



## **COURT OF APPEAL FOR ONTARIO CRIMINAL APPEAL RULES**

The Court of Appeal for Ontario, pursuant to ss. 482(1), 482(3) and 482.1(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, repeals the *Criminal Appeal Rules*, SI/93-169, 1993 Canada Gazette, Part II, and hereby makes the annexed *Criminal Appeal Rules*, effective November 1, 2021.

October 15, 2021

Chief Justice George R. Strathy

Effective: November 1, 2021

Amendments Released: March 7, 2022

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## **PART I – GENERAL MATTERS**

### **1. APPLICATION AND INTERPRETATION**

#### ***Application***

- (1) These rules are enacted pursuant to ss. 482(1), 482(3) and 482.1(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, and, subject to subrule 1(2), apply to all proceedings within the jurisdiction of the Court of Appeal for Ontario instituted in relation to any matter of a criminal nature or arising from or incidental to any such proceeding, including appeals and reviews under:
  - a. The *Criminal Code*;
  - b. The *Youth Criminal Justice Act*, S.C. 2002, c. 1; and
  - c. The *Extradition Act*, S.C. 1999, c. 18.
- (2) These rules do not apply to appeals under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

#### ***Interpretation***

- (3) These rules shall be liberally construed to secure the fair and expeditious determination of criminal appeals.

#### ***Matters Not Provided For***

- (4) Where matters are not provided for in these rules or the court's practice directions, the court, a judge or the Registrar may adopt any procedure that is not inconsistent with these rules.
- (5) A party may, on notice, bring a motion for directions as to the procedure referred to in subrule 1(4).

#### ***Short Title***

- (6) These rules may be cited as the *Criminal Appeal Rules*.

#### ***Commencement and Revocation***

- (7) These rules come into force on November 1, 2021, and on that day the *Criminal Appeal Rules*, SI/93-169, 1993 *Canada Gazette*, Part II, are revoked.

### ***Transitional Provisions***

- (8) Subject to subrule 1(9), these rules apply to all proceedings described in subrule 1(1), whether commenced before or after these rules come into force, except in respect of steps already taken under the preceding rules.
- (9) Unless otherwise directed or ordered by a judge, subrule 46(6) (Date for Filing Respondent's and Other Parties' Factums) only applies to appeals commenced after these rules come into force.
- (10) Notwithstanding subrule 1(8), a judge may make an order that a proceeding described in subrule 1(1) or a step in such a proceeding be conducted under these rules or the preceding rules or make any other order that is considered just in order to secure the fair and expeditious conduct of the appeal.

### ***Dispensing with Compliance***

- (11) The court or a judge may dispense with compliance with any rule where and to the extent it is necessary in the interests of justice to do so.

## **2. DEFINITIONS**

- (1) In these rules:

“acquittal” includes:

- a. An order of the Superior Court of Justice that quashes an indictment or in any manner refuses or fails to exercise jurisdiction on an indictment; and
- b. An order of a trial court that stays proceedings on an indictment or quashes an indictment, where the *Code* provides a right of appeal from the order;

“appeal” includes, where necessary, a review and a notice of application for leave to appeal;

“appeal management judge” means a single judge exercising appeal management functions;

“appellant” includes an applicant for leave to appeal and, unless otherwise indicated, includes the lawyer for the appellant;

“application for a variation of a release order pending appeal” includes an application to extend the surrender date in a release order pending appeal;

“Attorney General” means the Attorney General of Canada or the Attorney General of Ontario, as applicable;

“Chief Justice of the Court of Appeal” means the Chief Justice of Ontario and also includes the Associate Chief Justice of Ontario;

“Code” means the *Criminal Code*, R.S.C. 1985, c. C-46;

“contact information” means all of the following applicable information: (i) address; (ii) telephone number; (iii) email address; and (iv), where the person is a lawyer, Law Society of Ontario number.

“convicted person” means a person who has been convicted of an offence under the *Code* or the *Controlled Drugs and Substances Act*, and, where necessary, also includes a person who has been found guilty and granted a discharge under s. 730 of the *Code*;

“court” means the Court of Appeal for Ontario or a panel of three or more judges thereof;

“criminal panel” means any panel of three or more judges assigned to hear criminal appeals in the week in which a matter is referred to a criminal panel under these rules;

“electronic signature” means electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with a document;

“holiday” means:

- a. Any Saturday or Sunday;
- b. New Year’s Day;
- c. Family Day;
- d. Good Friday;
- e. Easter Monday;
- f. Victoria Day;
- g. Canada Day;
- h. Civic Holiday;
- i. Labour Day;
- j. Thanksgiving Day;
- k. Remembrance Day;

- l. Christmas Day;
- m. Boxing Day, and
- n. Any special holiday proclaimed by the Governor General or the Lieutenant Governor; and
- o. Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday; and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays; and where Christmas Day falls on a Friday, the following Monday is a holiday;

"inmate appeal" means an appeal, other than an appeal from an order made under Part XX.1 of the *Code*, by a person who, at the time the notice of appeal is filed, is in custody and is not represented by a lawyer, as well as appeals converted into or deemed to be an inmate appeal pursuant to these rules, a practice direction or an order or a direction from the court or a judge;

"in-person appeal" means an appeal, other than an appeal from an order made under Part XX.1 of the *Code*, by a person who, at the time the notice of appeal is filed, is out of custody and is not represented by a lawyer, as well as appeals converted into or deemed to be an in-person appeal pursuant to these rules, a practice direction or an order or a direction from the court or a judge;

"institution" means a penal or reform institution;

"judge" means the Chief Justice of Ontario, the Associate Chief Justice of Ontario or a single judge of the Court of Appeal for Ontario;

"motion" includes an application;

"moving party" includes an applicant;

"notice of appeal" includes, where necessary, a notice of application for leave to appeal and a notice of motion or application;

"practice direction" means a direction, notice, guide or similar publication for the purpose of governing, subject to these rules, the practice for proceedings at the Court of Appeal;

"Registrar" means the Registrar of the Court of Appeal and includes a deputy Registrar and any employee of the Office of the Registrar assigned to perform specific functions of the Registrar;



“respondent” includes a responding party on a motion or an application and, unless otherwise indicated, includes the lawyer for the respondent or responding party; and

“solicitor appeal” means an appeal, other than an appeal from an order made under Part XX.1 of the *Code*, by either the Attorney General or a person who, at the time the notice of appeal is filed, is in or out of custody and is represented by a lawyer who is entitled to practise law in the province of Ontario.

- (2) Except as otherwise provided in these rules, the definitions in the *Code* and in the *Youth Criminal Justice Act* apply to these rules.

### **3. FORMS**

- (1) The forms referred to in these rules are set out in the Appendix of Forms.
- (2) The forms set out in the Appendix of Forms shall be used where indicated and with such variations as the circumstances require.

### **4. PRACTICE DIRECTIONS**

- (1) The Court of Appeal may make practice directions not inconsistent with these rules.
- (2) Practice directions shall be posted on the court’s website.

### **5. COMPUTATION OF TIME**

- (1) In the computation of time under these rules or an order, except where a contrary intention appears:
  - a. Where there is a reference to a number of clear days between two events, they shall be counted by excluding the days on which the events happen;
  - b. Where there is a reference to a number of days, not expressed to be clear days, between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
  - c. Where a period of seven days or less is prescribed, holidays shall not be counted;

- d. Where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
  - e. Service or filing of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- (2) Where a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

## **6. COURT DOCUMENTS**

### ***Format***

- (1) The court may specify by practice direction, and the court or a judge may direct or order, whether a document in a proceeding, such as a notice of appeal, notice of motion, transcript, motion record, appeal book, factum, book of authorities or compendium, shall be served and/or filed in paper format, electronic format or both.
- (2) Every document in a proceeding under these rules, other than a transcript, shall:
- a. Be printed, typed, written or reproduced legibly;
  - b. Have a margin of approximately 25 millimetres on all sides;
  - c. Be in 12-point or larger font;
  - d. Have double spaces between the lines, except for quotations longer than four lines and footnotes;
  - e. Be divided into a single series of consecutively numbered paragraphs; and
  - f. If providing documents in paper format:
    - i. The paper shall be letter size (216 millimetres by 279 millimetres);
    - ii. The paper shall be of good quality;
    - iii. The paper shall be white or near white; and
    - iv. The text may appear on one side or both sides of the paper, except for the text in factums, which shall be set out on one side of the paper only.
- (3) The court may specify by practice direction further requirements for the formatting of electronic and paper documents.

### ***Colours of Covers***

- (4) In these rules, requirements as to the colour of document covers do not apply to a document that is filed electronically; however, if the same document is filed in paper format, these requirements apply to the paper version of the document.

### ***Electronic Signatures***

- (5) A document that may or must be signed under these rules may be signed with an electronic signature.

### ***Contents***

- (6) Every document in a proceeding, other than a transcript, shall have a heading in accordance with Form 1 that sets out:
- a. The court file number (if known), the motion number (if known and if applicable) and the name of the court; and
  - b. Subject to the exception set out in subrule 6(7), the title of the proceeding with the names of the parties:
    - i. As set out in the notice of appeal;
    - ii. Listed in the same order in which they were listed in the title of the proceeding in the court appealed from; and
    - iii. Showing the status of the party in the appeal.
- (7) Where there are more than two parties to the proceeding, in every document other than a notice of appeal, a short title showing the names of the first party on each side followed by the words “and others” or “et al.” may be used.
- (8) Every document in a proceeding, other than a transcript, shall contain:
- a. The title of the document;
  - b. Its date; and
  - c. The name and contact information of the lawyer serving or filing the document or, where a party acts in person, their name and contact information.
- (9) Every document in a proceeding, other than a transcript, shall have a backsheet in accordance with Form 2 that sets out:
- a. The court file number (if known), the motion number (if known and if applicable) and the name of the court;
  - b. The short title of the proceeding;

- c. The title of the document;
- d. In the case of an affidavit, the deponent's name and the date when they swore or affirmed the affidavit; and
- e. The name and contact information of the lawyer serving or filing the document or, where a party acts in person, their name and contact information.

***Documents Containing Information Subject to a Sealing Order or a Publication Ban or Arising from an in Camera Proceeding***

- (10) If a document refers to information that is subject to a sealing order imposed by a court, then the document itself must be sealed.
- (11) If a document refers to information that is subject to a publication ban imposed by a court or contains information the release of which would violate a legislative provision, then the party preparing the document must include a prominent reference to the terms of the applicable order or legislative provision on the front of the document.
- (12) If a document refers to information arising from an *in camera* proceeding that was not subsequently made publicly available by order of a court, then the party preparing the document must include a prominent reference to this fact on the front of the document.

***Affidavits***

- (13) An affidavit used in a proceeding shall:
  - a. Be in Form 3;
  - b. Be expressed in the first person;
  - c. State the full name of the deponent and, if the deponent is a party or a lawyer, shall state that fact;
  - d. Be divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular statement of fact; and
  - e. Be signed by the deponent and sworn or affirmed in accordance with the *Commissioners for Taking Affidavits Act*, R.S.O. 1990, c. C.17.
- (14) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, an affidavit shall be confined to a statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except that an affidavit may contain statements of the deponent's information and belief with respect to facts that

are not contentious, provided that the source(s) of the information and the fact of belief are specified in the affidavit.

- (15) An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and where the exhibit:
- a. Is referred to as being attached to the affidavit, it shall be attached to and filed with the affidavit;
  - b. Is referred to as being produced and shown to the deponent, it shall not be attached to the affidavit or filed with it, but shall be left with the Registrar for the use of the court, and on the disposition of the matter in respect of which the affidavit was filed, the exhibit shall be returned to the lawyer or party who filed the affidavit, unless a judge or the court orders otherwise;
  - c. Is a document, a copy shall be served with the affidavit, unless it is impractical to do so.
- (16) Where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents make the affidavit before the same person at the same time, in which case one jurat containing the words “Sworn (or affirmed) by the above-named deponents” may be used.
- (17) Where a rule or practice direction requires an affidavit to be made by a party and the party is a corporation, the affidavit may be made for the corporation by an officer, director or employee of the corporation.
- (18) Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person taking the affidavit and, unless so initialled, the affidavit shall not be used without leave of the court or a judge.

### ***Transcripts***

- (19) When produced in paper format, transcripts shall be bound front and back in red cover stock, except where the transcript forms part of the appeal book or motion record.
- (20) Every transcript of evidence shall have:
- a. A cover page setting out:
    - i. The name of the court in which the transcribed proceedings took place;
    - ii. In the top right-hand corner, the Court of Appeal file number and/or the Court of Appeal motion number;
    - iii. The title of proceedings;

- iv. The nature of the hearing;
- v. The place and date of the hearing;
- vi. The name of the presiding judge; and
- vii. The names of the lawyers representing the parties; and

b. A table of contents setting out:

- i. The name of each witness with the page number at which the examination-in-chief, cross-examination and re-examination of the witness commence;
- ii. The page number at which the charge to the jury, the objections to the charge and the re-charge commence;
- iii. The page number at which the reasons for judgment commence;
- iv. A list of exhibits with the page number at which they were made exhibits; and
- v. At the foot of the page, the date the transcript was ordered, the date it was completed and the date the parties were notified of its completion.

(21) Where there is more than one volume of a transcript, the volumes shall be clearly and consecutively numbered.

(22) Evidence shall be transcribed on letter size paper (216 millimetres by 279 millimetres) with a margin 25 millimetres wide on the left side delimited by a vertical line.

(23) The name of the court in which the transcribed proceedings took place shall be stated on a single line no more than 15 millimetres from the top of the first page.

(24) The text shall be typed in 12-point Courier font with 1.5 spaces between lines on 32 lines numbered in the margin at every fifth line.

(25) Headings, such as swearing of witnesses, examination-in-chief and cross-examination, shall be capitalized and separated from the preceding text by the space of a numbered line, and the number of lines of text on the page may be reduced by one for each heading that appears on the page.

(26) For transcripts of proceedings before a judge and jury, the time of court opening, recesses, adjournment, jury entrances and jury exits shall be placed in brackets on the right margin.

- (27) Every question shall commence on a new line and shall begin with the designation "Q.", followed, within 10 millimetres, by the question.
- (28) Every answer shall commence on a new line and shall begin with the designation "A.", followed, within 10 millimetres, by the answer.
- (29) Every line of a question or answer, other than the first line, shall begin at the margin and shall be 165 millimetres in length.
- (30) Lines of text other than questions and answers shall be indented 35 millimetres from the margin and shall be 130 millimetres in length.
- (31) Any portion of a proceeding that has not been transcribed shall be clearly noted in the transcript.

### ***Documents and Communications from the Court or Registrar***

- (32) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, any document or communication that the court or Registrar may or must send, give or otherwise provide to a person under these rules may be sent to the person in electronic format by email to:
  - a. The email address most recently indicated for the person in the court file, if any; or
  - b. In the case of a lawyer whose email address is not indicated in the court file, the email address for the lawyer as published on the Law Society of Ontario's website.

## **7. MANNER OF SERVING AND FILING**

### ***Practice Direction***

- (1) The subrules set out below are subject to any practice direction that the court may issue, and any direction or order the court or a judge may make, regarding the manner of serving and/or filing.

### ***Notice of Appeal***

- (2) Other than in appeals by the Attorney General, inmate appeals and appeals from orders made under Part XX.1 of the *Code*, emailing the notice of appeal to the Registrar in accordance with the court's practice directions or delivering, mailing or faxing three copies of the notice of appeal to the Registrar within the prescribed time shall constitute both service and filing except where the notice of appeal raises a constitutional question as set out in s. 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

- (3) In any appeal where the notice of appeal raises a constitutional question as set out in s. 109 of the *Courts of Justice Act*, the appellant must also serve the Attorney General of Ontario and the Attorney General of Canada.
- (4) Upon receipt of a notice of appeal provided in accordance with subrule 7(2), the Registrar shall forthwith transmit a copy of it to the appropriate Attorney General.
- (5) Subject to subrule 7(9), and unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, where the Attorney General is the appellant, the notice of appeal shall be served on the respondent personally in accordance with subrules 7(6) or by an alternative to personal service in accordance with subrule 7(8).
- (6) Personal service shall be made:
  - a. On an individual, by leaving a copy of the document with the individual, and where the individual is a young person, by leaving another copy of the document with the young person's parent;
  - b. On a corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;
  - c. On an organization, by leaving a copy of the document with:
    - i. In the case of a municipality, the mayor, warden, reeve or other chief officer of the municipality, the secretary, treasurer or clerk of the municipality; or
    - ii. In the case of any other organization, the manager, secretary or other senior officer of the organization or one of its branches.
- (7) A person effecting personal service of a document need not produce the original document or have it in their possession.
- (8) Service by an alternative to personal service shall be made in one of the following ways:
  - a. Where the party was represented by a lawyer at trial, by serving the lawyer with a copy of the document in accordance with subrule 7(14), so long as the lawyer confirms that they have instructions to accept service;
  - b. By sending a copy of the document together with an acknowledgment of receipt card (Form 4) by mail to the last known address of the person to be served, but service by mail under this paragraph is only effective as of the date the sender receives the receipt card;



- c. Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, by leaving a copy of the document in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household, and, on the same day or the following day, mailing another copy of the document to the person at the place of residence, but service in this manner is only effective on the fifth day after the document is mailed;
  - d. Where the party is a corporation and its head office, registered office or principal place of business or, in the cases of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Government and Consumer Services, by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.
- (9) Where the Attorney General is the appellant and a respondent cannot be found after reasonable efforts have been made by the Attorney General to serve them with a notice of appeal, or where it appears to the court or a judge that it is impractical for any reason for the Attorney General to effect prompt personal service of a notice of appeal, the court or a judge may make an order for substituted service or, where necessary in the interests of justice, may dispense with service.
- (10) In an order for substituted service, the court or a judge shall specify when service in accordance with the order is effective.
- (11) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

### ***All Other Documents***

- (12) Other than a notice of appeal in an appeal where the Attorney General is the appellant, no other document need be served personally, unless otherwise directed or ordered by these rules, a practice direction, the court or a judge.
- (13) Any document that is not required to be served personally:
- a. Shall be served on the Attorney General in the manner described in subrule 7(17);
  - b. Shall be served on a party other than the Attorney General who has a lawyer of record by serving the lawyer, and service may be made in the manner described in subrule 7(14); and

- c. Shall be served on a party other than the Attorney General who does not have a lawyer of record or on a person who is not a party in any of the following ways:
  - i. By personal service;
  - ii. By registered or regular mail to the last known address;
  - iii. By courier; or
  - iv. By email.

### ***Service on Lawyer of Record***

- (14) Service of a document on the lawyer of record of a party shall be made:
  - a. By leaving a copy with a lawyer or employee in the lawyer's office;
  - b. By mailing a copy to the lawyer's office;
  - c. By sending a copy to the lawyer's office by courier;
  - d. By emailing a copy to the lawyer's office in accordance with subrule 7(22).
  - e. By depositing a copy at a document exchange of which the lawyer is a member or subscriber, but service under this clause is effective only if the document or a copy of it and the copy deposited are date-stamped by the document exchange in the presence of the person depositing a copy; or
  - f. By use of an electronic document exchange of which the lawyer is a member or subscriber.

### ***Service on the Attorney General***

- (15) Service on the Attorney General of Canada shall be effected by service on the regional office of the Attorney General of Canada at Toronto or the office of the Attorney General of Canada at Ottawa.
- (16) Service on the Attorney General of Ontario shall be effected by service on the Crown Law Office – Criminal.
- (17) Service on the Attorney General shall be made in accordance with subrule 7(14).

### ***Effective Date***

- (18) Service of a document by registered or regular mail is effective on the fifth day after the document is mailed but the document may be filed with proof of service before service becomes effective.

- (19) Service of a document by courier is effective on the second day following the day the courier was given the document, unless that second day is a holiday, in which case service is effective on the next day that is not a holiday, but the document may be filed with proof of service before service becomes effective.
- (20) Service of a document by email is effective the day the document is sent, except when it is sent between 4:00 p.m. and midnight, it is deemed to have been sent on the next day that is not a holiday.
- (21) Service of a document by use of an electronic document exchange is effective the day the document is sent, except when it is sent between 4:00 p.m. and midnight, it is deemed to have been sent on the next day that is not a holiday.

### ***Serving a Document by Email***

- (22) A document that is served by email shall include:
  - a. The sender's name and contact information;
  - b. The name of the intended recipient;
  - c. The date and time of transmission; and
  - d. The name and telephone number of a person to contact in the event of a transmission problem.

### ***Where a Document Does Not Reach Person Served***

- (23) Even though a person has been served with a document in accordance with these rules, the person may show, on a motion for an extension of time or in support of a request for an adjournment, that the document:
  - a. Did not come to the person's notice; or
  - b. Came to the person's notice only at some time later than when it was served or was deemed to have been served.

### ***Validating Service***

- (24) Where a document has been served in a manner other than one authorized by these rules or an order, the court or a judge may make an order validating the service where the court is satisfied that:
  - a. The document came to the notice of the person to be served; or
  - b. The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

## ***Proof of Service***

- (25) Service of a document may be proved by an affidavit of service (Form 5) of the person who served it.
- (26) The affidavit of service may be printed on the backsheet or on a stamp or sticker affixed to the backsheet of the document served.
- (27) A lawyer's written admission or acceptance of service or a lawyer's oral admission or acceptance of service where recorded in writing by the person serving the document or where recorded in writing on the document by the person to whom the oral admission or acceptance was given is sufficient proof of service and need not be verified by affidavit.
- (28) Service of a document by way of a document exchange may be proved by the date stamp on the document or a copy of it.
- (29) Service of a document by way of an electronic document exchange may be proved by a record of service generated by the electronic document exchange that identifies the document that was served and indicates:
  - a. The total number of pages served;
  - b. The name of the person who served the document and, if the person served the document on behalf of a party, the name of the party and the nature of the relationship between the person and the party;
  - c. The name of the person on whom the document was served; and
  - d. The date and time at which the document was served through the electronic document exchange.

## ***Filing with the Court***

### **Manner of Filing**

- (30) Unless otherwise directed or ordered by these rules, a practice direction, the court, a judge or the Registrar, documents may be filed with the Court of Appeal by:
  - a. Hand delivery, mail or courier to Court of Appeal for Ontario, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5;
  - b. Fax to (416) 327-5032; or
  - c. Email or other electronic means in accordance with the court's practice directions.

### Service

- (31) Unless otherwise directed or ordered by these rules, a practice direction, the court, a judge or the Registrar, in order to be filed with the court, a document shall first be served in accordance with these rules on all parties and proof of service shall be provided at the time of filing.

### Sealed Documents

- (32) Any document that is subject to a sealing order from a court shall be filed under seal.
- (33) The manner by which sealed documents are filed with the court, whether in paper and/or electronically, may be set out in a practice direction or directed or ordered by the court or a judge.

### Powers of the Registrar

- (34) On receipt of a document, the Registrar may refuse to accept it for filing if it does not comply with these rules, a practice direction or any order or direction of the court or a judge, or if it is not legible.

### Date of Filing

- (35) Where a document is filed by hand delivery, mail or courier, the date of the filing stamp of the Registrar on the document shall be the date of its filing, unless the court or a judge orders otherwise.
- (36) Where a document is filed by fax, email or other electronic means, the date of filing shall be the date the document is sent, except when it is sent between 4:00 p.m. and midnight, in which case the date of filing shall be the next day that is not a holiday, unless the court or a judge orders otherwise.

### Deemed Not Filed

- (37) Where the court has no record of the receipt of a document alleged to have been filed by mail, the document shall be deemed not to have been filed, unless the court or a judge orders otherwise.

### Number of Copies to Be Filed When Filing in Paper Format

- (38) Unless otherwise directed or ordered by these rules, a practice direction, the court, a judge or the Registrar, when filing a document in a proceeding, such as a notice of appeal, notice of motion, transcript, motion record, appeal book, factum, book of authorities or compendium, in paper format:

- a. Where the documents are to go before a panel of the court, three copies of each document shall be filed, except where the parties have been notified that the panel will consist of five judges, in which case five copies of each document shall be filed; and
- b. Where the documents are to go before a judge, one copy of each document shall be filed.

## **8. TIME FOR SERVING AND FILING NOTICE OF APPEAL**

### ***Application***

- (1) This rule does not apply to appeals from orders made under Part XX.1 of the Code.

### ***General***

- (2) Appeals shall be commenced within the deadlines set out below unless an extension of time is granted by the court or a judge.

### ***Appeal from Conviction or Sentence by Convicted Person***

- (3) Where the appeal is from conviction, sentence, or both, and the appellant is the convicted person, the notice of appeal shall be filed within 30 days after the day on which the sentence is imposed.
- (4) A convicted person will be considered to have served and filed the notice of appeal:
  - a. In a solicitor or in-person appeal, on the date the notice of appeal is filed with the Court of Appeal in accordance with subrules 7(2)-(3).
  - b. In an inmate appeal, on the date the notice of appeal is delivered to the senior official of the institution in which the appellant is in custody in accordance with subrule 53(2).

### ***Appeal from Acquittal or Sentence by Attorney General***

- (5) Where the appeal is from acquittal or sentence, or both, the Attorney General shall serve the notice of appeal within 30 days after the day of the acquittal or the day on which the sentence is imposed, whichever is later, and shall file the notice of appeal, with proof of service, no later than 5 days after the expiration of the 30-day appeal period.

### ***Appeal from Any Other Order***

- (6) Where the appeal is from any other order and the appellant is not the Attorney General, the notice of appeal shall be served and filed within 30 days after the day of the making of the order sought to be appealed.
- (7) Parties other than the Attorney General will be considered to have served and filed the notice of appeal from any other order:
  - a. In a solicitor or in-person appeal, on the date the notice of appeal is filed with the Court of Appeal in accordance with subrules 7(2)-(3).
  - b. In an inmate appeal, on the date the notice of appeal is delivered to the senior official of the institution in which the appellant is in custody in accordance with subrule 53(2).
- (8) Where the appeal is from any other order and the appellant is the Attorney General, the notice of appeal shall be served within 30 days after the day of the making of the order sought to be appealed, and the notice of appeal shall be filed, with proof of service, no later than 5 days after the expiration of the 30-day appeal period.

## **9. EXTENSION OR ABRIDGMENT OF TIME**

- (1) This rule does not apply to applications for extensions of time in inmate appeals, which are governed by rule 55.
- (2) This rule does not apply to applications to extend the surrender date in release orders, which are governed by subrules 22(19)-(21).
- (3) The time to appeal and for doing any other act in connection with an appeal for which a time is prescribed may be extended or abridged by the court or a judge, before or after the expiration of the time prescribed.

### ***Notice***

- (4) Notice of an application to extend or abridge time shall be given to the opposing party unless otherwise directed or ordered by the court or a judge.

### ***Consent***

- (5) If the opposing party consents to the application for an extension of time, the consent shall be provided in writing and filed with the court.

### ***Applications on Consent***

- (6) Where the opposing party is consenting to an extension of time, either a judge or the Registrar may grant the extension of time.
- (7) The maximum length for an extension granted on consent is 30 days from the date of the order granting the extension.
- (8) An extension of time may only be granted once by the Registrar. Subsequent extensions can only be granted by the court or a judge.

### ***Contested Application***

- (9) Where the opposing party is not consenting to an extension of time, the party seeking the extension shall bring a motion before a judge on notice in accordance with these rules and any applicable practice direction.

## **10. MANNER OF HEARING**

- (1) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, this rule does not apply to inmate appeals or to appeals of orders made under Part XX.1 of the *Code*.
- (2) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, appeals and motions may be heard in person, by videoconference, by audioconference or in writing.

### ***Motions***

- (3) The moving party shall, in the notice of motion, specify the proposed manner of hearing.
- (4) A party who wishes to oppose the proposed manner of hearing shall serve and file a notice of objection in Form 6 within four days after being served with the notice of motion, unless the notice period has been abridged and/or the moving party is seeking release from custody pending appeal, in which case a party who wishes to oppose the proposed manner of hearing shall serve and file a notice of objection in Form 6 as soon as possible after being served with the notice of motion.
- (5) If a notice of objection is filed within the time limits specified in subrule 10(4), the Registrar shall place the notice of motion and the notice of objection before a judge in advance of the hearing, and the judge shall make an order directing the manner of hearing.
- (6) In deciding on the manner of hearing, the judge shall consider, if applicable:



- a. Whether any of the parties are unrepresented, and, if so, whether they have had access to legal advice;
  - b. The availability of videoconference or audioconference facilities to the court and to the parties;
  - c. Whether a party or lawyer is unable to attend in person because of disability, illness or any other reason;
  - d. The location and personal circumstances of the person who wishes to proceed by videoconference or audioconference;
  - e. The balance of convenience between the party who wishes to proceed by videoconference or audioconference and any party or parties opposing;
  - f. Whether *viva voce* evidence is anticipated; and
  - g. Any other relevant matter.
- (7) If no notice of objection is filed within the time limits specified in subrule 10(4), the parties are deemed to have agreed to proceed in accordance with the manner of hearing proposed in the notice of motion and, unless a judge or the court directs otherwise, the hearing shall proceed in that manner.

### ***Appeals***

- (8) The appellant shall, in the certificate of perfection, specify the proposed manner of hearing.
- (9) A party who wishes to oppose the proposed manner of hearing shall serve and file a notice of objection in Form 6 within ten days after being served with the certificate of perfection.
- (10) If a notice of objection is filed within the time limit specified in subrule 10(9), the Registrar shall place the appellant's factum, the certificate of perfection and the notice of objection before a judge in advance of the hearing, and the judge shall make an order directing the manner of hearing.
- (11) In deciding on the manner of hearing, the judge shall consider, if applicable:
- a. Whether any of the parties are unrepresented, and, if so, whether they have had access to legal advice;
  - b. The availability of videoconference or audioconference facilities to the court and to the parties;
  - c. Whether a party or lawyer is unable to attend in person because of disability, illness or any other reason;

- d. The location and personal circumstances of the person who wishes to proceed by videoconference or audioconference;
  - e. The balance of convenience between the party who wishes to proceed by videoconference or audioconference and any party or parties opposing;
  - f. Whether *viva voce* evidence is anticipated; and
  - g. Any other relevant matter.
- (12) If no notice of objection is filed within the time limit specified in subrule 10(9), the parties are deemed to have agreed to proceed in accordance with the manner of hearing proposed in the certificate of perfection and, unless a judge or the court directs otherwise, the hearing shall proceed in that manner.

## **11. CERTIFICATE RESPECTING *IN CAMERA* PROCEEDINGS, SEALING ORDERS AND PUBLICATION BANS**

- (1) Except for inmate appeals and appeals from orders made under Part XX.1 of the *Code*, all parties to a motion or an appeal shall serve and file a certificate in Form 7 certifying whether:
- a. There is a legislative provision or existing court order that requires some or all of the hearing, if not in writing, to be held *in camera*;
  - b. Any part of the material filed on the motion or appeal refers to information arising from *in camera* proceedings;
  - c. A sealing order is in effect with respect to any part of the material filed on the motion or appeal;
  - d. A publication ban is in effect with respect to any part of the material filed on the motion or appeal;
  - e. The full names of individuals named in the title of proceedings can be published; and/or
  - f. If the hearing is to be heard orally (i.e., in person, by videoconference or by audioconference), there are any specific strategies that could be used during oral submissions to mitigate any privacy or publication concerns.
- (2) For inmate appeals and appeals from orders made under Part XX.1 of the *Code*, the Attorney General shall and any other party may serve and file a certificate in Form 7 certifying whether:
- a. There is a legislative provision or existing court order that requires some or all of the hearing, if not in writing, to be held *in camera*;

- b. Any part of the material filed on the motion or appeal refers to information arising from *in camera* proceedings;
  - c. A sealing order is in effect with respect to any part of the material filed on the motion or appeal;
  - d. A publication ban is in effect with respect to any part of the material filed on the motion or appeal;
  - e. The full names of individuals named in the title of proceedings can be published; and/or
  - f. If the hearing is to be heard orally (i.e., in person, by videoconference or by audioconference), there are any specific strategies that could be used during oral submissions to mitigate any privacy or publication concerns.
- (3) If a party certifies that any of the situations set out in paragraphs 11(1)(a)-(f) or 11(2)(a)-(f) exist, the party shall attach the following to their certificate in Form 7, as may be applicable and available:
- a. A copy of any applicable order, if made in writing;
  - b. If the order was pronounced orally at a hearing, a copy of the relevant excerpt from the transcript of the hearing;
  - c. The text of any applicable legislative provision;
  - d. An explanation of the restriction and the specific materials that are affected by it; and/or
  - e. A description of the specific strategies that could be used during oral submissions to mitigate privacy or publication concerns.
- (4) For all motions:
- a. The moving party shall serve and file their certificate in Form 7 (along with any attached documents) at the same time as they serve and file their notice of motion; and
  - b. The responding party shall serve and file their certificate in Form 7 (along with any attached documents) by 12:00 noon the day before the motion is to be heard, unless the notice period has been abridged, in which case the responding party shall serve and file their certificate in Form 7 (along with any attached documents) as soon as possible after being served with the notice of motion.
- (5) For all appeals except for inmate appeals and appeals from orders made under Part XX.1 of the Code, the parties shall serve and file their certificate in Form 7 (along with any attached documents) at the same time as they serve and file their factum; and

- (6) For inmate appeals and appeals from orders made under Part XX.1 of the *Code*:
- a. The Attorney General shall serve and file their certificate in Form 7 (along with any attached documents) at the same time as they serve and file the appeal book, or, if the Attorney General does not file the appeal book, at the same time as the Attorney General files their factum; and
  - b. Any other party that chooses to complete a certificate in Form 7 shall serve and file it (along with any attached documents) at the same time as they serve and file their factum, or, if they do not file a factum, within two weeks of being served with the certificate of the Attorney General.
- (7) Parties shall immediately serve and file an amended version of the certificate in Form 7 (along with any attached documents) in the event of any change in respect of the matters set out in paragraphs 11(1)(a)-(f) or 11(2)(a)-(f).

## **12. ORIGINAL PAPERS AND EXHIBITS**

- (1) This rule does not apply to inmate appeals or to appeals from orders made under Part XX.1 of the *Code*.
- (2) When a notice of appeal in a solicitor or an in-person appeal is filed, the Registrar shall forthwith transmit a copy of it to the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, for the region and courthouse where the proceedings giving rise to the order under appeal were held.
- (3) Within 14 days after the filing of the notice of appeal, the appellant shall send a requisition in Form 8 to the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, for the region and courthouse where the proceedings giving rise to the order under appeal were held requesting that the following documents be sent to the Registrar forthwith:
- a. All original papers, documents and exhibits, whether in paper or electronic format, capable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal;
  - b. Where applicable, a list of documents and exhibits incapable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
  - c. Where applicable, a list of documents and exhibits under seal that were before the court with respect to the proceedings giving rise to the order under appeal.

- (4) The appellant shall serve on all other parties and file a copy of the requisition in Form 8 with the Registrar within 15 days after the filing of the notice of appeal.
- (5) Upon receipt of a requisition in Form 8, unless otherwise directed or ordered by the court or a judge, the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall forthwith send to the Registrar:
  - a. All original papers, documents and exhibits, whether in paper or electronic format, capable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal;
  - b. Where applicable, a list of documents and exhibits incapable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
  - c. Where applicable, a list of documents and exhibits under seal that were before the court with respect to the proceedings giving rise to the order under appeal.
- (6) Where possible, where an exhibit was filed in the lower court in an electronic format, it shall be transmitted to the Registrar in the same format.
- (7) Where a registrar of the Superior Court of Justice or a clerk of the Ontario Court of Justice sends material under paragraph 12(5)(a) that includes material under seal, they shall segregate the sealed material from the other material, clearly identify it as being sealed material and attach a copy of the list of sealed documents and exhibits produced pursuant to paragraph 12(5)(c).
- (8) The registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall not send to the Registrar any papers, documents or exhibits incapable of reproduction unless so ordered by the court or a judge.
- (9) Upon receipt of the materials from the Superior Court of Justice or Ontario Court of Justice described in subrule 12(5), the Registrar shall notify the appellant that they are available.
- (10) In order to facilitate the preparation of appeal materials:
  - a. In solicitor appeals:
    - i. Where the appellant is not the Attorney General, all material not under seal sent to the Registrar pursuant to subrule 12(5) shall be released to the appellant upon the filing of the written consent of the Attorney General; and
    - ii. Where the appellant is the Attorney General, all material not under seal sent to the Registrar pursuant to subrule 12(5) shall

be released to the Attorney General upon the Attorney General's request;

b. In in-person appeals:

- i. Where the appellant is not the Attorney General, the appellant shall seek the release of all material not under seal sent to the Registrar pursuant to subrule 12(5) by way of a motion to a judge on notice to all parties; and
- ii. Where the appellant is the Attorney General, all material not under seal sent to the Registrar pursuant to subrule 12(5) shall be released to the Attorney General upon the Attorney General's request.

(11) Where a party seeks access to material under seal sent to the Registrar pursuant to subrule 12(5), they shall bring a motion to a judge on notice to all parties.

(12) The Registrar shall not release any material under seal unless so ordered by the court or a judge.

### **13. REPRESENTATION OF PARTIES**

- (1) Subject to rule 14, a lawyer who signs a notice of appeal on behalf of an appellant shall be deemed to be the lawyer of record for the appellant.
- (2) A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.
- (3) Any other party to a proceeding may act in person or be represented by a lawyer.

### **14. CHANGE IN REPRESENTATION**

#### ***Obligations on Lawyers***

- (1) Unless deemed to be the lawyer of record pursuant to subrule 13(1), a lawyer who is appointed a lawyer of record for a party shall forthwith serve on all parties and the former lawyer of record, if applicable, and file a notice of change in representation in Form 9.
- (2) A lawyer of record for a party whose retainer has been terminated shall forthwith serve on all parties, including the lawyer's former client and the

former's client's new lawyer of record, if applicable, and file a notice of change in representation in Form 9.

- (3) A lawyer of record for a party who seeks to be removed from the record shall make a motion to a judge pursuant to rule 32, on notice to the client and all other parties, to be removed as lawyer of record.

### ***Effect of Change in Representation on Classification of Appeal***

- (4) Except in appeals from orders made under Part XX.1 of the *Code* and unless otherwise directed or ordered by a judge:
  - a. Where an appellant was previously acting in person and is now represented by a lawyer, their appeal shall be converted into a solicitor appeal;
  - b. Where an appellant was previously represented by a lawyer but that lawyer's retainer was terminated or that lawyer was removed from the record and the appellant is now represented by a new lawyer, their appeal shall remain a solicitor appeal;
  - c. Where an appellant was previously represented by a lawyer but that lawyer's retainer was terminated or that lawyer was removed from the record and the appellant is now proceeding without a lawyer:
    - i. Where they are in custody at the time the lawyer's retainer was terminated or that lawyer was removed from the record, their appeal shall be converted into an inmate appeal; and
    - ii. Where they are not in custody at the time the lawyer's retainer was terminated or that lawyer was removed from the record, their appeal shall be converted into an in-person appeal.
  - d. If a respondent changes their representation, this does not affect the classification of the appeal.
- (5) Appeals from orders made under Part XX.1 of the *Code* remain governed by Part VI of the rules irrespective of any change in representation.

## **15. APPEAL MANAGEMENT**

### ***Assignment of an Appeal Management Judge***

- (1) Except for inmate appeals and appeals from orders made under Part XX.1 of the *Code*, and unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, an appeal management judge shall be assigned to the following appeals:

- a. Where an appellant alleges ineffective assistance of counsel;
  - b. Where any party seeks to introduce fresh evidence under rule 27;
  - c. Appeals from a verdict of not criminally responsible on account of mental disorder or unfit to stand trial; and
  - d. Appeals from proceedings under Part XXIV of the *Code* – Dangerous Offenders.
- (2) In other appeals, a judge may order, on the judge's own motion or on the request of the Registrar or one of the parties, the assignment of an appeal management judge.
- (3) Requests for the assignment of an appeal management judge shall be made in writing and in accordance with any applicable practice direction.

### ***Appeal Management Conferences***

- (4) Appeal management judges may convene appeal management conferences to address issues in order to facilitate the fair and efficient preparation of the appeal for hearing.
- (5) Appeal management conferences may be conducted in person or by videoconference or audioconference, as directed by the appeal management judge.

### ***Directions of the Appeal Management Judge***

- (6) Appeal management judges may issue directions to facilitate the fair and efficient preparation of the appeal for hearing, including but not limited to directions with respect to the following:
- a. The development of a record that is sufficient to permit a just determination of the issues in dispute;
  - b. Schedules for serving and filing transcripts, appeal books, factums and compendiums;
  - c. Schedules for the completion of any fresh evidence to be tendered for admission on appeal;
  - d. The manner in which any evidence is to be called in the Court of Appeal;
  - e. The date and manner of the hearing of the appeal;
  - f. The time for oral argument; and
  - g. Any other matters deemed necessary by the appeal management judge.



### ***Practice Directions***

- (7) The court may, by practice direction, set out further requirements, procedures or directions regarding the scope and conduct of appeal management.

## **16. STATUS COURT AND PURGE COURT**

- (1) The court may schedule a status court and/or a purge court to ensure the timely perfection of appeals.
- (2) If a status court or a purge court has been scheduled, the court may cancel it either temporarily or permanently.

### ***Status Court***

- (3) If a status court has been scheduled, a judge may direct and a party to an appeal may request, with notice to the parties, that an appeal be placed before a single judge presiding in status court so that the judge may inquire into the status of the appeal and, if appropriate, provide direction on how the appeal is to proceed.
- (4) If a status court has not been scheduled or has been cancelled temporarily or permanently, then references to a judge presiding in status court in these rules shall be read as references to a single judge presiding in motions court or an appeal management judge.

### ***Purge Court***

- (5) If a purge court has been scheduled, a judge may direct and a party to an appeal may request, with notice to the parties, that the appeal be placed before a panel of this court presiding in purge court, where the appeal may be dismissed, if appropriate.
- (6) If a purge court has not been scheduled or has been cancelled temporarily or permanently, then references to a panel of this court presiding in purge court shall be read as references to a panel of this court presiding in any court.

## **17. SUMMARY DETERMINATION OF APPEALS**

- (1) Where the appeal is an inmate appeal, service of any notice or order pursuant to this rule shall also be made on the Pro Bono Inmate Appeal Program.

### ***Frivolous or Vexatious Appeals***

- (2) Upon the written request of the respondent, on notice to all other parties, or on the Registrar's own motion, on notice to all parties, the Registrar may refer an appeal to a panel of the court for summary determination where it appears that the notice of appeal, which purports to be on a ground of appeal involving a question of law alone, does not show a substantial ground of appeal.
- (3) Where an appeal is referred to a panel of the court pursuant to subrule 17(2), the panel may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing.
- (4) If a panel considers it necessary, the panel may direct the parties to provide submissions on the issue of whether the appeal ought to be dismissed summarily.
- (5) If the panel directs the parties to provide submissions on the issue of whether the appeal ought to be dismissed summarily, the Registrar shall notify the parties forthwith and seek their input on the manner of hearing and as well as on the time for oral argument or length of written argument, as applicable.
- (6) After considering the input from the parties, if any, and the factors set out in subrule 10(11), the panel shall make an order directing the manner of hearing and the time for oral argument or length of written argument, as applicable.
- (7) Subject to any direction or order made by the panel, the Registrar shall fix the date of the hearing and notify the parties.
- (8) The Registrar shall serve the parties with a copy of an order dismissing the appeal summarily, or with any other order issued under subrule 17(3).
- (9) Unless a judge otherwise directs or orders, service of a notice or an order by the respondent or the Registrar on an unrepresented appellant who is not in custody under subrules 17(2) and 17(8) shall be by registered mail to the address of the appellant as set out in the notice of appeal or as filed with the Registrar.
- (10) Where an appeal is summarily dismissed pursuant to this rule and a transcript has been ordered but not completed, the Registrar shall forthwith notify any authorized court transcriptionist who has filed a certificate of transcript order (Form 14) that the appeal has been dismissed.

### ***Another Court***

- (11) Upon the written request of the respondent, on notice to all other parties, or on the Registrar's own motion, on notice to all parties, the Registrar may refer an appeal to a judge of the court for directions where it appears that a notice of appeal should have been filed with another court.
- (12) Where an appeal is referred to a judge of the court pursuant to subrule 17(11), the judge may, on notice to all parties, refer the appeal to a panel of the court for summary dismissal.
- (13) The procedure set out in subrules 17(4)-(10) apply to referrals to a judge for directions under subrule 17(11) and referrals to a panel for summary determination under subrule 17(12).

## **18.ABANDONMENT AND REINSTATEMENT OF APPEALS**

### ***Abandonment by the Appellant with Notice***

- (1) An appellant may abandon an appeal by serving on the other parties and interveners, if any, and filing a notice of abandonment in Form 10.
- (2) If the appellant is in custody or is the accused in an appeal under Part XX.1 of the *Code*, the notice of abandonment may be served and filed by delivering it to the senior official of the institution in which the appellant is in custody or the person in charge of the hospital in which the appellant is in custody or to which the appellant reports, as the case may be.
- (3) The senior official or person in charge referred to in subrule 18(2) shall deliver the notice of abandonment to the Registrar forthwith, and, upon receipt, the Registrar shall forward the notice to the other parties and interveners, if any, forthwith by electronic or other means.
- (4) A notice of abandonment (Form 10) shall be signed by the appellant's lawyer of record or by the appellant, in which case the appellant's signature shall be verified by affidavit or witnessed by a lawyer or by an officer of the institution in which the appellant is in custody or the person in charge of the hospital in which the appellant is in custody or to which the appellant reports, as the case may be.
- (5) If the transcript is not complete, upon receipt of a notice of abandonment, the Registrar shall forthwith send a copy of the notice of abandonment by electronic or other means to any authorized court transcriptionist who has filed a certificate of transcript order.

- (6) A judge may dismiss an appeal as abandoned in accordance with a notice of abandonment or on consent.
- (7) If an appeal is dismissed as abandoned on consent without a notice of abandonment, the Registrar shall forthwith send a copy of the court's order dismissing the appeal by electronic or other means to any authorized court transcriptionist who has filed a certificate of transcript order.

### ***Court Deeming Appeal Abandoned***

- (8) A panel of the court may deem an appeal to be abandoned if the appellant does not take steps to perfect the appeal in accordance with these rules.
- (9) An appeal may be dismissed as abandoned by a panel without a hearing on the merits, whether or not a notice of abandonment has been served and filed.
- (10) Where an appeal is deemed abandoned and dismissed before the transcript is complete, the Registrar shall notify by electronic or other means any authorized court transcriptionist who has filed a certificate of transcript order that the appeal has been dismissed.

### ***Reinstatement of an Appeal***

- (11) A panel of the court may, on application, reinstate an appeal and, if necessary, extend the time in which to perfect an appeal, if the appeal was dismissed as abandoned without having been considered on its merits, and if it is in the interests of justice to reinstate the appeal.

## **19. REASONS FOR JUDGMENT AND FINAL ORDERS**

- (1) In every appeal, the Registrar shall notify the judge or Review Board that made the decision or order under appeal of the result of the appeal.
- (2) Where reasons are given in writing or given orally and later reduced to writing, the Registrar shall provide a copy of the reasons, by electronic or other means:
  - a. To each of the parties or, where a party is represented by a lawyer, to their lawyer;
  - b. To the lawyer for any person granted intervener status or to the intervener, where not represented by a lawyer;
  - c. To the judge or Review Board that made the decision or order under appeal;
  - d. In an appeal from the Superior Court of Justice sitting as a trial court, to the Chief Justice of the Superior Court of Justice;

- e. In an appeal from the Superior Court of Justice not sitting as a trial court, to the Chief Justice of the Superior Court of Justice as well as to any judge or justice whose decision or order was under appeal or review by the Superior Court of Justice;
  - f. In an appeal from the Ontario Court of Justice, to the Chief Justice of the Ontario Court of Justice; and
  - g. To any other judge designated by the Chief Justice of the court in which the decision or order under the appeal was issued.
- (3) The court may release its reasons by electronic or other means to the public, subject to any publication bans or other concerns.
  - (4) Where the reasons have been published on the internet, the reasons may be provided to persons listed in paragraphs 19(2)(c) through (g) by advising those persons that the reasons have been published and providing them with information to locate the decision on the internet.
  - (5) Absent exceptional circumstances, as soon as practicable after the release of the reasons for judgment the court shall issue and enter the final order disposing of an appeal.

## **20. POST-SENTENCE REPORT**

- (1) In this rule, a post-sentence report includes a report prepared to assist the court in considering the circumstances of an Aboriginal offender under s. 718.2(e) of the *Code* and in accordance with the decision of *R. v. Gladue*, [1999] 1 S.C.R. 688.
- (2) A person who has been sentenced may apply to a judge for an order that a post-sentence report be prepared.
- (3) In an inmate appeal, a judge, with the consent of the appellant, may order that a post-sentence report be prepared.
- (4) Where a post-sentence report is ordered by a judge, the Registrar shall forthwith transmit the order to the probation officer or such other person designated by the judge to prepare the report.
- (5) The probation officer or such other person designated by the judge to prepare the report shall prepare the report in writing and file it with the Registrar as soon as is practicable or within the time as directed in the order, and the Registrar shall forthwith forward a copy of the report to the lawyer for each party to the appeal and to any party who is not represented by a lawyer.

- (6) In the absence of a post-sentence report or a formal application to admit fresh evidence, the panel hearing a sentence appeal may receive, on consent of the parties or as permitted by the court, evidence regarding the current status or post-sentence conduct of the person who has been sentenced.
- (7) A party who seeks to file evidence pursuant to subrule 20(6) shall serve a copy of the proposed evidence on all other parties at least five days in advance of the hearing date.
- (8) If a party does not serve a copy of the proposed evidence on all other parties at least five days in advance of the hearing, they shall serve it on all other parties as soon as possible and thereafter may seek leave of the court at the hearing to file the proposed evidence.

## **PART II – MOTIONS AND APPLICATIONS**

### **21. MOTIONS – GENERAL**

#### ***Application***

- (1) This part applies to motions in all types of criminal appeals unless otherwise indicated in these rules.

#### ***Notice of Motion***

- (2) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, a motion shall be commenced by a notice of motion in Form 11.
- (3) Where the motion is to be heard by the court, the notice of motion shall state that the motion will be heard on a date fixed by the Registrar.
- (4) Where the motion is to be heard by a judge, the notice of motion shall state the date of the hearing in accordance with these rules and any applicable practice direction.
- (5) Every notice of motion shall also state:
  - a. The grounds to be argued;
  - b. The jurisdiction of a panel or a judge to hear the motion and to grant the relief requested;
  - c. The evidence to be relied upon;
  - d. The relief requested;

- e. The requested manner of hearing, including an estimated length of time for the oral argument of the motion (if applicable); and
- f. The manner by which the moving party may be served with documents pertinent to the motion.

### ***Motions Without Notice (Ex Parte Motions)***

- (6) Where the nature of the motion or the circumstances renders service of a notice of motion impracticable or unnecessary, the judge or the court considering the motion may make an order without notice.
- (7) The party seeking to bring a motion without notice must indicate in the notice of motion the reasons for seeking to bring the motion without notice.

### ***Minimum Notice Period***

- (8) Except for applications for release from custody pending appeal (see rule 22), and unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, the moving party shall serve and file a notice of motion and motion record at least seven days before the date on which the motion is to be heard.
- (9) A party seeking to have the notice period abridged must indicate in the notice of motion the reasons for the abridgment request and whether consent has been sought and obtained.

### ***Abridgment of Time***

- (10) If a party seeks an abridgment of time in which to serve and file motion materials:
  - a. In addition to including the request in the notice of motion pursuant to subrule 21(9), the party shall support the request by a letter or affidavit explaining the reason for the request;
  - b. The party seeking the abridgment shall deliver or transmit the letter or affidavit and accompanying motion materials to the attention of the Registrar, with copies to the other parties; and
  - c. Irrespective of whether the request for an abridgment of time is contested or on consent, the Registrar shall place the letter or affidavit and accompanying materials, along with any response from the other parties, before to a judge to determine whether the materials may be filed and whether the motion may be heard on the date requested, and the Registrar shall promptly advise the parties of the outcome.

### ***Responding Party's Position on the Motion***

- (11) The responding party shall notify all parties and the court of its position on the motion by 12:00 noon the day before a motion is to be heard, unless the notice period has been abridged, in which case the responding party shall notify all parties and the court of its position on the motion as soon as possible after being served with the notice of motion.

### ***Motions Before a Judge***

- (12) The following motions may be heard and determined by a judge:
- a. A motion to extend or abridge the time for appeal or for doing any other act in connection with an appeal for which a time is prescribed;
  - b. An application for release from custody pending: the determination of an appeal under the *Code*; the determination of a reference directed by the Minister of Justice under s. 696.3 of the *Code*; a determination of an appeal from an order of committal made under s. 29 of the *Extradition Act*; the Minister's decision under s. 40 of the *Extradition Act* respecting the surrender of the person; a determination of a judicial review of the Minister's decision under s. 40 of the *Extradition Act* to order the surrender of the person; an application for leave to appeal to the Supreme Court of Canada; an appeal to the Supreme Court of Canada; and a new trial;
  - c. An application for: a variation of a release order; the revocation of a release order; and the forfeiture of the amount set out in a release order;
  - d. An application to review a decision respecting judicial interim release under s. 18(2) of the *Extradition Act*;
  - e. A motion for a stay under ss. 320.25 or 683(5) of the *Code* or any other motion to stay an order to prevent frustration of the appeal;
  - f. A motion to vary a suspension or stay under ss. 462.45, 490.7 or 689 of the *Code*;
  - g. A motion to assign counsel to act on behalf of an accused under s. 684 of the *Code*;
  - h. A motion to appoint *amicus curiae*;
  - i. A motion to remove a lawyer of record;
  - j. A motion for leave to appeal from any order or decision of a judge or a court in Canada made under s. 35 of the *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Supp.);



- k. A motion for leave to appeal a decision of the summary conviction appeal court, where it is in the interests of justice for a single judge to hear the motion;
- l. A motion for leave to appeal sentence, where it is in the interests of justice for a single judge to hear the motion;
- m. A motion for directions under rule 28;
- n. A motion to expedite the appeal or expedite the production of transcripts;
- o. A motion to file a factum longer than 30 pages;
- p. A motion under rule 20 for an order that a post-sentence report be prepared;
- q. A motion to release the original papers and exhibits sent to the Registrar pursuant to subrule 12(10) to facilitate the preparation of appeal materials;
- r. A motion to vary a sealing order to allow for the release of materials to facilitate the preparation of appeal materials;
- s. A motion for any other order that the *Code*, these rules or a practice direction provides may be made by a judge; and
- t. Any motion that the court or a judge directs or orders shall be heard and determined by a judge.

### ***Motions Before the Court***

- (13) Except as provided by the *Code*, these rules, a practice direction, or as directed or ordered by the court or a judge, motions shall be heard by the court.

### ***Motion Records***

- (14) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, the moving party shall serve and file a motion record, which shall contain, in the following order:
- a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - b. A copy of the notice of motion;
  - c. A copy of the notice of appeal (or proposed notice of appeal where the moving party is seeking an extension of time);
  - d. Any previous court order(s) made in the proceeding that is (are) relevant to the issues on the motion, together with the court's reasons for the prior order(s);

- e. A copy of all affidavits and other material served by any party for use on the motion;
  - f. A list of any relevant transcripts of evidence, where separately available, in chronological order, necessary for the hearing of the motion, and/or any transcripts necessary for the judge or court to decide the motion;
  - g. A copy of the information or indictment, including endorsements, where available;
  - h. A copy of the pre-trial and/or pre-sentence judicial interim release order, where applicable and relevant;
  - i. A copy of any other original papers or material in the court file that is necessary for the hearing of the motion; and
  - j. A draft order, where appropriate.
- (15) With the exception of motions for leave to introduce fresh evidence under rule 27, motion records, if produced in paper format, shall have a white front cover and a light blue backsheet.
- (16) Where the responding party wishes to rely on material other than that contained in the material filed by the moving party, the responding party shall include the material in a responding party's motion record.
- (17) If a responding party chooses to provide a responding party's motion record, the responding party shall serve and file it by 12:00 noon the day before the motion is to be heard, unless the notice period has been abridged, in which case the responding party shall serve and file it as soon as possible after being served with the moving party's motion record.
- (18) A responding party's motion record, if produced in paper format, shall have a green front cover and a light blue backsheet.

***Request to Dispense with Requirement to File Motion Record***

- (19) If the moving party seeks court approval dispensing with the requirement to file a motion record:
- a. The moving party shall deliver or transmit a letter to the attention of the Registrar, with copies to the other parties, setting out the reasons for the request; and
  - b. The Registrar shall place the request, along with any response from the other parties, before a judge in advance of the hearing for determination of the request, and the Registrar shall promptly advise the parties of the outcome.

## ***Factums***

- (20) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge:
- a. On a motion that is to be heard by the court, the parties shall each serve and file a factum consisting of a concise summary of the relevant facts and a concise argument of the law relating to the issue(s); and
  - b. On a motion that is to be heard by a judge, the parties may each serve and file a factum consisting of a concise summary of the relevant facts and a concise argument of the law relating to the issue(s).
- (21) Any factum served and filed on a motion shall contain submissions regarding the possible impact, if any, of any sealing order, publication ban or other restriction on public access to information in the record on the reasons, if any, in the motion.
- (22) Unless otherwise directed or ordered by a judge, a factum filed in support of a motion, excluding the schedules, shall not exceed 20 pages in length.
- (23) The moving party shall serve and file their factum at the same time as they serve and file their notice of motion.
- (24) The responding party shall serve and file their factum by 12:00 noon the day before the motion is to be heard, unless the notice period has been abridged, in which case the responding party shall serve and file it as soon as possible after being served with the moving party's notice of motion.
- (25) When produced in paper format, the moving party's factum shall be bound front and back in white cover stock, and the responding party's factum shall be bound front and back in green cover stock.

## ***Books of Authorities***

- (26) Any party who wishes to provide a book of authorities may do so, provided that it is prepared in accordance with rule 42 and served and filed at the same time as the party's factum.

## ***Default Time for Oral Argument***

- (27) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, and subject to the discretion of the court or judge hearing the motion, the default time for oral argument:
- a. On a motion heard by the court is 25 minutes for the moving party and 15 minutes for the responding party; and

- b. On a motion heard by a judge is 15 minutes for the moving party and 10 minutes for the responding party.

### ***Motions in Writing***

#### **Motions on Consent and Ex Parte Motions**

- (28) Except for an order for release from custody pending appeal (which requires the attendance of the parties in person, by videoconference or by audioconference), where all parties consent in writing to an order provided for in these rules or where the motion is brought on an *ex parte* basis, the order may be granted without the attendance of the parties, unless the court or a judge orders otherwise.
- (29) Where the proposed order is on consent, the moving party shall file a copy of the consent and a draft order.

#### **Contested Motions in Writing**

- (30) Except for an order for release from custody pending appeal (which requires the attendance of the parties in person, by videoconference or by audioconference), where the motion is contested, the moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case the manner of hearing will be decided in accordance with rule 10.

### ***Disposition of a Motion***

- (31) The court or a judge hearing a motion may grant the relief sought or dismiss or adjourn the motion, in whole or in part and with or without terms, as well as make any other order considered just and appropriate in the circumstances.

### ***Abandonment of a Motion***

- (32) A party who makes a motion may abandon it by serving and filing a notice of abandonment in Form 10.
- (33) If a motion to be heard by a judge is abandoned within two days of the scheduled hearing date, the moving party shall promptly advise the motions desk by phone or email that the motion will not be proceeding.
- (34) If a motion to be heard by the court is abandoned after it has been listed for hearing, the moving party shall promptly advise the Appeal Scheduling Unit by phone or email that the motion will not be proceeding.
- (35) A party who serves a notice of motion but does not file it or who fails to appear at the hearing shall be deemed to have abandoned the motion unless the court or a judge orders otherwise.

(36) A moving party may seek to reinstate a motion that was abandoned, with or without a notice of abandonment, so long as the motion was not heard on its merits.

(37) A judge or the court may reinstate an abandoned motion that was not heard on the merits, so long as it is in the interests of justice to do so.

## **22.APPLICATIONS FOR RELEASE PENDING APPEAL**

### ***Application***

(1) This rule applies to:

- a. Applications for release from custody pending: the determination of an appeal under the *Code*; the determination of a reference directed by the Minister of Justice under s. 696.3 of the *Code*; a determination of an appeal from an order of committal made under s. 29 of the *Extradition Act*; the Minister's decision under s. 40 of the *Extradition Act* respecting the surrender of the person; a determination of a judicial review of the Minister's decision under s. 40 of the *Extradition Act* to order the surrender of the person; an application for leave to appeal to the Supreme Court of Canada; an appeal to the Supreme Court of Canada; and a new trial; and
- b. Applications for: a variation of a release order; the revocation of a release order; and the forfeiture of the amount set out in a release order.

(2) For purposes of this rule, unless indicated otherwise, the applications listed in subrule (1) shall be referred to as applications for release pending appeal.

(3) This rule does not apply to:

- a. Applications seeking a review under s. 680 of the *Code* (see rule 23 instead); or
- b. Applications to review a decision respecting judicial interim release under s. 18(2) of the *Extradition Act* (see rule 24 instead).

### ***Notice Period***

(4) The applicant shall serve and file a notice of application for release pending appeal and an application record three clear days before the date on which the application is to be heard unless the responding party consents to and a judge permits a shorter period of notice.

### ***Responding Party's Position on the Application***

- (5) The responding party shall notify the applicant and the court of its position on the motion by 12:00 noon the day before the application is to be heard, unless the notice period has been abridged, in which case the responding party shall notify the applicant and the court of its position on the application as soon as possible after being served with the notice of application for release pending appeal and the application record.

### ***Contents of Application Record***

- (6) In an application for release pending appeal, the applicant shall serve and file an application record, which shall contain, in the following order:
  - a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - b. A copy of the notice of application for release pending appeal;
  - c. A copy of the notice of appeal and/or notice of application for leave to appeal;
  - d. A copy of the information or indictment, including endorsements, where available;
  - e. Copies of any previous release orders issued by this court and the courts below in relation to the offences under appeal, together with the court's reasons for the order(s);
  - f. Copies of any existing release orders in relation to other matters;
  - g. Affidavit(s) addressing the matters referred to in subrule 22(7);
  - h. Any additional material intended to be relied upon in support of the application for release pending appeal; and
  - i. A draft release order, the format of which may be described by practice direction.

### ***Contents of Affidavit(s)***

- (7) In support of an application for release pending appeal, the applicant shall provide an affidavit or affidavits, including where applicable and practicable the appellant's own affidavit, establishing, where applicable:
  - a. The particulars respecting the conviction, sentence, verdict or order under appeal;

- b. The judicial interim release status of the appellant and particulars of any release orders pending trial and/or appeal and any existing release orders in relation to other matters;
- c. Any grounds of appeal not specified in the notice of appeal;
- d. The date of birth of the appellant;
- e. The appellant's place(s) of residence in the three years preceding the date of conviction, sentence, verdict or order appealed from, and where the appellant proposes to reside if released;
- f. The appellant's employment prior to conviction, sentence, verdict or order appealed from, and whether the appellant expects to be employed if released and where;
- g. The appellant's criminal record, if any;
- h. Where the appeal is as to sentence only, what unnecessary hardship would be caused if the appellant were detained in custody;
- i. Where the appellant proposes entering into a release order with sureties, the amount of money or value of other valuable security the appellant proposes should be promised or deposited and by whom, and where practicable, the names of the sureties and the amount for which each is proposing to be liable;
- j. The appellant's agreement to surrender as required and acknowledgment that failure to do so will be deemed to constitute an abandonment of the appeal;
- k. The appellant's agreement that failure to comply with any condition of the release order may result in the revocation of the release order and incarceration;
- l. The appellant's agreement that the appeal will be pursued with all due diligence; and
- m. The appellant's agreement that any failure to pursue the appeal with due diligence may result in the dismissal of an application to extend the surrender date in a release order or to vary its form.

### ***Responding Party's Application Record***

- (8) Where the responding party wishes to rely on material other than that contained in the material filed by the applicant, including an affidavit or affidavits, the responding party shall include the material in a responding party's application record.

- (9) If the responding party chooses to provide a responding party's application record, the responding party shall serve and file it by 12:00 noon the day before the application is to be heard unless the notice period has been abridged, in which case the responding party shall serve and file it as soon as possible after being served with the applicant's application record.

***Parties May Cross-Examine on Affidavits***

- (10) The applicant and the responding party may cross-examine upon affidavits filed by the opposing party, in accordance with the procedure directed by a judge.

***Judge May Dispense with Compliance***

- (11) A judge may dispense with the filing of the affidavits and act upon a statement of facts agreed upon by the lawyers for the applicant and the responding party.

***Attendance of the Parties***

- (12) Except for applications for a variation of a release order on consent, the parties are required to attend the argument of an application for release pending appeal.
- (13) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, an application for release pending appeal may be heard in person, by videoconference or by audioconference.
- (14) The manner of hearing shall be determined in accordance with rule 10.

***Order for Release from Custody Pending Appeal***

- (15) The format of an order for release pending appeal may be described by practice direction.
- (16) Unless otherwise ordered by the judge hearing the application, an order for release pending appeal shall contain the following conditions:
- a. A condition respecting surrender;
  - b. That the appellant acknowledges that failure to surrender into custody in accordance with the terms of the order will be deemed to constitute an abandonment of the appeal;
  - c. That the appellant will notify the Registrar and the Attorney General in writing within 24 hours of any change in their address;
  - d. That the appellant will notify the Registrar and the Attorney General in writing within 24 hours of any new charges;



- e. That the appellant agrees that failure to comply with any condition of the release order may result in the revocation of the release order and incarceration;
- f. That the appeal will be pursued with all due diligence; and
- g. That the appellant agrees that any failure to pursue the appeal with due diligence may result in the dismissal of an application to extend the surrender date in a release order or to vary its form.

### ***Motions for Leave to Appeal Sentence***

- (17) Where a convicted person seeks to appeal against sentence only and also seeks their release from custody pending appeal, a judge shall first hear and determine the motion for leave to appeal sentence.
- (18) A motion for leave to appeal sentence and an application for release pending appeal may be brought at the same time before a judge, or the motion for leave to appeal sentence may be submitted first in writing.

### ***Application for Variation of Release Order Pending Appeal***

- (19) A judge may, on cause being shown, cancel an order previously made under s. 679 of the *Code* and may make any order that could have been made under that section.
- (20) Where the applicant seeks a variation in order to extend the surrender date in a release order, the material filed in support of the application shall include:
  - a. Evidence addressing the following:
    - i. Whether the appellant has been abiding by the terms of release ordered by the court;
    - ii. Whether the surety/sureties (if any) is/are willing to continue in that role for the period of the extension;
    - iii. Any changes in the circumstances of the appellant since the original or previous order for release;
    - iv. A summary of the status of the appeal, including the status of all transcripts and efforts to perfect the appeal;
    - v. Where applicable, an explanation for any failure to comply with rules 36, 37 or 44 and a proposed timeline to cure the default; and
    - vi. Where applicable, a statement of the earliest feasible date on which the appeal may be heard;

- b. Any consent; and
- c. A draft order.

(21) An order for a new release order varying a condition may be made by a judge without the attendance of the parties, upon filing the written consent of the responding party.

## **23. APPLICATIONS TO SEEK A REVIEW UNDER SECTION 680 OF THE CODE**

### ***Commencement of the Application***

- (1) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, an application for a direction from the Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal for a review under s. 680 of the *Code* shall be commenced by:
  - a. Serving and filing a notice of application for a direction for a review under s. 680 of the *Code*, which shall state that the application will be heard on a date fixed by the Registrar; and then
  - b. Sending a letter by email, copying all parties, to the Executive Legal Officer of the Court of Appeal requesting a case management conference with the Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal in order to:
    - i. Fix the date, time and manner of the hearing of the application;
    - ii. Determine the content of the materials to be served and filed on the application;
    - iii. Set the schedule for the serving and filing of the materials to be used on the application; and
    - iv. Address any other issues in order to facilitate the fair and efficient preparation of the materials for the application.
- (2) Case management conferences with the Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal may be conducted in person or by videoconference or audioconference, as directed by the Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal.

### ***Disposition of the Application for a Direction for a Review***

- (3) The Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal hearing the application may direct a review or dismiss the application for a direction.
- (4) If the Chief Justice of the Court of Appeal or Acting Chief Justice of the Court of Appeal directs a review, the Registrar shall fix the date of the review and notify the parties.
- (5) On consent of the parties, a review may be heard by a judge of the court.

### **24. APPLICATIONS TO REVIEW A DECISION RESPECTING JUDICIAL INTERIM RELEASE UNDER SECTION 18(2) OF THE *EXTRADITION ACT***

- (1) An application to review a decision respecting judicial interim release under s. 18(2) of the *Extradition Act* shall be treated as a motion before a judge and, subject to subrule 24(2), shall be governed by rule 21.
- (2) Unless otherwise directed or ordered by a practice direction, the court or a judge:
  - a. In addition to the requirements set out in subrule 21(14), the moving party's motion record shall contain all of the material that was before the court that made the order that the moving party seeks to have reviewed; and
  - b. The parties shall each serve and file a factum in accordance with subrules 21(21)-(25) and consisting of a concise summary of the relevant facts and a concise argument of the law relating to the issue(s).

### **25. APPLICATIONS FOR LEAVE TO APPEAL A DECISION OF THE SUMMARY CONVICTION APPEAL COURT**

#### ***Application of This Rule***

- (1) This rule applies to applications for leave to appeal under s. 839(1) of the *Code* except as indicated in subrules 25(3)-(4).
- (2) This rule does not apply to applications for leave to appeal under ss. 675(1.1) and 676(1.1) of the *Code*.
- (3) This rule does not apply to applications for leave to appeal that are joined with applications to stay a driving prohibition order pending appeal; such applications are governed by rule 26.

- (4) This rule does not apply to applications for leave to appeal brought by a person who is in custody on the date the notice of application for leave to appeal is filed and who is not represented by a lawyer (i.e., an inmate appeal); such applications are governed by Part V.

***Application for Leave to Appeal to Be Heard in Writing***

- (5) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, applications for leave to appeal from a decision of the summary conviction appeal court under s. 839(1) of the *Code* shall be heard in writing.

***Combined Notice of Application for Leave to Appeal and Notice of Appeal***

- (6) The applicant for leave to appeal under s. 839(1) of the *Code* shall serve and file a combined notice of application for leave to appeal and notice of appeal in Form 12, and the notice of appeal need not be re-served or re-filed if leave is granted.
- (7) In accordance with subrule 7(2), other than in applications for leave to appeal by the Attorney General, emailing the combined notice of application for leave to appeal and notice of appeal to the Registrar in accordance with the court's practice directions or delivering, mailing or faxing three copies of the combined notice of application for leave to appeal and notice of appeal to the Registrar within the time prescribed in rule 8 shall constitute both service and filing.
- (8) Upon receipt of a combined notice of application for leave to appeal and notice of appeal from a party other than the Attorney General that is provided in accordance with subrule 7(2), the Registrar shall forthwith transmit a copy of it to the appropriate Attorney General.
- (9) Where the Attorney General is the applicant for leave to appeal, the combined application for leave to appeal and notice of appeal shall be served and filed in accordance with rule 7.
- (10) The grounds to be argued and the relief sought set out in a combined notice of application for leave to appeal and notice of appeal may be amended without leave before the applicant's factum has been filed by serving and filing a supplementary combined notice of application for leave to appeal and notice of appeal in Form 13 in accordance with the rules pertaining to the serving and filing of notices of appeal in rule 7.
- (11) No grounds other than those stated and no relief other than that sought in the combined application for leave to appeal and notice of appeal or supplementary combined application for leave to appeal and notice of appeal may be relied on at the hearing of the appeal, except with leave of the panel hearing the appeal.

### ***60 Days to Perfect***

- (12) Applications for leave to appeal under s. 839(1) of the *Code* must be perfected:
- a. Where no transcript is required other than that filed in the Superior Court of Justice, within 60 days after filing the combined notice of application for leave to appeal and notice of appeal; or
  - b. Where any additional transcript of evidence is required in such cases, within 60 days after the certificate of transcript completion has been filed with the Court of Appeal.

### ***Appeal Book***

- (13) The Appeal Book shall contain the contents listed in rule 39.

### ***Applicant's Factum***

- (14) The structure and contents of the applicant's factum shall comply with subrule 40(3), except that, at the outset of Part III, the applicant shall specify the questions of law on which leave to appeal is sought, as well as the factors relied upon to justify granting leave to appeal.

### ***Responding Party's Factum***

- (15) The responding party's factum shall be served and filed within 60 days of the date that the responding party was served with the applicant's factum.
- (16) The structure and contents of the responding party's factum shall comply with subrule 40(4), except that, at the outset of Part III, the responding party shall state their position on and the factors relevant to the issue of whether leave to appeal should be granted.

### ***Books of Authorities***

- (17) Parties shall prepare books of authorities in accordance with rule 42, which shall be served and filed no later than five days after the date on which the party's factum is filed.
- (18) Books of authorities should provide the relevant authority on the leave test as well as on the merits.

### ***Determination of the Leave Application***

- (19) After receipt of all materials relating to the application for leave to appeal, the materials shall be forwarded to the judge or the panel deciding the application.

(20) As soon as reasonably practicable following the receipt of the materials relating to the application for leave to appeal, the judge or panel deciding the application shall decide whether to grant or to refuse leave to appeal based on the written material without the attendance of the parties and shall cause the parties to be notified of their decision.

(21) The court will generally not provide reasons for granting or refusing leave to appeal.

### ***Where Leave to Appeal is Granted***

(22) Where leave to appeal is granted, the appeal will be set down for hearing and no further materials need be filed by the parties.

## **26. APPLICATIONS TO STAY A DRIVING PROHIBITION MADE IN SUMMARY CONVICTION PROCEEDINGS PENDING APPEAL**

(1) Where an applicant seeks leave to appeal from the decision of the summary conviction appeal court and at the same time seeks a stay of a driving prohibition order imposed in the summary conviction proceedings pending appeal, a judge shall hear both applications at the same time in writing.

### ***Material to Be Filed on Combined Applications for Leave to Appeal and for a Stay of a Driving Prohibition Pending Appeal***

(2) On combined applications for leave to appeal from the decision of the summary conviction appeal court and to stay a driving prohibition pending appeal, the applicant shall serve and file:

- a. An application record containing, in the following order:
  - i. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - ii. A copy of the combined notice of application for leave to appeal and notice of appeal and the notice of application for a stay of a driving prohibition pending appeal;
  - iii. A copy of the information, including endorsements, where available;
  - iv. A copy of the driving prohibition order sought to be stayed pending appeal, where on a separate document and where available;

- v. A copy of the reasons for judgment of the summary conviction appeal court, with a further typed or printed copy if the reasons are handwritten;
  - vi. A copy of the notice of appeal filed in the Summary Conviction Appeal Court;
  - vii. Copies of the factums filed in the Summary Conviction Appeal Court;
  - viii. Any affidavit of the applicant that may be relied on, which shall address matters relevant to the application for leave to appeal and/or the application for a stay of the driving prohibition pending appeal;
  - ix. A copy of all material relevant to the applications for leave to appeal and for a stay of a driving prohibition pending appeal that was before the summary conviction appeal court;
  - x. Relevant excerpts of transcripts of evidence; and
  - xi. Any additional material relied on in support of the application to stay the driving prohibition pending appeal; and
- b. A factum prepared in accordance with subrule 25(14), except that it shall also address why the driving prohibition ought to be stayed pending appeal.
- (3) The responding party shall notify the applicant and the court of its position on the application and shall serve and file any additional materials that it wishes to have before the judge in deciding the combined leave to appeal and stay pending appeal applications by 12:00 noon the day before the applications are to be heard.
- (4) Where the responding party chooses to serve and file a factum, it shall be prepared in accordance with subrule 25(16), except that it shall also address the issue of whether the driving prohibition ought to be stayed pending appeal.
- (5) Responding materials on the appeal proper need only be filed if leave is granted.
- (6) A party that serves and files a factum shall also prepare a book of authorities in accordance with rule 42, which shall provide the relevant authority on the leave test as well as on the merits, and the party shall serve and file their book of authorities at the same time as they serve and file their factum.

### ***Duty to Perfect Where Leave Granted***

- (7) If leave to appeal is granted, the applicant shall perfect the appeal in accordance with rule 44 within 30 days, regardless of whether or not the stay is granted.

## **27. MOTIONS FOR LEAVE TO INTRODUCE FRESH EVIDENCE**

- (1) Unless otherwise directed or ordered by a judge, motions for leave to introduce fresh evidence under s. 683 of the *Code* are heard by the court at the time the appeal is heard.

### ***Where Claim of Ineffective Assistance of Counsel Raised***

- (2) Where the fresh evidence sought to be admitted raises a claim of ineffective assistance of counsel, the procedure set out in the court's practice directions shall be followed.

### ***Notice of Motion***

- (3) A party who intends to seek leave to introduce fresh evidence at the hearing of an appeal shall serve and file a notice of motion to introduce fresh evidence as soon as possible after making the decision to seek leave for this purpose.
- (4) The notice of motion shall describe:
  - a. The nature of the proposed fresh evidence;
  - b. The ground(s) of appeal to which the proposed fresh evidence relates;
  - c. The persons from whom the proposed fresh evidence will be obtained;
  - d. The basis upon which the proposed fresh evidence is said to be admissible; and
  - e. Whether the opposing party consents to the receipt of the fresh evidence on appeal (if the opposing party's position is known).
- (5) A notice of motion for leave to introduce fresh evidence is required even if the party intending to seek leave to introduce fresh evidence has already sought leave to do so in a notice of appeal or supplementary notice of appeal.

### ***Supplementary Notice of Appeal***

- (6) If a party who intends to seek leave to introduce fresh evidence has not sought leave to do so in a notice of appeal or supplementary notice of appeal, in addition to serving and filing a notice of motion for leave to introduce fresh



evidence, the party shall also include the request for leave to introduce fresh evidence in a supplementary notice of appeal, which shall be served and filed in Form 13 in accordance with the rules pertaining to the serving and filing of notices of appeal in rule 7.

### ***Appeal Management***

- (7) Unless otherwise directed or ordered by a judge, any appeal in which the notice of appeal or a notice of motion indicates that leave shall be sought to introduce fresh evidence shall be managed by an appeal management judge who shall give directions to ensure that the fresh evidence record is completed expeditiously so that the perfection, listing and hearing of the appeal are not delayed.
- (8) In order to ensure that the fresh evidence record is completed expeditiously and that the perfection, listing and hearing of the appeal are not delayed, the appeal management judge may give directions and make orders concerning but not limited to:
  - a. The form in which the fresh evidence will be tendered;
  - b. The contents of the record on the motion;
  - c. The time within which the various steps necessary to complete the record will be completed;
  - d. The dates, manner and order in which any cross-examinations will take place, including whether the cross-examinations will be recorded and/or presided over by a member of the court or other judicial officer;
  - e. Any consequences for failing to adhere to the schedule set by the appeal management judge for completion of the fresh evidence record;
  - f. The manner in which the completed fresh evidence record will be kept in advance of the hearing; and
  - g. The length of the parties' written submissions with respect to the fresh evidence and whether the written submissions will be set out in the parties' factums on the appeal or in separate factums.
- (9) If the parties are directed or ordered to prepare their written submissions with respect to the fresh evidence in separate factums, the length of such a factum shall not exceed 15 pages absent a direction or order to the contrary by the appeal management judge.

### ***Materials to Be Filed***

- (10) Unless otherwise directed or ordered by a judge, the completed record compiled in support of a motion for leave to introduce fresh evidence, including any factums filed in connection with the motion, shall be sealed when filed with the court.
- (11) The party seeking leave to adduce fresh evidence at the hearing of the appeal shall affix to the outside of the sealed packet a copy of the notice of motion for leave to introduce fresh evidence (amended and updated, if necessary) that describes the matters set out in subrule 27(4).
- (12) The motion record on a motion for leave to introduce fresh evidence, when produced in paper format, shall be bound front and back in white cover stock.

### ***Duty to Perfect Appeal***

- (13) Unless otherwise directed or ordered by a judge, the motion for leave to introduce fresh evidence does not relieve the appellant of the obligation to perfect the appeal, apart from the fresh evidence material, in accordance with these rules.
- (14) Unless otherwise directed or ordered by a judge, appeals involving motions for leave to introduce fresh evidence shall not be listed for hearing until the fresh evidence motion record is complete and filed with the court.

## **28. MOTIONS FOR DIRECTIONS**

Any party to the appeal may, on notice, make a motion to a judge for directions in respect of the conduct of the appeal.

## **29. MOTIONS TO EXPEDITE PRODUCTION OF TRANSCRIPTS**

Motions to expedite the production of transcripts shall be served on the other parties and the authorized court transcriptionist.

## **30. MOTIONS FOR LEAVE TO INTERVENE IN AN APPEAL**

### ***Leave to Intervene***

- (1) Leave to intervene in an appeal may be granted by the Chief Justice of Ontario, the Associate Chief Justice of Ontario, or a judge designated by either of them,

upon such terms and conditions and with such rights and privileges as the judge determines.

### ***Motion for Leave to Intervene***

- (2) Motions for leave to intervene shall be brought in accordance with, and any parties opposed to leave shall comply with, the procedure set out in the court's practice directions.

### ***Intervener's Factum***

- (3) Where leave to intervene is granted, the intervener shall serve and file a factum and book of authorities in accordance with the terms of the order granting leave to intervene.
- (4) Unless otherwise directed or ordered by a judge, the intervener's factum and book of authorities, when produced in paper format, shall be bound front and back in white cover stock.

## **31. MOTIONS TO APPOINT *AMICUS CURIAE***

Motions to appoint *amicus curiae* (friend of the court) shall be brought before the Chief Justice of Ontario, the Associate Chief Justice of Ontario, or a judge designated by either of them.

## **32. MOTIONS TO REMOVE LAWYER OF RECORD**

### ***Application***

- (1) This rule applies to motions by the lawyer of record for a party to be removed as lawyer of record and to motions by another party, including the Attorney General, to have the lawyer of record for a party removed as lawyer of record.

### ***Manner of Service***

- (2) Service of a notice of motion to remove a lawyer of record shall be made in accordance with rule 7, and where the motion is made by the lawyer of record for a party, upon that party by mailing a copy to their last known address.

### ***Materials to Be Filed***

- (3) A motion to remove a lawyer of record shall be accompanied by an affidavit deposing to the following matters:

- a. Particulars of the appeal in respect of which the motion is made, including a statement of the status of the appeal, the status of transcripts, and when the appeal is scheduled to be heard (if a date has been set);
- b. Particulars of any prior motions, irrespective of the identity of the moving party, to have the lawyer of record removed;
- c. Where the motion is made by the lawyer of record, a full statement of all facts material to a determination of the motion, including, without disclosing any solicitor-client communication in respect of which solicitor-client privilege has not been waived, a statement of the reasons why the order sought should be given;
- d. Where the motion is made by another party, including the Attorney General, a full statement of all facts material to a determination of the motion, including a statement of the reasons why the order sought should be given;
- e. A statement regarding whether an adjournment of the hearing of the appeal (if a date has been set) is likely or will be required to enable the party to retain and instruct a new lawyer of record to proceed with the appeal and, if so, when it is proposed that the appeal will be heard; and
- f. Where applicable, a statement of the identity of the new lawyer of record and their undertaking to proceed with the hearing of the appeal on the date specified under paragraph 32(3)(e).

### ***Consent***

- (4) The parties and/or the lawyer of record may consent in writing to the order sought upon the terms included in a draft order, and a judge, if satisfied that the order sought by the moving party should be granted, may grant the order on such terms without the attendance of the parties.

### ***Effect of Removal of Lawyer of Record on Classification of Appeal***

- (5) The effect of the removal of the lawyer of record on the classification of the appeal is governed by subrules 14(4)-(5).

## **PART III – SOLICITOR APPEALS**

### **33.APPLICATION OF THIS PART**

This part applies to all solicitor appeals.

### **34. NOTICE OF APPEAL IN SOLICITOR APPEALS**

#### ***Notice of Appeal – Solicitor appeal***

- (1) A solicitor appeal, whether the appellant is the convicted person or the Attorney General, shall be commenced by a notice of appeal in Form 12.

#### ***Where Appeal Commenced as an Inmate Appeal***

- (2) Where an appeal is commenced as an inmate appeal and the appellant subsequently becomes represented by a lawyer with respect to all parts of the appeal, in addition to serving and filing a notice of change in representation in Form 9 pursuant to rule 14, the lawyer shall also serve and file a new notice of appeal in Form 12 within 15 days after being retained or appointed, whereupon the inmate appeal shall be deemed to be withdrawn and the appeal shall continue as a solicitor appeal governed by this part.
- (3) Where an appeal is commenced as an inmate appeal and the appellant subsequently becomes represented by a lawyer but only with respect to part of the appeal:
  - a. In addition to serving and filing a notice of change in representation in Form 9 pursuant to rule 14, the lawyer shall serve and file a new notice of appeal in Form 12 pertaining to the part of the appeal on which the lawyer is representing the appellant within 15 days after being retained or appointed, whereupon the inmate appeal pertaining to the part of the appeal on which the lawyer is now representing the appellant shall be deemed to be withdrawn; and
  - b. The appeal will be considered to be a hybrid appeal, such that the solicitor component of the appeal will be governed by this part and the inmate component of the appeal shall be governed by Part V.
- (4) Unless otherwise directed or ordered by the court or a judge, the solicitor component and the inmate component of a hybrid appeal shall be heard by the same panel.
- (5) In a hybrid appeal, the party(ies) responsible for the preparation of the materials to be filed on the various components of the appeal shall consolidate the materials to the extent feasible.
- (6) Appeal books prepared, served and filed for an inmate appeal prior to the conversion of the appeal into a solicitor appeal in whole or in part may be used on the solicitor appeal without the need to serve and file again.

- (7) A judge may make any such order in respect of the matters referred to in subrules 34(4)-(6) as is considered just in order to secure the fair and expeditious conduct of the appeal.

### **35.AMENDMENT OF NOTICE OF APPEAL**

#### ***Supplementary Notice of Appeal***

- (1) The grounds stated and the relief sought in a notice of appeal may be amended without leave before the appellant's factum has been filed, by serving and filing a supplementary notice of appeal in Form 13 in accordance with the rules pertaining to the serving and filing of notices of appeal in subrules 7(2)-(11).

#### ***Argument Limited to Grounds Stated***

- (2) No grounds other than those stated in the notice of appeal or supplementary notice of appeal may be relied on at the hearing of the appeal, except with leave of the panel hearing the appeal.

#### ***Relief Limited***

- (3) No relief other than that sought in the notice of appeal or supplementary notice of appeal may be sought at the hearing of the appeal, except with the leave of the panel hearing the appeal.

### **36.TRANSCRIPTS – ORDERING**

#### ***Searchable Electronic Copy***

- (1) In addition to any paper copies of the transcript that these rules, a practice direction, order or direction of the court or a judge may require or the appellant may want to order, the appellant shall order a searchable electronic copy of the transcript.

#### ***Certificate of Transcript Order to Be Filed Within 15 Days***

- (2) Subject to the exceptions set out in subrules 36(3), (6) to (9), within 15 days of filing the notice of appeal, the appellant shall serve and file a certificate of transcript order in Form 14 confirming that all copies of the transcript as required by these rules, a practice direction, order or direction of the court or a judge have been ordered.

### ***Where It Is Not Possible to File the Certificate Within 15 Days***

- (3) Where the appellant cannot through the exercise of reasonable diligence serve and file the certificate of transcript order as required by subrule 36(2), the appellant shall, within 15 days after the filing of the notice of appeal, serve and file a letter with the Registrar explaining why the transcript has not been ordered and proposing a reasonable timeline for ordering.
- (4) If the respondent chooses to respond to the letter referred to in subrule 36(3), the response must be served and filed within seven days of being served with the letter referred to in subrule 36(3).
- (5) After considering the letter filed by the appellant pursuant to subrule 36(3) and any response filed by the respondent pursuant to subrule 36(4), a judge or the Registrar may make an order extending the time for serving and filing the certificate of transcript order.

### ***Appeal from Order of a Judge of the Superior Court of Justice Not Sitting as a Trial Judge***

- (6) On an appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge where no transcript is required other than that filed in the Superior Court of Justice, the appellant shall, at the time the notice of appeal is filed, file an undertaking in Form 15 that the appeal is from an order of a judge of the Superior Court of Justice not sitting as a trial judge, no transcript is required other than that filed in the Superior Court of Justice and that transcript will be included in the appeal book pursuant to rule 39(1)(k).

### ***Appeal Where Legal Aid Funding Pending***

- (7) Where Legal Aid Ontario has indicated that it will fund an appeal but the approval for transcript disbursements is pending, the appellant's lawyer may serve and file a letter of explanation with the Registrar instead of filing the certificate of transcript order in Form 14.
- (8) When Legal Aid Ontario grants the approval for transcript disbursements, within 15 days after the approval, the lawyer shall serve and file a certificate of transcript order in Form 14.

### ***Procedure When Inmate Appeal Converts into a Solicitor Appeal***

- (9) Where an appeal is commenced as an inmate appeal and the appellant subsequently becomes represented by a lawyer with respect to all or part of the appeal, within 15 days after being retained or appointed the lawyer shall:
  - a. Determine what, if any, transcripts have already been ordered; and

- b. If applicable, serve and file a certificate of transcript order in Form 14 for any transcripts required by rule 38 but not yet ordered.
- (10) Where the lawyer cannot through the exercise of reasonable diligence serve and file the certificate of transcript order in Form 14 as required by paragraph 36(9)(b), or if approval from Legal Aid Ontario for transcript disbursement is pending, subrules 36(3)-(5) and (7)-(8) apply.

***Failure to Comply with This Rule***

- (11) Where an appellant fails to comply with any provision of this rule,
  - a. The Registrar may:
    - i. Place the appeal, on notice to the parties, before a judge presiding in a status court to give direction on how the appellant must proceed; or
    - ii. Serve notice on the appellant that the appeal will be placed before the court to be dismissed as abandoned unless the default is cured within ten days after service of the notice; or
  - b. The respondent may:
    - i. On notice to the appellant, make a motion to a judge for directions; or
    - ii. On notice to the appellant, request the Registrar to serve on the appellant the notice referred to in subparagraph 36(11)(a)(ii).
- (12) Where the appellant does not cure the default within ten days after service of the notice under subparagraph 36(11)(a)(ii), or within such longer period as a judge may allow, the Registrar shall, on notice to the parties, place the appeal before the court to be dismissed as abandoned.
- (13) The court, in considering an appeal referred to it under subrule 36(12), may dismiss the appeal as abandoned or make any other order that the interests of justice require.
- (14) The Registrar shall serve the parties with a copy of an order dismissing the appeal as an abandoned appeal, or with any other order issued under subrule 36(13).
- (15) Unless a judge otherwise directs or orders, service of a notice or an order by the Registrar on an unrepresented appellant who is not in custody under subparagraph 36(11)(a)(ii), subrule 36(12) and subrule 36(14) shall be by registered mail to the address for the appellant as set out in the notice of appeal or as filed with the Registrar.



- (16) Where an appeal is dismissed as abandoned pursuant to this rule and a transcript has been ordered but not completed, the Registrar shall forthwith notify any authorized court transcriptionist who has filed a certificate of transcript order (Form 14) that the appeal has been dismissed.

***Parties May Order Copies of Transcript for Purposes Other Than Filing***

- (17) A party to an appeal may order a copy of any portion of the transcript for purposes other than filing with the court.

***Practice Directions***

- (18) The court may provide further direction regarding the ordering of transcripts through its practice directions including, but not limited to, the establishment of revised timelines for the ordering of transcripts in particular types of appeals.

**37. TRANSCRIPTS – PRODUCTION**

***Preparation and Completion of the Transcript***

- (1) Upon signing the certificate of transcript order (Form 14), each authorized court transcriptionist shall proceed with reasonable diligence to prepare and certify the transcript.

***Timelines for Completion of the Transcript***

- (2) Unless otherwise directed or ordered by these rules, a practice direction, the court, a judge or the Registrar, all transcripts shall be completed as follows:
- a. In an appeal from sentence only, other than where a sentence under Part XXIV (Dangerous Offenders) was sought, no later than 45 days after the date the transcript was ordered.
  - b. In all other appeals, no later than 90 days after the transcript was ordered.
- (3) Where the appeal is from conviction or conviction and sentence and the proceedings lasted more than 20 days, if the transcript cannot be produced within 90 days, the appellant shall serve and file a document signed by the authorized court transcriptionist(s) preparing the transcript setting out the proposed schedule for production of the transcript, for the court's consideration.
- (4) A judge may make an order abridging or extending the time or otherwise setting out a schedule for the completion of transcripts.

### ***Duty to Inform the Court Where Completion Is Delayed***

- (5) If the transcript will not be, or has not been, completed within the timelines set out in this rule, the authorized court transcriptionist shall forthwith notify the parties to the appeal and the Registrar, in writing, of the reason for the delay, and the date upon which the transcript will be completed.

### ***Completion Not to Be Suspended***

- (6) After a transcript has been ordered, the completion of the transcript shall not be suspended or the order countermanded without an order or direction of a judge or the Registrar, unless the authorized court transcriptionist has been notified in writing that the appeal has been dismissed as abandoned.

### ***Certificate of Transcript Completion***

- (7) When the transcript has been completed, the authorized court transcriptionist shall forthwith notify the ordering party and send a copy of the certificate of transcript completion in Form 16A to all parties and file the certificate with the court.
- (8) If an authorized court transcriptionist notifies the ordering party that the transcript is complete or delivers the transcript to the ordering party, but fails to file the certificate of transcript completion within seven days of notification or delivery, the ordering party shall forthwith notify the Registrar, the other party(ies) and the authorized court transcriptionist of the transcript completion by serving and filing a notice of failure to submit certificate of transcript completion in Form 16B.

### ***Delivery of Transcripts***

- (9) Upon payment, the authorized court transcriptionist shall forthwith send a searchable electronic copy of the transcript to the Registrar and to all parties.
- (10) If the transcript is also produced in paper format, upon payment, the authorized court transcriptionist shall deliver:
  - a. The court's copies of the transcript to the Registrar;
  - b. Where the Attorney General is the appellant, all parties' copies of the transcript to the Attorney General; and
  - c. Where the Attorney General is the respondent, the respondent's copies of the transcript to the Attorney General and all other parties' copies to the appellant.

### ***Failure of Authorized Court Transcriptionist to Comply with This Rule***

- (11) Where an authorized court transcriptionist fails to comply with any provision of this rule, a judge or the Registrar may require the authorized court transcriptionist to appear before a judge presiding in a status court.

### ***Practice Directions***

- (12) The court may provide further direction regarding the production of transcripts through its practice directions including, but not limited to, the establishment of revised timelines for the production of transcripts in particular types of appeals.

## **38. TRANSCRIPTS – PRESCRIBED CONTENTS**

### ***Appeal from a Judge of the Superior Court of Justice Not Sitting as a Trial Judge***

- (1) On an appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge:
- a. The transcript of the proceedings in the Ontario Court of Justice as it was submitted on appeal or application to the Superior Court of Justice shall be requisitioned from the Superior Court of Justice pursuant to subrule 12(3) and included as part of the appeal book pursuant to paragraph 39(1)(k);
  - b. A transcript of the proceedings in the Superior Court of Justice is not required except for the transcript of the Superior Court of Justice judge's reasons for judgment, if delivered orally;
  - c. If a transcript of the Superior Court of Justice judge's reasons for judgment is produced, it shall be included in the appeal book pursuant to paragraph 39(1)(k); and
  - d. If the appellant intends to rely on any other portion of the transcript of the proceedings from the Ontario Court of Justice or the Superior Court of Justice for purposes of the appeal, the appellant shall serve it on the other parties and file it with the court as a transcript rather than include it in the appeal book.

### ***Appeals Against Conviction or Acquittal***

- (2) Subject to subrules 38(3)-(6), the transcript for an appeal against conviction or acquittal shall include the entire trial proceeding commencing with the arraignment and plea of the accused and concluding with the verdict of the jury or the reasons for judgment, as the case may be.

### ***Trial Transcript That May Be Omitted***

- (3) Unless relevant to a ground of appeal, the following trial proceedings may be omitted from the transcript:
- a. Any proceedings in respect of the selection of the jury;
  - b. The opening addresses of counsel;
  - c. Any evidence given on a motion or application brought before, during or after the trial;
  - d. In the case of a trial by judge and jury, any evidence given in the absence of the jury; and
  - e. Any submissions of counsel pertaining to paragraphs 38(3)(a)-(d).

### ***Appeals Against Conviction and Sentence***

- (4) In an appeal against conviction and sentence, in addition to the requirements of subrule 38(2), the transcript shall also include:
- a. Any evidence called in respect of sentence;
  - b. Any submissions of counsel for the prosecution and for the defence on sentence;
  - c. Any statement by the accused prior to the passing of sentence made under s. 726 of the *Code*; and
  - d. The trial judge's reasons for sentence.

### ***Appeals Against Sentence Only – Plea of Guilty***

- (5) In an appeal against sentence only where there was a plea of guilty, the transcript shall include the entire plea proceedings before the court, including:
- a. The arraignment;
  - b. The statement of counsel for the prosecution;
  - c. Any evidence called in respect of sentence;
  - d. Any submissions of counsel for the prosecution and the defence on sentence;
  - e. Any statement by the accused prior to the passing of sentence made under s. 726 of the *Code*; and
  - f. The trial judge's reasons for sentence.

### ***Appeals Against Sentence Only – Plea of Not Guilty***

- (6) In an appeal against sentence only where the plea was not guilty at the opening of the trial and was followed by the adducing of evidence:
- a. The transcript shall include:
    - i. In the case of a jury trial, the charge to the jury, the re-charge if any, and the verdict;
    - ii. In the case of a trial by a judge without a jury, the trial judge's reasons for judgment;
    - iii. Any evidence called in respect of sentence;
    - iv. Any submissions of counsel for the prosecution and for the defence on sentence;
    - v. Any statement by the accused prior to the passing of sentence made under s. 726 of the *Code*; and
    - vi. The trial judge's reasons for sentence.
  - b. In addition to the transcript, the parties may choose to provide an agreed statement of facts in the appeal book pursuant to paragraph 39(1)(i).

### ***Parties May Order Additional Portions of Transcript***

- (7) A party to an appeal may order additional portions of the transcript of the proceedings.
- (8) If the party intends to rely on additional portions of the transcript for purposes of the appeal, the additional portions of transcript shall be served on the other parties to the appeal and filed with the court.

### ***Agreement Respecting Evidence***

- (9) Instead of complying with this rule, the parties may, at any time prior to perfection, make an agreement respecting the transcript required for the appeal, and any such agreement shall be reduced to writing, signed by the parties, filed with the Registrar forthwith and form part of the contents of the appeal book under rule 39.

### **39. APPEAL BOOKS**

#### ***Contents of Appellant's Appeal Book***

- (1) The appellant shall serve and file an appeal book, which shall contain, in the following order:
  - a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - b. A copy of the notice of appeal and any supplementary notices of appeal;
  - c. A copy of the order granting leave to appeal, if any;
  - d. A copy of the information or indictment, including all endorsements;
  - e. A copy of the formal order or decision appealed from, if any, as signed and entered;
  - f. A copy of the reasons for judgment and any other rulings relevant to an issue on the appeal, if not included in the transcript of the trial or hearing, together with a further typed or printed copy if the reasons and/or ruling(s) are/is handwritten;
  - g. A copy of any order for release from custody pending appeal and any other order suspending the operation of the sentence;
  - h. Copies of any exhibits capable of reproduction, whether in paper or electronic format, filed at the trial that are relevant to an issue on the appeal;
  - i. A copy of any agreed statements of fact, if relevant to any issue on the appeal;
  - j. Where there is an appeal as to sentence, copies of the pre-sentence report (if any), the criminal record of the person who has been sentenced (if any), and any exhibits capable of reproduction, whether in paper or electronic format, filed on the sentencing proceedings that are relevant to an issue on the appeal;
  - k. Where the appeal is from the decision of a Superior Court of Justice judge not sitting as a trial judge, a copy of all material relevant to the application or appeal that was before the Superior Court of Justice, including the reasons for judgment from the Ontario Court of Justice that were reviewed by or appealed to the Superior Court of Justice (with a further typed or printed copy if the reasons are handwritten), the notice of appeal or application, the factums and the transcript of the proceedings in the Ontario Court of Justice as it was submitted on appeal or application to the Superior Court of Justice.

- l. Where the appeal is a summary conviction appeal and leave to appeal has not yet been obtained, a copy of any affidavit of the applicant that may be relied on to address matters relevant to the application for leave to appeal;
- m. A copy of any notice of constitutional question served in accordance with s. 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and proof of service of the notice upon the Attorney General of Ontario and the Attorney General of Canada;
- n. A copy of any agreement made by the parties under subrule 38(9);
- o. A copy of the certificate of completeness in Form 17 signed by the appellant's lawyer, on the lawyer's behalf by someone specifically authorized to do so or by the appellant if they have no lawyer, stating that the contents of the appeal book are complete and legible.

### ***Agreement of Parties***

- (2) To the extent possible, parties shall agree on the contents of the appeal book.

### ***Respondent's Appeal Book***

- (3) The respondent may serve and file a respondent's appeal book, which may contain, in the following order:
  - a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - b. Any material required by subrule 39(1) but omitted from the appeal book; and
  - c. Copies of any exhibits capable of reproduction, whether in paper or electronic format, filed at the trial or on the sentencing proceedings not included in the appellant's appeal book (or are included in the appellant's appeal book in a different format) to which the respondent will refer in their factum or oral argument.
- (4) If a respondent chooses to prepare an appeal book, it shall be served and filed at the same time as the respondent's factum.

### ***Format of Appeal Book***

- (5) The material in an appeal book shall be set out in consecutively numbered pages and organized within consecutively numbered or lettered tabs.

- (6) When produced in paper format, the appellant's appeal book shall be bound front and back in buff cover stock, and the respondent's appeal book shall be bound front and back in grey cover stock.
- (7) The Registrar may refuse to accept an appeal book that does not comply with these rules or is not legible, and in that case the appeal book shall not be filed without a direction from a judge.

### ***Exception***

- (8) A judge may order that the appeal book be prepared in a different manner than as set out in this rule.

## **40. FACTUMS**

### ***Title of Factum***

- (1) All parties to an appeal and persons who have been granted the right to be heard shall deliver a factum, to be titled "Appellant's Factum", "Respondent's Factum", "Intervener's Factum", or as the case may be.

### ***Factum to Be Signed and Dated***

- (2) A factum shall be signed by the party's lawyer or on the lawyer's behalf by someone specifically authorized to do so, or by the party if they have no lawyer, and the signature shall be followed by the name of the lawyer or the party if they have no lawyer, and the date.

### ***Contents of Appellant's Factum***

- (3) Except in an appeal from sentence only (see rule 41), the appellant's factum shall consist of:
  - a. Part I, with the caption "Statement of the Case and Overview", containing a statement identifying the appellant and the court appealed from, the nature of the charge(s), the result in that court, whether the appeal is from conviction, conviction and sentence, acquittal or other disposition, and a brief overview setting out the issues raised and the position of the appellant;
  - b. Part II, with the caption "Summary of the Facts", containing a concise summary of the facts relevant to the issues on the appeal, with such reference to the transcript of evidence (by volume, page and line number), reasons for judgment (by page or paragraph number) and/or reasons for sentence (by page or paragraph number) as may be necessary;



- c. Part III, with the caption “Issues and Law”, containing a statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- d. Part IV, with the caption “Order Requested”, containing a statement of the order that the court will be asked to make as well as a reasonable time estimate for the appellant’s oral argument, if applicable;
- e. Part V, with the caption “Sealing Orders, Publication Bans or Other Restriction on Public Access”, containing submissions regarding the possible impact, if any, of any sealing order, publication ban or other restriction on public access to information in the record on the reasons, if any, in the appeal.
- f. Schedule A, with the caption “Authorities to be Cited”, containing a list of the authorities referred to, with citations, in the order in which they appear in Part III or in alphabetical order; and
- g. Schedule B, with the caption “Relevant Legislative Provisions”, setting out the text of all relevant statutes except any provisions from the *Code* or the *Youth Criminal Justice Act*.

### ***Contents of Respondent’s Factum***

(4) The respondent’s factum shall consist of:

- a. Part I, with the caption “Overview”, briefly setting out the issues raised and the position of the respondent;
- b. Part II, with the caption “Respondent’s Statement as to Facts”, containing a statement of the facts in Part II of the appellant’s factum that the respondent accepts as correct or substantially correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with such reference to the transcript of evidence (by volume, page and line number), reasons for judgment (by page or paragraph number) and/or reasons for sentence (by page or paragraph number) as may be necessary;
- c. Part III, with the caption “Response to Appellant’s Issues”, containing the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise statement of the law and the authorities relating to that issue;
- d. Part IV, with the caption “Additional Issues”, containing a statement of any additional issues raised by the respondent, immediately followed by a concise statement of the law and the authorities relating to that issue;

- e. Part V, with the caption “Order Requested”, containing a statement of the order that the court will be asked to make;
- f. Part VI, with the caption “Sealing Orders, Publication Bans or Other Restriction on Public Access”, containing submissions regarding the possible impact, if any, of any sealing order, publication ban or other restriction on public access to information in the record on the reasons, if any, in the appeal.
- g. Schedule A, with the caption “Authorities to be Cited”, containing a list of the authorities referred to, with citations, in the order in which they appear in Parts III and IV or in alphabetical order; and
- h. Schedule B, with the caption “Relevant Legislative Provisions”, setting out the text of all relevant statutes except any provisions from the *Code* or the *Youth Criminal Justice Act*.

### ***Length of Factum***

- (5) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, a factum, excluding the schedules, shall not exceed 30 pages in length.

### ***Form of Factum***

- (6) When produced in paper format, the appellant’s factum shall be bound front and back in blue cover stock, and the respondent’s factum shall be bound front and back in green cover stock.
- (7) The Registrar may refuse to accept a factum that does not comply with these rules, and in that case, the factum shall not be filed without a direction from a judge.

### ***Reply or Supplementary Factums***

- (8) Subject to rule 47, in exceptional circumstances a judge may order that the appellant may serve and file a reply factum, or that the respondent may serve and file a supplementary factum, on such terms as may be specified, and which will ordinarily not exceed ten pages.

## **41. SENTENCE APPEALS**

### ***Factums in Sentence Appeals***

- (1) In an appeal from sentence only, the factum of the appellant shall be in Form 18.
- (2) Where the appellant in an appeal from sentence only is the Attorney General, such changes may be made in the form of the factum as are required.

### ***Time for Oral Argument in Sentence Appeals***

- (3) Unless otherwise directed or ordered by a practice direction, the court or a judge, and subject to subrule 41(4), on the hearing of an appeal from sentence only, for oral argument:
  - a. The appellant shall be limited to 15 minutes;
  - b. The respondent shall be limited to 10 minutes; and
  - c. The appellant shall be allowed 5 minutes to reply.
- (4) In cases of unusual complexity, a party/the parties may seek additional time for oral argument by making a request by email to the Criminal Appeal Coordinator to arrange a conference call with all parties and a judge who has been designated by the Chief Justice to serve as the Criminal List Judge, and the Criminal List Judge, after hearing from the parties, shall determine the time assigned for oral argument.

## **42. BOOKS OF AUTHORITIES**

### ***Filing Books of Authorities***

- (1) If a party serves and files a factum in an appeal, unless otherwise directed or ordered by a practice direction, the court or a judge or unless the parties intend to file a joint book of authorities in accordance with subrule 42(2), the party shall also serve and file a book of authorities no later than five days after the date on which the party's factum is filed.
- (2) If the parties agree to produce a joint book of authorities, it shall be served and filed by one of the parties on behalf of all parties no later than five days after the date on which the respondent's factum is filed.

### ***Colour of Cover and Title***

- (3) Subject to subrule 42(6), when produced in paper format, a party's book of authorities shall be bound front and back in cover stock of the same colour as the party's factum.
- (4) A book of authorities filed only by the appellant shall be titled "Appellant's Book of Authorities".
- (5) A book of authorities filed only by the respondent shall be titled "Respondent's Book of Authorities".
- (6) A joint book of authorities shall be titled "Joint Book of Authorities", and, when produced in paper format, it shall be bound front and back in yellow cover stock.

### ***Authorities to Be Included***

- (7) A book of authorities shall contain the full text of those cases and secondary authorities cited in the factum of the party/parties filing the book of authorities or intended to be referred to in oral argument.

### ***Marking of Authorities***

- (8) The authorities shall be marked to indicate those passages that are referred to in the factum of the party/parties filing the book of authorities or are intended to be referred to in oral argument.

### ***Copies to Be Legible***

- (9) The authorities shall be reproduced legibly.

### ***Duplication of Authorities to Be Avoided***

- (10) To the extent possible, a party shall not duplicate authorities already filed with the court by another party.

### ***Practice Directions***

- (11) The court may provide further direction regarding the format and content of books of authorities through its practice directions, including, but not limited to, identifying frequently cited authorities that do not need to be included in a book of authorities and specifying the order of the court's preference for which print version of an authority ought to be included in a book of authorities.

## **43.COMPENDIUMS**

### ***When Required***

- (1) Each of the parties to an appeal involving a transcript of 1000 pages or more shall serve and file a compendium.
- (2) Parties to an appeal involving a transcript of less than 1000 pages may serve and file a compendium.

### ***Format***

- (3) A compendium shall contain a table of contents and be set out in consecutively numbered pages and organized within consecutively numbered or lettered tabs.
- (4) A compendium filed by the appellant shall be titled “Appellant’s Compendium”, and, when produced in paper format, it shall be bound front and back in yellow cover stock.
- (5) A compendium filed by the respondent shall be titled “Respondent’s Compendium”, and, when produced in paper format, it shall be bound front and back in pink cover stock.

### ***Contents***

- (6) Unless otherwise directed or ordered by a practice direction, the court or a judge:
  - a. A compendium shall contain:
    - i. Excerpts from the appeal book, transcript and books of authorities to which the party filing the compendium intends to refer in oral argument; and/or
    - ii. Any slide presentation to which the party filing the compendium intends to refer in oral argument;
  - b. A compendium may contain a two-page outline of the party’s anticipated oral argument; and
  - c. A compendium shall not contain written submissions that supplement the party’s factum.

### ***Serving and Filing***

- (7) Unless otherwise directed or ordered by a practice direction, the court or a judge, the compendium shall be served and filed at least five days before the appeal hearing date.

- (8) Where a party seeks to serve and file a compendium later than five days before the appeal hearing date, the party shall serve the compendium on all other parties as soon as possible and thereafter shall seek leave of the panel at the appeal hearing to file the compendium.
- (9) If leave is granted by the panel, the party shall file the compendium with the courtroom registrar.

#### **44. PERFECTING THE APPEAL**

##### ***Duty on Appellant to Perfect Appeal***

- (1) The appellant is responsible for perfecting the appeal.

##### ***Procedure***

- (2) Unless otherwise directed or ordered by a practice direction, the court or a judge, in order to perfect the appeal, the appellant shall serve on each party to the appeal and any person entitled by statute or an order of the court to be heard on the appeal and file:
  - a. The appeal book;
  - b. The transcript, unless the transcript has been delivered directly to the parties and other persons entitled to be heard by the authorized transcriptionist under rule 37 or no transcript is required other than that which is included as part of the appeal book pursuant to paragraph 39(1)(k);
  - c. The appellant's factum; and
  - d. The certificate of perfection in Form 19 stating:
    - i. That the appeal book, transcript (if applicable) and appellant's factum have been served and filed;
    - ii. That the transcript is complete;
    - iii. The estimated total length of time for oral argument (if applicable);
    - iv. The name and contact information for each party and person entitled by statute or an order of the court to be heard on the appeal; and
    - v. The proposed manner of hearing.

## ***Timelines***

- (3) Except as otherwise provided in subrules 44(4)-(6), the appellant shall perfect the appeal by complying with subrule 44(2) within ninety days after the filing of the certificate of transcript completion (Form 16A) or the notice of failure to submit certificate of transcript completion (Form 16B), whichever is earlier, or such other period as is directed by a judge or the Registrar.
- (4) In an appeal from the decision of the summary conviction appeal court, the appellant shall perfect the appeal by complying with subrule 44(2) within the timelines set out in rule 25 or rule 26, as applicable, or such other period as is directed by a judge or the Registrar.
- (5) In any other appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge, the appellant shall perfect the appeal by complying with subrule 44(2):
  - a. Where no transcript is required other than that filed in the proceedings below, within sixty days after filing the notice of appeal;
  - b. Where any additional transcript is required in such cases, within sixty days after the filing of the certificate of transcript completion (Form 16A) or the notice of failure to submit certificate of transcript completion (Form 16B), whichever is earlier;or such other period as is directed by a judge or the Registrar.
- (6) In the case of an appeal from sentence only, the appellant shall perfect the appeal by complying with subrule 44(2) within thirty days after the filing of the certificate of transcript completion (Form 16A) or the notice of failure to submit certificate of transcript completion (Form 16B), whichever is earlier, or such other period as is directed by a judge or the Registrar.

## **45. FAILURE TO PERFECT THE APPEAL**

- (1) Where an appellant fails to comply with any provision of rule 44:
  - a. The Registrar may:
    - i. Place the matter, on notice to the parties, before a judge presiding in a status court to give direction on how the appellant must proceed; or
    - ii. Serve notice on the appellant that the appeal will be placed before the court to be dismissed as abandoned unless the default is cured within ten days after service of the notice; or

- b. The respondent may:
  - i. On notice to the appellant, make a motion to a judge for directions; or
  - ii. On notice to the appellant, request the Registrar to serve on the appellant the notice referred to in subrule 45(1)(a)(ii).
- (2) Where the appellant does not cure the default within ten days after service of the notice under subrule 45(1)(a)(ii), or within such longer period as a judge may allow, the Registrar shall, on notice to the parties, place the appeal before the court to be dismissed as abandoned.
- (3) Where the appeal has remained unperfected for 60 days past the time limits set out in these rules, the Registrar shall serve the notice referred to in subrule 45(1)(a)(ii).
- (4) The court, in considering an appeal referred to it under subrule 45(2) may:
  - a. Dismiss the appeal as abandoned;
  - b. If the appellant was granted release from custody pending the appeal, revoke the release order and direct that a warrant issue for the arrest of the appellant;
  - c. Permit the appeal to remain on the list of pending appeals upon such conditions, if any, as the court considers fit, including conditions respecting the time limits for filing the transcript, the appeal book and the factum; or
  - d. Make any other order that the interests of justice require.
- (5) The Registrar shall serve the parties with a copy of an order dismissing the appeal as an abandoned appeal, or any other order issued under subrule 45(4).
- (6) Unless a judge otherwise directs or orders, service of a notice or order by the Registrar on an unrepresented appellant who is not in custody under subrules 45(1)(a)(ii), (2), (3) and (5) shall be by registered mail to the address for the appellant as set out in the notice of appeal or as filed with the Registrar.
- (7) Where an appeal is dismissed as abandoned pursuant to this rule and a transcript has been ordered but not completed, the Registrar shall forthwith notify any authorized court transcriptionist who has filed a certificate of transcript order (Form 14) that the appeal has been dismissed.



## **46. LISTING APPEALS**

### ***Hearing Date Not to Be Fixed Until Appeal Perfected***

- (1) Unless otherwise directed or ordered by a practice direction, the court or a judge, an appeal shall be scheduled for hearing only after it is perfected and the manner of hearing is confirmed in accordance with these rules.

### ***Scheduling the Appeal Hearing Date***

- (2) Where the appeal is confirmed to proceed in writing, unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, the Criminal Appeal Coordinator shall fix the date of the hearing and notify the parties.
- (3) Where the appeal is confirmed to proceed in person, by videoconference or by audioconference, unless otherwise directed or ordered by these rules, a practice direction, the court or a judge:
  - a. The Criminal Appeal Coordinator shall inform the parties of the time assigned by the court for oral argument and provide the parties with a number of possible dates when the appeal may be scheduled;
  - b. As soon as possible after receiving the information set out in paragraph 46(3)(a), the parties shall consult with each other, without copying the Criminal Appeal Coordinator, in order to select a mutually agreeable date and shall forthwith notify the Criminal Appeal Coordinator of this date;
  - c. Where the parties cannot agree on a hearing date and/or where a party is requesting time for oral argument in excess of the time assigned by the court:
    - i. The party or parties shall make a request by email to the Criminal Appeal Coordinator to arrange a conference call with all parties and a judge who has been designated by the Chief Justice to serve as the Criminal List Judge; and
    - ii. The Criminal List Judge, after hearing from the parties, shall determine the hearing date and/or the time assigned for oral argument;
  - d. Once the parties notify the Criminal Appeal Coordinator of the mutually agreeable hearing date pursuant to paragraph 46(3)(b) or the Criminal List Judge determines the hearing date pursuant to subparagraph 46(3)(c)(ii), the Criminal Appeal Coordinator shall fix the date of the hearing and notify the parties.
- (4) The parties shall adhere to the time assigned for oral argument;

- (5) The time for the appellant's reply, if any, is in the discretion of the panel hearing the appeal.

#### ***Date for Filing Respondent's and Other Parties' Factums***

- (6) Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, the respondent, any other party to the appeal and any person entitled by statute or an order of the court to be heard on the appeal shall serve their factum on each other party to the appeal and any person entitled by statute or an order of the court to be heard on the appeal and file it no later than five weeks before the appeal hearing date.

### **47. APPEALS IN WRITING**

#### ***Reply Factum Permitted***

- (1) For an appeal in writing, the appellant may serve on each party to the appeal and any person entitled by statute or an order of the court to be heard on the appeal and file a reply factum, which shall not exceed ten pages, within ten days after service of the respondent's factum.

#### ***Consideration and Disposition by a Panel of the Court***

- (2) The materials filed by the parties shall be considered by the panel.
- (3) The panel considering and disposing of the appeal in writing shall give written reasons for judgment.

#### ***Panel May Require Oral Hearing***

- (4) Notwithstanding subrule 47(3), the panel considering the appeal may direct that the appeal be listed for oral hearing.
- (5) If the panel directs that the appeal be listed for oral hearing, the Registrar shall notify the parties forthwith and seek their input on the manner of hearing and time for oral argument.
- (6) After considering the input from the parties, if any, the panel shall make an order directing the manner of hearing and time for oral argument.
- (7) In deciding on the manner of hearing, the panel shall consider those factors set out in subrule 10(11).
- (8) The oral hearing shall be scheduled in accordance with subrule 46(3).

## **PART IV – IN-PERSON APPEALS**

### **48.APPLICATION OF THIS PART**

This part applies to all in-person appeals.

### **49.APPLICATION OF THE RULES GOVERNING SOLICITOR APPEALS**

Unless otherwise directed or ordered by these rules, a practice direction, the court or a judge, the rules for solicitor appeals set out in Part III also apply to in-person appeals.

### **50.ORDERS MODIFYING OR RELIEVING COMPLIANCE WITH CERTAIN REQUIREMENTS AND RULES**

A judge may, on the motion of one of the parties or the Registrar, make an order modifying or relieving compliance with the rules including, but not limited to, the following:

- a. An order setting out a schedule for the ordering of transcripts;
- b. An order directing that the appeal proceed on limited transcripts;
- c. An order dispensing with the inclusion of some or all exhibits in the appeal book;
- d. An order directing the Attorney General to order certain transcripts;
- e. An order directing the Attorney General to prepare the appeal book; and
- f. An order directing an in-person appeal to proceed as an inmate appeal.

## **PART V – INMATE APPEALS**

### **51.APPLICATION**

- (1) This part applies to all inmate appeals, including appeals against verdicts of not criminally responsible on account of mental disorder or unfit to stand trial and applications for leave to appeal in summary conviction appeals pursuant to s. 839(1) of the *Code*.

- (2) Except where otherwise specified or inconsistent with this part, the remainder of the rules apply to inmate appeals as appropriate and with necessary modifications.

## **52. DEFINITIONS**

In this part, where necessary:

- a. “institution” includes a hospital; and
- b. “senior official” includes a person in charge.

## **53. NOTICE OF APPEAL**

### ***Form for Notice of Appeal for Inmate Appeals***

- (1) An inmate appeal, including an application for leave to appeal from the decision of the summary conviction appeal court pursuant to s. 839(1) of the *Code*, shall be commenced by a notice of appeal in Form 20.

### ***Manner of Serving and Filing Notice of Appeal***

- (2) Serving and filing a notice of appeal in an inmate appeal shall be effected by delivering the notice of appeal to the senior official of the institution in which the appellant is in custody.

### ***Duty of Senior Official of an Institution to Supply Form and File and Deliver Materials***

- (3) The senior official of an institution shall supply to any inmate in their custody a blank notice of appeal in Form 20 upon request.
- (4) Upon receiving a notice of appeal from an inmate, the senior official of an institution shall:
  - a. Endorse on the notice of appeal the date the notice of appeal was received from the inmate;
  - b. Retain a copy of the notice of appeal; and
  - c. Forthwith deliver a copy of the notice of appeal to the Registrar.
- (5) The senior official of an institution shall forthwith deliver to the inmate concerned any documents sent to the inmate by the Registrar, the Attorney General, Legal Aid Ontario, duty counsel or a representative of a duty counsel program providing assistance to inmate appellants, including the Pro Bono

Inmate Appeal Program, and shall inform the Registrar, the Attorney General, Legal Aid Ontario, duty counsel or a representative of a duty counsel program providing assistance to inmate appellants, including the Pro Bono Inmate Appeal Program, as applicable, of having done so.

#### **54. ORIGINAL PAPERS AND EXHIBITS**

- (1) When an inmate notice of appeal is received by the Registrar, the Registrar shall forthwith transmit a copy of it to the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, for the region and courthouse where the proceedings giving rise to the order under appeal were held.
- (2) Upon receipt of a notice of appeal, unless it is otherwise directed or ordered by the court or a judge, the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall forthwith send to the Registrar:
  - a. All original papers, documents and exhibits, whether in paper or electronic format, capable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
  - b. Where applicable, a list of documents and exhibits incapable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
  - c. Where applicable, a list of documents and exhibits under seal that were before the court with respect to the proceedings giving rise to the order under appeal.
- (3) Where possible:
  - a. All materials sent to the Registrar pursuant to paragraph 54(2)(a) shall be copies rather than originals; and
  - b. Where an exhibit was filed in the lower court in an electronic format, it shall be transmitted to the Registrar in the same format.
- (4) Where a registrar or a clerk sends material under paragraph 54(2)(a) that includes material under seal, they shall segregate the sealed material from the other material, clearly identify it as being sealed material and attach a copy of the list of sealed documents and exhibits produced pursuant to paragraph 54(2)(c).
- (5) The registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall not send to the Registrar any papers,

documents or exhibits incapable of reproduction unless so ordered by the court or a judge.

- (6) Upon receipt of the materials from the Superior Court of Justice or Ontario Court of Justice described in subrule 54(2), the Registrar shall notify the Attorney General that they are available, and all material not under seal shall be released to the Attorney General upon the Attorney General's request.
- (7) Where the Attorney General seeks access to material under seal sent to the Registrar pursuant to subrule 54(2), they shall bring a motion on notice to all parties to vary a sealing order to allow for the release of materials to facilitate the preparation of appeal materials.
- (8) The Registrar shall not release any material under seal unless so ordered by the court or a judge.

## **55. EXTENSION OF TIME**

### ***Reasons for Seeking Extension of Time to Be Set Out in Notice of Appeal***

- (1) If the notice of appeal in Form 20 is not served and filed within the time limited by rule 8, the appellant shall set out in the place provided therefor in Form 20 the reasons they are seeking an extension of time.

### ***Extension of Time for Inmate Appeal May Be Granted by a Judge***

- (2) An extension of time relating to an inmate appeal may be granted by a judge, and the endorsement to that effect shall constitute an order extending the time.

### ***Notice to Attorney General***

- (3) In all cases where the notice of appeal in an inmate matter is served and filed six months or more after the time for serving and filing has expired, and in any other case where the judge considers it appropriate, the Registrar shall give notice to the Attorney General of the application.

### ***Written Submissions by Attorney General and Reply Submissions***

- (4) If the application for an extension of time is opposed, within ten days of receiving the notice of the application, the Attorney General shall file with the Registrar a written response to the application, and the Registrar shall forward a copy of the response to the appellant together with a notification that they may make written submissions in reply within ten days of receiving the response.

### ***Referral to Criminal Panel***

- (5) If, after reviewing the submissions of the appellant and, when provided, the Attorney General, the judge to whom the application is made under this rule is of the opinion that an extension of time should be refused, the judge shall prepare reasons for the refusal, and the file shall then be referred to two members of the criminal panel.
- (6) The decision of the majority of the three judges shall be the decision of the court on the application for an extension of time.
- (7) The reasons given by the court on the application shall be sent to the appellant and to the Attorney General.

### ***Notice of Decision***

- (8) The Registrar shall notify both the appellant and the Attorney General of the decision in any application for an extension of time in an inmate appeal.

## **56. APPLICATIONS FOR LEAVE TO APPEAL IN SUMMARY CONVICTION APPEALS**

When an application for leave to appeal from the decision of the summary conviction appeal court is brought as an inmate appeal:

- a. The appellant shall set out in the place provided therefor in Form 20 the reasons they are seeking leave to appeal; and
- b. Unless otherwise directed or ordered by the court or a judge, the application for leave to appeal shall be heard at the same time as the appeal, should leave be granted.

## **57. TRANSCRIPTS**

### ***Application of Rules Regarding Transcripts to Inmate Appeals***

- (1) Subject to the subrules set out below that are specifically applicable to transcripts for inmate appeals, the rules regarding transcripts apply to inmate appeals as appropriate and with necessary modifications.

### ***Transcripts to Be Ordered by Registrar***

- (2) Upon receipt of an inmate notice of appeal, in consultation with the Attorney General, the Registrar shall order the following transcripts forthwith:

- a. Transcripts of rulings identified in the notice of appeal as being relevant to a ground of appeal; and
- b. In respect of an appeal against conviction only in a case that was tried by judge alone:
  - i. The closing submissions of counsel; and
  - ii. The reasons for judgment.
- c. In respect of an appeal against conviction only in a case that was tried by judge and jury:
  - i. The closing addresses of counsel;
  - ii. The pre-charge conference;
  - iii. The charge to the jury (including any questions from the jury, objections to the charge, or re-charge); and
  - iv. The verdict.
- d. In respect of an appeal against conviction and sentence in a case that was tried by judge alone:
  - i. The closing submissions of counsel;
  - ii. The reasons for judgment;
  - iii. The submissions on sentence; and
  - iv. The reasons for sentence.
- e. In respect of an appeal against conviction and sentence in a case that was tried by judge and jury:
  - i. The closing addresses of counsel;
  - ii. The pre-charge conference;
  - iii. The charge to the jury (including any questions from the jury, objections to the charge, or re-charge);
  - iv. The verdict;
  - v. The submissions on sentence; and
  - vi. The reasons for sentence.
- f. In respect of an appeal against sentence only in a case that was tried by judge alone:
  - i. The reasons for judgment;



- ii. The submissions on sentence; and
  - iii. The reasons for sentence.
- g. In respect of an appeal against sentence only in a case that was tried by judge and jury:
  - i. The charge to the jury (including any re-charge);
  - ii. The verdict;
  - iii. The submissions on sentence; and
  - iv. The reasons for sentence.
- h. In respect of an appeal against either conviction or sentence in a case where the appellant pleaded guilty to some or all of the charges:
  - i. The guilty plea proceedings;
  - ii. The submissions on sentence;
  - iii. The reasons for sentence; and
  - iv. If applicable, any other transcript required under other subsections of this rule; and
- i. In respect of an appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge:
  - i. The transcript of the Superior Court of Justice judge's reasons for judgment, if delivered orally, which shall be included in the appeal book pursuant to paragraph 58(2)(h).
- (3) Subject to paragraph 57(2)(i), in respect of an appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge:
  - a. The transcript of the proceedings in the Ontario Court of Justice as it was submitted on appeal or application to the Superior Court of Justice shall be obtained from the Superior Court of Justice pursuant to subrule 54(2) and included as part of the appeal book pursuant to paragraph 58(2)(h); and
  - b. A transcript of the proceedings in the Superior Court of Justice is not required.
- (4) The Registrar may order such other transcripts as may be suggested by the Attorney General.
- (5) The appellant may make a motion to a judge for additional transcripts to be ordered.

### ***Certificate of Transcript Order***

- (6) Within 15 days of receiving an order for a transcript pursuant to this rule, the authorized court transcriptionist shall complete a certificate of transcript order in Form 14 and send the completed certificate to the Registrar along with a copy to the Attorney General.

### ***Timelines for Completion of Transcript***

- (7) Unless otherwise directed or ordered by a practice direction, the court, a judge or the Registrar, all transcripts under this rule shall be completed as follows:
  - a. In an appeal from the decision of a judge of the Superior Court of Justice not sitting as a trial judge where no transcript is required other than the transcript of the Superior Court of Justice judge's orally delivered reasons for judgment, no later than 30 days after the date the transcript was ordered;
  - b. In an appeal from sentence only, other than where a sentence under Part XXIV (Dangerous Offenders) was sought, no later than 45 days after the date the transcript was ordered; and
  - c. In all other inmate appeals, no later than 60 days after the date the transcript was ordered.

### ***Certificate of Transcript Completion***

- (8) Upon completion of the transcript, the authorized court transcriptionist shall forthwith send a certificate of transcript completion in Form 16A to the Registrar along with a copy to the Attorney General.

### ***Delivery of Transcripts***

- (9) Upon payment, the authorized court transcriptionist shall forthwith send a searchable electronic copy of the transcript to the Registrar and to the Attorney General.
- (10) If the transcript is also produced in paper format, upon payment, the authorized court transcriptionist shall deliver all copies of the transcript to the Registrar, who will then deliver any copies of the transcript for the Attorney General to the Attorney General.

## **58. APPEAL BOOKS**

### ***Preparation of Appeal Book by Attorney General***

- (1) The Registrar shall request the Attorney General to prepare the appeal books for the use of the court and the appellant.

### ***Contents of Appeal Book***

- (2) The appeal book shall contain, in the following order:
  - a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter;
  - b. A copy of the notice of appeal and any supplementary notice of appeal;
  - c. A copy of the information or indictment, including all endorsements;
  - d. A copy of the formal order or decision appealed from, if any, as signed and entered;
  - e. A copy of the reasons for judgment and any other rulings relevant to an issue on the appeal, if not included in the transcripts ordered, together with a further typed or printed copy if the reasons and/or ruling(s) are/is handwritten;
  - f. Copies of any exhibits capable of reproduction, whether in paper or electronic format, filed at the trial that are relevant to an issue on the appeal;
  - g. Where the appeal is or includes an appeal against sentence, copies of the pre-sentence report (if any), the criminal record of the person who has been sentenced (if any), and any exhibits capable of reproduction, whether in paper or electronic format, filed on the sentencing proceedings that are relevant to an issue on the appeal;
  - h. Where the appeal is from the decision of a Superior Court of Justice judge not sitting as a trial judge, a copy of all material relevant to the application or appeal that was before the Superior Court of Justice, including the reasons for judgment from the Ontario Court of Justice that were reviewed by or appealed to the Superior Court of Justice (with a further typed or printed copy if the reasons are handwritten), the notice of appeal or application, the factums and the transcript of the proceedings in the Ontario Court of Justice as it was submitted on appeal or application to the Superior Court of Justice.
  - i. A copy of all transcripts ordered and obtained under rule 57; and

- j. A copy of any notice of constitutional question served in accordance with s. 109 of the *Courts of Justice Act* and proof of service upon the Attorney General and the Attorney General of Canada.

### ***Attorney General to Provide Copies of Appeal Books***

- (3) The Attorney General shall deliver the appeal book to the appellant and file the appeal book with the Registrar.

### ***Registrar May Excuse Compliance***

- (4) A judge or the Registrar may, in an appropriate case, excuse the Attorney General from complying with some or all of the requirements of this rule.

## **59. PREPARING AN APPEAL TO BE HEARD**

- (1) An inmate appeal may be listed for hearing upon the request of the Attorney General or upon the direction of a judge.
- (2) Separate from the issue of how an appellant who is in custody shall appear before the court, which is governed by rule 60, the court may specify by practice direction or the court or a judge may direct or order how an inmate appeal (or a motion or an appearance in reference to an inmate appeal) shall be heard or how the manner of hearing for an inmate appeal (or a motion or an appearance in reference to an inmate appeal) shall be determined.
- (3) Factums are not required for an inmate appeal.
- (4) A certificate of perfection is not required for an inmate appeal.

## **60. PRESENCE OF APPELLANT**

### ***Monitoring Progress of Appeal***

- (1) A judge or the Registrar may direct that an appellant who is in custody be brought before a judge at the sittings of inmate appeals to monitor the progress of the appeal.
- (2) Unless otherwise directed by a practice direction, after considering any input from the appellant and the Attorney General, a judge shall direct whether the appellant's appearance before the court to monitor the progress of the appeal will be in person, by videoconference or by audioconference.

## ***Motions***

- (3) Unless a motion is in writing, an appellant who is in custody shall be brought before a judge or the court to argue a motion.
- (4) Unless otherwise directed by a practice direction, after considering any input from the appellant and the Attorney General, a judge shall direct whether the appellant's appearance before the court to argue a motion will be in person, by videoconference or by audioconference.

## ***Appeals***

- (5) Unless an appeal is in writing, an appellant who is in custody shall be brought before the court to argue an appeal.
- (6) Unless otherwise directed by a practice direction, after considering any input from the appellant and the Attorney General, a judge shall direct whether the appellant's appearance before the court to argue the appeal will be in person, by videoconference, so long as the appellant has access to legal advice, or by audioconference, so long as the appellant consents.

## **61. APPEALS IN WRITING**

### ***Further Written Submissions***

- (1) Where the appellant in an inmate appeal requests that their appeal be dealt with as an appeal in writing, the Registrar shall deliver to the appellant a notification that the appellant has the right to present further written submissions within 30 days of receiving the appeal book.

### ***Appeal to Be Considered Initially by Single Judge***

- (2) When the appellant's further written submissions have been received, or the time for submitting them has expired, the appeal shall be referred to a judge for consideration.

### ***Procedure Where Judge Considers Appeal Should Be Dismissed***

- (3) If the judge considers that the appeal does not have sufficient merit to require argument from the Attorney General, the judge shall write draft reasons for judgment dismissing the appeal and shall refer the appeal with the draft reasons to two members of the criminal panel.

- (4) If two members of the criminal panel agree with the judge and sign the reasons for judgment, the appeal shall be dismissed, and the reasons for dismissal dealt with as if the reasons were a reserved judgment.
- (5) If one of the two members of the criminal panel considers that written submissions should be required from the Attorney General, the provisions of subrules 61(6)-(9) apply.

***Procedure Where Judge Requires Argument from Attorney General***

- (6) If the judge considers that the appeal has sufficient merit to require argument from the Attorney General, the judge shall so endorse the file, whereupon the Registrar shall notify the Attorney General and deliver to the Attorney General any further written submissions of the appellant provided under subrule 61(1).
- (7) Within 20 days of the being notified by the Registrar pursuant to subrule 61(6), the Attorney General shall file with the Registrar its written submissions in answer to the appeal.
- (8) If the Attorney General's submissions are produced in paper format, the Attorney General shall file four copies with the Registrar.
- (9) Where the Attorney General has filed written submissions pursuant to subrules 61(7)-(8), the Registrar shall deliver a copy of the submissions to the appellant together with a notification that they may make written submissions in reply within 14 days of receiving the written submissions of the Attorney General from the Registrar.
- (10) When the appellant's written submissions in reply have been received, or the time for submitting them has expired, the appeal shall be referred for disposition to the criminal panel, which shall give written reasons for judgment, to be dealt with as if the reasons were a reserved judgment.

***Criminal Panel May Require Oral Submissions***

- (11) Notwithstanding subrule 61(10), the criminal panel considering the appeal under that subrule may direct that the appeal be listed for oral submissions instead.
- (12) The Registrar shall fix the date for the oral submissions and notify the parties.
- (13) An appellant who is in custody shall be brought before the panel for the oral submissions.
- (14) Unless otherwise directed by a practice direction, after considering any input from the appellant and the Attorney General, a judge shall direct whether the appellant's appearance before the panel for the oral submissions will be in person, by videoconference, so long as the appellant has access to legal advice, or by audioconference, so long as the appellant consents.

## **62. APPEAL CONVERSION**

A judge may, on the motion of one of the parties, make an order converting an inmate appeal to an in-person appeal, or an in-person appeal to an inmate appeal.

## **PART VI – APPEALS FROM ORDERS MADE UNDER PART XX.1 OF THE CRIMINAL CODE – MENTAL DISORDER**

## **63. APPLICATION**

- (1) This part applies to appeals from orders made under Part XX.1 – Mental Disorder of the *Code*.
- (2) This part does not apply to appeals under Part XXI – Appeals – Indictable Offences of the *Code* from a finding that an accused is not criminally responsible under s. 16 of the *Code* or unfit to stand trial under s. 2 of the *Code*.
- (3) Except where otherwise specified or inconsistent with this part, the remainder of the rules apply to appeals from orders made under Part XX.1 – Mental Disorder of the *Code* as appropriate and with necessary modifications.

## **64. DEFINITIONS**

In this part, where necessary:

- a. “hospital” includes an institution; and
- b. “person in charge” includes a senior official.

## **65. HEARING TO BE EXPEDITED**

All hearings of appeals from orders made under Part XX.1 shall be expedited by the court.

## **66. NOTICE OF APPEAL**

### ***Form for Notice of Appeal***

- (1) An appeal under s. 672.72 of the *Code* shall be commenced by a notice of appeal in Form 21, regardless of:

- a. Whether the appellant is the accused, the Attorney General or the person in charge of the hospital where the accused is in custody or to which the accused reports;
- b. Whether the accused is in or out of custody; and
- c. Whether the accused is or is not represented by a lawyer.

### ***Serving and Filing Notice of Appeal***

- (2) The appellant shall serve the notice of appeal within 15 days after the day on which the appellant is provided with a copy of the reasons for the disposition or placement decision, unless the court or a judge grants an extension of time.
- (3) The appellant shall serve and file the notice of appeal in the following manner unless otherwise directed or ordered by the court or a judge:
  - a. Where the appellant is the accused:
    - i. And is not represented by a lawyer, by delivering the notice of appeal to the person in charge of the hospital in which the accused is in custody or to which the accused reports. The person in charge of the hospital shall then file forthwith the notice of appeal with the Registrar and shall provide the accused with proof of filing.
    - ii. And is represented by a lawyer, by serving the notice of appeal on each of the Attorney General and the person in charge of the hospital in which the accused is in custody or to which the accused reports and filing the notice of appeal with the Registrar within 10 days after service.
  - b. Where the appellant is the Attorney General, by personally serving the notice of appeal on the accused or, with agreement of the lawyer who represented or assisted the accused at the hearing that is the subject of the appeal, serving that lawyer and serving the person in charge of the hospital in which the accused is in custody or to which the accused reports and then filing the notice of appeal with the Registrar within 10 days after service.
  - c. Where the appellant is the person in charge of the hospital, by personally serving the notice of appeal on the accused or, with agreement of the lawyer who represented or assisted the accused at the hearing that is the subject of the appeal, serving that lawyer and serving the Attorney General and then filing the notice of appeal with the Registrar within 10 days after service.



- d. In any appeal where the notice of appeal raises a constitutional question as set out in s. 109 of the *Courts of Justice Act*, the appellant must also serve the Attorney General of Ontario and the Attorney General of Canada.
- (4) Where the appellant is the accused and is not represented by a lawyer, if the notice of appeal is not served within the time prescribed by this rule, the court will treat the notice of appeal as a request for an extension of time, and the accused shall set out the grounds for seeking an extension of time in the notice of appeal.
- (5) Where the appellant is the Attorney General or the person in charge of the hospital, they shall make best efforts to effect service of the notice of appeal on the accused, as well as any other document, in a manner that is sensitive to the accused's needs and circumstances, including the time of day, and whether service is delivered by an officer in uniform or plainclothes.

***Duty on Person in Charge of Hospital to Supply Form and File and Deliver Material***

- (6) The person in charge of a hospital in which the accused is in custody or to which the accused reports shall supply a blank notice of appeal in Form 21 to an accused upon request.
- (7) Upon receiving a notice of appeal from an accused, the person in charge of the hospital in which the accused is in custody or to which the accused reports shall:
  - a. Endorse on the notice of appeal the date the notice of appeal was received from the accused;
  - b. Retain a copy of the notice of appeal; and
  - c. Forthwith deliver a copy of the notice of appeal to the Registrar.
- (8) The person in charge of a hospital in which the accused is in custody or to which the accused reports shall forthwith deliver to the accused any documents sent to the accused by the Registrar, the Attorney General or Legal Aid Ontario, and shall inform the Registrar, the Attorney General or Legal Aid Ontario, as applicable, of having done so.

***Duty on Registrar to Provide Copies of the Notice of Appeal***

- (9) Upon receipt of a notice of appeal, the Registrar shall provide forthwith a copy of the notice of appeal to the court or Review Board that made the disposition or the Review Board that made the placement decision, the Attorney General (except where the Attorney General is the appellant), and to Legal Aid Ontario.

### ***Original Papers and Exhibits***

- (10) Upon receipt of the notice of appeal, the court or Review Board shall transmit forthwith, and no later than within 15 days, to the Registrar and, where possible, also to the Attorney General, copies of:
  - a. The disposition or placement decision;
  - b. All exhibits capable of reproduction, whether in paper or electronic format, filed at the hearing before the court or the Review Board; and
  - c. All other material in its possession respecting the hearing.
- (11) Where the court or Review Board transmits material under subrule 66(10) that includes disposition information it withheld from the accused or any other party under s. 672.51(3) or (5) of the *Code*, the court or Review Board shall segregate the withheld information from the other material and clearly identify it as being withheld information under one or both of those subsections.
- (12) Subject to any restrictions arising from withheld information, upon the request of the party responsible for preparing the appeal book, the Registrar shall forward this material to the party forthwith.

## **67. TRANSCRIPT**

### ***Application of Rules Regarding Transcripts to Appeals from Orders Made under Part XX.1 of the Code***

- (1) Subject to the subrules set out below that are specifically applicable to transcripts for appeals from orders made under Part XX.1 of the *Code*, the rules regarding transcripts apply to these appeals as appropriate and with necessary modifications.
- (2) References elsewhere in these rules to an authorized court transcriptionist shall, in this part of the rules, also encompass a transcriptionist.

### ***Ordering of Transcript by Hospital or Attorney General***

- (3) Unless otherwise directed or ordered by the court or a judge and subject to subrule 67(4):
  - a. In appeals brought by the Attorney General or person in charge of the hospital in which the accused is in custody or to which the accused reports, within 15 days of filing the notice of appeal, the party bringing the appeal shall order the transcript of the proceedings before the court or Review Board; and

- b. In all other appeals, the court shall order the Attorney General to order the transcript of the proceedings before the court or Review Board.

### ***Registrar May Excuse Compliance***

- (4) Where the appellant is the accused and is represented by a lawyer, in an appropriate case or where the parties consent, the Registrar may excuse the Attorney General from complying with paragraph 67(3)(b), and the accused's lawyer shall order the transcript of the proceedings.

### ***Contents of Transcript***

- (5) Unless otherwise directed or ordered by a practice direction, the court or a judge, the transcript of the proceedings shall include:
  - a. Where the appeal is from a disposition by the court following a finding of unfitness, all evidence and proceedings, including submissions, relating to the fitness issue and the disposition resulting therefrom;
  - b. Where the appeal is from a disposition by the court following a verdict of not criminally responsible on account of mental disorder, all evidence and proceedings, including submissions, following the verdict; and
  - c. Where the appeal is from a disposition or placement decision by the Review Board, all evidence and proceedings, including submissions, before the Review Board.

### ***Timeline for Completion of Transcript***

- (6) Unless otherwise directed or ordered by a practice direction, the court or a judge, all transcripts under this rule shall be completed no later than 45 days after the date the transcript was ordered.

### ***Agreed Statement of Facts in Some Cases***

- (7) Where the appeal is from a disposition following a finding of unfitness and the issue of fitness was postponed under s. 672.25(2) of the *Code*:
  - a. If the accused is represented by a lawyer, the parties shall prepare an agreed statement of facts as to the evidence heard in respect of the offence, which shall be included in the appeal book; and
  - b. If a lawyer has been appointed *amicus curiae*, if possible, the parties shall prepare an agreed statement of facts as to the evidence heard in respect of the offence, which shall be included in the appeal book.

- (8) In the event of difficulty with agreeing on the statement of facts, any party may, on notice, bring a motion for directions.

### ***Serving and Filing Copies of Transcript***

- (9) The party responsible for preparing the appeal book shall serve the transcript on each of the other parties to the appeal, including *amicus curiae*, if appointed, and then shall file the transcript with the court at the same time as they serve and file the appeal book pursuant to the timeline set out in subrule 68(6).

## **68. APPEAL BOOKS**

### ***Contents of Appeal Book***

- (1) The appeal book shall contain, in the following order:
- a. A table of contents describing each document by its nature and date, and in the case of an exhibit, by exhibit number or letter ;
  - b. A copy of the notice of appeal and any supplementary notice of appeal;
  - c. A copy of the information or indictment, including all endorsements, where included in the original papers and exhibits transmitted by the court or Review Board under subrule 66(10);
  - d. A copy of the disposition or placement decision;
  - e. A copy of the reasons for the disposition or placement decision;
  - f. A copy of any order made under s. 672.76 of the *Code*, any other order or direction made in respect of the appeal and any agreement made by the parties;
  - g. Copies of all exhibits capable of reproduction, whether in paper or electronic format, filed at the hearing before the court or the Review Board that are relevant to an issue on the appeal, except disposition information which has been withheld from the accused or any other party under s. 672.51(3) or (5) of the *Code*;
  - h. A copy of the agreed statement of facts, if any; and
  - i. A copy of any notice of constitutional question served in accordance with s. 109 of the *Courts of Justice Act* or rule 11 of the Review Board's *Rules of Procedure* and proof of service upon the Attorney General of Ontario and the Attorney General of Canada.

### ***Material May Be Omitted***

- (2) With the consent of the parties or as directed by the court or a judge, some or all of the material referred to in subrule 68(1) may be omitted from the appeal book.

### ***Format of Appeal Book***

- (3) Subrules 39(5)-(8) regarding the format of an appeal book apply with necessary modifications to the appeal books required by this rule.

### ***Preparation of Appeal Book by Hospital or Attorney General***

- (4) Unless otherwise directed or ordered by the court or a judge and subject to subrule 68(5):
  - a. In appeals brought by the person in charge of the hospital in which the accused is in custody or to which the accused reports, the person in charge of the hospital shall prepare the appeal book; and
  - b. In all other appeals, the Attorney General shall prepare the appeal book.

### ***Registrar May Excuse Compliance***

- (5) Where the appellant is the accused and is represented by a lawyer, in an appropriate case or where the parties consent, the Registrar may excuse the Attorney General from complying with paragraph 68(4)(b), and the accused's lawyer shall prepare the appeal book.

### ***Serving and Filing Appeal Books***

- (6) Unless otherwise directed or ordered by a practice direction, the court or a judge, the party responsible for preparing the appeal book shall serve the appeal book on each of the other parties to the appeal, including *amicus curiae*, if appointed, and then shall file the appeal book with the court within 30 days after the transcript has been delivered to the party responsible for preparing the appeal book or within 30 days after the original papers and exhibits have been received by the party responsible for preparing the appeal book, whichever is later.

### ***Registrar May Excuse Compliance***

- (7) The court, a judge or the Registrar may, in an appropriate case, excuse a party from complying with some or all of the requirements of this rule.

## **69. FACTUMS**

### ***Titles of Factums***

- (1) Subject to subrule 69(2), the appellant shall serve and file a factum, titled “Appellant’s Factum”.
- (2) Where the appellant is the accused and is not represented by a lawyer, the filing of an appellant’s factum is optional.
- (3) Subject to subrules 69(4) and (5), all other parties to the appeal shall each serve and file a factum titled “Factum of the Respondent [name of party]”, unless they have communicated to the court and to the other parties in writing that they are adopting the position of another party or that they are not participating in the appeal.
- (4) Where the accused is a respondent and is not represented by a lawyer, the filing of a respondent’s factum is optional.
- (5) Where the Attorney General and the person in charge of the hospital in which the accused is in custody or to which the accused reports are both respondents, the filing of a respondent’s factum by the person in charge of the hospital is optional.
- (6) Where the court appoints *amicus curiae*, the *amicus curiae* shall serve a factum on the parties titled “Factum of *Amicus Curiae*”.

### ***Contents of Factums***

- (7) Factums shall be prepared in compliance with rule 40, with necessary modifications.

## **70. PREPARING AN APPEAL TO BE HEARD**

### ***Listing an Appeal for Hearing***

- (1) A certificate of perfection is not required for an appeal from an order made under Part XX.1 of the *Code*.
- (2) An appeal may be listed for hearing as soon as the notice of appeal, transcript of the proceedings and appeal book have been filed with the Registrar.
- (3) The time for oral argument shall be 40 minutes for the appellant and 20 minutes for the respondent, unless more time is requested and granted by the court or a judge.

- (4) Parties to the appeal shall follow the procedure for scheduling an appeal hearing date set out in subrules 46(2)-(5).
- (5) The Criminal Appeal Coordinator shall fix the date for the hearing on an expedited basis.

### ***Serving and Filing Factums***

- (6) The appellant's factum shall be served on each of the other parties to the appeal, including *amicus curiae*, if appointed, and filed with the Registrar no later than six weeks before the appeal hearing date.
- (7) Subject to subrule 70(8), the respondent's factum shall be served on each of the other parties to the appeal, including *amicus curiae*, if appointed, and then filed with the Registrar no later than three weeks before the appeal hearing date.
- (8) Where the Attorney General and the person in charge of the hospital in which the accused is in custody or to which the accused reports are both respondents and the person in charge of the hospital chooses to file a factum, that factum shall be served on each of the other parties to the appeal, including *amicus curiae*, if appointed, and then filed with the Registrar no later than two weeks before the appeal hearing date.
- (9) The factum of *amicus curiae* shall be served on each of the other parties to the appeal and then filed with the Registrar no later than the same date that the accused's factum as a party is due.

### ***Presence of In-Custody, Unrepresented Accused***

- (10) Unless the appeal is in writing, an accused who is in custody and is not represented by a lawyer shall be brought before the court on the date of the appeal.
- (11) Unless otherwise directed by a practice direction, after considering any input from the parties, a judge shall direct whether an accused's appearance before the court for the appeal hearing will be in person, by videoconference, so long as the appellant has access to legal advice, or by audioconference, so long as the appellant consents.

### ***Manner of Hearing***

- (12) Separate from the issue of how an in-custody, unrepresented accused shall appear before the court for the appeal hearing, the court may specify by practice direction or the court or a judge may direct or order how an appeal under this part shall be heard or how the manner of hearing for an appeal under this part shall be determined.

### ***Appeals in Writing***

- (13) In appeals where the appellant seeks to proceed in writing, the court will arrange for a conference call with all parties and a judge who has been designated by the Chief Justice to serve as the Designated Ontario Review Board Appeals Judge, and, after hearing from the parties, the Designated Ontario Review Board Appeals Judge will decide how the appeal will proceed and provide any directions necessary to facilitate the fair and efficient preparation of the appeal for determination.

## **71. APPLICATIONS RESPECTING DISPOSITION AND PLACEMENT DECISIONS UNDER APPEAL**

### ***Application to a Judge***

- (1) An application for an order under s. 672.76 of the *Code* shall be made to a judge.

### ***Contents of Application***

- (2) The notice of application shall specify the order sought to be made.

### ***Contents of Affidavit***

- (3) The applicant shall serve and file an affidavit or affidavits on the application establishing:
- a. The particulars respecting the disposition or placement decision;
  - b. The particulars respecting any disposition or order for the interim release or detention of the accused, as the case may be, that was in effect immediately before the disposition or placement decision appealed from took effect;
  - c. The reasons that the mental condition of the accused justifies the order sought to be made;
  - d. Any other relevant facts that the applicant alleges justify the order sought to be made; and
  - e. The date by which the appeal can be expected to be listed.
- (4) The application shall be on three clear days' notice to the other parties to the appeal unless otherwise directed or ordered by a practice direction, the court or a judge.



**APPENDIX OF FORMS**

**FORM 1: GENERAL HEADING**

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

---

(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

FORM 2: BACKSHEET

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**HER MAJESTY THE QUEEN**

**- and -**

\_\_\_\_\_  
(*specify name*)

\_\_\_\_\_  
(*specify title of document*)

\_\_\_\_\_  
(*if an affidavit, specify name of deponent and date sworn/affirmed*)

\_\_\_\_\_  
(*specify name and contact information of  
person serving or filing the document*)

FORM 3: AFFIDAVIT

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**AFFIDAVIT OF** (*specify name of deponent*)

I, (*full name of deponent*), of the (*City, Town, etc.*) of \_\_\_\_\_, in the (*County, District, Regional Municipality, etc.*) of \_\_\_\_\_, (*set out the deponent's capacity*), MAKE OATH AND SAY (or AFFIRM):

1. (*Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.*)

**Sworn or Affirmed before me:** ☐ In Person OR ☐ By Videoconference

***Complete if affidavit is being sworn or affirmed in person:***

at the (City, Town, etc.) of \_\_\_\_\_ in the (County, District, Regional Municipality, etc.) of \_\_\_\_\_, on (date).

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Signature of Deponent

***Use one of the following if affidavit is being sworn or affirmed by video conference:***

***Complete if deponent and commissioner are in the same city or town:***

by (deponent's name) at the (City, Town, etc.) of \_\_\_\_\_ in the (County, District, Regional Municipality, etc.) of \_\_\_\_\_, before me on (date) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Signature of Deponent

***Complete if deponent and commissioner are NOT in the same city or town:***

by (deponent's name) at the (City, Town, etc.) of \_\_\_\_\_ in the (County, District, Regional Municipality, etc.) of \_\_\_\_\_, before me at the (City, Town, etc.) of \_\_\_\_\_ in the (County, District, Regional Municipality, etc.) of \_\_\_\_\_, on (date) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Signature of Deponent

FORM 4: ACKNOWLEDGMENT OF RECEIPT CARD

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**ACKNOWLEDGMENT OF RECEIPT CARD**

**TO** (*state full name*)

You are served by mail with the documents enclosed in accordance with the *Criminal Appeal Rules*.

You are requested to sign the acknowledgment below and mail this card immediately after you receive it. If you fail to do so, the documents may be served upon you in another manner and you may have to pay the costs of service.

#### ACKNOWLEDGMENT OF RECEIPT

**I ACKNOWLEDGE** that I have received a copy of the following documents:

1. *(To be completed in advance by the sender of the documents. Include sufficient particulars to identify each document.)*

---

Signature of Person Served

---

Print Name

*(The reverse side of this card must bear the name and contact information of the sender and the required postage.)*

FORM 5: AFFIDAVIT OF SERVICE

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**AFFIDAVIT OF SERVICE**

I, (*full name*), of the (*City, Town, etc.*) of \_\_\_\_\_, in the (*County, District, Regional Municipality, etc.*) of \_\_\_\_\_, (*set out the deponent's capacity*),  
MAKE OATH AND SAY (or AFFIRM):

### **(Personal Service)**

1. On *(date)*, at *(time)*, I served *(identify person served)* with the *(identify document(s) served)* by *(leaving a copy with them at [address where service was made])*. *(Adapt wording in accordance with the rules if serving a young person or a corporation.)*
2. I was able to identify the person by means of *(state the means by which the person's identity was ascertained)*.

### **(Service on Lawyer at Trial as an Alternative to Personal Service)**

1. I served *(identify person served)* with the *(identify document(s) served)* by *(specify manner of service as permitted by the rules)* on *(date)* to *(name of lawyer at trial)*, the lawyer for the *(identify party)* at trial, at *(complete address)*.
2. Prior to service, the lawyer confirmed that they had instructions to accept service.

### **(Service by Mail as an Alternative to Personal Service)**

1. On *(date)*, I sent to *(identify person served)* by regular *(or registered or certified)* mail a copy of the *(identify document(s) served)* at *(complete address)*.
2. On *(date)*, I received the attached acknowledgment of receipt card bearing a signature that purports to be the signature of *(identify person)*.

### **(Service on Adult Member of Same Household as an Alternative to Personal Service)**

1. I served *(identify person served)* with the *(identify document(s) served)* by leaving a copy in a sealed envelope on *(date)*, at *(time)*, with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing, at *(address where service was made)*, and by mailing another copy on *(date)* to *(identify person served)* at the same address.



2. I ascertained that the person was an adult member of the household by means of *(state how it was ascertained that the person was an adult member of the household)*.
3. Before serving the documents in this way, I made an unsuccessful attempt to serve *(identify person)* personally at the same address on *(date)*. *(If more than one attempt has been made, add: and again on (date).)*

**(Service on Lawyer of Record)**

1. I served *(identify person served)* with the *(identify document(s) served)* by *(specify manner of service as permitted by the rules)* on *(date)* to *(name of lawyer)*, the lawyer of record for the *(identify party)*, at *(complete address)*.

**(Service on Party Acting in Person or a Non-Party)**

1. I served *(identify person served)* with the *(identify document(s) served)* by *(specify manner of service as permitted by the rules)* on *(date)* to *(complete address/last known address of person served)*.

**Sworn or Affirmed before me:** ☐ In Person OR ☐ By Videoconference

**Complete if affidavit is being sworn or affirmed in person:**

at the *(City, Town, etc.)* of \_\_\_\_\_ in the *(County, District, Regional Municipality, etc.)* of \_\_\_\_\_, on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as may be)*

\_\_\_\_\_  
Signature of Deponent

**Use one of the following if affidavit is being sworn or affirmed by video conference:**

**Complete if deponent and commissioner are in the same city or town:**

by (deponent's name) at the (City, Town, etc.) of \_\_\_\_\_ in the  
(County, District, Regional Municipality, etc.) of \_\_\_\_\_, before me  
on (date) in accordance with O. Reg. 431/20, Administering Oath or Declaration  
Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Signature of Deponent

**Complete if deponent and commissioner are NOT in the same city or town:**

by (deponent's name) at the (City, Town, etc.) of \_\_\_\_\_ in the  
(County, District, Regional Municipality, etc.) of \_\_\_\_\_, before me  
at the (City, Town, etc.) of \_\_\_\_\_ in the (County, District, Regional  
Municipality, etc.) of \_\_\_\_\_, on (date) in accordance with O. Reg.  
431/20, Administering Oath or Declaration Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Signature of Deponent

FORM 6: NOTICE OF OBJECTION TO PROPOSED MANNER OF HEARING

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**NOTICE OF OBJECTION TO PROPOSED MANNER OF HEARING**

1. I, (*insert name*), am the/am a lawyer for the (*party type*) in the above proceeding.
2. The (*name of party*) has proposed the following manner of hearing for the (*identify type of hearing*):

☐ In Person   ☐ By Videoconference   ☐ By Audioconference   ☐ In Writing

3. I object to the manner of hearing proposed for the following reasons:

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*(Attach separate sheet if necessary.)*

4. I propose the following manner of hearing instead: *(select one)*

☐ In Person    ☐ By Videoconference    ☐ By Audioconference    ☐ In Writing

**DATED** at \_\_\_\_\_ *(specify city or town, etc.)*, \_\_\_\_\_  
*(specify province)*, this \_\_\_\_\_ day of \_\_\_\_\_ *(specify month)*, 2\_\_\_\_.

---

*(signature of objecting party or lawyer)*

---

*(specify name and contact information)*

TO: The Registrar

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*

FORM 7: CERTIFICATE RESPECTING *IN CAMERA* PROCEEDINGS, SEALING  
ORDERS AND PUBLICATION BANS

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**CERTIFICATE<sup>1</sup> OF THE (APPELLANT/RESPONDENT/APPLICANT/MOVING  
PARTY/RESPONDING PARTY) RESPECTING *IN CAMERA* PROCEEDINGS,  
SEALING ORDERS AND PUBLICATION BANS**

\_\_\_\_\_

<sup>1</sup> If this is an amended version, put the word “Amended” before the word “Certificate” in the title.

1. Is there a legislative provision or existing court order that requires some or all of the hearing, if not in writing, to be held <i>in camera</i> ?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does any part of the material filed on the motion or appeal refer to information arising from <i>in camera</i> proceedings?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Is there a sealing order in effect with respect to any part of the material filed on the motion or appeal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Is there a publication ban in effect with respect to any part of the material filed on the motion or appeal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Can the full names of the individuals named in the title of proceedings be published?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. If the hearing is to be heard orally (i.e., in person, by videoconference or by audioconference), are there any specific strategies that could be used during oral submissions to mitigate any privacy or publication concerns?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If you have answered “Yes” to any of the questions above, attach the following, as may be applicable:

1. A copy of any applicable order, if made in writing;
2. If the order was pronounced orally at a hearing, a copy of the relevant excerpt from the transcript of the hearing;
3. The text of any applicable legislative provision;
4. An explanation of the restriction and the specific materials that are affected by it; and/or
5. A description of the specific strategies that could be used during oral submissions to mitigate privacy or publication concerns.

I, (*name of lawyer for the appellant/respondent/applicant/moving party/responding party or appellant/respondent/applicant/moving party/responding party*), lawyer for the

*(appellant/respondent/applicant/moving party/responding party) (if applicable), certify that the information above is complete and accurate.*

**DATED** at \_\_\_\_\_ *(specify city or town, etc.)*, \_\_\_\_\_  
*(specify province)*, this \_\_\_\_\_ day of \_\_\_\_\_ *(specify month)*, 2\_\_\_\_.

\_\_\_\_\_  
*(signature of appellant/respondent/applicant/  
moving party/responding party or lawyer)*

\_\_\_\_\_  
*(specify name and contact information)*

TO: The Registrar

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*

FORM 8: REQUISITION

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**REQUISITION FOR ORIGINAL PAPERS AND EXHIBITS FOR PURPOSES OF  
APPEAL PURSUANT TO RULE 12 OF THE *CRIMINAL APPEAL RULES***

**TO:** **THE REGISTRAR OF THE SUPERIOR COURT/CLERK OF THE  
ONTARIO COURT OF JUSTICE** (*select one*)

**REGION:** (*insert region*)

**COURTHOUSE:** (*insert courthouse*)



I am the appellant/represent the appellant (*select one*) in the above-named appeal.

The proceedings giving rise to the order under appeal took place in (*insert region*) at (*insert courthouse*) on the following date(s): (*insert dates*). The presiding judge was: (*insert judge*). The accused's full name and date of birth is: (*insert full name and date of birth*). The charges were: (*insert list of charges*). The Superior Court of Justice /Ontario Court of Justice (*select one*) court file number was: (*insert court file number if known*).

Pursuant to rule 12 of the *Criminal Appeal Rules*, in order to prepare the appeal materials, **I REQUIRE:**

1. All original papers, documents and exhibits, whether in paper or electronic format, capable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal;
2. Where applicable, a list of documents and exhibits incapable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
3. Where applicable, a list of documents and exhibits under seal that were before the court with respect to the proceedings giving rise to the order under appeal.

**PLEASE SEND THESE MATERIALS TO THE REGISTRAR OF THE COURT OF APPEAL FOR ONTARIO FORTHWITH.**

**COURT OF APPEAL FOR ONTARIO CONTACT INFORMATION:**

Court of Appeal for Ontario

Osgoode Hall

130 Queen Street West

Toronto, Ontario

M5H 2N5

Phone: (416) 327-5020; Fax: (416) 327-5032; Email: [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca)

**IMPORTANT:** Rules 12(5)-(8) of the *Criminal Appeal Rules* provide:

- (5) Upon receipt of a requisition in Form 8, unless otherwise directed or ordered by the court or a judge, the registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall forthwith send to the Registrar:
  - a. All original papers, documents and exhibits, whether in paper or electronic format, capable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal;
  - b. Where applicable, a list of documents and exhibits incapable of reproduction that were before the court with respect to the proceedings giving rise to the order under appeal; and
  - c. Where applicable, a list of documents and exhibits under seal that were before the court with respect to the proceedings giving rise to the order under appeal.
- (6) Where possible:
  - a. All materials sent to the Registrar pursuant to paragraph 12(5)(a) shall be copies rather than originals; and
  - b. Where an exhibit was filed in the lower court in an electronic format, it shall be transmitted to the Registrar in the same format.
- (7) Where a registrar or a clerk sends material under paragraph 12(5)(a) that includes material under seal, they shall segregate the sealed material from the other material, clearly identify it as being sealed material and attach a copy of the list of sealed documents and exhibits produced pursuant to paragraph 12(5)(c).
- (8) The registrar of the Superior Court of Justice or the clerk of the Ontario Court of Justice, as the case may be, shall not send to the Registrar any papers, documents or exhibits incapable of reproduction unless so ordered by the court or a judge.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

---

(*signature of appellant or lawyer*)

---

(*specify name and contact information*)

FORM 9: NOTICE OF CHANGE IN REPRESENTATION

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**NOTICE OF CHANGE IN REPRESENTATION**

**(Choose and complete appropriate section.)**

**APPOINTMENT OF LAWYER**

The *(appellant/respondent/applicant/moving party/responding party)* has appointed *(name of lawyer)* as lawyer of record. *(If appointment only relates to part of the appeal, explain that here.)*

*(Provide name, contact information and Law Society of Ontario number of the lawyer.)*

**OR**

## **NOTICE OF TERMINATION OF RETAINER**

The *(appellant/respondent/applicant/moving party/responding party)* has terminated the retainer of *(name of lawyer)*. *(Name of lawyer)* is no longer lawyer of record for *(appellant/respondent/applicant/moving party/responding party)*.

*(Provide name contact information and Law Society of Ontario number of the lawyer.)*

**DATED** at \_\_\_\_\_ *(specify city or town, etc.)*, \_\_\_\_\_  
*(specify province)*, this \_\_\_\_\_ day of \_\_\_\_\_ *(specify month)*, 2\_\_\_\_.

\_\_\_\_\_  
*(signature of lawyer)*

\_\_\_\_\_  
*(specify name, contact information  
and Law Society of Ontario number)*

TO: The Registrar

AND TO: *(Name and contact information of former lawyer and/or former client and/or former client's new lawyer of record [if applicable])*

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*

FORM 10: NOTICE OF ABANDONMENT

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**NOTICE OF ABANDONMENT**

**TAKE NOTICE** that the (*appellant, applicant or moving party*) hereby wholly abandons their (*appeal against, application for or motion for*) (*indicate the nature of the order and relief sought*).

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of appellant/applicant/moving party  
or lawyer*)

\_\_\_\_\_  
(*specify name and contact information*)

**(If signed by appellant, applicant or moving party [except for when that party is Attorney General], complete the following or provide an affidavit verifying the signature of the appellant, applicant or moving party.)**

I have witnessed the signature of the (*appellant, applicant or moving party*).

\_\_\_\_\_  
(*signature of lawyer or officer of the institution  
or person in charge of the hospital in which the appellant,  
applicant or moving party is in custody or to which they report*)

\_\_\_\_\_  
(*specify name and contact information*)

TO: The Registrar

AND TO: (*Names and contact information of all other parties' lawyers or other parties*)

FORM 11: NOTICE OF MOTION

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

---

*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**NOTICE OF MOTION**

**TAKE NOTICE** that a motion will be brought to *(a panel of the court or to a judge of the court)* on *(a date fixed by the Registrar or specify date if motion to a judge)*, for an order granting *(set out relief sought)*.

**THE GROUNDS FOR THIS MOTION ARE:**



1. That ...
2. That ...
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE PANEL’S/JUDGE’S JURISDICTION IS:** *(Outline the jurisdiction of the panel or a judge to hear the motion and to grant the relief requested).*

**IN SUPPORT OF THIS MOTION, THE MOVING PARTY RELIES UPON THE FOLLOWING:**

1. *(set out documents such as transcripts, etc. upon which the moving party relies)*

**THE RELIEF SOUGHT IS:**

1. An order allowing the motion and granting *(indicate particular relief sought)*.

**THE MOVING PARTY REQUESTS THAT THE MOTION BE HEARD** *(select one):*

- ☐ In writing because it is *(on consent, unopposed or made without notice)*;
- ☐ In writing as an opposed motion;
- ☐ In person. The estimated time for oral argument is *(specify time)*;
- ☐ By videoconference. The estimated time for oral argument is *(specify time)*; or
- ☐ By audioconference. The estimated time for oral argument is *(specify time)*.

**THE MOVING PARTY MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS MOTION:**

1. By service in accordance with the *Criminal Appeal Rules* through \_\_\_\_\_  
(specify contact information).

**DATED** at \_\_\_\_\_ (specify city or town, etc.), \_\_\_\_\_  
(specify province), this \_\_\_\_\_ day of \_\_\_\_\_ (specify month), 2\_\_\_\_.

\_\_\_\_\_  
(signature of moving party or lawyer)

\_\_\_\_\_  
(specify name and contact information)

TO: The Registrar

AND TO: (Names and contact information of all other parties' lawyers or other parties)

FORM 12: NOTICE OF APPEAL OR COMBINED NOTICE OF APPLICATION FOR  
LEAVE TO APPEAL AND NOTICE OF APPEAL

Court File No. (*if known*): C \_\_\_\_\_  
Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**NOTICE OF APPEAL  
[OR COMBINED NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND NOTICE  
OF APPEAL]**

**APPEAL INFORMATION** (*complete as applicable*):

1. Place of trial/proceedings below:

2. Name of judge:
3. Offence(s)/Sentence(s) under appeal (*include the applicable Criminal Code and/or Controlled Drugs and Substances Act section number(s) and any other applicable information in the chart below and add more rows, if necessary*):

Offence Name	Section Number	Plea	Result at trial	Sentence

4. Length of trial/proceedings below:
5. Date of conviction/acquittal/order/decision/verdict being appealed:
6. Date of sentence (*if any*):
7. If in custody, place of incarceration:
8. Court File No. in court(s) below (*if known*):
9. Name of Judge of Summary Conviction Appeal Court (*if applicable*):
10. Date of Judgment of Summary Conviction Appeal Court (*if applicable*):
11. Result of Summary Conviction Appeal (*if applicable*):

**TAKE NOTICE** that the appellant/applicant (*check all that apply*):

- ☐ Appeals against (*conviction or acquittal*) upon grounds involving a question of law alone;
- ☐ Applies for leave to appeal against conviction upon grounds involving a question of fact or a question of mixed law and fact, and if leave be granted hereby appeals against conviction;
- ☐ Applies for leave to appeal against sentence, and if leave be granted hereby appeals against sentence;

- ☐ Applies for leave to appeal from the decision of the summary conviction appeal court upon grounds involving a question of law alone.

**THE GROUNDS FOR GRANTING LEAVE TO APPEAL/APPEAL ARE:**

1. That ...
2. That ...
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE RELIEF SOUGHT IS:**

1. *(indicate particular relief sought)*

**IF A NEW TRIAL IS ORDERED AND THE APPELLANT HAS A RIGHT TO A TRIAL BY JUDGE AND JURY, THE APPELLANT:**

- ☐ Does; or
- ☐ Does not

want the new trial to be by judge and jury (*Criminal Code*, s. 686(5)).

**THE APPELLANT/APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPEAL/APPLICATION:**

1. By service in accordance with the *Criminal Appeal Rules* through  
\_\_\_\_\_  
*(specify contact information)*.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of appellant/applicant or lawyer*)

\_\_\_\_\_  
(*specify name and contact information*)

TO: The Registrar

AND TO: (*Names and contact information of all other parties' lawyers or other parties*)

FORM 13: SUPPLEMENTARY NOTICE OF APPEAL OR SUPPLEMENTARY  
COMBINED NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND NOTICE OF  
APPEAL

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**SUPPLEMENTARY NOTICE OF APPEAL  
[OR SUPPLEMENTARY COMBINED NOTICE OF APPLICATION FOR LEAVE TO  
APPEAL AND NOTICE OF APPEAL]**

**TAKE NOTICE** that in addition to the grounds of appeal and requested relief set out in the Notice of Appeal or Combined Notice of Application for Leave to Appeal and Notice

of Appeal filed on \_\_\_\_\_, 2\_\_\_\_, the Appellant/Applicant will place reliance on the ground(s) of appeal and/or seek the relief set out below.

**THE ADDITIONAL GROUNDS FOR APPEAL ARE:** *(complete if applicable)*

1. That ...

**THE ADDITIONAL RELIEF SOUGHT IS:** *(complete if applicable)*

1. *(indicate particular relief sought)*

**DATED** at \_\_\_\_\_ *(specify city or town, etc.)*, \_\_\_\_\_  
*(specify province)*, this \_\_\_\_\_ day of \_\_\_\_\_ *(specify month)*, 2\_\_\_\_.

---

*(signature of appellant/applicant or lawyer)*

---

*(specify name and contact information)*

TO: The Registrar

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*



FORM 14: CERTIFICATE OF TRANSCRIPT ORDER

Court File No. (if known): C \_\_\_\_\_

Motion No. (if known/applicable): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

\_\_\_\_\_  
*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**CERTIFICATE OF TRANSCRIPT ORDER**

**THIS IS TO CERTIFY** that, pursuant to the *Criminal Appeal Rules*, transcripts of the following proceedings have been ordered for appeal purposes:

Date of Proceeding, Court and Judge	Description of Proceeding (note any exclusions)	Searchable Electronic Copy Ordered? (Yes/No)	Number of Paper Copies Ordered (if any)	Estimated Number of Pages	Date Transcript Ordered	Estimated Completion Date

**THIS IS ALSO TO CERTIFY** that:

1. The party ordering the transcripts undertakes, upon being advised that the transcripts are complete, to pay the prescribed fee;
2. In the event it is necessary to cancel the transcript order, the party ordering the transcript will do so by written communication to the Authorized Court Transcriptionist and undertakes to pay the prescribed fee for work done up to the date of receipt of the notice of cancellation; and
3. The names and contact information for all other parties' lawyers or other parties to this appeal are as follows: *(insert names and contact information of all other parties' lawyers or other parties)*.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_ day of \_\_\_\_ (*specify month*), 2\_\_\_\_.

---

(*signature of ordering party or lawyer*)

---

(*specify name and contact information*)

---

*(signature of Authorized Court Transcriptionist)*

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*(specify name, contact information and ACT ID)*

TO: The Registrar

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*

FORM 15: UNDERTAKING REGARDING TRANSCRIPTS

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

---

*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**UNDERTAKING REGARDING TRANSCRIPTS**

I, (*name of lawyer for the appellant/applicant/moving party or appellant/applicant/moving party*), lawyer for the appellant/applicant/moving party (*if applicable*), undertake that the appeal is from an order of a Superior Court of Justice judge not sitting as a trial judge, no transcript is required other than that filed in the Superior Court of Justice and that transcript will be included in the appeal book pursuant to rule 39(1)(k).

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of appellant/applicant/moving party  
or lawyer*)

\_\_\_\_\_  
(*specify name and contact information*)

TO: The Registrar

AND TO: (*Names and contact information of all other parties/lawyers for all other  
parties*)

FORM 16A: CERTIFICATE OF TRANSCRIPT COMPLETION

Court File No. (*if known*): C\_\_\_\_\_

Motion No. (*if known/applicable*): M\_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

---

*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**CERTIFICATE OF TRANSCRIPT COMPLETION**

**THIS IS TO CERTIFY** that transcripts of the following proceedings have been completed:

Date of Proceeding, Court and Judge	Description of Proceeding ( <i>note any exclusions</i> )	Searchable Electronic Copy Produced? (Yes/No)	Number of Paper Copies Produced (if any)	Number of Pages	Completion Date

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of Authorized Court Transcriptionist*)

\_\_\_\_\_  
(*specify name, contact information and ACT ID*)

TO: The Registrar

AND TO: (*Name and contact information of ordering party's lawyer or ordering party*)

AND TO: (*Name and contact information of other party's lawyer or other party*)

FORM 16B: NOTICE OF FAILURE TO SUBMIT CERTIFICATE OF TRANSCRIPT  
COMPLETION

Court File No. (*if known*): C \_\_\_\_\_  
Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**NOTICE OF FAILURE TO SUBMIT CERTIFICATE OF TRANSCRIPT COMPLETION**

[*Complete the sections below as appropriate.*]

**TAKE NOTICE** that on (*date*) I was notified by (*name*), an authorized court transcriptionist, that transcripts of the following proceedings were complete:



Date of Proceeding, Court and Judge	Description of Proceeding ( <i>note any exclusions</i> )	Searchable Electronic Copy Produced? (Yes/No)	Number of Paper Copies Produced ( <i>if any</i> )	Number of Pages	Completion Date

but, as far as I am aware, a certificate of transcript completion has not been filed.

**TAKE NOTICE** that on (*date*) I received transcripts of the following proceedings from (*name*), an authorized court transcriptionist:

Date of Proceeding, Court and Judge	Description of Proceeding ( <i>note any exclusions</i> )	Searchable Electronic Copy Produced? (Yes/No)	Number of Paper Copies Produced ( <i>if any</i> )	Number of Pages	Completion Date

but, as far as I am aware, a certificate of transcript completion has not been filed.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of lawyer for ordering party or ordering party*)

\_\_\_\_\_  
(*specify name and contact information*)

TO: The Registrar

AND TO: (*Names and contact information of all other parties' lawyers or other parties*)

AND TO: (*Name and contact information of Authorized Court Transcriptionist named  
above*)

FORM 17: CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**CERTIFICATE OF COMPLETENESS OF APPEAL BOOK**

I, (*name of lawyer for the appellant or appellant*), lawyer for the appellant (*if applicable*),  
certify that the appeal book in this appeal is complete and legible.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

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(*signature of appellant or lawyer*)

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(*specify name and contact information*)

FORM 18: APPELLANT'S FACTUM – APPEAL FROM SENTENCE ONLY

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**- and -**

---

*(specify name)*

*(Appellant/Respondent/Applicant/  
Moving Party/Responding Party)*

**APPELLANT'S FACTUM – APPEAL FROM SENTENCE ONLY**

**PART I**

**PARTICULARS OF THE CASE**

1. Place of conviction:
2. Name of judge:

3. Was the trial by judge and jury or judge alone:
4. All offence(s) for which applicant/appellant or respondent was convicted and sentenced (*include the applicable Criminal Code and/or Controlled Drugs and Substances Act section number(s), the plea and the sentence(s) imposed and add more rows, if necessary*):

Offence Name	Section Number	Plea	Sentence

5. Length of trial:
6. Date of conviction:
7. Date of sentence:
8. If in custody, present place of incarceration:
9. If on release pending appeal, date of release:
10. Period spent in pre-trial and/or pre-sentence incarceration:
11. Parole eligibility date:
12. Date of mandatory release:
13. Names of co-accused and sentences imposed for offences of which they were convicted:
14. Does the appellant have a prior criminal record:
15. Age at time of offence:
16. Age now:
17. Present employment:
18. Any pre-sentence report:
19. Any other report filed at sentencing:
20. Was there a joint submission and if so what was it:

21. If no joint submission, briefly set out position of the prosecution and the defence at sentencing:
22. Was there a victim impact statement:
23. Will there be an application to admit fresh evidence and if so does the respondent consent to its admission:

## **PART II**

### **SUMMARY OF THE FACTS**

*(In consecutively numbered paragraphs, summarize the facts of the offence(s), the background of the person convicted and sentenced, and any fresh evidence filed on consent.)*

## **PART III**

### **GROUND OF APPEAL**

*(In consecutively numbered paragraphs, set out the grounds of appeal.)*

## **PART IV**

### **ORDER REQUESTED**

It is respectfully submitted that *(set out relief requested – e.g., that leave to appeal sentence be granted, the appeal allowed, and the sentence reduced)*.

## **PART V**

### **SEALING ORDERS, PUBLICATION BANS OR OTHER RESTRICTION ON PUBLIC ACCESS**

*(In consecutively numbered paragraphs, set out the possible impact, if any, of any sealing order, publication ban or other restriction on public access to information in the record on the reasons, if any, in the appeal).*

All of which is respectfully submitted:

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*(signature of appellant/applicant or  
lawyer)*

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*(specify name and contact information)*

**DATED** at \_\_\_\_\_ *(specify city or town, etc.)*, \_\_\_\_\_  
*(specify province)*, this \_\_\_\_\_ day of \_\_\_\_\_ *(specify month)*, 2\_\_\_\_.

TO: The Registrar

AND TO: *(Names and contact information of all other parties' lawyers or other parties)*



FORM 19: CERTIFICATE OF PERFECTION

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**- and -**

\_\_\_\_\_  
(*specify name*)

(*Appellant/Respondent/Applicant/  
Moving Party/Responding Party*)

**CERTIFICATE OF PERFECTION**

I, (*name of lawyer for the appellant or appellant*), lawyer for the appellant (*if applicable*),  
certify that:

- (a) The appeal book, transcript (if applicable) and appellant's factum have been  
served and filed;
- (b) The transcript is complete;

(c) If applicable, the estimated total length of time for oral argument is: \_\_\_\_\_.

(d) The name and contact information for each party and person entitled by statute or an order of the court to be heard on the appeal are:

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**THE APPELLANT REQUESTS THAT THE APPEAL BE HEARD** (*select one*):

- ☐ In writing;
- ☐ In person;
- ☐ By videoconference; or
- ☐ By audioconference.

**DATED** at \_\_\_\_\_ (*specify city or town, etc.*), \_\_\_\_\_  
(*specify province*), this \_\_\_\_\_ day of \_\_\_\_\_ (*specify month*), 2\_\_\_\_.

\_\_\_\_\_  
(*signature of appellant or lawyer*)

\_\_\_\_\_  
(*specify name and contact information*)

TO: The Registrar

AND TO: (*Names and contact information of all other parties' lawyers or other parties*)

FORM 20: NOTICE OF APPEAL FOR INMATE APPEAL OR COMBINED NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND NOTICE OF APPEAL FOR INMATE APPEAL

Court File No. (*if known*): C \_\_\_\_\_

Motion No. (*if known/applicable*): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**NOTE TO APPELLANT:**

**YOU MUST DELIVER THIS NOTICE TO THE SENIOR OFFICIAL OF YOUR INSTITUTION WITHIN 30 DAYS OF THE DATE YOU WERE SENTENCED. IF THIS NOTICE IS DELIVERED AFTER THAT TIME, YOU MUST APPLY FOR AN EXTENSION OF TIME BY COMPLETING THE LAST SECTION OF THIS FORM. PLEASE ENSURE ALL PARTS OF THIS NOTICE ARE FILLED OUT.**

**NOTE TO SENIOR OFFICIAL OF INSTITUTION IN WHICH APPELLANT IS IN CUSTODY:**

**PLEASE COMPLETE THE FOLLOWING:**

Notice of Appeal received from appellant on ( <i>date</i> ):	
Name of institution in which appellant is in custody:	
Name of senior official of this institution:	
Signature of senior official of this institution:	

**PLEASE SEND THIS ENTIRE FORM TO:**

**Court of Appeal for Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N5  
Email: [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca)  
Fax: (416) 327-5032**

To: THE REGISTRAR

Appellant (*name of person appealing*): \_\_\_\_\_

Date of Birth: \_\_\_\_\_

**APPEAL INFORMATION:**

1. On \_\_\_\_\_ (*date*) at \_\_\_\_\_ (*place*), I was convicted of this offence/these offences:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The proceedings took place before (*check one*):

- ☐ A Judge in the Ontario Court of Justice;  
☐ A Judge alone in the Superior Court of Justice; or  
☐ A Judge and Jury in the Superior Court of Justice.

3. The name of the Judge was: \_\_\_\_\_

4. The name of the lawyer who represented me was: \_\_\_\_\_  
(*if you were self-represented, please write "self-represented" on the line above*).

5. I pleaded (*check one*):    ☐ Guilty    ☐ Not Guilty

6. On \_\_\_\_\_ (*date*), I was sentenced to:

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7. Check the box that applies to your case:

- ☐ This appeal is the first time I have appealed my conviction and/or sentence; or
- ☐ I already appealed my conviction and/or sentence to the summary conviction appeal court, and this is an appeal of the summary appeal court's decision.
  - The date of the summary conviction appeal court decision was: \_\_\_\_\_.
  - The location of the summary conviction appeal court decision was: \_\_\_\_\_.
  - The name of the lawyer who represented me before the summary conviction appeal court was: \_\_\_\_\_  
(*if you were self-represented, write "self-represented" on the line above*).

8. I am in custody at this institution: \_\_\_\_\_.

9. I give notice that I want to appeal to the Court of Appeal against:

- ☐ Conviction only;
- ☐ Sentence only;
- ☐ Conviction and sentence; or
- ☐ A decision of a summary conviction appeal court.

and, if I am appealing against sentence or against the decision of a summary conviction appeal court, I am also applying for permission (leave) to appeal to the Court of Appeal.

10. My reasons for appealing and, if applicable, seeking permission (leave) to appeal, are (*continue on back or add in additional paper, if needed*):

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11. I intend to (*check one*):

- ☐ apply to Legal Aid Ontario for a lawyer
- ☐ hire my own lawyer
- ☐ represent myself and argue the appeal in person
- ☐ represent myself and argue the appeal by videoconference

- ☐ represent myself and argue the appeal by audioconference
- ☐ represent myself and argue the appeal in writing

12. If a new trial is ordered and I have the right to trial by judge and jury:

- ☐ I want trial by judge and jury, or
- ☐ I want trial by judge alone, not by judge and jury.

13. The time limit for delivering this notice of appeal is within 30 days of the date sentence was imposed. Check one:

- ☐ I am within the time limit for delivering this notice of appeal.
- ☐ I am not within the time limit for delivering this notice of appeal and I am applying for an extension of time. The reasons I need an extension are:

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*(NOTE: In explaining the reasons why you are asking for an extension, you may wish to provide information about: (i) when you first found out you could appeal; (ii) when you first decided you wanted to appeal; (iii) when you first received the Notice of Appeal form; (iv) whether you also applied for legal aid and, if so, when; (v) whether you consulted a lawyer about an appeal and, if so, when (do not write out what you talked about); and (vi) whether*

*you told a probation or parole officer or other similar person that you intended to appeal and, if so, who and when.)*

Appellant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Other Information

1. Toll-Free Phone Number for Pro Bono Inmate Appeal Program: 1-855-678-3528.
2. Toll-Free Phone Number for Legal Aid Ontario: 1-800-668-8258.



FORM 21: NOTICE OF APPEAL FOR APPEAL FROM ORDER MADE UNDER PART  
XX.1 – MENTAL DISORDER

Court File No. (if known): C \_\_\_\_\_

Motion No. (if known/applicable): M \_\_\_\_\_

**COURT OF APPEAL FOR ONTARIO**

**NOTE TO APPELLANT:**

**IF YOU ARE THE APPELLANT AND YOU ARE NOT REPRESENTED BY A LAWYER, YOU MUST DELIVER THIS NOTICE TO THE PERSON IN CHARGE OF THE HOSPITAL OR SENIOR OFFICIAL OF THE INSTITUTION IN WHICH YOU ARE IN CUSTODY OR TO WHICH YOU REPORT WITHIN 15 DAYS OF THE DATE YOU RECEIVED THE REASONS FOR THE DECISION YOU ARE APPEALING. IF THIS NOTICE IS DELIVERED AFTER THAT TIME, YOU MUST APPLY FOR AN EXTENSION OF TIME BY COMPLETING THE LAST SECTION (#15) OF THIS FORM. PLEASE ENSURE ALL PARTS OF THIS NOTICE ARE FILLED OUT.**

**NOTE TO PERSON IN CHARGE OF HOSPITAL OR INSTITUTION IN WHICH APPELLANT IS IN CUSTODY OR TO WHICH THE APPELLANT REPORTS:**

**PLEASE COMPLETE THE FOLLOWING:**

Notice of Appeal received from appellant on ( <i>date</i> ):	
Name of hospital/institution in which appellant is in custody/to which the appellant reports:	
Name of person in charge/senior official of this hospital/institution:	
Signature of person in charge/senior official of this hospital/institution:	

**PLEASE SEND THIS ENTIRE FORM TO:**

**Court of Appeal for Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N5  
Email: [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca)  
Fax: (416) 327-5032**

To: THE REGISTRAR

IN THE MATTER OF (*name of accused*): \_\_\_\_\_

Accused's Date of Birth: \_\_\_\_\_

Appellant (*name of person or institution appealing*): \_\_\_\_\_

### **INFORMATION ABOUT THE CASE**

1. Index Offence(s): \_\_\_\_\_

2. Verdict at trial (*check one*):

☐ Not Criminally Responsible; or

☐ Unfit to Stand Trial

3. Year of trial (*if known*): \_\_\_\_\_

4. Disposition or placement order being appealed: \_\_\_\_\_

\_\_\_\_\_

5. Date of hearing: \_\_\_\_\_

6. Place of hearing: \_\_\_\_\_

7. Name of lawyer who represented accused at hearing:

\_\_\_\_\_  
(if accused was self-represented, write "self-represented" on the line above).

8. Date of disposition or placement decision: \_\_\_\_\_

9. Date of reasons for decision (if released): \_\_\_\_\_

10. Date appellant received the reasons (if known): \_\_\_\_\_

11. Name of hospital where accused is currently detained or reports to: \_\_\_\_\_

\_\_\_\_\_

## GROUNDS OF APPEAL

12. The grounds of appeal (the reasons you think the decision is wrong) are (continue on back or add in additional paper, if needed):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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13. The order you would like the Court of Appeal to make is: \_\_\_\_\_

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## LEGAL REPRESENTATION

14. If you are the accused person, please check one of these boxes:

- ☐ I want a lawyer. The lawyer I want is named: \_\_\_\_\_
- ☐ I want a lawyer. Legal Aid Ontario can recommend a lawyer for me.
- ☐ I want to represent myself and argue the appeal in person.
- ☐ I want to represent myself and argue the appeal by videoconference.
- ☐ I want to represent myself and argue the appeal by audioconference.
- ☐ I want to represent myself and argue the appeal in writing.

## TIME TO APPEAL

15. The time limit for filing this notice of appeal is within **15 days** after the date on which you received the **reasons** for the decision you are appealing. Check one:

- ☐ I am within the time limit for delivering this notice of appeal.
  - ☐ I am not within the time limit for delivering this notice of appeal and I am applying for an extension of time. The reasons I need an extension are:
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*(NOTE: In explaining the reasons why you are asking for an extension, you may wish to provide information about: (i) when you first found out you could appeal; (ii) when you first decided you wanted to appeal; (iii) when you first received the Notice of Appeal form; (iv) whether you also applied for legal aid and, if so, when; and (v) whether you consulted a lawyer about an appeal and, if so, when (do not write out what you talked about).*

Appellant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

The appellant's address for service, including email *(if available)* is: \_\_\_\_\_

\_\_\_\_\_

Other Information

Toll-Free Phone Number for Legal Aid Ontario: 1-800-668-8258.

## **APPENDIX OF AMENDMENTS**

1. This Appendix lists amendments made to the *Criminal Appeal Rules*. Amendments are listed in sections based on date.
2. The numbering of parts, rules, subrules, paragraphs and subparagraphs in the rules may change as amendments are made. The numbering used in each section of this Appendix will follow the numbering in use at the time the amendments are released.

### **AMENDMENTS OF MARCH 7, 2022**

3. Effective immediately, a line for the appellant's signature and a line for the date of the signature are added after paragraph 13 on Form 20: Notice of Appeal for Inmate Appeal or Combined Notice of Application for Leave to Appeal and Notice of Appeal for Inmate Appeal.