JUDICATURE ACT

RULES OF THE SUPREME COURT, 1986

COURT OF APPEAL PRACTICE NOTE

CAPN No. 2014-01

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The following Practice Note was filed with the Deputy Registrar of the Court of Appeal and is published pursuant to Rule 57.31(3) of the *Rules of the Supreme Court, 1986*.

Procedure for Staying an Order Pending Appeal

Background and Purpose

1. Under the current rule 57.10(5), to obtain a stay of an order pending appeal to the Court of Appeal, a litigant must first apply for a stay in the court or tribunal below. A litigant dissatisfied with the result of that application has two options: (i) appeal the decision to the Court of Appeal; or (ii) make a further application for a stay to the Court of Appeal, which will be treated as a *de novo hearing.* In the second circumstance, where the application is heard by a single judge of the Court of Appeal pursuant to s. 10 of the *Judicature Act*, a litigant dissatisfied with that decision may, pursuant to rule 57.31(4), apply to the Chief Justice for a rehearing before a panel of judges.

2. This multi-stage procedure has led to some confusion regarding the difference between an appeal and a direct application for a stay to the Court of Appeal. In some cases, the current procedure results in extra costs flowing from extra court appearances.

3. As a result, the Rules Committee has recently adopted amendments to rule 57.10 to clarify and to limit the options available to a litigant who wishes to seek a stay of an order pending appeal to the Court of Appeal.

4. The purpose of this Practice Note is to draw these changes to the attention of litigants and the legal profession to reduce confusion, lost time and expense that may otherwise result from transition from the current procedural requirements to the new ones.

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5. Upon the coming into force of the amendments, litigants must henceforth make a choice to seek a stay either in the Trial Division under Rule 53A or in the Court of Appeal under

rule 57.10. This removes the requirement that a litigant must first seek a stay in the lower court. However, if the litigant chooses to apply to the lower court, he or she will no longer have the opportunity to make a second application for a stay to the Court of Appeal.

6. If the litigant chooses to apply for a stay in the lower court, the decision on such an application may still be *appealed* to the Court of Appeal *but only with leave*. The factors to be considered in deciding whether leave should be granted are those set out in rule 57.02(4).

7. If the litigant chooses to apply for a stay directly to the Court of Appeal instead of to the court or tribunal below, and the application is heard by a single judge of the Court of Appeal, a litigant may still seek the leave of the Chief Justice to have the matter reheard by a panel of judges.

8. The effect of the changes to rule 57.10 is therefore that a litigant may choose to apply for a stay of the order appealed from either:

    (a) at the lower court or tribunal, with the possibility of an appeal of that decision to the Court of Appeal, subject to obtaining leave to appeal; or
    (b) at first instance in the Court of Appeal, with the possibility, if the application is heard by a single judge, of a rehearing by a panel of three judges, subject to leave of the Chief Justice.

9. There is also an amendment to rule 57.10(2). There is no substantive change to this rule. The amendment is intended to clarify the authority of the Court to order stays.

10. The amendments to the rule come into force upon publication in *The Newfoundland and Labrador Gazette* and will apply where the order in respect of which the stay is being sought was made after the amendment comes into force.

Authorized by:

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