

**RULE 62**  
**APPEALS TO THE SUPREME COURT**

**PROCEDURE ON APPEAL**

**Application of Rule**

- 62.01** (1) Subrules (2) to (9) apply to an appeal that is made to a judge,
- (a) from an interlocutory order of the Prothonotary;
  - (b) from a certificate of assessment of costs; or
  - (c) under any other statute, unless the statute or a rule provides for another procedure.

**Time for Appeal**

- (2) An appeal shall be commenced by serving a notice of appeal (Form 62A) and a designation of address for service (Form 16A.1) on all parties whose interests may be affected by the appeal, within seven days after the date of the order or certificate appealed from.

**Hearing Date**

- (3) The notice of appeal shall name the first available hearing date that is not less than seven days after the date of service of the notice of appeal, and Rule 37.05 (hearing date for motions) applies, with necessary modifications.

**Notice of Appeal**

- (4) The notice of appeal (Form 62A) shall state the relief sought and the grounds of appeal, and no grounds other than those stated in the notice may be relied on at the hearing, except with leave of the judge hearing the appeal.
- (5) The notice of appeal shall be filed in the court office where the appeal is to be heard, with proof of service, not later than seven clear days before the hearing date.

**Appeal Record**

- (6) The appellant shall, not later than seven clear days before the hearing, serve on every other party and file, with proof of service, in the court office, an appeal record containing, in consecutively numbered pages arranged in the following order,
  - (a) a table of contents describing each document, including each exhibit by its nature and date and, in the case of an exhibit, by exhibit number or letter;

- (b) a copy of the notice of appeal;
  - (c) a copy of the order or certificate appealed from, as signed and entered and the reasons, if any, as well as a further typed or printed copy of the reasons if they are handwritten; and
  - (d) such other material that was before the judge or officer appealed from as is necessary for the hearing of the appeal, and a factum consisting of a concise statement, with argument, of the facts and law relied on by the appellant.
- (7) The respondent shall serve on every other party and file with proof of service, in the court office where the appeal is to be heard at least three clear days before the hearing date,
- (a) any further material that was before the judge or officer appealed from and is necessary for the hearing of the appeal; and
  - (b) a factum consisting of a concise statement, with argument, of the facts and law relied on by the respondent.
- (8) A judge may dispense with compliance with subrules (6) and (7) in whole or in part, before or at the hearing of the appeal.

**Abandoned Appeals**

- (9) Rule 61.12 applies, with necessary modifications, to the abandonment of an appeal under this rule.

**DISMISSAL FOR DELAY**

**Motion by Respondent**

- 62.02** (1) Where an appellant has not perfected the appeal within one year after filing the notice of appeal or within any extension of time granted by a judge of the Supreme Court, the respondent may make a motion to the Registrar, on ten days' notice to the appellant, to have the appeal dismissed for delay.

**Notice by Registrar**

- (2) Where the appellant has not perfected the appeal within one year after filing the notice of appeal, the Registrar may serve notice on the appellant that the appeal will be dismissed for delay unless it is perfected within ten days after service of the notice.

**Registrar to Dismiss Where Default not Cured**

- (3) Where the appellant does not cure the default,

- (a) in the case of a motion under subrule (1), before the hearing of the motion; or
- (b) in the case of a notice under subrule (2), within ten days after service of the notice or within such longer period as a judge of the Supreme Court allows, the Registrar shall make an order (Form 62B) dismissing the appeal for delay, with costs and shall serve the order on the respondent.

*Perry v. Kings Square Affordable Housing Corporation*, 2023 PESC 32

Where a statute provided for an appeal of a decision of an administrative tribunal on a question of law only, the court examined the notice of appeal and supporting submissions to identify the true substance of the appeal, and dismissed the appeal. The court pointed out that this gatekeeping function is important as a signal of respect for the institutional design chosen by the Legislature.

*R. v. Stead*, 2020 PECA 6

A summary conviction appeal is governed by s.822 and s.686 of the *Criminal Code*. The appeal may be allowed if the trial judge made an error of law or if his application of the facts to the law was unreasonable.

When considering whether a verdict is reasonable, the summary conviction appeal court must be satisfied there was evidence to go to the trier of fact and that the weight of the evidence was sufficient to support the verdict. An appeal court is not to substitute its opinion for that of the trier of fact. The test is whether the verdict is one that a properly directed jury, acting judicially, could reasonably have rendered (see: *Dorgan and Gavin v. R.*, 2008 PESCTD 31, at paras.13-14; *R. v. Brookfield Gardens Inc.*, 2018 PECA 2, at para.56).

*Clark v. Simmonds* (1999), 171 Nfld. & P.E.I. R. 70 (P.E.I.S.C.-T.D.)

On the facts of this case the party affected by the *ex parte* order of the prothonotary could either file an appeal from the order pursuant to Rule 62 or make a motion pursuant to Rule 37.

*Clark v. Simmonds* (1999), 174 Nfld. & P.E.I.R. 21 (P.E.I.S.C.-T.D.)

The appeal pursuant to Rule 62.01(1)(a) is from a formal order and not the written reasons of the prothonotary. Where the applicant had not obtained a formal order it could not be said the applicant had a *bona fide* intention to appeal, and thus the application for an extension of time to file an appeal was denied.