

Rules of the Supreme Court of Newfoundland, 1986

COURT OF APPEAL PRACTICE NOTE

CAPN No. 2012-02

DATE ISSUED: February 6, 2012

RULES AFFECTED: Rule 57

EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the Office of the Registrar, as Secretary of the Rules Committee of the Court of Appeal, and is published pursuant to Rule 57.31(3) of the *Rules of the Supreme Court, 1986*.

Civil Appeal Procedures Involving Children

Background and Purpose

1. At present the rules of court apply equally to all civil appeals, including those where the interests of a child may be directly affected.
2. In some cases where the interests of a child are potentially directly affected by the outcome of an appeal, the Court has expressed concern about potential adverse consequences resulting from delay in conduct of the proceeding and has noted also that the child's circumstances may have changed since the time of the original judgment such that any variation on appeal, even if legally justified on the basis of the trial record, might be counterproductive to the current interests of the child. See for example, *J.F. v. T.P.S.*, 2011 NLCA 70 at paragraphs 15-16; and *M.W. v. Director of Child, Youth and Family Services*, 2011 NLCA 76 at paragraph 19.
3. All steps should be taken by counsel, and the Court itself, to ensure to the extent possible, that appeal proceedings respecting children should be processed to conclusion expeditiously.
4. To respond to this concern, the Rules Committee of the Court of Appeal has recently passed an amendment to Rule 57.11. The amendments were published in the *Newfoundland Gazette* on February 3, 2012 as NL Reg 10/12 and are effective immediately. They can be accessed on line at: <http://www.assembly.nl.ca/legislation/sr/annualregs/2012/nr120010.htm>

Practice Note

5. Counsel contemplating an appeal from an order affecting the interests of a child should familiarize themselves with the provisions of rule 57.11(2) - (6) and comply with its letter and spirit.
6. The rules in question apply to all appeals and any related proceeding where the interests of a child may be directly affected by the outcome of an appeal. This includes appeals involving;
 - custody;
 - access;
 - protective intervention for a child;
 - guardianship of a child or of the estate of a child;
 - child support;
 - possession of a matrimonial home where s. 15(3)(a) of the *Family Law Act* applies;
 - the application of a domestic contract where s. 66(1) of the *Family Law Act* applies;
 - change of a child's name.
7. Counsel should strive to work co-operatively to perfect the appeal and should take all steps needed to expedite the preparation of any necessary transcripts and the filing of the appeal book and factums notwithstanding that the time available under the rules has not expired. Cases falling within the scope of this Practice Note must be given priority. For example, counsel will be regarded as having the obligation to follow-up regularly to ensure that the preparation of the transcript occurs in a timely way and, if necessary, require its preparation, if it is lengthy, on an overtime basis.
8. When the Deputy Registrar attempts to contact counsel for the purpose of consultation pursuant to rule 57.11(3) and is unsuccessful, counsel must attempt to make return contact on a priority basis.
9. Where a party or his or her counsel, or the Deputy Registrar, believes that the objective of the amendment to rule 57.11 can be better achieved by a form of pre-hearing intervention by the Court, he or she may, on notice to all other parties, request the Chief Justice by letter to make an order or give directions pursuant to rule 57.11(6). The Chief Justice may, if he or she considers it appropriate to do so, give interim directions without

hearing from the parties or request the Deputy Registrar to consult with all parties to determine if agreement can be reached as to the desirability of the suggested intervention or some variation thereof, or may, on notice to all parties, set the matter down for a hearing before a judge of the Court with directions as to what material, if any, should be filed to expedite resolution of the issue.

Authorized by:

Chief Justice of Newfoundland and Labrador

Debbie Brennan, Deputy Registrar
(for the Registrar of the Supreme Court of
Newfoundland and Labrador
Secretary, Rules Committee of the Court of Appeal)