

**COURT OF APPEAL RULES
PRACTICE NOTE – CIVIL PROCEEDINGS**

CAPN No. 2018-12

APPEAL BOOK, FACTUM AND TRANSCRIPT

DATE ISSUED: January 5, 2018

RULES AFFECTED: Rules 52 to 56

EFFECTIVE DATE: Upon publication

The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 4 of the *Court of Appeal Rules*.

Background

Rule 56 provides that the appeal book, factum and transcript, are to be filed at the same time. The purpose is to limit the filing of unnecessary documents for purposes of an appeal. Delaying the filing of the appeal book and transcript until the factum has been prepared should result in the submission of only relevant portions of the record.

To facilitate hearing of the appeal and drafting reasons for a decision, compliance with the technical aspects of the Rules is important. While it does not impact content or merit, failure to conform to the technical requirements of the Rules and provide proper indexing, references and citations creates inconvenience and difficulties for the judges. More common failures include:

Filing extensive transcripts without indexing, dating and tabbing or any other means to locate evidence;

Failure to include citations of cases from legal publications in the Index of Authorities, and providing only a CanLII citation;

Improper use of footnotes;

Failure to number the pages of the appeal book;

Failure to use the correct colour of cover for a document;

Failure to place the Index of Authorities after Part V in the factum;

Failure to bind the factum properly;

Failure to file a clean copy of the decision under appeal;

Failure to follow the order for placing documents in the appeal book and factum.

Filing a factum in excess of 40 pages should be necessary only in rare circumstances. Counsel should have good reason for requesting leave to file a factum exceeding the limit.

Practice Note

1. The appeal book and transcript are to be filed at the same time as the factum. This should ensure that only materials necessary for the appeal will be filed.
2. It is important for counsel and their assistants to be familiar with the technical rules for filing the appeal book, factum and transcript (rules 52 to 56). The registry may refuse to accept materials that are not in substantial compliance, resulting in extra expense and time.
3. It is important to deal with the question of costs in the submissions in the factum. If counsel is submitting that costs, either in its favour or against it, should be ordered other than under column 3 of the scale of costs, that should be made clear along with the reasons supporting the request.
4. Where a party wishes to exceed the 40-page limit for written argument imposed by rule 53(1)(e), a request, not an application, should be made to the Chief Justice. See CAPN No. 2018-06 for the relevant procedure. A copy of the request should be provided to the other parties. The request must state the reasons why it is not possible to comply with the 40-page limit.

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