

PREPARING FACTUMS FOR THE DIVISIONAL COURT

John C. Murray and Holly L. Rasky***

Preface

The purpose of this article is to share with you some of our views on what ingredients are necessary to produce a factum for a hearing before the Divisional Court which will best serve your client's position.

Generally, our comments apply equally to facta used on appeals and judicial reviews. Thus, for the sake of convenience references to "appeals" should be read as including judicial reviews, except where the contrary is indicated.

We hasten to point out, however, that appeals and judicial reviews are distinct proceedings, involving different standards of review and jurisdictional issues. Our convenient reference to appeals should not be construed as a statement that one type of factum will be appropriate in both types of proceedings. To the contrary: as will be more fully addressed in our article, just as the two types of proceedings are distinct, so must be the facta.

Introduction

Members of the bench and seasoned advocates will agree with Sopinka J.'s statement: "The most strategically important document in the appellant's appeal is its factum."¹

Your factum is the first and last opportunity you have to present your client's case to the court. It is usually the first (and sometimes, only) document the court will read prior to your argument, and it will be the most comprehensive summary of your argument the court will have if it reserves its decision. Understanding the use

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1. J. Sopinka J. and M.A. Gelowitz, *The Conduct of An Appeal* (Toronto: Butterworths, 1993).

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