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JUDICIAL REVIEW IN LABOUR LAW

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This award-winning looseleaf service provides a comprehensive overview of what the courts have done, and are currently doing, when confronted with applications for judicial review of decisions made by labour tribunals. It discusses current case law from all Canadian jurisdictions and includes a discussion of the procedure and remedies available.

What's New in this Update:

This release features updates to Chapter 18 (Procedural Guide). This chapter was comprehensively reviewed, and numerous updates were made with respect to the required procedures in several jurisdictions including Alberta, British Columbia, Nova Scotia, Ontario, Prince Edward Island and Quebec.

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Highlights:

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:3.

Alberta—The court may add to, dispense with, or vary anything required to be sent to the court clerk under (see Rule 3.18(2)). When filing the originating application under Rule 3.8 in Form 7, the applicant must indicate a date and time for the matter to be heard. Under Civil Practice Note 1, any contested application that will require more than 20 minutes to argue and decide is treated as a special application (see Alberta Court of King’s Bench, Civil Practice Note 1 (last modified July 2, 2024), Special Applications, para. C(10)). Matters likely to require more than a half day for argument before a judge must be filed in accordance with Part 8: Trial of the *Rules of Court*. Virtually all judicial review applications will in practice be special applications. Hearing times for special applications are assigned upon request by the Court Coordinator. The date that the parties receive scheduling confirmation is deemed the “triggering date” (Civil Practice Note 1, para. C(21)(b)(ii)). No more than two weeks following the triggering date, the applicant must file its brief and authorities with the court of the clerk at or before 12:00 noon, and must serve these materials on the respondent at or before 4:30 p.m. the same day (Civil Practice Note 1, para. C(21)(b)(iv)). No more than four weeks following the triggering date, the respondent must file its brief and authorities with the court of the clerk at or before 12:00 noon, and must serve these materials on the applicant at or before 4:30 p.m. the same day (Civil Practice Note 1, para. C(21)(b)(v)). Any cross examination permitted on affidavits filed in the application must be completed before the parties’ materials are filed, absent a special order of the Court.

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:3.

Alberta—If an applicant’s brief is not filed in time, the application will be automatically struck (Civil Procedure Note 1, para. C(21)(b)(viii)). If the respondent does not file its brief in time, the application may proceed and the court may order costs or another appropriate penalty against the respondent (Civil Practice note 1, para. C(21)(b)(ix)). The parties may seek to adjourn a hearing date more than three weeks in advance by phoning or emailing the Court Coordinator and obtaining confirmation of the adjournment by fax or letter, copied to all other counsel (Civil Practice Note 1, para. C(19)). All new matters scheduled after July 2, 2024 for hearing after September 6, 2024 will be scheduled in accordance with the new Mode of Hearing Guidelines. These determine whether a hearing will be heard in person or remotely (Alberta Court of King’s Bench “Hearing Guidelines”).

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:4.

British Columbia—Where a petition is unopposed, the applicant may deliver its notice of hearing at any time in advance of the hear-

ing date (Rule 16-1(8)(a), Form 68). If the petition is opposed, the applicant must file and serve its notice of hearing on each respondent at least seven days before the date set for the hearing of the petition (Rule 16-1(8)). The petitioner must provide the registry with a petition record, including a copy of the filed petition, any filed response to petition and each filed affidavit no earlier than 9:00 a.m. on the business day that is three business days before the date set for the hearing and no later than 4:00 p.m. on the day that is one full business day before the date set for it, or, if an earlier date is fixed by a registrar, before that date (Rule 16-1(11)). Failure to file this material in a timely manner will result in the loss of the scheduled hearing date (Civil Practice Direction 65 “Consent Adjournments of Applications and Petitions on the Chambers List”). The petition record may also contain the parties’ written arguments, list of authorities, a draft order and draft bill of costs (Rule 16-1(11)).

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:8. Nova Scotia—Under the *Nova Scotia Civil Procedure Rules*, a party may seek judicial review of a labour relations tribunal’s decision by filing a notice for judicial review within 25 days after the day the decision is communicated to the party or within six months after the day the decision is made, whichever is earlier (*Nova Scotia Civil Procedure Rules*, Rule 7.05(1)). The notice must be entitled “Notice for Judicial Review”, be dated and signed (Rule 7.05(4)) and include a notice of motion for directions to manage the application, as well as a date and place for hearing the motion for directions (Rule 7.05(2), (4); Rule 7.10 sets out in more detail the nature of the directives a judge may make in a judicial review application). The date for hearing of the motion for directions must be no later than 25 days from the date on which the notice is filed (Rule 7.05(3)).

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:9. Ontario—Applicants’ and respondents’ factums must include a certificate with an estimate of the time required for the time required for oral arguments by the party, expressed in hours and fractions of hours. The certificate must also include a statement by the party’s lawyer that the lawyer is satisfied that all authorities cited in the factum are authentic (see Rule 68 (6)(d.1)).

Part VI. Procedure—Chapter 18. Procedural Guide—§ 18:10. Quebec—Proceedings for judicial review of labour relations tribunals in Quebec are primarily governed by arts. 34 and 529 of the *Code of Civil Procedure* (C.Q.L.R. c. C-25.01). It is to be noted that the rules of procedure found in Book II of the *C.C.P.* do not apply to judicial review proceedings (Art 141), so no case management protocols or summaries are required (*Association québécois des vapeurs v. Québec (Procureur général)*, 2016 QCCS 1797. In particularly complex proceedings, though, the court may require the establishment of a case protocol to ensure procedural efficiency (*Giroux v. Greenberg*

Bidner, 2025 QCCS 351) (Art. 141), so no case protocols or summaries are required. Judicial review proceedings are heard in the first instance by the Superior Court of the judicial district in which the defendant (or one of them if there are several) is domiciled or, if it does not have a domicile in Quebec, where it lives or carries on business. The proceedings are by way of an originating application to the Superior Court setting out the facts on which it is based and stating the legal basis for the application and the relief sought.