

Subdivision 3 Types of Appeals

Standard appeals

14.13(1) All appeals that are not fast track appeals are standard appeals.

(2) A case management officer may direct that any appeal must or must not be managed as a fast track appeal.

AR 41/2014 s4

Fast track appeals

14.14(1) Fast track appeals are appeals from a decision, or part of a decision, that does not finally determine all or some significant part of the substantive rights in issue.

(2) Unless otherwise ordered, appeals from the following kinds of decisions are to be dealt with as fast track appeals:

- (a) a ruling by a judge made during a trial;
- (b) a decision as to custody, access, parenting or support of a child;
- (c) a decision concerning support for a present or former spouse or adult interdependent partner made without a trial being held;
- (d) a decision concerning only costs or liability to pay fees or costs;
- (e) a decision denying summary judgment.

(3) Unless otherwise ordered, appeals from the following kinds of decisions are not fast track appeals:

- (a) a decision granting summary judgment or striking out a statement of claim, statement of defence or third party claim;
- (b) a decision refusing to open a default judgment or a noting in default;
- (c) a decision permitting or directing default judgment;
- (d) a decision staying an action indefinitely;
- (e) a decision dismissing an action on procedural grounds;
- (f) certification of or failure to certify a class proceeding.

AR 41/2014 s4;128/2015

Subdivision 4 Appeal Record

Ordering the Appeal Record

14.15(1) Subject to rule 14.20 [*Contents of Appeal Record – appeals from tribunals*], the appellant must

- (a) within 10 days after filing a notice of appeal, order or commence preparation of the Appeal Record,

- (b) order from Transcript Management Services or any other commercial preparer a transcript of
 - (i) all oral evidence,
 - (ii) subject to subrule (iii), only such part of the argument as is necessary to dispose of the appeal,
 - (iii) all oral argument in a chambers hearing, if that hearing did not exceed one-half day, and
 - (iv) any oral reasons for the decision under appeal and for any other ruling that will be an issue on the appeal,and
- (c) within 5 days after ordering the Appeal Record and transcripts, file a copy of the order and serve a filed copy on the respondent.

(2) Unless the Appeal Record is being prepared by the appellant, a copy of any amendment to, or countermand of, the instructions to prepare the Appeal Record or transcripts must be filed and served on the respondent within a reasonable time after the amendment is made or the countermand given.

AR 41/2014 s4

Information note

Transcripts of the oral argument at a trial are not required unless relevant, for example if a dispute exists about whether a particular issue was raised, or whether some fact or issue was conceded. Where formal reasons for judgment are issued by the court, transcripts of oral reasons are generally not required.

Filing the Appeal Record – standard appeals

14.16(1) Subject to rules 14.18 [*Contents of Appeal Record – standard appeals*] and 14.21 [*Format of Appeal Record – standard appeals*], the appellant in a standard appeal must file 5 copies of the Appeal Record, consisting of

- (a) Part 1 — Pleadings,
- (b) Part 2 — Final Documents, and
- (c) Part 3 — Transcripts, consisting of
 - (i) one paper and one electronic copy, if an electronic copy is available, or
 - (ii) 5 paper copies, if no electronic copy is available.

(2) In addition to the copies required under subrule (1), the appellant must serve on every other party to the appeal a copy of the Appeal Record and an electronic copy of the Transcripts.

(3) The Appeal Record and Transcripts must be

- (a) prepared promptly and filed and served forthwith after they are prepared, and

- (b) filed not later than 4 months from the date on which the notice of appeal was filed,

or the appeal will be struck by the Registrar.

AR 41/2014 s4

Filing the Appeal Record – fast track appeals

14.17(1) Rule 14.16 [*Filing the Appeal Record – standard appeals*] applies to fast track appeals, except that

- (a) the Appeal Record may be prepared in compliance with rule 14.22 [*Format of Appeal Record – fast track appeals*],
- (b) subject to subrule (2), unless otherwise ordered by a case management officer, the Appeal Record and Transcripts must be filed and served on the other parties to the appeal immediately after they are prepared, and not later than one month from the date on which the notice of appeal was filed, and
- (c) unless otherwise ordered, electronic copies of Transcripts need not be filed.

(2) If the Transcripts are not available when the Appeal Record is filed and served in accordance with subrule (1), the Table of Contents of the Appeal Record must mention that, and the Transcripts must be filed and served as soon as possible.

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Contents of Appeal Record – standard appeals

14.18(1) The Appeal Record for standard appeals must meet the requirements of rule 14.21 [*Format of Appeal Record – standard appeals*] and must contain the following:

- (a) a Table of Contents at the beginning of each volume, which must
 - (i) list separately each document and show the page number where the document can be found,
 - (ii) include a copy of the Table of Contents for the Transcripts required by clause (d)(i), and
 - (iii) contain a list and description of all the exhibits entered in the trial court and the page in the transcripts where the entry of the exhibit is shown.
- (b) Part 1 — Pleadings, which must contain the relevant pleadings in the action in chronological order, including
 - (i) the relevant pleadings, but the last version only of any pleading that was amended before trial,
 - (ii) any amendments to pleadings made at trial, and
 - (iii) if the appeal concerns a decision arising from an application, a copy of the application;

- (c) Part 2 — Final Documents, which must include
- (i) the written or transcribed reasons
 - (A) that led to the decision being appealed, including the reasons for any decision rendered during the trial that is relevant to the disposition of the appeal, and
 - (B) of any prior decision of a judge, master or tribunal that led to the decision now appealed,
 - (ii) the formal judgment, order or decision appealed,
 - (iii) any restricted access order,
 - (iv) any prior order, reference to which is required to resolve the appeal,
 - (v) the order granting permission to appeal, if any,
 - (vi) the notice of appeal,
 - (vii) the notice of cross appeal, if any,
 - (viii) when an enactment or these rules requires service on the Minister or the Minister of Justice and Attorney General for Canada, or both, proof of that service, and
 - (ix) if there is no oral record that can be transcribed for Part 3, a notation to that effect in the Table of Contents.
- (d) Part 3 — Transcripts, which must contain the following information:
- (i) a table of contents at the beginning of every volume, listing separately each part of the transcript, the name of each witness and questioner and showing the page number where the part or the testimony of the witness or questioner begins;
 - (ii) all transcripts required by rule 14.15(1)(b) [*Ordering the Appeal Record*];
 - (iii) in the case of an appeal from a judgment in a jury trial, the answers given to any questions from the jury, the judge's charge to the jury and the address to the jury of each party.

(2) Where any document required for the Appeal Record is not available at the time of its preparation, a note to that effect must be inserted in the Appeal Record in its place, and sufficient copies of the unavailable document must be filed as soon as possible or included in or appended to another document required to be filed.

(3) A case management officer may set or vary the contents or format of the Appeal Record as the nature of the appeal requires, including giving directions respecting transcripts.

AR 41/2014 s4;85/2016

Information note

If, for example, the formal judgment under appeal (or the order granting permission to appeal) is not available at the time of preparation of the Appeal Record, a copy can be appended to the factum, or included in the Extracts of Key Evidence under rule 14.27(2) [*Filing Extracts of Key Evidence*].

Contents of Appeal Record – fast track appeals

14.19 Rule 14.18 [*Contents of Appeal Record – standard appeals*] applies to fast track appeals, except that rule 14.22 [*Format of Appeal Record – fast track appeals*] applies to the format of the Appeal Record for fast track appeals.

AR 41/2014 s4

Contents of Appeal Record – appeals from tribunals

14.20(1) Where the appeal is from the decision of a person or body other than a court, the contents, format and filing of the Appeal Record must follow the format for standard appeals as set out in rule 14.18 [*Contents of Appeal Record – standard appeals*], except that, subject to any direction of a case management officer,

- (a) the contents of the Appeal Record must be prepared with appropriate changes, as the circumstances require, in order to ensure that the information required to resolve the appeal is before the Court, and
- (b) the Transcripts need only consist of any existing transcripts of evidence before the person or body whose decision is being appealed.

(2) A single appeal judge may make any order required to obtain production of records from the person or body whose decision is being appealed.

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Format of Appeal Record – standard appeals

14.21(1) The Appeal Record must

- (a) be printed single-sided and bound together along the right edge of the page so that the printed text is to the left of the binding;
- (b) number the Pleadings starting with page P1, and the Final Documents with page F1;
- (c) have red cardstock covers, front and back;
- (d) be divided into numbered volumes of approximately 200 pages each.

(2) The Transcripts must

- (a) be prepared by an official court reporter or comply with the *Transcript Fees and Format Regulation* (AR 167/2010);
- (b) be prepared in an electronic format approved by the Registrar and uploaded before the paper copy is filed;
- (c) be paginated and printed double-sided;

- (d) have grey cardstock covers, front and back;
 - (e) be divided into numbered volumes of approximately 200 pages each.
- (3) With the consent of all parties, or by order, an Appeal Record may be completed in electronic format.

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Format of Appeal Record – fast track appeals

14.22 Rule 14.21 [*Format of Appeal Record – standard appeals*] applies to fast track appeals, except

- (a) if less than 200 pages in length, the Appeal Record may be all in one volume, with red covers, and a comprehensive index;
- (b) the items in the Appeal Record may be separated by tabs, and consecutively numbered within each tab, rather than continuously numbered.

AR 41/2014 s4

Division 3
Preparing Written Argument and Scheduling
Oral Argument of Appeals

Subdivision 1
Factums

Filing factums – standard appeals

14.23(1) The appellant in a standard appeal must file 5 copies of an appellant's factum that meet the requirements of rules 14.25 [*Contents of factums*] and 14.26 [*Format of factums*], and must file and serve one additional copy on every other party to the appeal before the earlier of

- (a) 2 months after the filing of the Appeal Record, and
- (b) 6 months after the filing of the notice of appeal

or the appeal will be struck by the Registrar.

(2) The respondent in a standard appeal must, within 2 months of service of the appellant's factum

- (a) file 5 copies of
 - (i) a respondent's factum that meets the requirements of rule 14.25 [*Contents of factums*] and rule 14.26 [*Format of factums*], or
 - (ii) a letter of intention not to file a factum,and
- (b) for every other party to the appeal file and serve an additional copy of the factum or letter of intention.