

FAMILY CROWN SERVICES OPERATIONAL MANUAL

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| APPEALS | New | Office of the Attorney General / Family Crown Services | Policy 27 |
| Policy Title | New or Amended | Division / Branch / Section | Policy # |

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| SLT | | June 1, 2022 | June 1, 2025 |
| Approved by | This policy was approved on: | This version takes effect on: | This policy will be reviewed by: |

APPEALS

1. Introduction

The purpose of an appeal is for a party in disagreement with a decision of the Court of Queen’s Bench to challenge that decision before the Court of Appeal of New Brunswick.

Section 41 (Adult Protection) and subsection 59(1) (Child Protection) of the *Family Services Act* both state the following:

“Any order or decision made under this Part may be appealed within thirty days of the order or decision to the Court of Appeal of New Brunswick.”

Parties to an appeal must follow Rules 62 and 62.1 of the *New Brunswick Rules of Court* governing civil appeals. It should be noted that Leave to appeal is required for an appeal with respect to an Interlocutory Order (Interim Order), an Order with respect to costs only, or an Order made with consent of the parties.

2. Powers of the Court

2.1 Orders made under Parts III and IV of the *Family Services Act*

Subsections 42(2) and 59(4) of the *Family Services Act* provide that on appeal, the Court may affirm the order, terminate the order, remit the order with directions to the court below, give any judgement or make any order that in its opinion should have been given in the court below.

2.2 Standard of review of the New Brunswick Court of Appeal

In a guardianship case, the Court cannot intervene unless the trial judge’s decision has no factual merit or was based on an error in principle, a failure to consider all relevant factors or the consideration of an irrelevant factor. *New Brunswick (Minister of Family and Community Services) v. L.J.B. et al. (2008)*, 327 N.B.R. (2d) 190, 2008 NBCA 21 (CanLII) (C.A.), para. 5.

The standard of review applicable to an appeal of a decision granting the Minister of Social Development an order giving her guardianship of children is that of palpable overriding error. *New Brunswick (Minister of Family and Community Services) v. T.M.S. and J.C.* (2009), 347 N.B.R. (2nd) 285, 2009 NBCA 50 (CanLII) (C.A.)

2.3 Adoptions

When there is an Adoption Order or a refusal to make an Adoption Order, an appeal may be brought either by the person adopted or to have been adopted; the adopting parent or a prospective adopting parent; any person whose consent was required but was waived by the court; or the Minister of Social Development.

On appeal, the Court may affirm the order, terminate the order, remit the order with directions to the court below, give any judgement or make any order that in its opinion ought to have been given or made in the court below.

3. Procedure for recommendation or notification of an Appeal and guidelines for approval

3.1 Approval with respect to appeals initiated by Family Crown Services

All recommendations from Family Crown Counsel to initiate an appeal to the Court of Appeal or to the Supreme Court of Canada are to be approved by the Assistant Deputy Attorney General in accordance with this Policy.

An appeal or application by Family Crown to the Court of Appeal for matters falling under the mandate of Family Crown Services requires the authority of the Attorney General or counsel instructed by the Attorney General. The Assistant Deputy Attorney General of Family Crown Services, or his or her designate, is counsel instructed by the Attorney General for this purpose.

An appeal or application by Family Crown to the Supreme Court of Canada for matters falling under the mandate of Family Crown Services requires the written authority of the Attorney General or Deputy Attorney General. No appeal or application to the Supreme Court of Canada shall be initiated without such authority.

3.2 Respondent appeals

Family Crown Counsel shall advise the Assistant Deputy Attorney General forthwith when served with a Notice of Appeal or Motion seeking Leave to Appeal.

Family Crown Counsel who had conduct of a proceeding resulting in an order or decision being appealed by a Respondent shall be responsible for conducting such appeal subject to the following:

- (a) a request from the Family Crown Counsel that another Family Crown Counsel be permitted to conduct or participate in an appeal; or
- (b) instructions from the Assistant Deputy Attorney General.

Where a Family Crown Counsel conducts or participates in an appeal, he or she is accountable to and under the direction of the Assistant Deputy Attorney General.

3.3 Recommendation or Notification of Appeal

The package to be submitted to the Assistant Deputy Attorney General in relation to a recommendation or notification of an appeal shall contain, to the extent possible, the following material:

- (a) a completed Recommendation or Notification of Appeal Form, a sample of which is included in Appendix A,
- (b) a copy of the order or decision appealed from;
- (c) a case synopsis; and
- (d) any available transcripts or audio recordings.

4. Related documents

Family Services Act, S.N.B. 1980, c. F-2.2

New Brunswick Rules of Court

Appendix A - Recommendation or Notification of Appeal Form



Department of Justice and Public Safety
Ministère de la justice et de la sécurité publique

APPENDIX A

RECOMMENDATION OR NOTIFICATION OF APPEAL

FAMILY CROWN AS RESPONDENT

FAMILY CROWN AS APPELLANT

NATURE OF APPEAL (DESCRIBE OR ATTACH NOTICE OF APPEAL):

HEARING INFORMATION:

Court File Number: FD__ - _____

Name of applicant: _____

Name of respondent(s): _____

Name of trial judge: _____

Date of order or decision being appealed: _____

Name of Family Crown Counsel: _____

Name of defence counsel: _____

Name of counsel for the child(ren): _____

REASONS FOR RECOMMENDING APPEAL (IF APPLICABLE):

SPECIAL INSTRUCTIONS / OTHER COMMENTS:

Attach the following (if available):

- (a) a copy of the order or decision appealed from;
- (b) a case synopsis; and
- (c) any available transcripts or audio recordings;
- (d) Notice of Appeal (62 B)

APPEAL RECOMMENDED BY:

Family Crown Counsel: _____ Date: _____

APPROVED

Assistant Deputy Attorney General: _____ Date: _____

Forward completed application to the attention of the Assistant Deputy Attorney General of Family Crown Services.