



**PRACTICE DIRECTION CONCERNING
MANNER OF SERVICE, INMATE APPEAL BOOKS, AND ORDERS FOR RELEASE
OF ELECTRONIC EXHIBITS IN CRIMINAL MATTERS
GIVEN THE EXCEPTIONAL AND EVOLVING CIRCUMSTANCES
CONCERNING COVID-19
("Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and
Orders")
April 3, 2020**

Given the exceptional and evolving circumstances concerning COVID-19, and subject to any further Practice Direction that may issue, "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders" applies until further notice and should be read in conjunction with the *Criminal Appeal Rules*, SI/93-169, Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario ("Practice Direction"), "Practice Direction – Criminal – COVID-19", and all applicable federal statutes:

1. While this "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders" is in force, potential parties to an appeal may serve a Notice of Appeal in the following manner:
 - a. If the appellant is the Crown¹, the Crown is not required to serve the Notice of Appeal personally. The Crown may effect service of the Notice of Appeal in the following manner:
 - i. In accordance with subsection 5.2(2) of the "Practice Direction", where the person was represented by counsel at trial, by serving counsel by registered mail, courier, email, or fax, if counsel confirms in writing that he or she has instructions to accept service.

If the Crown serves counsel by email, the Crown may serve

¹ In this "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders", the "Crown" includes the Attorney General for Ontario, the Minister of Justice, and the Public Prosecution Service of Canada.

counsel and file with the court simultaneously, by way of a single email addressed to counsel and the court. If the Crown serves and files by a single email, the Crown should include in that email counsel's confirmation that he or she has instructions to accept service; or

- ii. In the case of service upon a self-represented person, by serving that person:
 1. By registered mail or courier to the person's last known address, where a reasonable effort has been made to obtain a current one; or
 2. By email or fax.
 3. In Part XX.1 appeals, the parties should continue to be aware of special considerations when serving court documents, as outlined in subsection 18.2(1) of the "Practice Direction".
 4. After serving the person in one of these ways, the Crown shall file the Notice of Appeal, along with proof of service, with the court.
- b. If the appellant is the accused:
 - i. In non-inmate appeals and for appeals that are *not* under Part XX.1 of the *Criminal Code*, in accordance with subsection 5.2(1) of the "Practice Direction", electronically filing or mailing a Notice of Appeal to the Court of Appeal within the prescribed time² will constitute serving and filing.
 - ii. Subrules 5(a) and 39(3) of the *Criminal Appeal Rules* continue to provide the manner of service for inmate appeals and appeals under Part XX.1.
 - iii. In accordance with subrules 10(1) and 39(7) of the *Criminal Appeal Rules* and subsection 5.2(1) of the "Practice Direction", the Court of Appeal will forward the Notice of Appeal to the appropriate respondent Crown forthwith, by electronic or other means. Please note that the Notice of Appeal is the only document that is automatically forwarded by the court to the Crown.
 - iv. In all counsel matters, on the same day as counsel files the Notice of Appeal with the court, counsel for the appellant shall also provide

² The prescribed times have been extended in "Practice Direction – Criminal – COVID-19".

a copy of the Notice of Appeal to the Crown, by email through the applicable Crown's e-service address. Counsel may provide a copy of the Notice of Appeal to the Crown at the same time as filing the Notice of Appeal by way of a single email addressed to the Crown and the court.

- v. Please note that public counter services at the Court of Appeal are closed effective March 23, 2020.³
 - c. This "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders" is subject to the court's discretion to order substituted service of a Notice of Appeal where a respondent cannot be found pursuant to s. 678.1 of the *Criminal Code*.
2. The parties shall comply with any Practice Direction regarding the electronic conduct of matters, including "Practice Direction Regarding the Electronic Conduct of Matters During the COVID-19 Emergency" (forthcoming) and the [Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario](#) in filing documents with the court.
 3. The court will accept for filing Crown Notices of Appeal where service has been effected within the prescribed appeal period, even if the Notice of Appeal is filed outside the prescribed period, so long as the Notice of Appeal is filed within a reasonable time following service.
 4. In accordance with subsection 5.2(3) of the "Practice Direction", no other document need be served personally. In particular, a notice of abandonment under Rule 30 of the *Criminal Appeal Rules* may be served in accordance with paragraph 1 of this "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders" and need not be served personally on the other party.
 5. Motions for the release of original electronic exhibits entered at trial will no longer be required for counsel matters. Electronic exhibits will be released to counsel along with the other exhibits, in accordance with the usual process. Electronic exhibits released to counsel must be included in the appeal book, in electronic form.

No sealed materials, electronic or otherwise, will be released to the parties without a court order.

6. Subrule 25(3) of the *Criminal Appeal Rules* sets out what the Crown must include in appeal books for inmate appeals. Pursuant to subrule 25(4), while this "Practice Direction – Criminal – COVID-19 – Service, Inmate Appeal Books, and Orders" is in force, the Crown is excused from strict compliance with the

³ See [Notice of Public Counter Services \(March 23, 2020\)](#).

requirements of subrule 25(3). Instead, subject to the court's discretion to direct otherwise, the Crown is only required to include those documents that may be relevant to an argument raised on appeal.

In determining what documents may be relevant to an argument raised on appeal, after filing an inmate appeal book or books containing transcripts and any other documents identified by the Crown as being potentially relevant, the Crown shall consult with the appellant and duty counsel. Where the parties disagree on the contents of the appeal book, they may seek direction from the court. The letter may be directed to the attention of the Deputy Registrar, who shall place it before the Designated Inmate Appeal Judge for direction.



Chief Justice George R. Strathy

April 3, 2020

Date

Effective: April 3, 2020