

BC's Highest Court Overhauls Appeal Procedures – Are You Ready?

Jordanna Cytrynbaum, Logan Rogers

July 27, 2022

Effective July 18, 2022, an amended *Court of Appeal Act*¹ (the “Amended Act”) and corresponding *Court of Appeal Rules*² (the “Amended Rules”) came into force. These amendments are intended to make the appeal procedures for civil matters easier to understand and more efficient for lawyers and people who represent themselves.

The various changes to the Amended Rules allow for, among other things, more flexibility with appeal proceedings and confer greater discretion to the judiciary over procedural matters. Key changes include the following:

- parties, if permitted by the Court, may attend a hearing, motion, or case management by telephone, video conference or other means of telecommunication authorized;
- the Court has clarified the circumstances in which leave to appeal is required;³
- an appellant must file and serve a notice of appeal irrespective of whether leave to appeal is, or may be, required, and the receiving party has 15 days to bring a cross appeal;⁴
- an appellant must obtain hearing dates without delay once an appeal is ready for hearing;⁵
- if a rule requires a party to file and serve a document, that party must file the document and serve a filed version of the document on each party to the appeal, subject to a contrary intention in the Amended Rules;⁶
- the Amended Rules formalize the requirements and related procedures for bringing an urgent application on short notice in the Court of Appeal, and sets out the various orders a Justice may make following an urgent application;⁷
- the Court of Appeal registrar will more proactively maintain and update the inactive appeal list.⁸ For example, the registrar must place an appeal on the inactive appeal list if a notice of hearing of appeal is not filed in accordance with the Amended Rules by either (i) one year after the notice of appeal is filed for the appeal, or (ii) 60 days after the appeal is ready for hearing;

Cassels

- the Amended Rules also set out when an appeal, or an application proceeding, will be deemed to be abandoned.⁹ For example, if an appeal or application for leave to file an appeal remains on the inactive appeals list for 180 days, the registrar will automatically dismiss said appeal or application as abandoned. Once abandoned, the appeal or application cannot be reinstated without a justice ordering otherwise;
- calculating costs for proceedings have been simplified. Specifically, the three scales of costs in the previous Rules for calculating ordinary costs have been minimized to two scales in the Amended Rules; and,
- lastly, in its continued effort to facilitate easier access to and use of the Court of Appeal procedures, particularly for lay litigants, the Court released updated process overview charts for both the Appellant¹⁰ and the Respondent.¹¹ Each chart can be found in the footnotes below. The court forms have also been simplified to become more user-friendly.¹²

All litigation practitioners should familiarize themselves with the Amended Rules, which bring about significant changes to the previous rules and offer more efficient procedures for advancing Appeals in a timely and orderly fashion.

¹ Amended *Court of Appeal Act*

² Amended *Court of Appeal Rules*, BC Reg. 120/2022

³ Amended Rules, Rule 12

⁴ Amended Rules, Rules 8-10

⁵ Amended Rules, Rule 33(1)

⁶ Amended Rules, Rule 3

⁷ Amended Rules, Rule 57

⁸ Amended Rules, Rule 49 and 50

⁹ Amended Rules, Rule 51

¹⁰ Appellant process overview chart (updated)

¹¹ Respondent process overview chart (updated)

¹² Amended Rules, Schedule 3