

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

CAPN No. 2018-09

SETTING THE DATE FOR HEARING AN APPEAL

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RULES AFFECTED: Rule 19

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

With a view to reducing costs to litigants by eliminating unnecessary court appearances on routine matters, a party may request that a date be set for the hearing of an appeal, without the need for an application.

In some cases following perfection of an appeal, the parties will delay making a request to set a date for a hearing. While parties may have legitimate reasons for so doing, the Court is concerned that there may be other cases, especially in family matters, where the public interest in the timely administration of justice may not be served by delay.

Even though there are mechanisms within the Rules for dealing with inactive cases through deemed abandonment (rule 17) and failure to proceed with an appeal (rule 16), the Court may adopt a shorter time frame to ensure that cases that are perfected and awaiting a hearing can be advanced, if it is appropriate to do so.

Practice Note

1. Under rule 19(1), a party may obtain a date for the hearing of an appeal without the need for an application. A request is made in writing using Form 6. The following criteria, listed on the Form, must be satisfied:

(a) all factums, the appeal book, and transcript as required by rule 47 are filed;

(b) the direction of the Court is not required on any matter before a date is set; and

(c) there is no circumstance requiring a court appearance.

2. Absent special considerations, the date requested should fall within two months after the request is made.

3. Parties are encouraged to determine, by reference to the Court's published calendar of sitting dates, mutually acceptable dates during the following two months when the parties would be available to appear on the appeal.

4. If necessary, the registrar may attempt to contact the parties to confirm an acceptable date for the hearing of the appeal. If the registrar does not receive a reply from the parties within 3 days of having attempted to contact them, the registrar may proceed to set a date for the hearing in accordance with the requesting party's proposal.

5. The registrar may convene a conference call with all parties, with or without the participation of the Chief Justice or his or her designate, to resolve scheduling arrangements.

6. The registrar may decline to set a date in accordance with this procedure and require that an application using Form 7 be made to the Court where

(a) it appears that any of the conditions in Form 6 is not satisfied,

(b) one of the parties objects to setting a date without an application being made,

(c) the registrar concludes that for any other reason an application should be made.

7. If the registrar sets a date under rule 19(1), the parties will be notified in writing that the appeal will be heard on that date.

8. Parties are encouraged to set hearing dates by means of a request rather than an application.

9. Where a party unnecessarily or unreasonably requests that a date be set by means of the application procedure, the presiding judge may take that fact into consideration in deciding to award costs of the application against that party.

10. A taxing master may take into consideration whether an application to set a date was unnecessarily or unreasonably made in deciding to deny costs of such application to a party who is otherwise entitled to costs following an appeal.

11. In the absence of good reasons to the contrary, an appellant will be expected to request or apply for a date for the hearing of the appeal within 60 days after the respondent's factum is filed.

12. Where 60 days have elapsed since the filing of the respondent's factum, the registrar may contact the parties to inquire as to the reasons for not requesting a hearing date and may require that the reasons be stated in writing.

In the absence of good reasons, the registrar, on the instructions of the Chief Justice, may give notice to the parties that the matter will be called at a subsequent applications date for a judge to determine whether a hearing date should nevertheless be set.

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