

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

CAPN No. 2018-03

APPEALS INVOLVING CHILDREN

DATE ISSUED: January 5, 2018
RULES AFFECTED: Rule 9
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

Particular concerns arise when an appeal involving children is delayed. 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.

It is necessary, then, that parties avoid delay in the appeal process, and provide current information regarding a child, where appropriate.

Practice Note

1. Counsel involved in an appeal from an order affecting the interests of a child should familiarize themselves with the provisions of rule 9, and should comply with its letter and spirit.

2. Rule 9 applies to all appeals and any related proceeding where the interests of a child may be directly affected by the outcome. This includes, but is not limited to, appeals involving

(a) custody,

- (b) access,
- (c) protective intervention for a child,
- (d) guardianship of a child or the estate of a child,
- (e) child support,
- (f) possession of a matrimonial home,
- (g) application of a domestic contract, and
- (h) change of a child's name.

3. Counsel should strive to work cooperatively to perfect the appeal and should take all steps needed to expedite

- (a) the preparation of any necessary transcripts, and
- (b) filing of the appeal book and factums,

notwithstanding that time permitted under the Rules has not expired.

4. Cases in which rule 9 is engaged must be given priority. For example, counsel should

- (a) carefully consider what portions of the transcript are necessary for preparation of the factum and to enable the issues on appeal to be determined,
- (b) undertake any necessary follow-up to ensure timely preparation of any necessary transcript, and
- (c) where appropriate, request preparation of the transcript on an overtime basis.

5. The registrar will monitor the progress of an appeal involving a child. Counsel is expected to provide any assistance and respond to any requests by the registrar in a timely way.

6. Counsel should ensure the provision of current information regarding a child as specified in rule 9, where appropriate. Rule 9(5) authorizes the provision of information regarding any other court proceedings involving a child (Form 9). Rule 9(6) authorizes the provision of current information regarding a child, by affidavit.

7. Further, any orders that have been made relating to a child must be included in the appeal book (rule 52(1)(a)(vii)).

8. In written submissions and at the hearing of an appeal it is important to advise the Court of any concerns regarding identification of parties where children are involved, including any orders or practices followed in the court appealed from.

9. A party may request or the Court of its own motion may direct a prehearing conference where necessary or appropriate to expedite the hearing of an appeal involving a child. Where appropriate, the Court may give interim directions or orders. Where the circumstances warrant, on matters of procedure having no substantive effect, the Court may give directions in the absence of a request or submissions of the parties.

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