

COURT OF APPEAL FOR ONTARIO



How to Proceed with a Motion for Leave to Appeal in a Provincial Offences Case

A Guide for Unrepresented Persons

This guide gives a brief overview about how to proceed with a motion for leave to appeal to the Court of Appeal for Ontario in a provincial offences case – that is, a case prosecuted under the [Provincial Offences Act, R.S.O. 1990, c. P.33](#). This guide does not address appeals with respect to applications for extraordinary remedies, such as *certiorari*. Please note that court administrative staff cannot provide legal advice or complete the documents to be filed on your motion or appeal for you. For more detailed information about appeals under the *Provincial Offences Act*, please refer to the [Provincial Offences Act](#) and the [Rules of the Court of Appeal in Appeals under the Provincial Offences Act](#).

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1. I HAVE BEEN CONVICTED AND SENTENCED UNDER THE PROVINCIAL OFFENCES ACT (“POA”). CAN I APPEAL THE CONVICTION AND/OR THE SENTENCE DIRECTLY TO THE COURT OF APPEAL?

No, a person must first appeal to the Ontario Court of Justice or Ontario Superior Court of Justice. This is the first-level appeal.

An appeal to the Court of Appeal is a second-level appeal, which cannot take place until a first-level appeal has concluded.

First-Level Appeal

The first level of appeal does not require a motion for leave (permission).

Generally, if you were convicted and sentenced by a justice of the peace, your first-level appeal will be heard by a judge of the Ontario Court of Justice.¹ If you were convicted and sentenced by a judge of the Ontario Court of Justice, your first-level appeal will be heard by a judge of the Superior Court of Justice. For more information about first-level appeals, you may wish to read the Ontario Court of Justice’s [Guide to Appeals in Provincial Offences Cases](#).

Second-Level Appeal

There is no automatic right to appeal to the Court of Appeal. If a person wants to appeal a decision of a first-level appeal judge, the person must seek leave (permission) from a judge of the Court of Appeal.

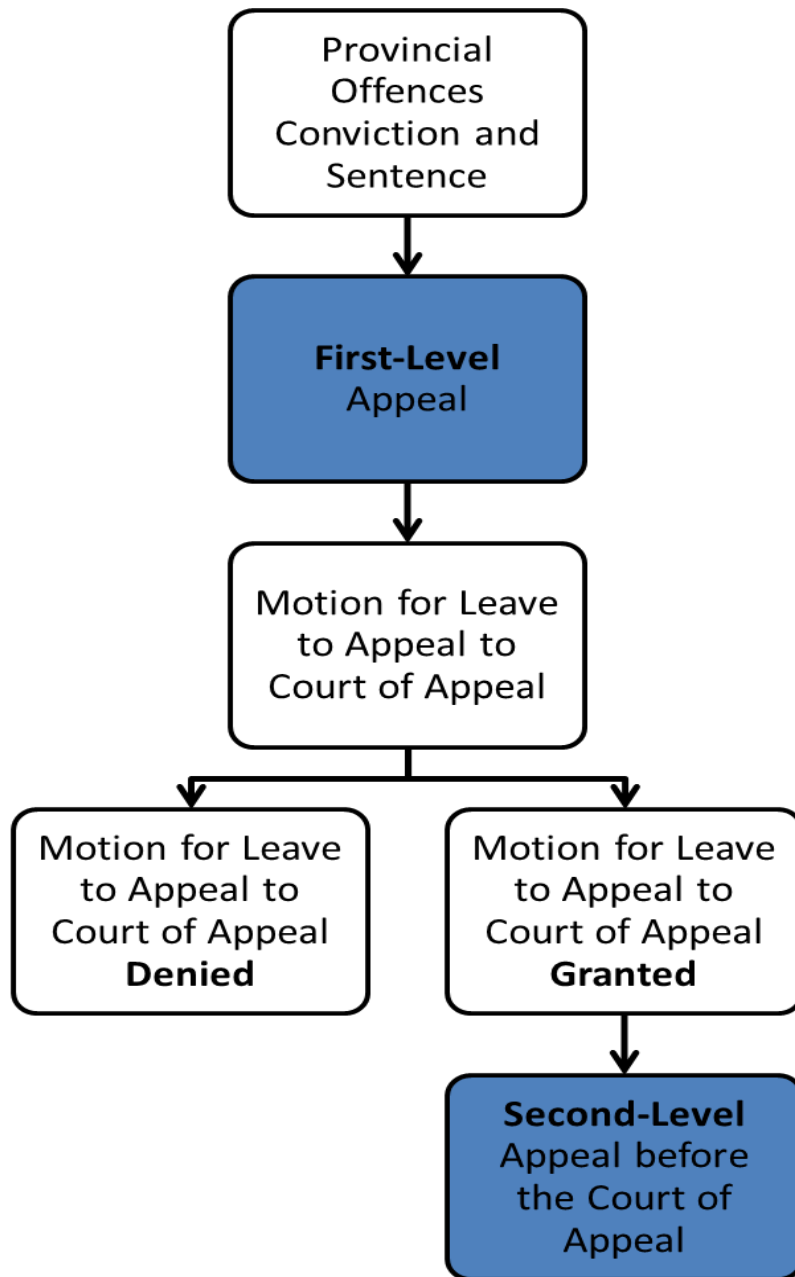
In general, first-level appeal judgments under the POA are intended to be final. Leave to appeal these judgments is granted only in rare cases. (The test for leave to appeal is set out in #3 below.)

If leave to appeal is denied, there is no appeal or review: see [POA, ss. 131\(3\)](#) and [139\(4\)](#).

If leave to appeal is granted, the appeal will be heard by a panel of judges of the Court of Appeal.

¹ Young persons (persons aged 12 years and over but under 16 years) convicted and sentenced by a justice of the peace have their appeals heard by a judge of the Superior Court of Justice: see [POA, s. 105](#).

The following chart illustrates the appeal process for provincial offences cases:



2. A JUDGE OF THE ONTARIO COURT OF JUSTICE OR THE SUPERIOR COURT OF JUSTICE DISMISSED MY MOTION FOR AN EXTENSION OF TIME TO APPEAL IN A FIRST-LEVEL APPEAL. CAN I APPEAL THE DISMISSAL DIRECTLY TO THE COURT OF APPEAL?

If your case was prosecuted **by a certificate of offence or a certificate of parking infraction** (Part I or Part II of the POA), you **may not** appeal from the dismissal. The dismissal is final: see *R. v. Melaku* (2011), 106 O.R. (3d) 481, [2011 CanLII 99905](#) (Ont. C.A., in Chambers).

If the case was prosecuted **by a sworn information** (Part III of the POA), you **may** appeal from the dismissal, **but only with leave** (permission) from a judge of the Court of Appeal: see *R. v. A.E.*, [2016 ONCA 243](#), at para. 35. The test for granting leave to appeal from a dismissal of a motion for an extension of time is the same as the test for granting leave to appeal from a conviction. This text is set out in the next section.

3. WHAT IS THE TEST FOR GRANTING LEAVE TO APPEAL?

For leave to appeal **from a conviction**, you need to establish:

- That there are special grounds;
- That the issue in the appeal is about a question of law alone; and
- That granting leave is essential in the public interest or for the due administration of justice.

For leave to appeal **from a sentence**, you need to establish:

- That there are special grounds;
- That granting leave is essential in the public interest or for the due administration of justice; and
- If your case was prosecuted by a certificate of offence or a certificate of parking infraction (Part I or Part II of the POA), that the issue in the appeal is about a question of law alone.

These tests are set out in [subsections 131\(1\)-\(2\)](#) and [139\(1\)-\(2\)](#) of the POA.

The meaning of “**special grounds**” is informed by the requirement that it is essential in the public interest or for the due administration of justice to grant leave.

To determine whether “**special grounds**” exist, the judge hearing the motion for leave to appeal will consider all the circumstances of the case and determine whether it is essential

in the public interest or for the due administration of justice to grant leave. Some factors that could be relevant to this determination include:

- Does the proposed appeal raise an issue about the interpretation of a statute or a general legal principle, and, if so, could the issue apply to other cases besides yours;
- Does the proposed appeal raise a new issue for the Court of Appeal to decide, or has the issue already been decided by the Court of Appeal in a previous case or cases;
- Are there conflicting lower court decisions about the issue in the proposed appeal;
- Does the issue in the proposed appeal have significance beyond your specific case; and
- Does the proposed appeal have merit?

A “**question of law alone**” means a question that is only about a legal principle. The legal principle could come from a constitutional or statutory provision, a regulation or the common law (judge-made law).

You may wish to review the decisions of the Court of Appeal that discuss the test for leave to appeal. Some of these cases are:

- *R. v. He*, [2021 ONCA 240](#), at paras. 4-5;
- *R. v. Morillo*, [2018 ONCA 582](#), at paras. 5-9;
- *Ontario (Ministry of the Environment and Climate Change) v. Sunrise Propane Energy Group Inc.*, [2018 ONCA 461](#), at paras. 11-16.

You may also wish to consider seeking legal advice. Here is a link to the Court of Appeal’s webpage about getting legal assistance in criminal matters:
<https://www.ontariocourts.ca/coa/how-to-proceed-court/criminal-matters/legal-assistance/>.

4. DOES THE COURT OF APPEAL HAVE RULES ABOUT HOW TO PROCEED WITH PROVINCIAL OFFENCES APPEALS?

Yes, the Court of Appeal has rules about how to proceed with provincial offences appeals. They are set out in the [Rules of the Court of Appeal in Appeals under the Provincial Offences Act, O.Reg. 721/94](#) (“POA Rules”).

5. HOW DO I APPLY FOR LEAVE TO APPEAL?

Applying for leave to appeal is sometimes called “making a motion for leave to appeal”.

To apply for leave to appeal to the Court of Appeal, an unrepresented person (whether in custody or not) must:

Complete a notice of motion in Form 2.

A copy of the notice of motion in Form 2 is found in the Forms section of this document. If you are in custody, the senior official of the institution is required to provide you with a copy of Form 2 upon request.

On the notice of motion (Form 2) you will set out the information about the trial and the first-level appeal, as well as the grounds (reasons) you are seeking leave to appeal. You will also indicate if you want to present your case and argument for leave to appeal in person (that is, before a judge of the Court of Appeal) or in writing.

When you sign your completed notice of motion (Form 2), please also include your name, address, telephone number and email address. Please note: it is your responsibility to notify the court of any changes in your address, telephone number or email address so that information can be conveyed to you in a timely manner. Failing to do so may result in a delay or dismissal of your case.

Serve the notice of motion (Form 2) on the prosecutor (and the Crown, if the prosecutor is not acting on behalf of the Crown) within 30 days after the date of the decision or order you are seeking leave to appeal.

“Serving” means giving materials to the other parties.

If you are in custody, you serve the notice of motion (Form 2) by delivering it to the senior official of the institution. The senior official of the institution will forward the notice of motion to the Registrar of the Court of Appeal. The Registrar of the Court of Appeal will provide the notice of motion to the other parties.

If you are not in custody, you must serve the notice of motion (Form 2) by leaving a copy of it with the prosecutor and, if the prosecutor is not acting on behalf of the Crown, with the Crown Law Office (Criminal) of the Ministry of the Attorney General as well. They are the responding party(ies) on the motion.

The address of the Crown Law Office (Criminal) for service is:

Crown Law Office (Criminal)

Ministry of the Attorney General

720 Bay Street, 10th Floor

Toronto, Ontario M7A 2S9

Telephone Number: (416) 326-4600

Fax: (416) 326-4656

Email: EserviceCLOC@ontario.ca²

To obtain the address of the prosecutor's office, please contact the prosecutor of your trial directly or contact the court where your trial was held.

The notice of motion (Form 2) must be served within 30 days of the date of the order or decision you are trying to appeal. If you are not within that 30-day deadline, you must apply for an extension of time by completing the designated section in Form 2. A single judge of the Court of Appeal will decide whether to grant an extension of time. If the extension of time is denied, your motion for leave to appeal is also denied.

- File the notice of motion (Form 2), with proof of service, in the office of the Registrar of the Court of Appeal within 5 days after service.**

"Filing" means giving materials to the court.

For more information about filing at the Court of Appeal, please go to this page: <https://www.ontariocourts.ca/coa/how-to-proceed-court/filing/>. When filing, you must show proof that you have already served the materials on the other party(ies). Examples of proof include an affidavit of service (see [Form 16B](#) under the *Rules of Civil Procedure*) or a lawyer's written acceptance of service.

- Decide how you wish to present your argument.**

² Email is the preferred method of service for the Crown Law Office (Criminal). During the COVID-19 pandemic, the Crown Law Office (Criminal) is not accepting in-person deliveries of documents.

Argument is what you write or say to try to convince the court to accept your position on the motion or appeal. As discussed below, you can present your argument by filing written submissions, called a factum, or you can present your argument by making oral submissions in person.³

If you ARE in custody; and

- a. **You want to present your argument for leave to appeal in writing**, file your factum by delivering it to the senior official of the institution either at the same time you deliver the notice of motion for leave to appeal (Form 2) to the senior official or within 15 days of when you delivered the notice of motion for leave to appeal (Form 2) to the senior official; or
- b. **You want to present your argument for leave to appeal in person**, arrangements will be made for you to appear before a judge of the Court of Appeal on a date fixed by the Registrar.

If you ARE NOT in custody, file, with proof of service, a motion record and relevant transcripts of evidence within 30 days of filing the notice of motion for leave to appeal (Form 2), whether or not you want to present your argument in writing or in person; and

- a. **If you want to present your argument in writing**, file, with proof of service, two copies of the written argument with the notice of motion for leave to appeal (Form 2) or the motion record.
- b. **If you want to present your argument in person**, the Registrar will set the date for the hearing before a judge of the Court of Appeal.

³ Due to the COVID-19 Pandemic, in-person hearings may be heard virtually by zoom. Please check the [Court of Appeal website](#) for up-to-date information on the status of in-person hearings.

A **motion record** contains the following documents arranged in the following order and on consecutively numbered pages:

- A table of contents describing each document;
- A copy of the notice of motion for leave to appeal;
- A copy of the proposed notice of appeal (see Form 4 below);
- A copy of the certificate or information;
- A copy of any reasons of the trial court and the first-level appeal court if the reasons are not included in the transcripts;
- A copy of any report prepared under the authority of an order made during the course of the proceedings;
- A copy of all affidavits used before the first-level appeal court; and
- A copy of any other material in the court file that is necessary for the hearing of the motion.

A motion record, if produced in paper format, must be bound with a light blue back sheet. The parts of the motion record may be divided by numbered tabs so long as the pages of the whole motion record are consecutively numbered.

The responding party can also file a motion record if they think your motion record is incomplete. If they choose to file a motion record, the opposing party must serve you with a copy of it and file the motion record within five days after being served with your motion record and transcripts of evidence.

Transcripts of evidence are ordered from a certified transcriptionist. For more information about ordering transcripts, go to: https://www.attorneygeneral.jus.gov.on.ca/english/courts/court_transcripts.asp. For those without access to the internet, the toll-free number for further information is 1-800-645-8113.

Transcripts of evidence for use on a motion, if produced in paper format, must have a light grey back sheet.

6. IF I DECIDE TO PRESENT MY ARGUMENT FOR LEAVE TO APPEAL IN WRITING, WHAT HAPPENS AFTER MY WRITTEN ARGUMENT IS FILED WITH THE COURT?

After your written argument is filed with the court, the judge will review it. The judge will either dismiss your motion with written reasons explaining why they dismissed it, or they

will ask the responding party to provide written argument in response to yours. The Registrar will provide you with a copy of the responding party's written argument. If you want, you can reply to the responding party's written argument by filing reply written argument. If you choose to make reply submissions, you must file them within 7 days of when you received the responding party's written argument. The judge will consider the written argument from the parties and will make a decision in writing about whether to grant or dismiss the motion for leave to appeal. The Registrar will send you the judge's decision.

7. IF I DECIDE TO PRESENT MY ARGUMENT FOR LEAVE TO APPEAL IN PERSON (ORALLY):

7.1. WILL THE RESPONDING PARTY BE AT THE ORAL ARGUMENT?

The responding party has the right to appear at the oral argument of your motion for leave to appeal. Usually, you, as the one applying for (asking for) leave to appeal will make your argument about why leave to appeal should be granted first. Then, the responding party will have an opportunity to make their argument about why leave to appeal should not be granted. After that, if the judge thinks it necessary, they may ask for further argument from you in reply to the responding party's arguments.

7.2. WILL THE JUDGE MAKE A DECISION RIGHT AWAY?

After listening to the parties' arguments, the judge will either make a decision on the motion for leave to appeal right away, or they may reserve their decision (take more time to make their decision). If the judge reserves their decision, once they make their decision, the Registrar will notify you and provide you with a copy of the judge's decision.

7.3. WHAT IF I CANNOT ATTEND ON THE DATE THE REGISTRAR HAS SET FOR THE HEARING OF MY MOTION FOR LEAVE TO APPEAL?

If you cannot attend on the date the Registrar has set for the hearing of your motion for leave to appeal, first ask the responding party if they would agree to an adjournment (a rescheduling) of the date. Next, send a letter to the Court of Appeal asking for the adjournment and include in your letter whether the responding party is agreeing (consenting) or not to the adjournment. Please make sure that the responding party is copied on the letter.

7.4. WHAT HAPPENS IF I DO NOT APPEAR FOR THE HEARING OF MY MOTION?

If you do not appear for the hearing of your motion, your motion for leave to appeal may be dismissed as abandoned by the presiding judge.

8. IF MY MOTION FOR LEAVE TO APPEAL IS DENIED, CAN I APPEAL IT FURTHER?

No, the decision of the judge of the Court of Appeal for Ontario on a motion for leave to appeal is final. This means if leave to appeal is denied, there is no appeal or review: see [POA, ss. 131\(3\)](#) and [139\(4\)](#).

9. IF MY MOTION FOR LEAVE TO APPEAL IS GRANTED, WHAT DO I DO NEXT?

➤ If your motion for leave to appeal is granted and **you are in custody**, to continue with the appeal, you must:

- Complete a notice of appeal in Form 3 and deliver it to the senior official of your institution within 10 days of the date of the order granting leave to appeal.**

A copy of a notice of appeal in Form 3 is found at the end of this document. The senior official of the institution is required to provide you with a copy of Form 3 upon request. The senior official will forward your completed notice of appeal in Form 3 to the Registrar of the Court of Appeal. The Registrar of the Court of Appeal will provide it to the other parties.

If you are not within the 10-day deadline, you must apply for an extension of time by completing the designated section of Form 3. The judge considering your application may or may not ask for a written response from the respondent. If the judge asks the respondent for a written response, the Registrar will provide you with a copy of the written response that is submitted. You may make written submissions in reply within 7 days after receipt of the respondent's written response. Once the judge makes a decision on your application, they will put the decision and reasons for it in writing and the Registrar will send you a copy.

On the notice of appeal in Form 3 you will set out the information about the trial and the first-level appeal, as well as the grounds (reasons) for the appeal.⁴ You will also

⁴ If leave to appeal was limited to certain grounds of appeal, then you should only set out those grounds on the notice of appeal.

indicate whether you want to present your argument in person (that is, before a panel [a group of three judges] of the Court of Appeal) or in writing.

If you want to present your argument in person, the Registrar will set a date for the appeal hearing, and arrangements will be made for you to appear before the court.

If you want to present your case and argument in writing, you have the right to present further written submissions within 14 days after receiving the appeal book, or you may include your written argument with your notice of appeal.

Please note: it is your responsibility to notify the court of any changes in your address, telephone number or email address so that information can be conveyed to you in a timely manner. Failing to do so may result in a delay or dismissal of your case.

Unless excused by the Registrar, the Attorney General or counsel for the prosecutor is responsible for preparing the appeal book. Your copy of the appeal book will be mailed to you.

➤ If your motion for leave to appeal is granted and **you are NOT in custody**, to continue with the appeal, you must:

Complete a notice of appeal in Form 4.

A copy of a notice of appeal in Form 4 is found at the end of this document. On the notice of appeal in Form 4 you will set out the information about the trial and the first-level appeal, as well as the grounds (reasons) for the appeal⁵ and the relief (the result) you are asking for.

When you sign the notice of appeal in Form 4, please also include your name, address, telephone number and email address. Please note: it is your responsibility to notify the court of any changes in your address, telephone number or email address so that information can be conveyed to you in a timely manner. Failing to do so may result in a delay or dismissal of your case.

⁵ If leave to appeal was limited to certain grounds of appeal, then you should only set out those grounds on the notice of appeal.

- ☑ **Serve the notice of appeal on the prosecutor (and the Crown, if the prosecutor is not acting on behalf of the Crown) within 10 days after the date of the decision or order you are seeking leave to appeal.**

“Serving” means giving materials to the other parties.

You must serve a copy of the notice of appeal on the prosecutor and, if the prosecutor is not acting on behalf of the Crown, on the Crown Law Office (Criminal) of the Ministry of the Attorney General as well. They are the respondent(s) in the appeal.

The address of the Crown Law Office (Criminal) for service is:

Crown Law Office (Criminal)
Ministry of the Attorney General
720 Bay Street, 10th Floor
Toronto, Ontario M7A 2S9
Telephone Number: (416) 326-4600
Fax: (416) 326-4656
Email: EserviceCLOC@ontario.ca⁶

To obtain the address of the prosecutor, please contact the court where your trial was held.

If you are not within the 10-day deadline, you must apply for an extension of time by making a notice of motion to extend time. The notice of motion must be served on the respondent(s). For more information about bringing motions, here is a link to the Court’s webpage on this topic (note: for this purpose, a provincial offences appeal

⁶ Email is the preferred method of service for the Crown Law Office (Criminal). During the COVID-19 pandemic, the Crown Law Office (Criminal) is not accepting in-person deliveries of documents.

is considered a civil appeal): <https://www.ontariocourts.ca/coa/how-to-proceed-court/civil-family/motions-in-civil-family-appeals/>.

- ☑ **File the notice of appeal, a certificate of the court reporter stating that copies of the transcripts required for the hearing of the appeal have been ordered or an undertaking in Form 5 that transcripts will be filed within 30 days after filing the notice of appeal.**

“Filing” means giving materials to the court.

For more information about filing at the Court of Appeal, please go to this page: <https://www.ontariocourts.ca/coa/how-to-proceed-court/filing/>. When filing, you must show proof that you have already served the materials on the other party(ies). Example of proof include an affidavit of service (see [Form 16B](#) under the *Rules of Civil Procedure*) or a lawyer’s written acceptance of service.

Except for appeals about sentence only, “the transcripts required for the hearing of the appeal” are transcripts of the evidence heard at the trial and of any evidence heard at the first-level appeal. Unless a judge orders otherwise or the respondent consents, the transcript does not include final argument and objections to the admissibility of evidence (except for a notation that an objection was made and a brief summary of the nature of the objection and the position of the parties). The judge’s ruling and reasons about objection will be in the transcript. Alternatively, within 30 days after service of the notice of appeal, the parties can make a signed agreement about the transcript required for the appeal and file it with the Registrar. This signed agreement must be included in the appeal book.

For appeals about sentence only:

- If you pleaded guilty at the beginning of the trial, the transcript required for the hearing of the appeal will be the entire transcript of the hearing before the court, including: (i) the arraignment; (ii) the statement of counsel for the prosecution; (iii) any evidence; (iv) any submissions by the prosecution and the defence; (v) any statement by you before the sentence was imposed; and (vi) the trial judge’s reasons for sentence.
- If you did not plead guilty at the beginning of the trial, the transcript required for the hearing of the appeal will include: (i) the trial judge’s reasons for conviction; (ii) the verdict; (iii) any evidence called about sentence; (iv) any

submissions by the prosecution or the defence on sentence; and (v) the trial judge's reasons for sentence. You and the respondent will also need to work together to see if you can agree to a statement of facts about what the evidence at trial was. If you can agree, the statement of facts must be included in the appeal book. If you cannot agree, either party can, on notice to the other party, ask a judge for directions.

Transcripts for an appeal, if produced in paper format, must be bound front and back in red covers.

Prepare the appeal book.

The **appeal book** contains the following documents arranged in the following order and on consecutively numbered pages:

- A table of contents describing each document;
- A copy of the notice of appeal and any supplementary notice of appeal;
- A copy of order granting leave to appeal and any direction or order made with reference to the appeal;
- A copy of the information or certificate, including all endorsements;
- A copy of the formal order or decision appealed from, if any, as signed and entered;
- A copy of the reasons for judgment of the trial court (if the reasons are not included in the transcripts) with a typed or printed copy if the reasons are handwritten;
- A copy of the reasons for judgment of the first-level appeal court with a typed or printed copy if the reasons are handwritten;
- A copy of any order for release from custody and any other order suspending the operation of sentence;
- A copy of all documentary exhibits filed at trial arranged in order by date or, where there are documents having common characteristics, arranged in separate grounds in order by date;

- A copy of all additional documentary exhibits and affidavits used on the hearing of the appeal in the first-level appeal court;
- A copy of all maps, plans, photographs, drawings and charts that were before the trial judge and are capable of reproduction;
- A copy of the agreed statement of facts, if any;
- Where some or all of the appeal is about the sentence, a copy of the pre-sentence report, the record of the defendant and any exhibits filed on the sentencing proceedings;
- A copy of any notice of constitutional question served in accordance with section 109 of the *Courts of Justice Act* and proof of service of the notice upon the Attorney General of Ontario and the Attorney General of Canada; and
- A copy of a certificate in [Form 61H](#) of the *Rules of Civil Procedure* signed by you stating that the contents of the appeal book are complete and legible.

To obtain copies of exhibits and other documents filed in the trial court and first-level appeal court, contact the Registrar.

If produced in paper format, the appeal book must be bound front and back in buff covers.

Where an appellant is not represented by a lawyer, the Registrar may require the Attorney General or the lawyer for the prosecutor to prepare the appeal book.

Prepare the appellant's factum.

A **factum** is a written summary of the facts, issues, law and the party's argument in support of its position.

The appellant's factum should be titled "Appellant's Factum" on its cover page. If produced in paper format, the factum must be bound front and back in blue covers. The text of the factum must be printed, typewritten, written or reproduced legibly on one side only with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side. The characters must be at least 12 point or 10 pitch in size. The factum must be signed by you and dated. The length of the factum cannot exceed 30 pages unless the Registrar or a judge has given permission. The factum must also contain the following sections:

- Part I, with the caption "Statement of the Case", containing a statement identifying the appellant, the trial court and the first-level appeal court, the nature of the charge(s), the result in the trial court and in the first-level appeal court, and whether the appeal is from conviction, conviction and sentence, acquittal or other disposition;
- Part II, with the caption "Summary of the Facts", containing a concise summary of the facts relevant to the issues on the appeal, with reference to the evidence by page and line number in the transcript as is necessary;
- Part III, with the caption "Issues and the Law", containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities (cases, textbooks, etc.) related to that issue;
- Part IV, with the caption "Order Requested", containing a statement of each issue raised, immediately followed by a concise argument with reference to the law and authorities relating to that issue;

- Schedule A, with the caption “Authorities to be Cited”, containing a list of the authorities referred to, with citations (more detailed information about the authority, such as its date, title, page number, etc.).
- Schedule B, with the caption “Relevant Legislative Provisions”, setting out the text of all relevant statutes.

If the appeal is only about sentence, the factum must be in Form 6. A copy of Form 6 is at the end of this document.

“Perfect” (get the appeal ready for hearing) the appeal by:

- a. Serving on each party to the appeal (and any person entitled by statute or court order to be heard on the appeal) a copy of the appeal book, the transcript and the appellant’s factum, and immediately after that file proof of service of those documents with the Registrar along with the court’s copies of the appeal book and appellant’s factum; and then
- b. Filing with the Registrar a certificate of perfection stating:
 - The appeal book, transcript and appellant’s factum have been served and filed;
 - The transcript is complete;
 - The estimated total length of time for oral argument; and
 - The name, address and telephone number of the lawyer for each party to the appeal (unless the respondent is the Attorney General) and for any persons entitled by statute or court order to be heard on the appeal. If a party or person is self-represented, you must include their name, address for service and telephone number.

Be aware of these deadlines for perfection:

- Where no transcript of evidence is needed except for what was filed in the first-level appeal court, the appeal must be perfected within 60 days after filing the notice of appeal;
- Where a transcript of evidence is needed for the appeal, within 30 days after the transcript has been delivered to the Court of Appeal; or
- Where an agreed statement of facts is required, within 60 days after the transcript has been delivered to the Court of Appeal.

These deadlines can be extended by the Registrar or a judge.

If you do not perfect within these deadlines, the Registrar may serve notice on you that the appeal will be placed before the court to be dismissed as abandoned unless the appeal is perfected within 10 days after the service of the notice. The respondent may also ask the Registrar to place the appeal before the court to be dismissed as abandoned if you fail to perfect on time.

- Prepare a book of authorities, serve a copy on each party to the appeal (and any person entitled by statute or court order to be heard on the appeal) and then file the book of authorities with the court no later than Thursday in the week before the week in which the appeal is scheduled to be heard.**

Book of Authorities contain copies of past legal cases and extracts from secondary sources that are relevant to the issues and that are cited in the factum. The Book of Authorities usually has a table of contents listing all of the cases and sources contained in it.

The book of authorities must only contain those authorities (cases, excerpts from textbooks, etc.) that you intend to refer to in oral argument, and you should mark (highlight, underline, put a vertical line next to [also known as side-barring], etc.) the specific passages in each authority that you intend to refer to. If the book of authorities is produced in paper, it must be bound front and back in blue covers.

10. AFTER I PERFECT THE APPEAL (GET THE APPEAL READY FOR HEARING), WHAT HAPPENS NEXT?

After you perfect the appeal (get the appeal ready for hearing) and file the certificate of perfection, the Registrar will set the date for the appeal hearing and notify you of the date.

The respondent's factum is required to be served and filed no later than 10 days before the week in which the appeal is to be heard.

You must serve and file the book of authorities (see section above) no later than Thursday in the week before the week in which the appeal is scheduled to be heard.

The appeal hearing will be heard by a panel of three or five judges. After listening to the parties' arguments, the judges will either make a decision right away, or they may reserve their decision (take more time to make their decision). If they reserve their decision, once they make their decision, the Registrar will notify you and provide you with a copy of the reasons for decision.

11. WHAT IS THE PROCEDURE FOR APPEALS IN WRITING?

If you want to present your appeal in writing, you need to advise the court in writing. You can do this on the notice of appeal or on a separate document, such as a letter to the Registrar.

If you are in custody and you have indicated to the court that you want to present your appeal in writing, you have the right to present further written submissions within 14 days after receiving the appeal book, or you may include your written argument with your notice of appeal.

If you are NOT in custody and you have indicated to the court that you want to present your appeal in writing, you still need to file all the material that would otherwise be required for an oral appeal (including the appeal book and the transcript) **except** you do not have to file a factum. Instead, you must file your written argument within 30 days after you have filed the material that would otherwise be required for an oral appeal.

The court may or may not require written argument from the respondent. If it does, you will be given a copy of the written argument submitted by the respondent, and you will be given 14 days in which to provide reply submissions should you wish to provide any.

Even though you have asked to present your appeal in writing, the court may direct that the appeal be listed for oral hearing. If this happens, you will be given notice that you may attend and make oral submissions.

Once the court makes its decision, the Registrar will notify you and provide you with a copy of the reasons for decision.

12. CAN I APPLY FOR RELEASE FROM CUSTODY PENDING MY APPEAL?

If you are in custody, and if leave to appeal is granted, you may apply for release from custody pending your appeal. You must give two clear days' notice of your application to the respondent unless the respondent consents to, and a judge or the Registrar permits, a shorter period of notice. Your application must also contain an affidavit or affidavits, including where practicable your own affidavit, establishing:

- The particulars (details) about the conviction;
- Your judicial interim release (bail) status pending the first-level appeal from the trial decision;
- Your places of residence in the three years before the conviction, and where you propose to reside if you are released;
- Your employment prior to conviction, and whether you expect to be employed if you are released and where;
- Your criminal record, if any (including any record of convictions under the same statute as the conviction you are appealing); and
- If you are proposing to enter into a release order with sureties, the amount of money or value of other valuable security you propose should be deposited, and where practicable, the names of the sureties and the amount for which each is to be liable.

13. WHAT IF I DO NOT WANT TO GO AHEAD WITH MY APPEAL ANYMORE?

If you do not want to go ahead with your appeal anymore, you must prepare a notice of abandonment ([Form 61K](#) of the *Rules of Civil Procedure*), sign it, and have your signature verified by affidavit or witnessed by a lawyer or an officer of the institution in which you are in custody. Then, if you are in custody, you must deliver the notice of abandonment to the senior official of your institution. If you are not in custody, you must serve a copy of the notice of abandonment on the prosecutor and, if the prosecutor is not acting on behalf of the Crown, on the Crown Law Office (Criminal) of the Ministry of the Attorney General as well, and then file a copy of the notice of abandonment with proof of service with the Registrar.

14. WHAT ABOUT COSTS?

An order for the payment of “costs” in an appeal usually means an order that the losing party in the appeal pay some or all of the winning party’s legal fees and expenses for the appeal. Even though the POA allows for the court to make an order for the payment of costs in an appeal, the general rule is that no costs are awarded in a proceeding under the POA.

FORMS

Form 2

NOTICE OF MOTION FOR INMATE APPEALS AND WHERE MOVING PARTY IS
UNREPRESENTED

COURT OF APPEAL FOR ONTARIO

MOTION FOR LEAVE TO APPEAL

UNDER THE PROVINCIAL OFFENCES ACT

To: The Registrar

Name of defendant

Place of trial

Name of court⁷ appealed from

Name of judge appealed from

Offence(s) of which convicted⁸

.....

Statute under which defendant convicted⁹

Plea at trial

Sentence imposed

Date of conviction

⁷ Superior Court of Justice or Ontario Court of Justice

⁸ e.g. careless driving

⁹ e.g. *Highway Traffic Act*

Date of imposition of sentence

Date of disposition of appeal

Name and address of place at which appellant is in custody

.....

I, the above named defendant, hereby give you notice that I desire to appeal to the Court of Appeal against my¹⁰

.....

on the grounds hereinafter set forth on page 3 of this notice.

I desire to present my case and argument for leave to appeal,

- (a) in person and request that the Registrar fix a date for the hearing of the motion; or
- (b) in writing.¹¹

Dated thisday of, 20.....¹²

Signed

Appellant

I hereby apply for an extension of time within which I may launch my motion for leave to appeal upon the following grounds (here state reasons for delay.)

¹⁰ If you wish to appeal against conviction, you must write the word "conviction". If you wish to appeal sentence, you must write the word "sentence". If you wish to appeal both conviction and sentence, you must write the words "conviction and sentence". If you are convicted of more than one offence and wish to appeal against some only of the convictions or sentences, you must state clearly the convictions or sentences against which you wish to appeal.

¹¹ See the notes at the end of this form.

¹² This notice must be signed by the defendant. If the defendant cannot write he or she must affix his or her mark in the presence of a witness. The name and address of the witness must be given.

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The moving party [strike out inapplicable provisions]

- (1) applies under s. 131 [or s. 139] of the Provincial Offences Act for leave to appeal conviction upon grounds involving a question of law alone.
- (2) applies under s. 131 of the Provincial Offences Act for leave to appeal sentence.
- (3) applies under s. 139 of the Provincial Offences Act for leave to appeal sentence upon grounds involving a question of law alone¹³

GROUND OF APPEAL

These must be filled in before notice is sent to the Registrar. The moving party must here set out the grounds or reasons he or she alleges why the conviction should be quashed or the sentence reduced. The moving party must also set out the special grounds for granting leave to appeal.

Additional pages may be added and you may include your written argument if you do not wish to appear in person.

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¹³ You may apply for leave to appeal sentence in proceedings commenced under Part I or Part II of the Provincial Offences Act under s. 131 of the Act only on a question of law alone.

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NOTES

Grounds for leave to appeal

- I. (a) You may apply for leave to appeal to the court of appeal from conviction only upon questions of law alone and only on special grounds which make it essential in the public interest or for the due administration of justice that leave be granted.

- (b) You may apply for leave to appeal to the Court of Appeal from sentence only upon special grounds which make it essential in the public interest or for the due administration of justice that leaves be granted, and in proceedings commenced under Part I or II only on a question of law alone.

Time for serving this notice

- II. (a) Whether your motion for leave to appeal is from conviction, sentence or both, this notice must be served within 30 days of the date of the order or decision from which leave to appeal is sought.
- (b) If this notice is served beyond that time when you must apply for an extension of time by completing the application above.

Manner of service of this notice where person in custody

- III. If you are in custody this notice of motion must be served by delivering it to the senior official of the institution in which you are confined.

Manner of service of this notice where person not in custody

- IV. If you are not in custody you must serve a copy of this notice on the prosecutor and the Crown Law Office (Criminal) of the Ministry of the Attorney General if the prosecutor is not acting on behalf of the Crown. This notice must then be filed in the office of the Registrar of the Court of Appeal, with proof of service, within five days after service.

Filing argument in writing if in custody

- V. If you are in custody and desire to submit your case and argument for leave to appeal in writing you may deliver your written argument to the senior official of the institution in which you are confined, with this notice of motion or not later than 15 days from the date that you serve this notice.

Filing argument and motion record if person not in custody

- VI. If you are not in custody you must comply with subrule 3 (9) by serving and filing a motion record and transcripts within 30 days of filing of this notice, whether or not you wish to present your argument in writing or in person. The contents of the motion record are described in subrule 3 (9), a copy of which may be obtained from the Registrar's office. If you wish to present your argument in writing, the argument may be included with this notice or filed with the motion record.

Filing notice of appeal

- VII. If leave to appeal is granted you will be notified by the Registrar. You will then have 10 days to file a notice of appeal. If you are in custody the notice of appeal must be in Form 3. Copies of Form 3 may be obtained from the officials in the institution or from Legal Aid Duty Counsel. If you are not in custody the notice of appeal must be in Form 4. Copies of Form 4 may be obtained from the Registrar.

If you are in custody you may apply for bail pending your appeal if leave to appeal is granted.

Form 3

NOTICE OF APPEAL FOR INMATE APPEALS

COURT OF APPEAL FOR ONTARIO

NOTICE OF APPEAL UNDER

THE PROVINCIAL OFFENCES ACT

To: The Registrar

Name of defendant

Place of trial

Name of court¹ appealed from

Name of judge appealed from

Offence(s) of which convicted²

.....

Statute under which defendant convicted³

Plea at trial

Sentence imposed

Date of conviction

Date of imposition of sentence

Date of disposition of appeal

Name and address of place at which appellant is in custody

.....

¹ Superior Court of Justice or Ontario Court of Justice

² e.g. careless driving

³ e.g. *Highway Traffic Act*

I, the above named defendant, hereby give you notice that I appeal to the Court of Appeal against my⁴

.....

on the grounds hereinafter set forth on page 3 of this notice.

Dated thisday of, 20.....

Signed⁵

Appellant

NOTE:

- (a) This notice must be served within 10 days of the date of order granting leave to appeal.
- (b) If this notice is served beyond that time then you must apply for an extension of time by completing the application below.

III. This notice of appeal must be served by delivering it to the senior official of the institution in which you are confined.

I hereby apply for an extension of time within which I may launch my appeal upon the following grounds (here state reasons for delay.)

.....

.....

⁴ You may appeal to the Court of Appeal from conviction only upon questions of law alone and only after a judge of the Court of Appeal has granted leave to appeal on special grounds. You may appeal to the Court of Appeal from sentence only after a judge of the Court of Appeal has granted leave to appeal on special grounds.

⁵ This notice must be signed by the defendant. If the defendant cannot write he or she must affix his or her mark in the presence of a witness. The name and address of the witness must be given.

.....
.....
Signed Date

I desire to present my case and argument,

- (a) in person and request that the Registrar fix a date for the hearing of the appeal; or
- (b) in writing.⁶

The Appellant [strike out inapplicable provisions]

- (1) appeals conviction upon grounds involving a question of law alone.
- (2) appeals sentence.

GROUND OF APPEAL

These must be filled in before notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why the conviction should be quashed or the sentence reduced.

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⁶ If you wish to present your argument in writing you will be notified by the Registrar of the date for filing that argument or you may include your argument with this Notice of Appeal.

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.....

Form 4

NOTICE OF APPEAL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE QUEEN

(indicate whether appellant or respondent)

- and -

A.B.

(specify name of defendant)

(indicate whether appellant or respondent)

NOTICE OF APPEAL

(UNDER SECTION 131 [OR 139]

OF THE PROVINCIAL OFFENCES ACT)

PARTICULARS OF CONVICTION (or as the case may be)

1. Place of conviction
2. Name of trial judge
3. Name of appeal court judge
4. Offence(s)¹ of which defendant convicted
.....
5. Section(s) of statute under which accused convicted
6. Plea at trial
7. Length of trial
8. Sentence imposed
9. Date of conviction
10. Date of sentence
11. Date of disposition of appeal
12. Disposition of appeal

¹ Note: The notice of appeal must refer to all offences under appeal.

13. If defendant in custody, place of incarceration

The Appellant [use applicable provisions]

- (1) appeals against his or her conviction upon grounds involving a question of law alone.
- (2) appeals against his or her sentence.

The grounds of appeal are:²

The relief sought is

The Appellant's address for service is

The Appellant's address³ is

Dated thisday of, 20.....

.....

(Name, address and telephone number of appellant's solicitor
or (where none)⁴ the appellant)

² Note: If leave to appeal has been granted limited to certain grounds of appeal then it is only those grounds which should be set out here.

³ Note: These rules provide for service upon the appellant of certain material at the address provided in the notice of appeal. If the appellant changes address then the appellant must notify the registrar.

⁴ Note: The appellant may present the case on appeal and the argument in writing by so indicating to the Court of Appeal. Reference should be made to Rule 22.

Form 5

UNDERTAKING

I [counsel for the Appellant or, where none, the Appellant] undertake that all transcripts required for the hearing of the appeal in the matter of His Majesty the Queen and A.B. shall be filed by, 20...

.....

(Name, address and telephone number of appellant's
solicitor or (where none) the appellant)

Form 6

APPELLANT'S FACTUM - - APPEAL FROM SENTENCE ONLY

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE QUEEN

Respondent

- and -

NAME OF APPELLANT

Appellant

APPELLANT'S FACTUM

PART I

PARTICULARS OF THE CASE

1. Place of Conviction
2. Name of Trial Judge
3. Name of appeal court Judge
4. Offence(s) of which defendant convicted
5. Section(s) of statute under which defendant convicted
6. Plea at trial
7. Length of trial
8. Sentence imposed
9. Date of conviction
10. Date of sentence
11. Date of disposition of appeal
12. Disposition of appeal
13. Present place of incarceration [if applicable]
14. If defendant released on bail pending appeal, date of release¹
15. Period spent in pre-trial/pre-sentence incarceration²

¹ Note that these Rules require that the Release order be placed in the Appeal Book.

² Where the incarceration was due to circumstances other than detention on the charges under appeal this should be made clear. Thus if for a portion of the time the

16. Parole Eligibility date³
17. Statutory release date⁴
18. Names of co-defendants and sentences imposed for offences upon which they were convicted⁵
19. Does the defendant have a prior criminal record⁶
20. Present employment⁷
21. Present Marital status⁸
22. Appellant's present age and age at time of offence
23. Was there a pre-sentence report prepared⁹

defendant was serving sentence on another offence either this period should not be included or there should be a note to this effect.

³ This date is available from the sentence administrator of the institution where the defendant is incarcerated. Where the defendant is serving sentence for other offences other than the offence under appeal this should be made clear in a note.

⁴ This date is available from the sentence administrator of the institution where the Appellant is incarcerated.

⁵ Where the defendant relies on disparity as a ground for varying the sentence additional details may be necessary and should be included in Part II of the Factum. These details would include the co-defendant's criminal record, references to the judge's reasons for the sentence imposed on the co-defendants, the involvement of the co-defendant, whether the co-defendant was convicted of other offences so that the totality principle affected the sentence, and any other information which would put the allegation of disparity in its proper context.

⁶ If the defendant has a prior criminal record it should be set out in detail in Part II of the Factum and should include reference to convictions for offences under the same statute as the offence being appealed.

⁷ In addition to present employment a fuller history of employment should be set out in Part II of the Factum. If the defendant is in custody then refer to employment at time of conviction or sentence.

⁸ Where relevant the history of the defendant's marital status should be referred to in Part II of the Factum.

⁹ If there was a pre-sentence report prepared its contents should be briefly summarized in Part II of the Factum. In addition the entire report must be included in the Appeal Book.

24. Were there any medical, psychological, psychiatric or similar reports referred to or filed at the sentence proceedings¹⁰
25. Was there a joint submission and if so what was it¹¹
26. If no joint submission briefly set out the position of the prosecutor and defence counsel on the sentence proceedings¹²
27. Will there be an application to admit fresh evidence and if so does the Respondent consent to its admission¹³

PART II

SUMMARY OF THE FACTS

The Facts of the Offence¹⁴

The Background of the Appellant

¹⁰ Where relevant the contents of such reports should be briefly summarized in Part II of the Factum. In addition the complete report must be included in the Appeal Book, whether or not it was formally marked as an exhibit on the proceedings.

¹¹ A joint submission would include where counsel have agreed on a range of sentences to be submitted to the trial Judge.

¹² The “position” of counsel may simply be that the sentence should take a particular form i.e. incarceration, or may be more specific i.e. a specified term of months or years. If counsel did not make any suggestion as to the type or length of sentence this should be indicated as well.

¹³ Where the Respondent consents to the admission of fresh evidence on the appeal this evidence may be included in the Appeal Book or filed separately and reference may be made to the evidence in Part II of the Factum. No notice of motion is required, provided that the material is clearly identified as fresh evidence and the Respondent has consented to its admission. Where the Respondent opposes the admission of the fresh evidence then the counsel must prepare a notice of motion returnable on the date of the appeal. The evidence itself should be filed with the notice of motion but in a sealed envelope. There must be sufficient copies for the members of the Court.

¹⁴ Where the facts are complicated and somewhat lengthy counsel may wish to include a paragraph containing an overview of the facts. In most sentence appeals that paragraph should not be required since these Rules require that this Part of the factum contain a brief summary of the facts.

Fresh Evidence

(Here briefly summarize the fresh evidence which
on consent has been filed with the court)

PART III

GROUNDS OF APPEAL

PART IV

ORDER REQUESTED

It is respectfully submitted that *(here set out relief requested, e.g. that the appeal from sentence be allowed and the sentence reduced)*.

All of which is respectfully submitted

.....

Defence Lawyer

Counsel for the Appellant

Dated thisday of, 20.....

GLOSSARY OF TERMS AND EXPRESSIONS

Term	Definition
Appeal	An appeal is a review by a higher-level court of a decision of a lower-level court.
Appeal Allowed	When an appeal is allowed, this means the court has decided in favour of the appellant (the party bringing the appeal).
Appeal Book	The appeal book contains the documents that are needed for the hearing of the appeal. The contents of the appeal book for all appeals except inmate appeals are set out in rule 12(1) of the POA Rules. The contents of the appeal book for inmate appeals is set out in rule 23(3) .
Appeal Dismissed	When an appeal is dismissed, this means the court has decided against the appellant (the party bringing the appeal).
Appellant	The appellant is the party who is asking the higher-level court to review the decision of the lower-level court.
Argument	Argument is what you write or say to try to convince the court to accept your position on the motion or the appeal. Argument can be written or oral. Argument is sometimes called submissions.
Book of Authorities	Copies of past legal cases and extracts from secondary sources that are relevant to the issues and that are cited in the factum. The Book of Authorities usually has a table of contents listing all of the cases and sources contained in it.
Crown	The term Crown usually refers to the federal or provincial government or the prosecution, so long as it is not a private prosecution.
Evidence	Evidence is the testimony of witnesses and exhibits filed in court. Evidence is used to try to prove a fact or facts in a case.
Factum	A factum is a written summary of the facts, issues, law and the party's argument in support of its position.

Filing	Filing means giving materials to the court. When filing, you must show proof that you have already served the materials on the other party.
Grounds for leave to appeal	Grounds for leave to appeal are the reasons you say that the judge or the court should give you leave (permission) to appeal.
Hearing	A hearing is a proceeding before a judge or the court during which the parties present argument (and sometimes evidence) about the issues at stake, and then the judge or the court makes a decision.
Inmate Appeal	An inmate appeal is an appeal (or motion for leave to appeal) brought by a person who is in custody and unrepresented by a lawyer at the time the notice of appeal or notice of motion for leave to appeal is filed.
Judgment	A judgment is the final decision by the court in a legal proceeding. Shorter decisions at the Court of Appeal are referred to as Reasons for Decision or Endorsements.
Leave to Appeal	Leave to appeal means permission to launch an appeal. Leave (permission) to appeal is given by a judge or the court.
Motion Denied	When a motion is denied, this means the judge or the court has decided not to do what the moving party (the party who brought the motion before the court) was asking them to do.
Motion for Leave to Appeal	A motion for leave to appeal is a formal request for the court's permission to launch an appeal. A motion for leave to appeal is sometimes called an application for leave to appeal. The words motion and application mean the same thing in this context.
Motion Granted	When a motion is granted, this means the judge or the court has decided to do what the moving party (the party who brought the motion before the court) was asking them to do.
Motion Record	The motion record contains the documents that are needed for the hearing of the motion for leave to appeal in non-inmate appeals. The contents of the motion record are set out in rule 3(9) of the POA Rules.

Moving Party	The moving party is the party who is bringing the motion before the court.
Municipal Prosecutor	The municipal prosecutor in a provincial offences case represents the municipality rather than the federal or provincial government.
Party	A party is a person or an entity (like a municipality or the Crown) who is directly involved in a legal proceeding.
Proof of Service	Proof of service means something that shows the court that you have provided the materials to the other party(ies) to the legal proceedings. Examples of proof include an affidavit of service (see Form 16B under the <i>Rules of Civil Procedure</i>) or a lawyer's written acceptance of service. Usually, you need to show proof of service of a document before you can file it with the court.
Prosecutor	A prosecutor is a legal professional who represents the federal, provincial or municipal government a provincial offences case.
Provincial Offences Act (POA)	The Provincial Offences Act (POA) is a provincial statute that sets out procedures for the prosecution of provincial offences, including trials, sentencing and appeals.
Respondent	The respondent is the party who responds to the appeal brought by the appellant.
Responding Party	The responding party is the party who responds to the motion brought by the moving party.
Serving	Serving means giving materials to the other party(ies) in the motion or appeal.
Transcript	A transcript is a word-for-word written record of what was said in court.

KEY PROVISIONS IN THE PROVINCIAL OFFENCES ACT

Provincial Offences Act, R.S.O. 1990, c. P.33

For Cases Commenced by a Certificate (Part I and Part II of the POA):

Appeal to Court of Appeal

139 (1) An appeal lies from the judgment of the Ontario Court of Justice in an appeal under section 135 to the Court of Appeal, with leave of a judge of the Court of Appeal, on special grounds, upon any question of law alone.

Grounds for leave

(2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

Costs

(3) Upon an appeal under this section, the Court of Appeal may make any order with respect to costs that it considers just and reasonable.

Appeal as to leave

(4) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).

For Cases Commenced by a Sworn Information (Part III of the POA):

Appeal to Court of Appeal

131 (1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the court to the Court of Appeal, with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone or as to sentence.

Grounds for leave

(2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

Appeal as to leave

(3) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).