

2022 Amendments to the Rules of the Court of Appeal for Saskatchewan

THE HONOURABLE MR. JUSTICE R.W. LEURER



Introduction – Amendments to:

- *The Court of Appeal Rules*
- *The Court of Appeal Criminal Appeal Rules (Saskatchewan)*



Important dates

- Amendments were effective October 3, 2022
- New Rule 15 applies to appeals filed *after* December 31, 2022
- Old Rule 15 will continue to apply to appeals filed *on or before* December 31, 2022



Organization of the Rules

The Court of Appeal Rules

- Commonly referred to as the “Civil” Rules
- Apply to all appeals, including criminal appeals

The Court of Appeal Criminal Appeal Rules

- Apply to:
 - any proceeding “in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding, action or appeal, in accordance with subsection 482(1) and section 482.1” of the *Criminal Code* [Rule 4]
 - any appeal pursuant to summary conviction proceedings, within the jurisdiction of the court, taken pursuant to The Summary Offences Procedure Act, 1990 [Rule 4(b)]
- Adopt *The Court of Appeals Rules*, “(e)xcept where otherwise provided in the [Criminal] Code, a statute or these rules... where appropriate and with any necessary modification.” [Rule 5]



Key changes to *The Court of Appeal Rules*

1. Stays pending appeal (Rule 15)
2. Appeal settlement conferences (Rule 41.1)
3. Aids for oral argument (Rule 37.1)
4. Vexatious litigants (Rules 46.2 and 46.3)
5. Update, modernize, and align with existing practice
 - Electronic filing
 - Ensuring issued orders exist
 - Forms of documents
 - Evidence
 - Address for service
 - Changes relating to appeals by self-represented parties
 - Practice directives



Stays pending appeal (Rule 15)

Under “Old” Rule 15:

- Filing of a notice of appeal stays the execution of a judgment pending the appeal, except where the judgment awards *mandamus*, an injunction or maintenance
 - Where execution is stayed, proceedings generally stayed – this inapplicable where the judgment does not require “execution” (R 15(4))

New Rule 15:

- Filing of a notice of appeal will *not* result in an automatic stay of proceedings
- Party seeking a stay of any sort of an order judgment will be required to apply for it



Stays pending appeal (cont.)

“Old” Rule 15(1)

15(1) Unless otherwise ordered by the judge appealed from or by a judge, the service and filing of a notice of appeal does not stay the execution of a judgment or an order awarding *mandamus*, an injunction, alimony, or maintenance for a spouse, child or dependant adult. Unless otherwise ordered by a judge, the service and filing of a notice of appeal stays the execution of any other judgment or order pending the disposition of the appeal. (Forms 5a and 5b)

“New” Rule 15(1)

15(1) Unless ordered pursuant to Subrule (3) or otherwise provided by law, the service and filing of a notice of appeal or an application for leave to appeal does not:

- (a) stay the execution of the judgment appealed from;
- (b) stay proceedings in the action; or
- (c) invalidate any intermediate act or proceeding taken pursuant to the judgment.



Stays pending appeal (rationale)

- Aligns Saskatchewan with the law of most other provinces
- Comports with the notion that a judicial determination has been made and should be presumptively respected
- Purpose of the Rule has not changed:

Rule 15 is “to prevent such prejudice, pending the determination of the appeal, as may arise between the date the appeal is launched and the date it is determined” (The Honourable Stuart J. Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Regina: Law Society of Saskatchewan Library, 2015) at 126, citing *Bank of Nova Scotia v Omni Construction Ltd.* (1981) 14 Sask R 81 (CA)).

See also: *Ochapowace First Nation v A.(V.)* (1994), 123 Sask R 311 (CA),



Stays pending appeal (substance)

- Not completely new – under “old” Rule, filing of notice of appeal did not stay *mandamus*, injunction or maintenance, or any judgment that did not require execution
- *Lawson v Rees*, 2016 SKCA 37 at para 8, 396 DLR (4th) 472: Ryan-Froslic J.A. referred to the “well-settled” principles for when to lift a stay and then added that “the same objectives apply when *imposing a stay*, namely, to prevent injustice, to ensure the result is as fair and equitable as possible for all sides, to minimize prejudice and to balance the competing interests” (emphasis in original)
- SKCA has generally considered the issue of whether a stay should exist pending an appeal within the framework created by the three-part test set out in *RJR-MacDonald*. Per *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120, 377 Sask R 78



Stays pending appeal (procedure)

- Stay request can be made to the judge who made the order, or to a judge of the Court of Appeal

15(2) An application to stay the execution of all or part of a judgment or to stay proceedings pending an appeal may be made to:

- (a) the judge appealed from; or
- (b) a judge of the court. (Forms 5a and 5b)

(3) The judge mentioned in paragraph (2)(a) or (b) who hears an application pursuant to that subrule or who imposes a stay on the judge's own initiative may give any directions and orders that the judge considers appropriate in the circumstances.



Appeal settlement conference (Rule 41.1)

- Imports former practice directive into the Rules

41.1(1) With the consent of the parties, an appeal settlement conference may be convened before a judge at any time during the appeal process.

(2) The registrar or a judge may suggest to the parties that an appeal settlement conference be convened.

(3) The purpose of an appeal settlement conference is to facilitate confidential mediated discussions between the parties with a view to reaching settlement of:

- (a) all or some of the issues in the appeal; and
- (b) as appropriate, any other issues that the parties agree to place before the settlement conference judge.

(4) The judge who presides at an appeal settlement conference shall not:

- (a) sit as a judge in chambers to hear any contested application in relation to the appeal; or
- (b) sit as one of the judges who hears the appeal.



Appeal settlement conference (key points)

- Judicial mediation: “an appeal settlement conference may be convened before a judge ...”
- “... at any time during the appeal process”
- Will not be forced on parties: “With the consent of the parties ...”
- But may be suggested by the registrar or a judge
- Judge who presides at a settlement conference will not hear contested applications or sit on the appeal



Aids for oral argument

37.1(1) At the beginning of a hearing, a party may provide to the court all or any of the following:

(a) a compendium to which the party intends to refer that contains extracts from all or any of the following:

(i) any party's factum;

(ii) authorities referred to in any party's factum;

(iii) material found in the appeal book;

(b) alone or as part of a compendium filed pursuant to paragraph (a), an outline of oral argument, which shall not exceed 2 pages.

(2) A copy of any compendium or outline of oral argument provided to the court shall be provided to all other parties appearing at the hearing.



Vexatious litigants (Rules 46.1 and 46.3)

- Clarification around existing Rules
- Amendments allow registrar to initiate process to have person declared a vexatious litigant



Chambers matters (Rules 48, 48.1 and 49)

- Modernize the language and forms (e.g., “notice of application” to comport with practice in Court of King’s Bench)
- Clarify the process regarding the scheduling and hearing of chambers matters, including by providing more specific timelines for filing briefs, etc.
- If a judge or registrar sees fit, an application in chambers may be heard by telephone or video conference



Evidence on appeals (Rule 59)

- Clarifies procedure applicable to what had previously sometimes been referred to as “new” and “fresh” evidence¹

59(1) A party desiring to adduce evidence on appeal that was not before the court appealed from shall apply to the court for leave to do so by notice of application returnable on the date fixed for hearing the appeal.

(2) The notice of application shall be served on all parties and filed at least 10 days before the date fixed for hearing the appeal.

¹ *Barendregt v Grebliunas*, 2022 SCC 22, 469 DLR (4th) 1



Other updates, modernizations, etc.

- Electronic filing:
 - Existing mechanics and expectations brought into Rules
 - Includes bookmarking and hyperlinking requirements (see practice directive)
- Issued orders:
 - Taken together, RR 10.1 and 23(1)(c) more clearly require that an issued order or judgment under appeal be filed and included in the appeal book.
 - Failure to include can result in appeal books being rejected for filing
- Address for service
 - Modernize and align with practice in the Court of King's Bench
- Changes relating to appeals by self-represented parties
 - e.g., align allowances for briefs, etc. with those of represented parties
- Updated forms
 - Note, especially, requirement for contact information, including email address, for all parties



Key changes to *The Court of Appeal Criminal Rules (Saskatchewan)*

- Procedure for leave to appeal
 - From summary offence ticket proceedings taken pursuant to *The Traffic Safety Act*, SS 2004, c T-18.1, and bylaw proceedings pursuant to municipal bylaw (R 11.2)
 - All other appeals to be dealt with in factum and “the court will consider the issue of leave to appeal at the outset of the hearing of the appeal” (R 11.3)
- Applications for court-appointed counsel, update requirement for denial letter from Legal aid Saskatchewan (R 37(1)(c))
- Update presumptive conditions of release pending hearing of an appeal (R 39)
- Otherwise align with “Civil” Rules



Other recent procedural developments

- Remote and hybrid hearings to continue
- Addressing the Court Protocol
- Form of Address and Pronouns Protocol



Remote and hybrid hearings to continue

- *Notice to profession*, February 23, 2022
“... all hearings will occur with judges and court clerks sitting in the court room. However, in the interests of improving access to justice and promoting the open courts principle, counsel and self-represented litigants may, on an ongoing basis, choose at their individual option whether to attend their hearing in person or by WebEx video ...”
- Under the portion of the website titled “Court Schedule”, we have a document called “video hearing tips”: https://sasklawcourts.ca/wp-content/uploads/2021/07/WebEx_tips.pdf



Addressing the Court protocol

The preferred form of address for a judge of the Court is “Justice” or “Chief Justice”, as the case might be, followed by the last name of the judge. Counsel and self-represented parties are asked to refrain from addressing judges as “My Lord”, “My Lady”, “Your Lordship” or “Your Ladyship”. A hearing panel should be addressed as “Justices” or “the Court”.



Form of address and pronouns protocol

Counsel and self-represented litigants are welcome to provide their preferred manner of address (example, Mr./Ms./Mrs./Mx./Counsel) and/or pronouns (example, she/her, he/him, they/them) to the Court in advance of an appeal or a Chambers hearing by contacting the registrar in writing, including by email.

Alternatively, immediately prior to the commencement of a hearing, and before the judge or judges enter the courtroom, counsel or a self-represented litigant may elect to provide the clerk with their preferred manner of address and/or pronouns. Counsel may also elect to provide the manner of address and/or pronouns of their clients and other individuals who might be referred to during the hearing. The clerk will then provide such information to the judge or judges before the proceedings begin.



Resources

- The Honourable Stuart J. Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Regina: Law Society of Saskatchewan Library, 2015)
- www.sasklawcourts.ca
- Civil Rules & Practice Directives
- Criminal Rules & Practice Directives
- Includes:
 - Existing Rules
 - Amendments
 - Consolidation
- Updated forms – in both PDF and Word format for easy download and use



Questions?