signature and filing without their approval.

If this procedure is followed, the vast majority of appeal judgments should be settled and entered without difficulty.

[4] Occasionally disputes will arise over the proper drafting of the judgment, in which case resort must be had to R. 9.3, which merely says that disputes will be resolved by the Court. With respect to an appeal judgment, that means the panel of the Court which rendered the decision, although R. 14.77(2) allows the panel to delegate settling the judgment to one of the judges.

[5] If counsel are unable to resolve the form of the judgment, the first step should be to contact the Case Management Officer. Often the CMO will be able to provide sufficient guidance and input to enable the parties to come to an agreement. If that does not work, one of the parties should write to the Court seeking a ruling. The letter should focus on the specific area of disagreement, and should include copies

of the competing drafts. Issues like this are invariably dealt with based on written submissions, without oral argument, and in due course the Court will provide a ruling.

[6] Rule 9.5(2) provides that the judgment must be entered within 3 months of pronouncement. (Contact the CMO if this deadline is missed.) Once the draft judgment has been approved by counsel, the Registrar will sign it on behalf of the Court, and enter it: R. 14.77(3), 9.4.

[7] The form of Court of Appeal judgments is set by R. 9.1:

9.1(1) Judgments and orders must be divided into consecutively numbered paragraphs.

(2) Every judgment and order must include

- (a) the date on which and the location at which it was pronounced,
- (b) the name of the master or judge who made it, and
- (c) the date of entry.

Apart from these formal requirements, the Rules are silent on the actual contents of the judgment.

[8] Most draft appeal judgments are longer than they need to be. The basic rule is that the judgment is to record the ultimate result of the appeal, and is not to summarize the Reasons for Decision. Lengthy preambles are generally inappropriate. The precedent on the court website (copy attached, see albertacourts.ca/court-of-appeal/publications-forms) sets out the appropriate preamble in most cases:

UPON THE HEARING OF THIS APPEAL ON June 5, 2015, of an appeal from the judgment/order of the Honourable Mr. Justice I.B. Wise, granted on October 5, 2014; AND UPON HEARING representations from the appellant, the respondents, and the Attorney General,

IT IS HEREBY ORDERED THAT: . . .

The underlined portions are “blank” in the precedent, which can be filled out online. It will be seen that the form of this precedent, together with the basic detail required by R. 9.1, merely serve to create an official record of the result of the appeal.

[9] Note that there are separate precedents on the website for a) orders of single appeal judges and b) orders of appeal panels hearing applications.