

## PART J DOs

- ❑ **Do** read Part J of the Court of Appeal Consolidated Practice Directions!
- ❑ **Do** be aware that the rules concerning appeal books (now the appeal record) changed for any appeal filed on or after August 1, 2008.
- ❑ **Do** be aware that the Court has adopted a two year pilot project to move appeals that deal with maintenance only to the Part J list.
- ❑ **Do** remember that a Part J appeal includes any appeal of:
  - a) any order affecting the rights of children (e.g. custody, access, guardianship, adoption, parenting time);
  - b) any order as to child or spousal maintenance, or both; or
  - c) any order that does not finally determine all or some significant part of the substantive rights in an action, including a ruling during a trial.
- ❑ **Do** be aware that leave to appeal is required for certain Part J appeals such as:
  - a) any case where leave to appeal is mandated by statute, or Rule, or regulation (e.g. Rule 580.92(1) - no appeal to CA from a decision of QB sitting as an appeal court for decisions made under the *Family Law Act* except with leave; Rule 506(4) - leave required where the matter in controversy can be estimated in money and does not exceed the sum of \$25,000, exclusive of costs);
  - b) any case management or pre-trial order directing adjournments, time periods or time limits;
  - c) any ruling during trial, where the appeal is brought before the trial is concluded; or
  - d) any decision on security for costs.
- ❑ **Do** remember that if leave to appeal is required, the application must be filed and served within the applicable appeal period (otherwise, the application becomes two-fold, an application to extend the time to bring an application for leave to appeal and the application for leave to appeal itself, provided the former is granted).
- ❑ **Do** refer to Part J.3 if leave to appeal is required and note the requirements for the materials filed in support of the application and the filing deadlines applicable to the application. If the applicant misses a deadline, the application for leave will be struck.

- ❑ **Do** be aware that if leave to appeal is granted, the notice of appeal must be filed and served within 14 days from the date the decision on the leave application is granted, failing which the appeal will be struck.
- ❑ **Do** be cognizant of the fact that there are different appeal periods for different matters. Rule 506(1) provides for a “20 day from service” appeal period; many family matters are subject to a “30 day from pronouncement” appeal period. (See Rule 580.81(2), Rule 580.91(3), s. 21(3) of the *Divorce Act*.)
- ❑ **Do** be aware that an appeal of an order made by the Provincial Court under the *Interjurisdictional Support Orders Act* comes directly to the Court of Appeal - s. 36(1) *ISO Act*.
- ❑ **Do** remember that the notice of appeal must also be served within the applicable appeal period.
- ❑ **Do** make note of the strict filing deadlines associated with Part J appeals:
  - a) The transcripts must be ordered within 7 days of filing the notice of appeal.
  - b) The appeal record must be filed and served within one month of filing the notice of appeal, or one business day after the appeal record is ready, whichever comes first. If the appellant misses this deadline, the appeal will be struck.
  - c) The appellant's factum, authorities and extracts of key evidence must be filed and served either:
    - i) 2 weeks after the appeal record is filed; or
    - ii) 6 weeks after the notice of appeal is filed

*whichever is the earliest.*

The appellant must remember that their factum and extracts of key evidence are due on the earlier of the two dates. Sometimes, the date that is 6 weeks after the notice of appeal is filed precedes the date that is 2 weeks after the appeal record is filed. If the appellant misses this deadline, the appeal will be struck.

- d) The respondent's factum, authorities and extracts of key evidence must be filed and served by 12:00 noon either:
  - i) 30 days after the appellant's factum is filed and served; or
  - ii) 14 days before the opening day of sittings

*whichever is the earliest.*

The respondent must remember that their factum and extracts of key evidence are due on the earlier of the two dates. Sometimes, the date that is 14 days before the opening day of sittings precedes the date that is 30 days after the appellant's factum is filed and served. If the respondent misses this deadline, he or she will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

- ❑ **Do** be aware of the opening day of sittings. This is important for two reasons:
  - a) if the appeal record, appellant's factum, authorities and extracts of key evidence are filed and served at least 21 days before the opening day of sittings, then the matter will be placed on the next list. Part J appeals are normally heard on a Monday (or Tuesday if Monday is a holiday). They may also be scheduled into another day of the sitting week provided space is available and the parties consent. Parties need to be aware of the dates of the sittings so as not to be surprised when they receive a letter indicating that the matter has been set down for hearing.
  - b) the deadline for the respondent's factum, authorities and extracts of key evidence may depend on the opening day of sittings. (See above)

- ❑ **Do** be aware that any request for an adjournment of a Part J appeal must be made in writing to the Registrar no later than:

- a) 4:30 pm on the day which is 20 days before the opening of the sittings, if by consent; or
- b) 12 noon on the day that is 20 days before the opening of the sittings, if opposed.

An adjournment by consent may only be to the next sittings, and there may be no more than two consent adjournments.

- ❑ **Do** remember that if a Part J appeal that has been struck is not restored within 3 months, it will be deemed abandoned.

- ❑ **Do** be aware that a Part J appeal can be restored:

- a) by filing with the Registrar a letter of consent of all parties to the appeal which sets out the reason why the appeal should be restored; or
- b) where no consent has been obtained, by filing and serving a notice of motion, a supporting affidavit (if applicable) and a memorandum, which clearly sets out the reason for default.

The restoration fee must also be paid before an appeal can be restored. (\$200.00 for a

first time restoration, \$500.00 for the second, and \$1,000.00 thereafter.) Refer to Form P of the Consolidated Practice Directions for the standards required when preparing an Order for the restoration of a Part J appeal.

- ❑ **Do** be aware that once a Part J appeal is restored, the appeal record and the appellant's factum and extracts of key evidence must be filed within 21 days from the date that the application to restore was granted, or the appeal will be again struck.
- ❑ **Do** refer to the court's website: [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca) and do read the check/return forms.