

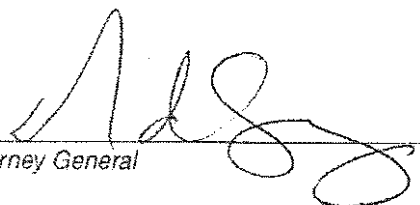
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **278**, Approved and Ordered **MAY 27 2010**


~~Lieutenant Governor~~
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ ^{Administrator}, made after consultation with the Chief Justice of British Columbia, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective July 1, 2010, the Court of Appeal Rules, B.C. Reg. 297/2001, are amended as set out in the attached Schedule.


Attorney General


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Court Rules Act, R.S.B.C. 1996, c. 80, s. 1

Other (specify):- OIC 1075/2001

April 14, 2010

SCHEDULE

- 1 ***Rule 1 of the Court of Appeal Rules, B.C. Reg. 297/2001, is amended by adding the following definition:***
 - “business day” means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday; .
- 2 ***Rule 7 (2) is amended by striking out “5 days” and substituting “10 business days”.***
- 3 ***Rule 8 is amended by striking out “one business day” and substituting “5 business days”.***
- 4 ***Rule 9 is amended***
 - (a) in subrule (4) by striking out “5 days” and substituting “5 business days”, and***
 - (b) by adding the following subrule:***
 - (5) A party wishing to respond to an application for a stay of proceedings or a stay of execution referred to in subrule (3) must, at least 2 business days before the date of the hearing of the application,
 - (a) prepare a reply book in Form 5,
 - (b) file one copy of the reply book for use by the court plus such additional copies as are required for the purposes of paragraph (c), and
 - (c) serve one filed copy of the reply book on each of the other parties.
- 5 ***Rule 20 (4) is repealed.***
- 6 ***Rules 23 to 25 are repealed and the following substituted:***

Factums and replies on cross appeal

- 23 (1) If a respondent intends to cross appeal, the respondent’s factum
 - (a) must be in 2 divisions entitled, respectively, “Respondent’s Factum on Appeal” and “Respondent’s Cross Appeal Factum”, and
 - (b) must not exceed 40 pages in length.
- (2) Within 14 days after being served with a factum referred to in subrule (1), the appellant must
 - (a) prepare a factum, entitled “Appellant’s Cross Appeal Factum”, that complies with Rule 22 in answer to the Respondent’s Cross Appeal Factum,
 - (b) if the appellant does not wish to reply to the Respondent’s Factum on Appeal,
 - (i) file 4 copies of the Appellant’s Cross Appeal Factum for use by the court plus such additional copies as are required for the purposes of subparagraph (ii) of this paragraph, and
 - (ii) serve one filed copy of the Appellant’s Cross Appeal Factum on each of the other parties, and

- (c) if the appellant does wish to reply to the Respondent's Factum on Appeal,
 - (i) prepare a reply in Form 11 entitled "Appellant's Reply",
 - (ii) prepare, in accordance with subrule (3), a document entitled "Appellant's Cross Appeal Factum and Reply" consisting of the Appellant's Cross Appeal Factum as Division 1 and the Appellant's Reply as Division 2,
 - (iii) file 4 copies of the Appellant's Cross Appeal Factum and Reply for use by the court plus such additional copies as are required for the purposes of subparagraph (iv) of this paragraph, and
 - (iv) serve one filed copy of the Appellant's Cross Appeal Factum and Reply on each of the other parties.
- (3) Unless a justice otherwise orders, the following applies to the Appellant's Cross Appeal Factum and Reply:
 - (a) Division 1, the Appellant's Cross Appeal Factum, must not exceed 30 pages in length;
 - (b) Division 2, the Appellant's Reply, must not exceed 5 pages in length.
- (4) If the respondent wishes to reply to the Appellant's Cross Appeal Factum, the respondent must, within 7 days after being served with that factum,
 - (a) prepare a reply in Form 11 entitled "Respondent's Reply In Cross Appeal",
 - (b) file 4 copies of that reply for use by the court plus such additional copies as are required for the purposes of paragraph (c), and
 - (c) serve one filed copy of the reply on each of the other parties.
- (5) The factums on the cross appeal must not unnecessarily repeat matters contained in the factums on the main appeal.

Reply if no cross appeal filed

- 24** If an appellant wishes to reply to the factum of a respondent who has not filed a cross appeal, the appellant must, within 7 days after being served with the respondent's factum,
- (a) prepare a reply in Form 11 entitled "Appellant's Reply",
 - (b) file 4 copies of that reply for use by the court plus such additional copies as are required for the purposes of paragraph (c), and
 - (c) serve one filed copy of the reply on each of the other parties.

7 *The following rule is added:*

Settlement of Appeal Record, transcript or Appeal Book

- 26.1** (1) Any party may apply to the registrar under subrule (2) to settle the contents of the Appeal Record, the transcript or an Appeal Book.
- (2) To apply to settle the contents of the Appeal Record, the transcript or an Appeal Book, a party must file an appointment in Form 29 and serve one filed copy of the appointment on all other parties at least 5 days before the date fixed in the appointment for the hearing.

- (3) If a party does not attend at the time fixed in the appointment for the settlement of the contents of the Appeal Record, the transcript or an Appeal Book, the registrar may settle the contents of the Appeal Record, transcript or Appeal Book in the party's absence.

8 *Rule 39 (4) (e) is amended by striking out "Rule 54.1 (16)" and substituting "Rule 54.1 (17)".*

9 *The following rule is added:*

Electronic filing rule

54.1 (1) In this rule:

"**electronic document**" means a document that has been transmitted for filing electronically;

"**electronic services agreement**" means an agreement referred to in subrule (3);

"**registered user**" means a person who has entered into an electronic services agreement.

- (2) In the event of a conflict between this rule and another rule, this rule applies.
- (3) A person wishing to file documents in a registry under this rule must
- (a) enter into an agreement with the Court Services Branch of the Ministry of Attorney General respecting the terms and conditions under which those filings may be made, and
 - (b) submit documents for filing in accordance with that agreement.
- (4) A registered user may electronically transmit a document to a registry for filing if
- (a) the document is accompanied by payment of the applicable filing fees, and
 - (b) the document is not one referred to in subrule (5).
- (5) The following documents may not be submitted to the registry electronically:
- (a) a motion book;
 - (b) a reply book;
 - (c) an appeal record;
 - (d) a factum;
 - (e) an appeal book;
 - (f) a transcript;
 - (g) a transcript extract book;
 - (h) a memorandum of argument;
 - (i) a book of authorities
 - (j) a form of order submitted for entry.
- (6) An affidavit or other signed document that is being filed for evidentiary purposes, if submitted for filing electronically, must clearly identify the signatory and must be accompanied by a statement, in Form 33, of the counsel acting for the person on whose behalf the document is submitted for filing or, if that person is unrepresented, by a statement of that person, in Form 33, indicating that

- (a) the original paper version of the document appears to bear an original signature of the person identified as the signatory and the person making the Form 33 statement has no reason to believe that the signature placed on the document is not the signature of the identified signatory, and
 - (b) the version of the document that is being submitted for filing electronically appears to be a true copy of the original paper version of the document and the person making the Form 33 statement has no reason to believe that it is not a true copy of the original paper version.
- (7) A person who submits a document for filing under subrule (6) in a proceeding must
 - (a) keep the original paper version of the document until the earliest of
 - (i) the date on which the proceeding, including any appeals, is finally disposed of,
 - (ii) the date on which the appeal period for that proceeding has expired if no appeals of the proceeding have been brought within that period, and
 - (iii) the date on which the registrar requests that the original paper version be filed, and
 - (b) if a request is made under paragraph (a) (iii), file the original paper version promptly after that request is made.
- (8) If a document in paper form is filed with the registrar, the registrar may convert the document into electronic form and, in that event, the registrar must
 - (a) store the conversion in a computer or in another electronic system that the registrar considers appropriate, and
 - (b) retain the paper form of the document.
- (9) A person who submits a document referred to in subrule (6) for filing electronically must, on request, make the original paper version of that document available for inspection by other parties or their counsel and by the court.
- (10) A person who is entitled to inspect a document under subrule (9) may, if that inspection is denied, file a requisition with the registrar, and, promptly after receipt of that requisition, the registrar must make a request under subrule (7) (a) (iii).
- (11) Rule 22-2 of the Supreme Court Civil Rules or Rule 10-4 of the Supreme Court Family Rules, as the case may be, continues to apply to affidavits filed under this rule, but, in the event of a conflict between this rule and Rule 22-2 of the Supreme Court Civil Rules or Rule 10-4 of the Supreme Court Family Rules, as the case may be, in respect of those affidavits, this rule prevails.
- (12) For the purposes of these rules other than subrule (6) of this rule, a document is deemed to have been originally signed if it has been electronically authenticated in the manner contemplated by the applicable electronic services agreement.
- (13) If a document that has been transmitted for filing electronically is accepted for filing by the registrar, the document is deemed to have been filed,

- (a) if the document is received at the registry at or before 4 p.m. on a day on which the registry is open for business, on the day of its receipt, or
 - (b) if the document is not received at the registry at or before 4 p.m., on the next day on which the registry is open for business.
- (14) After a document that has been transmitted for filing electronically is accepted for filing by the registrar, the registrar must affix an electronic version of the registry stamp to the document and, after that, must provide a copy of the stamped electronic document, in the manner contemplated by the electronic services agreement, to the person who transmitted the document for filing.
- (15) If a document has been filed in accordance with subrule (4), a person who is otherwise entitled to view and obtain a copy of the document may, on payment of the proper fee,
 - (a) obtain from the registry a paper copy of the document,
 - (b) if the court registry has provided a public access computer terminal, view the document on that terminal, or, if the document is not available for viewing on that terminal, view on that terminal the information about the document or its contents, if any, that the court registry provides on that terminal, or
 - (c) if the person is a registered user, access the document in accordance with the terms of the electronic services agreement entered into by that person.
- (16) A person who is required to provide an address for service under these rules may provide an e-mail address for service.
- (17) A document that may or must be served on a person may, if it is an electronic document, be served on the person as follows:
 - (a) if the person has provided an e-mail address for delivery under subrule (16), by e-mailing it to that person's e-mail address for delivery;
 - (b) if the solicitor for the person has provided an e-mail address for delivery under subrule (16), by e-mailing it to that solicitor's e-mail address for delivery.
- (18) A document transmitted for service by e-mail in accordance with subrule (17) is deemed to be served as follows:
 - (a) if the document is transmitted before 4 p.m. on a day that is not a Saturday or holiday, the document is deemed to be served on the day of transmission;
 - (b) if the document is transmitted on a Saturday or holiday or after 4 p.m. on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday.
- (19) Even though a document has been served in accordance with subrule (17), a person may show, on an application to set aside the consequences of default, on an application for an extension of time or on an application in support of a request for an adjournment, that the document
 - (a) did not come to the person's notice,
 - (b) did come to the person's notice later than when it was served or effectively served, or

(c) was incomplete or illegible.

10 Rule 68 is amended by adding the following subrule:

(3) If a party does not attend at the time appointed for an assessment of costs, the registrar may assess the costs in the party's absence.

11 Forms 1 and 7 are amended in section 2 by striking out "Rule 49 or 53 (6) of the Supreme Court Rules" and substituting "Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules".

12 Forms 1, 7 and 8 are amended by striking out the following:

B.C. Court of Appeal
The Law Courts
800 Smithe Street
Vancouver BC V6Z 2E1

and substituting the following:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5 .

13 Form 9 is amended by striking out "The reasons for judgment including the name of the judge and the date of the judgment." and substituting "A copy of the reasons for judgment filed in the court registry, including the name and signature of the judge and the date of the judgment."

14 Form 10 is amended by repealing paragraph (g) and substituting the following:

(g) the type must be Arial 12 point type; .

15 Form 11 is repealed and the following substituted:

FORM 11 (RULE 23 (2) (c) (i) AND (4) (a) AND 24 (a))

Court of Appeal File No.

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

APPELLANT'S REPLY/RESPONDENT'S REPLY IN CROSS APPEAL

(Name of appellant)

(Name of respondent)

(Name of appellant's counsel, if any)

(Name of respondent's counsel, if any)

(Address of appellant or, if the appellant is represented, name and address of the appellant's law firm)

(Address of respondent or, if the respondent is represented, name and address of the respondent's law firm)

COMPLETION INSTRUCTIONS

This reply

- (a) must be bound as follows:
 - (i) if filed by a respondent under Rule 23 (4), in a green cover;
 - (ii) if filed by an appellant under Rule 24, in a buff cover;
- (b) must not exceed 5 pages in length, and
- (c) must be signed by the party or the party's lawyer, whose name must be clearly printed below the signature.

In addition to the foregoing, this reply must comply with the following:

- (a) other than the index, which is to be printed on the right hand side of the page, each of the pages must be printed on the left;
- (b) each of the pages must be numbered consecutively on the upper left hand corner of the page;
- (c) each of the paragraphs must be numbered consecutively;
- (d) the lines must be spaced at least one and one-half lines apart except for excerpts from an authority or a reproduction of an enactment, which excerpts must be indented and single-spaced;
- (e) the margins must be no less than 2.5 cm;
- (f) format for the citation of authorities must follow the Directive concerning the Citation of Authorities;
- (g) the type must be Arial 12 point type.

16 Form 12 is amended

(a) by striking out “in the order in which they were filed” and substituting “in the order in which they were sworn or affirmed”, and

(b) by striking out the following:

- Each page in the appeal books must be printed on the left.
- Each page must be numbered consecutively, on the upper left hand corner of the page.

and substituting the following:

- Other than the index, which is to be printed on the right had side of the page, each of the pages must be printed
 - (a) on the left, or
 - (b) on both sides of the page.
- Each of the pages must be numbered consecutively on the upper outside corner of each printed side of the page.

17 Form 14 is amended by striking out “Appendix C, Schedule 1, Item 6 of the Supreme Court Rules.” and substituting “Item 5 of Schedule 1 of Appendix C of the Court of Appeal Rules.”

18 Form 19 is amended by striking out “Supreme Court Rules Appendix C, Schedule 1.” and substituting “Schedule 1 of Appendix C of the Court of Appeal Rules.”

19 Form 23 is amended by striking out “forthwith after assessment.” and substituting “promptly after assessment.”

20 Form 29 is amended by adding the following after “[] to settle contents of transcript”:

[] to settle contents of Appeal Record

[] to settle contents of Appeal Book

21 Form 33 is repealed and the following substituted:

FORM 33 (RULE 54.1 (6))

Court of Appeal File No.

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

ELECTRONIC FILING STATEMENT

I,[name]....., am the lawyer acting for[party(ies)].....,[name(s) of party(ies)].....

OR

I,[name]....., am the[party]..... and I am not represented by a lawyer.

I advise as follows:

1. The attached[type of document]..... is being submitted for filing electronically *[add the following if applicable]* on behalf of the[party(ies)].....,[name(s) of party(ies)]..... .
2. The original paper version of the document being submitted for filing electronically appears to bear an original signature of the person identified as the signatory and I have no reason to believe that the signature placed on the document is not the signature of the identified signatory.
3. The version of the document that is being submitted for filing electronically appears to be a true copy of the original paper version of the document and I have no reason to believe that it is not a true copy of the original paper version.

Date:[dd/mmm/yyyy].....
 Signature of
 filing party lawyer for filing party(ies)
[type or print name].....

22 *The following Appendix is added:*

APPENDIX C

SCHEDULE 1

FEE PAYABLE TO THE CROWN

(Unless otherwise provided by statute)

Definitions

1 In this Schedule, “**Item**” means an Item in the table to this Schedule.

Amount payable

- 2 For any Item, there must be paid to the government
 - (a) the fee shown in the table to this Schedule as being applicable to that Item, or
 - (b) if a different table has been published in Part 2 of the Gazette under section 2 (3) (b) of Schedule 2 of this Appendix C, the fee shown in that published table as being applicable to that Item.

FEE APPLICABLE TO THE COURT OF APPEAL		
Item	Description	Fee (\$)
1	For filing a notice of appeal or a notice of an application for leave to appeal	200

2	For filing an application to be heard by a Justice of the Court of Appeal excluding an application for leave to appeal	80
3	For filing an application to be heard by 3 or more justices if the application is not returnable to the hearing of the appeal	80
4	For filing a certificate of readiness	200
5	For each half day spent in whole or in part on the hearing of an appeal, excluding the first half day, unless the hearing is for judgment only, payable by the party who files the certificate of readiness, unless the court orders payment by another party	250
6	For filing any appointment for a hearing before a registrar	80
7	For taking or swearing an affidavit for use in the court unless (a) the deponent swears the affidavit in the course of his or her duties as a peace officer or as an agent or officer of the Province, (b) the affidavit is sworn for the purpose of enforcing a maintenance or support order, or (c) provision is made elsewhere for a fee for that service	40
8	For a search of a record, other than (a) an electronic search conducted from outside the registry, or (b) a search of a record of a proceeding by (i) a party to that proceeding, (ii) a party's solicitor, or (iii) an official reporter who, or a representative of a transcription firm that, is retained by a party to produce a transcript of the proceeding	8
9	For returning by mail, fax or electronic mail the results of a search of a record	10
10	For accessing from outside the registry, including, without limitation, viewing, printing or downloading, any record that is found by or created in response to an electronic search or request, including, without limitation, an index of cases produced in response to a search query	6
11	For accessing any document referred to in Item 10 and purchasing that document	10
12	For copies, per page	1
13	For (a) a certified copy of a document of record (b) issuing a certificate of judgment (c) issuing a certificate of pending litigation or other certificate not otherwise provided for	40
14	For returning by mail or by fax a confirmation of filing or rejection of a document submitted by fax to a registry	10

Despite anything in this Schedule, if, after consultation with the Chief Justice of British Columbia, the Crown enters into an agreement with a person under which the person is authorized to access one or both of registry records and specified registry services and is exempted from payment of any or all of the fees provided under Items 8, 9, 10, 11 and 12 for such access, the person may, on payment of any fee required under the agreement and on compliance with any other terms and conditions imposed by the agreement, access, during the term of the agreement, the registry records and registry services to which the agreement applies without payment of the fees from which the person is exempted under the agreement.

SCHEDULE 2

FEE CALCULATIONS

Definitions

1 In this Schedule:

- “**actual fee**”, in relation to an Item, means the actual fee applicable to that Item determined under section 2;
- “**base CPI**” means the number recorded as the “All-items Index” for British Columbia for April 2010 in the publication prepared for April 2010 under the *Statistics Act* by the director;
- “**base fee**”, in relation to an Item, means the fee shown in the table to this Schedule as being applicable to that Item;
- “**current CPI**”, in relation to any year in which a calculation of actual fees is to be made under section 2, means the number recorded as the “All-items Index” for British Columbia for April of that year in the publication prepared for that year under the *Statistics Act* by the director;
- “**director**” has the same meaning as in the *Statistics Act*;
- “**Item**” means an Item in the table to this Schedule.

Calculation of actual fee

- 2 (1) Until it is amended under this section, the actual fee applicable to an Item is the fee shown for that Item in the table to this Schedule.
- (2) In 2012, and in every second year after that, the actual fee applicable to an Item must be recalculated as follows:
- (a) a preliminary fee must be determined for the Item in accordance with the following formula:
$$\text{preliminary fee} = \text{base fee} \times (\text{current CPI}/\text{base CPI});$$
 - (b) the actual fee applicable to the Item is the preliminary fee determined for that Item under paragraph (a) rounded as follows:
 - (i) if the base fee applicable to the Item is less than or equal to \$10, the actual fee applicable to the Item is the preliminary fee for the Item rounded to the nearest \$1;
 - (ii) if the base fee applicable to the Item is greater than \$10 but less than \$100, the actual fee applicable to the Item is the preliminary fee for the Item rounded to the nearest \$5;
 - (iii) if the base fee applicable to the Item is \$100 or more, the actual fee applicable to the Item is the preliminary fee for the Item rounded to the nearest \$10.
- (3) If, as a result of the recalculation referred to in subsection (2), there is a change to the actual fee applicable to one or more Items, the minister may notify the Registrar of Regulations of that change and the Registrar of Regulations may
- (a) amend the table to Schedule 1 to reflect the change of which notice was given under this subsection, and
 - (b) publish in Part 2 of the Gazette the amended table.

- (4) On the date that is 7 days after the date on which an amended table is published under subsection (3) (b) in Part 2 of the Gazette, the table to Schedule 1 is amended accordingly.

FEES APPLICABLE TO THE COURT OF APPEAL		
Item	Description	Fee (\$)
1	For filing a notice of appeal or a notice of an application for leave to appeal	200
2	For filing an application to be heard by a Justice of the Court of Appeal excluding an application for leave to appeal	80
3	For filing an application to be heard by 3 or more justices if the application is not returnable to the hearing of the appeal	80
4	For filing a certificate of readiness	200
5	For each half day spent in whole or in part on the hearing of an appeal, excluding the first half day, unless the hearing is for judgment only, payable by the party who files the certificate of readiness, unless the court orders payment by another party	250
6	For filing any appointment for a hearing before a registrar	80
7	For taking or swearing an affidavit for use in the court unless <ul style="list-style-type: none"> (a) the deponent swears the affidavit in the course of his or her duties as a peace officer or as an agent or officer of the Province, (b) the affidavit is sworn for the purpose of enforcing a maintenance or support order, or (c) provision is made elsewhere for a fee for that service 	40
8	For a search of a record, other than <ul style="list-style-type: none"> (a) an electronic search conducted from outside the registry, or (b) a search of a record of a proceeding by <ul style="list-style-type: none"> (i) a party to that proceeding, (ii) a party's solicitor, or (iii) an official reporter who, or a representative of a transcription firm that, is retained by a party to produce a transcript of the proceeding 	8
9	For returning by mail, fax or electronic mail the results of a search of a record	10
10	For accessing from outside the registry, including, without limitation, viewing, printing or downloading, any record that is found by or created in response to an electronic search or request, including, without limitation, an index of cases produced in response to a search query	6
11	For accessing any document referred to in Item 10 and purchasing that document	10
12	For copies, per page	1
13	For <ul style="list-style-type: none"> (a) a certified copy of a document of record (b) issuing a certificate of judgment (c) issuing a certificate of pending litigation or other certificate not otherwise provided for 	40
14	For returning by mail or by fax a confirmation of filing or rejection of a document submitted by fax to a registry	10

Despite anything in this Schedule, if, after consultation with the Chief Justice of British Columbia, the Crown enters into an agreement with a person under which the person is authorized to access one or both

of registry records and specified registry services and is exempted from payment of any or all of the fees provided under Items 8, 9, 10, 11 and 12 for such access, the person may, on payment of any fee required under the agreement and on compliance with any other terms and conditions imposed by the agreement, access, during the term of the agreement, the registry records and registry services to which the agreement applies without payment of the fees from which the person is exempted under the agreement.