

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

**CAPN No. 2018-15**

**FREQUENTLY CITED CASES – CIVIL**

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**RULES AFFECTED:** Rule 54(3)

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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 54 requires a party to file copies of case authorities. However, where a case is included in a list of “Frequently Cited Cases” in a practice note, a copy should not be included in the Book of Authorities (rule 54(3)). This is because the members of the panel will have copies of those cases, or portions thereof, readily accessible. Providing an additional copy is unnecessary and inefficient.

Appended to this Practice Note is a list of “Frequently Cited Cases – Civil”, in alphabetical order. There is also a list of the same cases arranged by topic. The lists will be reviewed and updated periodically.

It is important to note that the citations refer to specific paragraphs or pages of the case. It is only those paragraphs or pages, together with the headnote, that will be readily accessible to the judges.

The rationale for limiting the copies in this way is that these cases are generally lengthy and the reason they are frequently cited is to state general principles or legal tests. Accordingly, if a party is relying on additional portions of the case, it will be necessary to include a copy in the Book of Authorities.

## Practice Note

1. A copy of the paragraphs or pages of cases referenced in the appended list should not be included in the Book of Authorities (rule 53(1)(h)). Where reliance is placed on paragraphs or pages in addition to those cited in the list, it will be necessary to provide a copy.
2. It is essential that the citation, as required under rule 54(1), be included in the Index of Authorities in the factum (rule 53(1)(g)). This Practice Note affects only copying of cases to be filed. It does not alter the requirement for a correct and complete citation.
3. The inclusion of a case, or portions thereof, on the appended list is simply an indication that it is frequently cited and that a copy is readily accessible to the judges.
4. The appended list will be periodically assessed and updated in accordance with the procedure adopted by the Court.

B. Gale Welsh  
Acting Chief Justice of Newfoundland and Labrador  
Court of Appeal of Newfoundland and Labrador

Kathy Blake  
Registrar  
Court of Appeal of Newfoundland and Labrador

## **Appendix to CAPN No. 2018-15**

### **(1) Alphabetical List of Frequently Cited Cases – Civil**

*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 - paras. 22-52 (standard of review of tribunal decisions – after *Dunsmuir*)

*Archean Resources Ltd. v. Newfoundland*, 2002 NFCA 43, 215 Nfld. & P.E.I.R. 124 - paras. 14-32 (statutory interpretation)

*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 - paras. 18-43 (procedural fairness - tribunals)

*Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 - paras. 16-57 (non-compensatory spousal support)

*Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331 - para. 44 (exceptions to stare decisis)

*Cojocar v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 - paras. 14-76 (adequate reasons in civil cases)

*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 - paras. 43-64 (standard of review of tribunal decisions)

*F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 - paras. 40-50 (balance of probabilities)

*Fahey v. Newfoundland (The Law Society of)*, 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79 - paras. 8-14 (reinstatement of abandoned appeal)

*Fahey v. The Law Society of Newfoundland*, 2000 NFCA 19 - para. 3 (extension of time to file notice of appeal)

*Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA) (credibility)

*Gordon v. Goertz*, [1996] 2 S.C.R. 27 - paras. 9-16 (custody - material change of circumstances); 49-50 (best interests of the child)

*H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401 - paras 52-76 (palpable and overriding error)

*Hickey v. Hickey*, [1999] 2 S.C.R. 518 - paras. 10-12 (standard of review of support orders)

*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 - paras. 1-37 (standard of review in civil cases, not tribunals)

*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 - paras. 23-33 (proportionality)

*J. F., Re*, 2005 NLCA 34, 247 Nfld. & P.E.I.R. 354 - para. 9 (state-funded counsel in child-protection proceedings)

*Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 - paras. 30-124 (unjust enrichment)

*Langor v. Spurrell* (1997), 157 Nfld. & P.E.I.R. 301 (C.A.) - paras. 32-34 (standard of review - discretionary decisions)

*Layman v. Layman Estate*, 2016 NLCA 13, 375 Nfld. & P.E.I.R. 106 - para. 18 (standard of review of Trial Division decisions reviewing tribunal)

*Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23 - paras. 46-48 (interpretation of a standard form contract is a question of pure law)

*Matchim v. BGI Atlantic Inc.*, 2010 NLCA 9, 294 Nfld. & P.E.I.R. 46 - paras. 93-109 (new trial or substituting decision - factors)

*Metal World Inc. v. Pennecon Energy Ltd.*, 2014 NLCA 10, 346 Nfld. & P.E.I.R. 302 - paras. 4-19 (reconsideration)

*Miglin v. Miglin*, 2003 SCC 24, [2003] 1 S.C.R. 303 - paras. 64-91 (separation agreements)

*Moge v. Moge*, [1992] 3 S.C.R. 813 - pages 858-875 (compensatory spousal support)

*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 - paras. 56-101 (state-funded counsel in child-protection proceedings)

*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 - paras. 11-22 (adequacy of reasons – tribunal decisions)

*R. v. Oakes*, [1986] 1 S.C.R. 103 - para. 70 (section 1 of the *Charter*)

*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 - pages 333-349 (stays and interlocutory injunctions)

*Van de Perre v. Edwards*, 2001 SCC 60, [2001] 2 S.C.R. 1014 - paras. 9-15 (standard of review of custody orders)

*Willick v. Willick*, [1994] 3 S.C.R. 670 - paras. 20-25 (support - material change of circumstances)

*Young v. Young*, [1993] 4 S.C.R. 3 - pages 134-138 (exceptional costs orders)

## **(2) Topical List of Frequently Cited Cases – Civil**

### **Tribunal Appeals**

Standard of review of tribunal decisions - after Dunsmuir: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 - paras. 22-52

Standard of review of tribunal decisions: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 - paras. 43-64

Procedural fairness – tribunals: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 - paras. 18-43

Standard of review of Trial Division decisions reviewing tribunal: *Layman v Layman Estate*, 2016 NLCA 13, 375 Nfld. & P.E.I.R. 106 - para. 18

Adequacy of reasons – tribunal decisions: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 - paras. 11-22

### **Supreme Court of Newfoundland and Labrador (General) Appeals**

Standard of review in civil cases, not tribunals: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 - paras. 1-37

Palpable and overriding error: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401 - paras 52-76

Standard of review - discretionary decisions: *Langor v. Spurrell* (1997), 157 Nfld. & P.E.I.R. 301 (C.A.) - paras. 32-34

## **Supreme Court of Newfoundland and Labrador (Family) Appeals**

Custody - material change of circumstances; best interests of the child: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 - paras. 9-16; paras. 49-50

Non-compensatory spousal support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 - paras. 16-57

Compensatory spousal support: *Moge v. Moge*, [1992] 3 S.C.R. 813 - pages 858-875

Standard of review of support orders: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 - paras. 10-12

Unjust enrichment: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 - paras. 30-124

Separation agreements: *Miglin v. Miglin*, 2003 SCC 24, [2003] 1 S.C.R. 303 - paras. 64-91

## **Court of Appeal**

Reinstatement of abandoned appeal: *Fahey v. Newfoundland (The Law Society of)*, 2003 NLCA 8, 221 Nfld. & P.E.I.R. 79 - paras. 8-14

Extension of time to file notice of appeal: *Fahey v. The Law Society of Newfoundland*, 2000 NFCA 19 - para. 3

State-funded counsel in child-protection proceedings: *J. F., Re*, 2005 NLCA 34, 247 Nfld. & P.E.I.R. 354 - para. 9

State-funded counsel in child-protection proceedings: *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 - paras. 56-101

Reconsideration: *Metal World Inc. v. Pennecon Energy Ltd.*, 2014 NLCA 10, 346 Nfld. & P.E.I.R. 302 - paras. 4-19

Stays and interlocutory injunctions: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 - pages 333-349

Standard of review of custody orders: *Van de Perre v. Edwards*, 2001 SCC 60, [2001] 2 S.C.R. 1014 - paras. 9-15

Support - material change of circumstances: *Willick v. Willick*, [1994] 3 S.C.R. 670 - paras. 20-25

## **General**

Statutory interpretation: *Archean Resources Ltd. v. Newfoundland*, 2002 NFCA 43, 215 Nfld. & P.E.I.R. 124 - paras. 14-32

Exceptions to stare decisis: *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331 - para. 44

Adequate reasons in civil cases: *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 - paras. 14-76

Balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 - paras. 40-50

Credibility: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA)

Proportionality: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 - paras. 23-33

New trial or substituting decision – factors: *Matchim v. BGI Atlantic Inc.*, 2010 NLCA 9, 294 Nfld. & P.E.I.R. 46 - paras. 93-109

Section 1 of the Charter: *R. v. Oakes*, [1986] 1 S.C.R. 103 - para. 70

Exceptional costs orders: *Young v. Young*, [1993] 4 S.C.R. 3 - pages 134-138

Interpretation of a contract: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23 - paras. 46-48