**Form 6**

APPELLANT’S FACTUM - - APPEAL FROM SENTENCE ONLY

Court of Appeal for Ontario

B E T W E E N:

HIS MAJESTY THE KING

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 release[[1]](#footnote-1)
15. Period spent in pre-trial/pre-sentence incarceration[[2]](#footnote-2)
16. Parole Eligibility date[[3]](#footnote-3)
17. Statutory release date[[4]](#footnote-4)
18. Names of co-defendants and sentences imposed for offences upon which they were convicted[[5]](#footnote-5)
19. Does the defendant have a prior criminal record[[6]](#footnote-6)
20. Present employment[[7]](#footnote-7)
21. Present Marital status[[8]](#footnote-8)
22. Appellant's present age and age at time of offence
23. Was there a pre-sentence report prepared[[9]](#footnote-9)
24. Were there any medical, psychological, psychiatric or similar reports referred to or filed at the sentence proceedings[[10]](#footnote-10)
25. Was there a joint submission and if so what was it[[11]](#footnote-11)
26. If no joint submission briefly set out the position of the prosecutor and defence counsel on the sentence proceedings[[12]](#footnote-12)
27. Will there be an application to admit fresh evidence and if so does the Respondent consent to its admission[[13]](#footnote-13)

Part II

Summary of the Facts

The Facts of the Offence[[14]](#footnote-14)

The Background of the Appellant

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

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Defence Lawyer

Counsel for the Appellant

Dated this ...................................day of .................................................., 20....................................

1. Note that these Rules require that the Release order be placed in the Appeal Book. [↑](#footnote-ref-1)
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 defendant was serving sentence on another offence either this period should not be included or there should be a note to this effect. [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)
4. This date is available from the sentence administrator of the institution where the Appellant is incarcerated. [↑](#footnote-ref-4)
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. [↑](#footnote-ref-5)
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. [↑](#footnote-ref-6)
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. [↑](#footnote-ref-7)
8. Where relevant the history of the defendant's marital status should be referred to in Part II of the Factum. [↑](#footnote-ref-8)
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. [↑](#footnote-ref-9)
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. [↑](#footnote-ref-10)
11. A joint submission would include where counsel have agreed on a range of sentences to be submitted to the trial Judge. [↑](#footnote-ref-11)
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. [↑](#footnote-ref-12)
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. [↑](#footnote-ref-13)
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. [↑](#footnote-ref-14)