Criminal Proceedings Rules for the Superior Court of Justice (Ontario)

Part I: General Matters [Rules 1 to 9]

Rule 1: Citation, Application and Interpretation

Citation

Short Title

1.01 These rules may be cited as the *Criminal Proceedings Rules* for the Superior Court of Justice (Ontario).

Application of Rules

Superior Court of Justice

1.02 (1) These rules are enacted pursuant to subsection 482(1) of the *Criminal Code* and apply to prosecutions, proceedings, applications and appeals, as the case may be, within the jurisdiction of the Superior Court of Justice, initiated in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding, application or appeal.

Transitional Provisions

(2) These rules come into force on May 27, 2024.

(3) Any rules previously issued for the Superior Court of Justice are repealed including the *Criminal Proceeding Rules for the Superior Court of Justice (Ontario)* SI/2012-7 and the *Ontario Review of Parole Ineligibility Rules (Rule 50)*, SOR/2013-249.

Definitions

1.03 In these rules, unless the context otherwise requires,

accused means the accused before the Court *(l'accusé)*

affidavit means a written statement in Form 4 confirmed by oath, or a solemn affirmation; (*affidavit*)

appeal means an appeal from a decision of a summary conviction court under Part XXVII of the *Criminal Code*, R.S.C. 1985, c. C-46; (*appel*)

appellant means a person who brings an appeal; (*appelant*)

applicant means a person who makes an application; (*requérant*)

application means a proceeding commenced by notice of application in Form 1, whether described in the enabling legislation or other authority as an application or motion; (*demande*)

Attorney General means either the Attorney General for the Province of Ontario where the prosecution was initiated or conducted by the Attorney General of Ontario, or, where the prosecution was initiated or conducted at the instance of the Government of Canada, the Attorney General of Canada, or the Director of Public Prosecutions appointed under subsection 3(1) of the *Director of Public Prosecutions Act*; (*procureur général*)

Charter means the *Canadian Charter of Rights and Freedoms*; (*Charte*)

clerk of the court means clerk of the Superior Court of Justice and includes the Registrar and local registrars of the Superior Court of Justice; (*greffier*)

counsel means a lawyer, in respect of the matters or things that lawyers, respectively, are authorized by the law of a province to do or perform in relation to legal proceedings, who represents a party (*avocat*)

counsel of record means the individual counsel who represents or represented the accused in the proceedings, and any agent appearing on counsel's behalf (*avocat inscrit au dossier*)

Court means the Superior Court of Justice in the place in which a proceeding is pending or being heard, as the case may be; (*tribunal*)

court office means the office of the registrar in the place in which the proceeding is commenced; (*greffe*)

deliver means serve and file with proof of service, and **delivery** has a corresponding meaning; (*remettre*)

document includes a notice of application, notice of appeal, supplementary notice of appeal, affidavit or any other material required or permitted to be served and filed under these rules, electronically or otherwise; (*document*)

file means to file electronically with the court office; (déposer)

hearing means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial; (*audience*)

holiday means,

- **(i)** any Saturday or Sunday,
- **(ii)** New Year's Day,
- **(iii)** Family Day,
- **(iv)** Good Friday,
- **(v)** Easter Monday,
- **(vi)** Victoria Day,
- **(vii)** Canada Day,
- **(viii)** Civic Holiday,
- **(ix)** Labour Day,
- **(x)** National Day for Truth and Reconciliation,
- **(xi)** Thanksgiving Day,
- **(xii)** Remembrance Day,
- **(xiii)** Christmas Day,
- **(xiv)** Boxing Day,
- **(xv)** any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- **(xvi)** where New Year's Day, Canada Day, Remembrance Day or the National Day for Truth and Reconciliation 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; (*jour férié*)

indictment includes an information or e-indictment; (*acte d'accusation*)

judge means a judge of the Superior Court of Justice; (*juge*)

judgment means a decision that finally disposes of an application, trial, appeal or other proceeding on its merits and includes a judgment entered in consequence of the default of a party; (*jugement*)

order includes a judgment; (*ordonnance*)

originating process includes a notice of application and notice of appeal; (*acte introductif d'instance*)

proceeding includes a trial, application, appeal or other hearing; (*instance*)

prosecutor means the Attorney General or the Public Prosecution Service of Canada, or where the Attorney General or the Public Prosecution Service of Canada does not intervene, means the person who initiates proceedings to which the *Criminal Code* applies, and includes counsel acting on behalf of any one of them; (*poursuivant*)

region means a region described in *Designation of Regions*, R.R.O. 1990, Reg. 186.

registrar means the Registrar of the Superior Court of Justice, or a local registrar or clerk of the Superior Court of Justice, as the circumstances may require; (*greffier*)

respondent means a person against whom an application is made or an appeal is brought, as the circumstances may require; (*intimé*)

statute includes the *Criminal Code*, and any other statute passed by the Parliament of Canada to which the *Criminal Code* provisions apply; (*loi*)

upload means to upload to CaseLines or such other online platform directed to be used by the Court.

Interpretation

General Principle

1.04 (1) These rules are intended to provide for the just determination of every criminal proceeding and shall be liberally construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Matters Not Provided For

(2) Where matters are not provided for in these rules or the Court's practice directions, the Court or a judge may adopt any procedure that is not inconsistent with these rules.

Self-Represented Accused

(3) Where an accused is not represented by counsel but is self-represented, anything that these rules require or permit counsel to do shall be done by the accused.

Clear Days

(4) Any reference to "clear days" in these rules shall be interpreted in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21.

Jury Area

(5) Any reference to “jury area” in these rules shall be interpreted in accordance with the definition set out in Regulation 680, R.R.O. 1990, made under the *Juries Act*, R.S.O. 1990, c. J.3.

Application of the *Criminal Code* Provisions

1.05 The interpretation sections of the *Criminal Code* apply to these rules.

Forms

1.06 The forms prescribed in the Appendix of Forms shall be used where applicable and with such variations as the circumstances require.

Rule 2: Non-Compliance with Rules

Court May Dispense with Compliance

2.01 A judge of the Court may dispense with compliance with any rule only where and to the extent it is necessary in the interests of justice to do so.

Rule 3: Time

Computation

3.01 (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 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;
>
> **(b)** where a period of less than 7 days is prescribed, holidays shall not be counted;
>
> **(c)** 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
>
> **(d)** service, filing, or uploading of a document, other than an originating process, made after 4 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.

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule 3.02(3), the Court may by order extend or abridge any time prescribed by these rules or an order in accordance with rule 2.01, on such terms as are just.

(2) An application for an order extending time may be made before or after the expiration of the time prescribed.

Consent in Writing

(3) Any time prescribed by these rules for serving, filing or delivering a document may be extended or abridged on consent of the parties in writing and with the approval of the Court or in such other form as a judge of the Court may direct.

Rule 4: Court Documents

Format

4.01 (1) Every document in a proceeding shall be:

(a) in 12-point or larger font;

(b) double spaced, except for quotations longer than four lines and footnotes; and,

(c) be divided into a single series of consecutively numbered paragraphs.

(2) All documents shall be electronic, except where a self-represented person does not have access to electronic means, in which case paper copy materials will be accepted.

(3) All electronic documents shall use bookmarks and hyperlinks as set out in the Consolidated Provincial Practice Direction for Criminal Proceedings.

Contents

General Heading

4.02 (1) Every document in a proceeding shall have a heading in accordance with Form 1 (applications) or 2 (appeals) that sets out:

(a) the name of the Court and the Court file number; and,

(b) the title of the proceeding in accordance with rule 6 (application) or rule 40 (appeal), except that in an originating process, record, order or report, where there are more than two parties to the proceeding, a short title showing the names of the first party on each side followed by the words “and others” may be used.

Body of Document

(2) Every document in a proceeding shall contain:

(a) the title of the document;

(b) its date;

(c) where the document is filed by a party and not issued by a clerk of the court or is an originating process, the name, address, email, and telephone number of counsel filing the document or, where a party acts in person, that person’s name, address for service, email, and telephone number; and

(d) where the document is issued by a clerk of the court, the address of the court office in which the proceeding was commenced.

Certified Copies of Court Documents

4.03 At the request of a person entitled to see a document in a court file and on payment of the prescribed fee, the clerk of the court shall issue a certified copy of the document.

Notice to be in Writing

4.04 Where these rules require notice to be given, it shall be given in writing.

Filing of Documents

Place of Filing

4.05 (1) All documents required to be filed in a proceeding shall be filed electronically by email or by other electronic means provided by the Court in compliance with rule 5, with

the court office in which the proceeding was commenced, except where they are filed in the course of a hearing or where these rules provide otherwise.

(2) Where a self-represented person does not have access to electronic means for filing, the Court will continue to accept paper copy filings, unless the Court orders otherwise.

(3) An affidavit, transcript, record or factum to be used on the hearing of an application shall be filed with the court office in the place where the hearing is to be held.

(4) Where a document has been filed electronically, it is not necessary to file a paper copy and the Court may not accept a paper copy.

Date of Filing Where Filed Electronically

(5) Where a document is filed electronically, the date of filing is the date it is sent to Court, except that documents sent after 4 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, unless the Court orders otherwise in accordance with rule 2.01.

Where Document Filed not Received

(6) Where a court office has no record of the receipt of a document alleged to have been filed, the document shall be deemed not to have been filed, unless the Court orders otherwise in accordance with rule 2.01.

Affidavits

Format

4.06 (1) An affidavit used in a proceeding shall:

(a) be in Form 4;

(b) be expressed in the first person;

(c) state the full name of the deponent and, if the deponent is a party or a counsel, officer, director, member or employee of a party, shall state that fact;

(d) be divided into paragraphs, consecutively numbered, 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, including *Administering Oath or Declaration Remotely*, O. Reg. 431/20.

Contents

(2) 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, or except where these rules provide otherwise.

Exhibits

(3) 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, filed, and uploaded 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 clerk of the court 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 counsel or party who filed the affidavit, unless the Court orders otherwise in accordance with rule 2.01; and,
>
> **(c)** is a document, a copy shall be served with the affidavit, unless it is impractical to do so.

By Two or More Deponents

(4) 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.

For a Corporation

(5) Where these rules require 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.

Alterations

(6) 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 presiding judge or officer.

Transcripts

Paper Size

4.07 (1) Evidence shall be transcribed in a letter-sized document.

(2) The name of the Court or, in the case of an examiner, the examiner's name, title and location shall be stated on a single line at the top of the first page.

Standards

(3) The text shall be typewritten on thirty-two lines numbered in the margin at every fifth line.

(4) Every transcript of evidence taken in or out of court shall have,

(a) a cover page setting out,

(i) the court,

(ii) the title of the proceeding,

(iii) the nature of the hearing or examination,

(iv) the place and date of the hearing or examination,

(v) the name of the presiding judge or officer,

(vi) the names of the counsel, and,

(vii) any publication ban in force at the time the transcript is prepared,

(b) a table of contents setting out,

(i) the name of each witness with the page number at which the examination, 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 the 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.

(5) Any portion of a proceeding that has not been transcribed shall be clearly noted in the transcript.

Transmission of Documents

4.08 (1) Where documents filed with the Court or exhibits in the custody of an officer are required for use at another location, the clerk of the court shall send them to the clerk of the court at the other location on a party's requisition in Form 22, on payment of the prescribed fee.

(2) Documents or exhibits that have been filed at or sent to a location other than where the proceeding was commenced for a hearing at that location shall be sent by the clerk of the court, after the completion of the hearing, to the clerk of the court at the court office in the place where the proceeding was commenced.

Notice of Constitutional Issue

4.09 Where an issue is raised with respect to:

(a) the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, or a regulation or by-law made under such an Act;

(b) the constitutional validity or constitutional applicability of a common law rule; or,

(c) a remedy claimed under subsection 24(1) of the *Charter* in relation to an act or omission of the Government of Canada or the Government of Ontario,

the party raising the issue shall serve a notice of constitutional issue in Form 5 on the Attorney General of Canada and the Attorney General of Ontario.

Indictments

4.10 Indictments, including e-indictments, shall be submitted to the Court electronically by email or such other electronic filing platform as may be adopted by the Court.

Designation of Counsel

General

4.11 (1) Counsel are required to file and upload a designation of counsel following the committal for trial using Form 18.

Limited Scope Designations

(2) In addition to a full designation for retained counsel, the Court will accept the filing of a "limited scope" designation for counsel who is retained only through to the conclusion of the judicial pre-trial conference and the setting of a trial date, with or without counsel, using Form 18.

Rule 5: Service of Documents

General Rules for Manner of Service

Notices of Application

5.01 (1) A notice of application that includes an application for *certiorari*, *habeas corpus*, *mandamus*, *procedendo*, or prohibition shall be served on the court, judge, justice, coroner, or other person who issued the subpoena or warrant, conducted the inquisition or made the other order or determination or the person in charge of the place where the applicant or respondent is in custody by email, or by any other electronic means permitted by the Court.

(2) Where a party is unable to serve a document electronically, personal service is acceptable.

(3) Unless otherwise directed by the Court, a notice of application that includes an application to quash a warrant, conviction, subpoena, order, or determination, shall be served upon the Manager of Court Operations at the place where the warrant, conviction, subpoena, order, or determination was made:

(a) by mailing a copy to the office of the Manager of Court Operations; or

(b) by leaving a copy of such notice of application at the office of the Manager of Court Operations; or

(c) by any electronic means authorized by the Manager of Court Operations for filing.

Notices of Appeal

(4) Where the appellant is the Attorney General, the notice of appeal shall be served personally on each person in respect of whom an appeal is brought against an acquittal, order of dismissal of or staying proceedings on an information, sentence or other final order or other determination, as the case may be.

All Other Documents

(5) Unless personal service is required, a document may be served on a party by email.

Effective Service

Personal Service

5.02 (1) Where personal service of a document is permitted or required, it is effective only if service is made:

(a) on an individual, other than a person under disability, by leaving a copy of the document with the individual;

(b) on any 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 any judge or justice, by leaving a copy of the document with a person in charge of the court office in the place where the adjudication was made;

(d) on the Attorney General of Canada, by leaving a copy of the document with the regional office of the Attorney General of Canada located in Toronto or Ottawa or, any staff office of the Attorney General of Canada in the region where the adjudication was made or, the office of the prosecutor retained by the Attorney General of Canada having carriage of the proceedings; and,

(e) on the Attorney General of Ontario, by leaving a copy of the document at the office of the Crown Attorney in the place where the adjudication was made, or at the Crown Law Office (Criminal Law) of the Ministry of the Attorney General.

(2) A person effecting personal service of a document need not produce or possess the original document.

Email Service, Where Personal Service Not Required

(3) Service of a document by email is effective only if the email message includes:

(a) the sender's name, address, telephone number, and email address;

(b) the date and time of transmission;

(c) the name and telephone number of a person to contact in the event of transmission problems; and

(d) a statement that the recipient shall comply with subrule 5.02(4) and acknowledge receipt of the document(s).

(4) A party who is served in accordance with subrule 5.02(3) shall respond by email, accepting service and confirming the date of acceptance.

(5) Where a document is served electronically, it is deemed to be effective on the day it is sent, except where it is sent after 4 p.m. or at any time on a holiday, in which case it is deemed to have been made on the next day that is not a holiday.

Service by Mail

(6) Where email or personal service are not required a document may be served by mail under these rules by sending the document by prepaid first-class mail or by registered or certified mail.

(7) Service of a document by mail, except under subrule 5.03(3), is effective on the fifth day after the document is mailed.

Alternatives to Personal Service or Email

Where Available

5.03 (1) Where these rules or an order of the Court permit service by an alternative to personal service or email, service shall be made in accordance with this rule.

Service at Place of Residence

(2) 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, the document may be served by:

> **(a)** leaving a copy, 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,
>
> **(b)** on the same day or the following day mailing another copy of the document to the person at the place of residence,

and service in this manner is effective on the fifth day after the document is mailed.

Service by Mail to Last Known Address

(3) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 6) by mail to the last known address of the person to be served, but service by mail under this subrule is effective:

> **(a)** only if the acknowledgment of receipt card or a post office receipt bearing a signature that purports to be the signature of the person to be served is received by the sender; and,
>
> **(b)** on the date on which the sender first receives either receipt, signed as provided by subrule 5.03(3)(a).

Service on a Corporation

(4) Where the head office or principal place of business of a corporation cannot be found, service may be made on the corporation by mailing a copy of the document to the last address registered with the Government of Ontario or the Government of Canada.

Substituted Service or Dispensing with Service

Where Order May be Made

5.04 (1) Where it appears to the Court that it is impractical for any reason to effect prompt service of any document required to be served personally, by email or any other means

provided under these rules, the Court may make an order for substituted service or, where necessary in the interests of justice, may dispense with service.

Effective Date of Service

(2) In an order for substituted service, the Court shall specify when service in accordance with the order is effective.

(3) 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.

Service on Counsel of Record

5.05 (1) Service of a document on the counsel of record for a party may be made:

(a) by emailing a copy to counsel's office in accordance with subrule 5.02(3);

(b) by mailing a copy to counsel's office in accordance with subrule 5.02(6); or,

(c) by leaving a copy with counsel or an employee in counsel's office in accordance with subrule 5.05(2).

(2) Where service on a party who has counsel is made by leaving a copy of the document with counsel, or an employee in counsel's office, service is effective only if acceptance of service and the date of acceptance is endorsed, or otherwise noted on the document, or a copy of it.

(3) By accepting service counsel shall be deemed to represent to the Court that they have the authority to accept service on behalf of the client.

Where Document Does Not Reach Person Served

5.06 Even though a person has been served with a document in accordance with these rules, the person may show on a motion to set aside the consequences of default, for an extension of time, or in support of a request for an adjournment, that the document:

(a) did not come to the notice of the person; or,

(b) came to the notice of the person only at some time later than when it was served or is deemed to have been served.

Validating Service

5.07 Where a document has been served in a manner other than one authorized by these rules or an order, the Court 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

Affidavit of Service

5.08 (1) Service of a document may be proved by an affidavit of the person who served it in Form 7.

Sheriff's Certificate

(2) Personal service or service under subrule 5.03(2) (service at place of residence) of a document by a sheriff or sheriff's officer may be proved by a certificate of service in Form 8.

Counsel of Record Admission or Acceptance

(3) Counsel of record's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

Electronic Service

(4) Where a document has been served by email and is being filed electronically, a formal affidavit of service is not required to be filed.

(5) A document served by email may be proved by a certificate of service of the person who served the document stating that:

(a) they served the document in accordance with these rules; and,

(b) they received an acceptance of service, with the date and time of the acceptance; or,

(c) they have other evidence establishing that the document was received.

(6) If directed by the Court, the party serving the document shall produce any other related documents or evidence referred to in subrule 5.08(5), including, but not limited to, any email confirmations or read receipts.

Rule 6: Applications

Application of the Rule

6.01 (1) Where the *Criminal Code* or other federal enactment to which the procedural provisions of the *Criminal Code* apply, authorizes, permits or requires that an application or motion be made to or an order or determination made by a judge of or presiding in the superior court of criminal jurisdiction, or a judge as defined in section 552 of the *Criminal Code*, other than a judge presiding at trial upon an indictment, the application shall be commenced by a notice of application in Form 1.

(2) Rules 6.01 to 6.11 apply to all proceedings commenced by a notice of application, except where these rules expressly provide otherwise, or a judge of the Court orders otherwise.

To Whom Application Made

6.02 Applications shall be made to a judge of the Court in the place where the criminal proceedings to which the application relates are being or are to be heard.

Content of Notice

6.03 Every notice of application in Form 1 shall state:

(a) the place and date of hearing in accordance with rule 6.02 and any other applicable rule;

(b) the precise relief sought;

(c) the grounds to be argued, including a reference to any statutory provision or rule to be relied upon;

(d) the documentary, affidavit and other evidence to be used at the hearing of the application;

(e) whether any order is required abridging or extending the time for service or filing of the notice of application or supporting materials required under these rules; and,

(f) the email address of the applicant and, if there is counsel of record, the email address of counsel.

Filing and Service of Notice

General Rule for Service

6.04 (1) The notice of application shall be served on all parties in accordance with rule 5 and, where there is uncertainty whether anyone else should be served, the applicant may make a motion without notice to a judge for an order for directions.

Filing Proof of Service

(2) The notice of application in Form 1 and any other supporting materials required by the *Criminal Code*, other statutes or these rules, or ordered by a judge of the Court, together with proof of service, shall be filed with the court office in the place where the application is to be heard, and uploaded, not later than 30 days before the date of the hearing of the application, unless otherwise ordered by a judge of the Court, or unless subrule 20.04(1) applies.

Material for Use on Applications

Applicant's Application Record

6.05 (1) Unless otherwise ordered by a judge of the Court or otherwise provided by these rules, an applicant shall serve on every other party, file an application record in accordance with subrule 6.05(2), and upload, not later than 30 days before the date of the hearing of the application.

(2) The applicant's application record shall contain, in consecutively numbered pages arranged in the following order:

(a) a table of contents describing each document, including each exhibit, 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;

(c) a copy of the indictment to which the application relates;

(d) a copy of all affidavits and other material served by the applicant and any party other than the respondent for use on the application;

(e) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and,

(f) a copy of any other material in the court file that is necessary for the hearing of the application.

Respondent's Application Record

(3) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall serve on every other party and file a respondent's application record in accordance with subrule 6.05(4), and upload, not later than 10 days before the date of the hearing of the application.

(4) The respondent's application record shall contain, in consecutively numbered pages arranged in the following order:

(a) a table of contents describing each document, including each exhibit, by its nature and date and in the case of an exhibit, by exhibit number or letter; and

(b) a copy of any material to be used by the respondent on the application and not included in the application record,

and the respondent's application record shall be filed and uploaded, with proof of service, in the court office in the place where the application is to be heard, not later than 10 days before the date of the hearing of the application.

Documents May be Filed as Part of Record

(5) Any documents served by a party for use on an application may be filed, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material.

Transcript of Evidence

(6) A party who intends to refer to a transcript of evidence at the hearing of an application shall file and upload a copy of the transcript as provided by rule 4.07.

Books of Authorities

(7) Unless otherwise ordered by a judge of the Court, where a book of authorities is required in accordance with rule 32, it shall be served, filed within the time limits described in subrules 6.05(1) and 6.05(3), and uploaded.

Factums

(8) Unless otherwise ordered by a judge of the Court, or permitted by these rules, factums are required for all applications, including, but not limited to:

(a) change of venue applications (Rule 22);

(b) applications to take evidence on commission (Rule 24);

(c) applications regarding constitutional issues, including section 11(b) of the *Charter* (Rule 27);

(d) applications to admit evidence (Rule 30); and

(e) applications to exclude evidence (Rule 31).

(9) Where a judge orders or these rules require that factums be served, filed, and uploaded on an application, the factums shall comply with rule 33 and be served, filed, and uploaded within the time limits described in subrules 6.05(1) and 6.05(3) unless otherwise ordered by a judge of the Court.

The Hearing of Applications

Place of Hearing

6.06 (1) Unless otherwise ordered by a judge of the Court, an application to which this rule applies shall be heard and determined by a judge of the Court in the place in which the trial or other proceedings to which the application relates are being or are to be held.

Date of Hearing

(2) Unless otherwise ordered by a judge of the Court, applications shall be heard on a date and at a time fixed by or on behalf of the clerk of the court on notice to all parties or counsel of record.

Evidence on Applications

General Rule: Evidence by Affidavit

6.07 (1) Evidence on an application may be given by affidavit in Form 4 and in accordance with rule 4.06, unless the *Criminal Code* or other applicable statute provides, or a judge of the Court orders otherwise in accordance with rule 2.01.

Service and Filing of Affidavit

(2) Where an application is made on notice, the affidavits on which the application is founded shall be served with the notice of application, filed with proof of service with the court office in the place where the motion or application is to be heard in accordance with subrule 6.05(1), and uploaded.

(3) All affidavits to be used at the hearing in opposition to an application or in reply shall be served, filed with proof of service with the court office in the place where the application is to be heard in accordance with subrule 6.05(3), and uploaded.

Cross-Examination on Affidavit

(4) Subject to the *Criminal Code* or any other applicable statute or rule of law, an affiant may be cross-examined on their affidavit at the office of a special examiner in sufficient time in advance of the return date of the application to permit a transcript of the cross-examination to be served on all parties, filed within the time limits described in subrules 6.05(1) and 6.05(3), and uploaded, unless otherwise ordered by a judge of the Court.

Evidence by Examination of Witnesses

6.08 Subject to the *Criminal Code* or any other applicable statute or rule of law, a witness may be examined or cross-examined upon the hearing of an application with leave of the presiding judge, and nothing in these rules shall be construed to affect the authority of a judge hearing an application to receive evidence through the examination of witnesses.

Use of Agreed Statement of Facts

6.09 A judge, before or upon the hearing of the application, may dispense with the filing of any transcript(s) or affidavit(s) required in these rules and act upon a statement of fact agreed upon by the prosecutor and the accused person or counsel of record.

Abandonment of Applications

Notice of Abandonment

6.10 (1) Where an applicant desires to abandon an application, the applicant shall serve, in any manner provided by rule 5, a notice of abandonment in Form 9, signed by counsel of record in the application, or by the applicant.

Dismissal as Abandoned

(2) A judge of the Court in chambers may thereupon dismiss the application as an abandoned application, without the attendance of counsel of record or the applicant.

(3) An applicant who fails to appear at the hearing of an application shall be deemed to have wholly abandoned the application, unless the Court orders otherwise in accordance with rule 2.01.

Dismissal on Application

Summary Dismissal

6.11 A judge of the Court may dismiss the application summarily and cause the applicant to be advised accordingly, if it can be determined without a full hearing that the application is manifestly frivolous.

Rule 7: Practice Directions

Power to Issue Practice Directions

7.01 The Chief Justice of the Superior Court of Justice may from time to time issue practice directions not inconsistent with these rules, in relation to the supervision and direction of the sittings and the assignment of judicial duties and if issued, such directions may be made applicable to any or all places.

Rule 8: Communication with the Court

Communications Out of Court

8.01 Unless otherwise directed by the Court, there shall be no direct out-of-court communication with a judge about a proceeding over which the judge is presiding.

8.02 Any indirect communication with a judge of the Court, for example, through the trial coordinator for scheduling or administrative matters, must comply with all applicable procedural rules and any orders made by the Court.

Rule 9: Electronic Signatures

Electronic Signatures

9.01 Where a signature is required, the Court will accept electronically signed documents that consist of electronic information identifying the signatory and the date and place of signing.

PART II: Pre-Trial Proceedings [Rules 20 – 29B]

Rule 20: Judicial Interim Release and Review Applications

Application of the Rule

20.01 This rule applies to:

(a) applications by an accused under subsections 520(1) and 520(8) and 522(1) of the *Criminal Code*;

(b) applications by the prosecutor under subsections 521(1) and 521(9) of the *Criminal Code;*

(c) applications by an accused or the prosecutor at any time prior to the trial, under subparagraph 523(2)(c)(ii) or subsection 523(3) of the *Criminal Code*, and,

(d) automatic reviews of pretrial detention under section 525 of the *Criminal Code*.

To Whom Application Made

20.02 (1) Applications under rule 20.01, other than detention reviews under section 525 of the *Criminal Code*, shall be made by notice of application in Form 1 to a judge of the Court in the place where the accused is to be tried on the indictment to which the application relates.

(2) Where an accused whose detention is to be reviewed under section 525 seeks to be released on grounds other than delay, the accused shall comply with subrule 20.02(1).

Contents of Notice

20.03 (1) The notice of application in Form 1 shall also state whether the accused is to be present and if so, whether the accused is to appear in person or virtually at the hearing of the application.

(2) Where the notice of application in Form 1 states that the accused is to be present at the hearing of the application, the application shall be accompanied by an affidavit which shall contain:

(a) a statement as to the place of confinement at which the accused is presently incarcerated;

(b) particulars of the date upon which the hearing of the application is anticipated to take place, together with a statement of whether the anticipated hearing date conflicts with any other proceedings in relation to the accused person;

(c) a statement of the accused's intention to be present at the hearing of the application; and,

(d) a statement as to the name of the police service or police officer into whose custody it is proposed that the accused be transferred for the purpose of effecting the accused's attendance at the hearing of the application,

together with a draft order in Form 13A, and a judge may grant an order requiring that the accused be present at the hearing of the application *ex parte* and without the attendance of counsel of record.

Filing and Service of Notice

General Rule

20.04 (1) The notice of application under rule 20.03 and supporting materials under rule 20.05 shall be served on the accused or prosecutor, as the case may be, in accordance with rule 5, at least 2 clear days prior to the date fixed for the hearing of the application, unless under section 520(2) of the *Criminal Code*, the prosecutor otherwise consents.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with rule 5.

Filing with Proof of Service

(3) The notice of application and supporting materials, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 1 day before the date fixed for the hearing of the application.

Materials for Use on Application

Materials to be Filed

20.05 (1) The notice of application in Form 1 under rule 20.03 shall be accompanied by:

(a) where the applicant is the accused, the affidavit of the applicant, in accordance with rule 4.06, containing the matters required under subrule 20.05(2);

(b) where the applicant is the accused and it is practicable to do so, the affidavit of the current or prospective employer by whom it is proposed that the accused be employed upon being released;

(c) where the applicant is the accused and it is practicable to do so, the affidavit of the proposed surety or sureties for the accused, if released, disclosing their willingness to serve as a surety and the amount for which each is to be liable;

(d) where the applicant seeks to review an order earlier made, a transcript of the proceedings on the judicial interim release hearing under sections 515 or 522 of the *Criminal Code*, as the case may be, and of previous review proceedings, if any, taken before a justice or judge; and,

(e) a legible copy of any exhibits, capable of reproduction, which were filed on the judicial interim release hearing and in any previous review proceedings.

Affidavit of the Applicant

(2) The affidavit of the applicant required by subrule 20.05(1)(a) shall disclose:

(a) the particulars of the charge on which release is sought and any other charge outstanding against the applicant, together with the date or dates scheduled for trial or preliminary inquiry in respect of such charges;

(b) the applicant's places of residence in the 3 years preceding the date of the offence charged and in respect of which release is sought, together with the place where the applicant proposes to reside if released;

(c) the applicant's employment in the 3 years preceding the date of the offence charged in respect of which release is sought, together with whether and where the applicant expects to be employed upon release;

(d) the form of order upon which the applicant proposes that release be granted; and,

(e) where the applicant proposes that release be upon entering into a release order with sureties, deposit or conditions, where practicable, the terms and conditions of the order sought, including the amount of any release order or deposit, as well as the names of any proposed surety and the amount for which each proposed surety is to be liable.

(3) Where the applicant is the prosecutor or where, as respondent, the prosecutor desires to assert that the detention of the accused is necessary in the public interest, and to rely on material other than that required to be filed under subrule 20.05(1), the prosecutor may file and upload an affidavit in accordance with rule 4.06 setting out the facts upon which reliance is placed, including the matters referred to in paragraph 518(1)(c) of the *Criminal Code*.

Factum Not Required

(4) No factum is required for the purposes of applications under this rule, unless otherwise directed by the Court.

Order Directing Release

Form of Order

20.06 (1) An order directing the terms upon which an accused is to be released from custody upon application under this rule may be in Form 10.

Sufficiency of Order

(2) An order in Form 10 shall be sufficient authority for a justice to prepare the necessary release order when satisfied that any condition precedent thereto has been met.

Consent in Writing

(3) The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 10A, and a judge may grant such order without the attendance of counsel.

Bail Variations Pursuant to section 519.1 of the *Criminal Code*

20.07 (1) This part applies to consent applications under section 519.1 of the *Criminal Code* to vary release orders issued under sections 499, 503 or 515 of the *Criminal Code* and does not apply to proceedings under sections 520, 521, 522, 523, 524 or 525.

(2) Where the applicant has been committed for trial in the Superior Court of Justice, all applications under section 519.1 shall be brought in the Superior Court of Justice.

(3) Where an application to vary a release order on consent under section 519.1 of the *Criminal Code,* without a court attendance, is filed, the reviewing judge may

(a) grant the order,

(b) direct that a court attendance is required, including a direction that the application proceed as an application under sections 520 or 521 of the *Criminal Code*, or

(c) give other directions regarding the application.

(4) All applications under section 519.1 of the *Criminal Code*, seeking an order without a court attendance, shall include:

(a) a notice of application clearly identifying the content of the term(s) sought to be varied and supported by the following;

(i) a copy of the release order that the applicant wants varied, including all previous variations of the release order;

(ii) a sworn affidavit from the applicant confirming that the applicant understands that the original release order remains in effect and that failure without lawful excuse to comply with that release order as it has been varied is an offence contrary to the *Criminal Code*; and

(iii) a sworn affidavit from each surety that includes: (1) the surety's position with respect to the variation(s) being sought; and (2) an acknowledgment that the surety agrees to be bound by the order as varied and understands that if the order is varied that the surety is bound by it;

or

(b) a completed Form 10B with a copy of the release order that the applicant wants varied.

(5) Where a judge grants a variation under section 519.1, the Form 10B signed by the judge or, where Form 10B is not used, the order or endorsement of the judge granting the variation, together with the original (varied) release order, are the release orders.

Rule 21: Release of Exhibits for Scientific Testing

Application of the Rule

21.01 This rule applies to applications on behalf of the accused or the prosecutor for the release of an exhibit for the purpose of a scientific or other test or examination under section 605(1) of the *Criminal Code*.

To Whom Application Made

21.02 Applications under rule 21.01 shall be made to a judge of the Court in the place in which the accused is being or is to be tried on the indictment to which the application relates.

Filing and Service of Notice

General Rule

21.03 (1) Service of the notice of application under this rule and the supporting materials required by rule 21.04 shall be made on the prosecutor or accused, as the case may be, in accordance with rule 5, at least 2 clear days prior to the date fixed for the hearing of the application.

Filing with Proof of Service

(2) The notice of application and supporting materials, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 1 day before the date fixed for the hearing of the application.

Material for Use on Application

21.04 (1) The notice of application in Form 1 under this rule shall be accompanied by:

> **(a)** an affidavit by or on behalf of the applicant deposing to the matters described in subrule 21.04(2); and,

(b) an affidavit of the person or an authorized representative of the agency whom it is proposed shall conduct the test or examination deposing to the matters described in subrule 21.04(3).

Affidavit of or on Behalf of the Applicant

(2) The affidavit of or on behalf of the applicant required by subrule 21.04(1)(a) shall contain:

(a) the particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to or did commence;

(b) particulars of the exhibit which it is sought to have ordered released for the purpose of a scientific or other test or examination;

(c) a description of the relevance of the exhibit, and the proposed examination or testing, to the issues raised at trial;

(d) a statement of the manner in which and steps by which the applicant will endeavour to ensure the safeguarding of the exhibit and its preservation for use at trial;

(e) where the application has not been brought until at or after the commencement of the trial proceedings, a statement of the reasons why it was not earlier brought and whether, if granted, the testing or examination procedure will disrupt or delay the trial proceedings; and,

(f) whether any issue is being or will be taken by the applicant with respect to the continuity of the exhibits being tested or examined, and whether prior or subsequent to such examination or testing as is proposed.

Affidavit of or on Behalf of Examiner

(3) The affidavit of the person or an authorized representative of the agency whom it is proposed shall conduct the test or examination, required under subrule 21.04(1)(b), shall contain:

(a) a statement of the capacity in which the deponent makes the affidavit, whether as examiner or authorized representative of the examining agency;

(b) where the affiant is an authorized representative of the examining agency, a statement of the scope of their authority and the basis and extent of their knowledge of the testing or examination techniques to be employed in the proposed examination;

(c) a detailed description of the nature, purpose, extent and duration of the testing or examination proposed including, where practicable, the scientific techniques, procedures and equipment to be used;

(d) a description of the location or facility in which the testing or examination is to be conducted;

(e) a reasonable estimate of the length of time required to complete the test or examination proposed;

(f) a statement of whether the examiner, testing agency or applicant will permit attendance by duly qualified representatives of the respondent at or during the examination or testing or furnish the results thereof to such persons;

(g) a statement whether, within a reasonable time after the completion of such testing or examination, the applicant shall advise the respondent whether it is proposed to adduce the results thereof at trial;

(h) where the examiner or testing agency is not within the jurisdiction of the Court, a statement whether such person who will examine or test the exhibit will attend to give evidence at trial or upon commission, if ordered; and,

(i) a description of the steps and procedures to be taken to ensure the safeguarding of the exhibit and its preservation, in an unaltered state, for use at the trial.

Factum May be Required

(4) A judge may require that factums complying with rule 33 be filed and uploaded on applications under this rule.

Consent in Writing

21.05 The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 11, and a judge may grant such order without the attendance of counsel.

Order Directing Release of Exhibits

Form of Order

21.06 (1) An order directing the release of exhibits for the purpose of a scientific test or other examination under section 605(1) of the *Criminal Code* and this rule shall be in Form 11.

Sufficiency of Order

(2) An order in Form 11 shall be sufficient authority for the person with custody of the exhibit to be tested or examined to release the exhibit for such purpose and thereafter to regain custody thereof in accordance with its terms.

Rule 22: Applications to Change the Venue of Trial

Application of the Rule

22.01 This rule applies to applications on behalf of an accused or the prosecutor to change the venue of trial under subsection 599(1) of the *Criminal Code*.

To Whom Application Made

22.02 Applications under rule 22.01 shall be made in Form 1 to a judge of the Court in the place in which the trial is scheduled to be held upon the indictment, either before or as soon as is reasonably practicable after the accused has been ordered to stand trial.

Filing and Service of Notice

General Rule

22.03 (1) Service of the notice of application in Form 1 under rule 22.02 and the supporting materials required by rule 22.04 shall be made upon the prosecutor or accused, as the case may be, in accordance with rule 5, within 90 days after the indictment has been filed with the Court, unless otherwise directed by the Court, with the hearing date to be set by the Court.

Filing with Proof of Service

(2) Notice of application and supporting materials, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 10 days before the date fixed for the hearing of the application.

Materials for Use on Application

Materials to be Filed

22.04 (1) The notice of application in Form 1 under rule 22.02 shall be accompanied by:

> **(a)** an affidavit by or on behalf of the applicant, deposing to the matters described in subrule 22.04(2); and
>
> **(b)** where the application is made under paragraph 599(1)(b) of the *Criminal Code*, an affidavit by or on behalf of the competent authority who has directed that no jury be summoned at the time and place appointed for trial, deposing to the matters described in subrule 22.04(3).

Affidavit of or on Behalf of the Applicant

(2) The affidavit of or on behalf of the applicant required by subrule 22.04(1)(a) shall contain:

> **(a)** particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to commence;
>
> **(b)** where the basis of the application under paragraph 599(1)(a) of the *Criminal Code* is prejudicial news media reporting of the matter to be tried, a full statement respecting the time, place, date and name of the relevant account(s) or report(s), together with a description of the extent of its circulation or coverage in the jury area from which prospective jurors would ordinarily be drawn; and,
>
> **(c)** as exhibits, legible copies or transcripts of the media accounts which constitute the basis of the application.

Affidavit of Competent Authority

(3) The affidavit by or on behalf of the competent authority described in subrule 22.04(1)(b) shall contain:

> **(a)** a statement of the reasons why no jury is to be summoned at the time appointed for the accused’s trial in the place where the trial is scheduled to be held;

(b) a statement of the date upon which the next jury is to be summoned in the place where the trial is scheduled to be held; and

(c) a statement of the dates upon which jurors are to be summoned at the time appointed for trial and prior to the date described in subrule 22.04(3)(b) in other places within the same region as described in *Designation of Regions*, R.R.O. 1990, Reg. 186.

Factums Required

(4) Factums complying with rule 33 are required in applications under this rule.

Consent in Writing

22.05 The respondent may consent in writing to the order sought upon terms and a judge, where satisfied that the requirements of subsection 599(1) of the *Criminal Code* have been met, may grant the order on such terms without the attendance of counsel.

Place of Trial

22.06 Where the application is granted, the place of the trial will be determined by the Regional Senior Judge without the necessity of a further hearing.

Rule 23: Applications to Procure

Application of the Rule

23.01 (1) This rule applies to applications under subsection 527(1) of the *Criminal Code* to procure the attendance of a person who is confined in a prison and under subsection 527(7) of the *Criminal Code* to transfer a prisoner to the custody of a peace officer to assist a peace officer acting in the execution of their duties.

(2) Where the person who is confined is the accused, the application shall be made by:

(a) counsel for the accused; or

(b) the prosecutor.

(3) Where the person who is confined is a witness, the application shall be made by counsel for the party who plans to call that witness.

To Whom Application Made

Applications for Attendance at Court Proceedings

23.02 (1) Applications under subsection 527(1) of the *Criminal Code* and rule 23.01 shall be made to a judge of the Court in the place where the proceedings are scheduled to take place, as soon as is reasonably practicable and sufficiently in advance of the required attendance to ensure that no adjournment of the proceedings will be required for such purpose.

(2) Applications under subsection 527(7) of the *Criminal Code* and rule 23.01 shall be made to a judge of the Court in the place where the prisoner is to be transferred or where the prisoner is incarcerated.

Filing of Notice

23.03 The notice of application and supporting materials shall be filed with the court office in the place where the application is to be heard, and uploaded, as soon as is reasonably practicable, before the date on which the application is to be determined.

Materials for Use on Application

Materials to be Filed

23.04 (1) The notice of application in Form 1 under this rule shall also be accompanied by:

(a) a copy of the warrant under which the prisoner is held, where it is reasonably practicable to do so;

(b) where the application is made under section 527(1) of the *Criminal Code*, a copy of the indictment to which the application relates;

(c) where the application is made under section 527(1) of the *Criminal Code*, an affidavit by or on behalf of the applicant deposing to the matters described in subrule 23.04(2);

(d) where the application is made under section 527(7) of the *Criminal Code*, an affidavit by or on behalf of the prosecutor setting out the matters described in subrule 23.04(3);

(e) where the application is made under section 527(7) of the *Criminal Code*, the written consent of the prisoner to the order proposed;

(f) a draft order in Form 12 or 13, as the case may be; and,

(g) a copy of any other material in the court file that is necessary for the determination of the application.

Affidavit of or on Behalf of the Applicant

(2) The affidavit of or on behalf of the applicant required by subrule 23.04(1)(c) for applications under subsection 527(1) of the *Criminal Code* shall contain:

(a) particulars of the charge in respect of which the application is made;

(b) particulars of the date(s) of the proceedings upon which the prisoner's attendance is required

(c) particulars of the location(s) where the prisoner's attendance will or may be required; and,

(d) a statement of the reasons why the prisoner's attendance is required.

(3) The affidavit of or on behalf of the applicant required by subrule 23.04(1)(d) for applications under subsection 527(7) of the *Criminal Code* shall contain:

(a) a description of the status of the peace officer to whose custody it is sought to transfer the prisoner;

(b) a statement or description of the purpose for which the transfer of the prisoner is sought;

(c) a statement or description of the nature of the assistance which it is reasonably anticipated the prisoner will provide, if transferred;

(d) a statement as to whether the assistance reasonably anticipated from the prisoner is available from other sources;

(e) a statement as to whether notice of the application has been given to counsel of record of the prisoner;

(f) as an exhibit, the written consent of the prisoner to the proposed transfer;

(g) a description of the procedures to be followed to ensure the custody and security of the prisoner;

(h) a statement of particulars of the period for which the transfer is required; and,

(i) a general description of the locations at which the attendance of the prisoner will be required.

Application Record and Factum

(4) Unless otherwise directed or ordered by these rules, a practice direction, the Court or a judge, an application record and factum are not required for the purposes of applications under this rule.

Attendance Not Required

(5) Unless otherwise directed, in accordance with rule 2.01, by the judge before whom an application under this rule and section 527(1) or (7) of the *Criminal Code* is returnable, the order sought may be given *ex parte* and without the attendance of counsel of record for the applicant.

Rule 24: Applications to Take Evidence on Commission

Application of the Rule

24.01 This rule applies to applications on behalf of an accused or the prosecutor for an order appointing a commissioner to take the evidence of a witness under section 709 of the *Criminal Code.*

To Whom Application Made

24.02 Applications made under rule 24.01 shall be made to a judge of the Court in the place where the trial is being, or is scheduled to be, held within 90 days after the indictment has been filed with the Court, unless otherwise directed by the Court.

Contents of Notice

24.03 A notice of application in Form 1 under rule 24.01 shall include a statement whether the presence of the accused is required upon the taking of the evidence and whether the proceedings on commission are to be videotaped.

Filing and Service of Notice

General Rule

24.04 Service of the notice of application under rule 24.03 and the supporting materials required by rule 24.05 shall be made upon the prosecutor or accused, as the case may be, at least 30 days before the date fixed for the hearing of the application and not less than 60 days before the date fixed for trial upon the indictment.

Materials for Use on Application

Materials to be Filed

24.05 (1) The notice of application in Form 1 under rule 24.03 shall be accompanied by:

> **(a)** an affidavit by or on behalf of the applicant and deposing to the matters described in subrule 24.05(2);
>
> **(b)** where the application is made under subparagraph 709(a)(i) of the *Criminal Code*, the affidavit of a duly qualified medical practitioner describing the nature and extent of the illness and the disability arising therefrom or, where the prosecutor and accused consent, the report in writing of such practitioner; and,
>
> **(c)** a draft order which, in cases where the person is to be examined outside Ontario, shall provide for the issuing of a commission in Form 14 authorizing the taking of evidence before a named commissioner and a letter of request directed to the judicial authorities of the jurisdiction in which the witness is to be found, requesting the assistance of such process as is necessary to compel the witness to attend and be examined before the named commissioner.

Affidavit by or on Behalf of the Applicant

(2) The affidavit by or on behalf of the applicant required by subrule 24.05(1)(a) shall contain:

> **(a)** particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to commence and of their anticipated length;
>
> **(b)** a statement of all material facts relied upon to justify the belief that an order should be given including a statement:
>
> > **(i)** whether the requested jurisdiction will or is likely to respond favourably to a request for judicial assistance;

(ii) whether the manner of response, if favourable, is compatible with the manner in which evidence is taken in criminal proceedings in Canada;

(iii) whether the circumstances of the witness' residence out of Canada render return to Canada for trial likely or unlikely, thereby affecting the necessity for the taking of evidence on commission;

(iv) whether the witness has relevant and material evidence to give, receivable in accordance with the rules of evidence applicable in the Canadian proceedings;

(v) whether the witness is willing to attend to give evidence on commission and, if not, the means whereby the witness's attendance may be compelled or otherwise ensured;

(vi) whether there will be unfair prejudice to the party opposite by the order of a commission;

(vii) whether there will be any serious disruption of the trial proceedings by the taking of such evidence; and,

(viii) whether the trier of fact will be disadvantaged to the prejudice of the parties or either of them, by being unable to observe the demeanour of the witness.

(c) if known, a statement of the time and place at which the proposed examination is to be conducted;

(d) if known, a statement of the identity of the proposed commissioner and that person's consent to act in that capacity;

(e) a description of the manner in which it is proposed to conduct and record the examination, including whether an interpreter will be required and whether it is proposed that the proceedings be videotaped; and,

(f) a statement whether the presence of the accused is sought, permitted or required and, where applicable, what arrangements, if any, are proposed in respect of the accused's attendance or detention in custody.

Factum Required

(3) Factums complying with rule 33 are required on applications under this rule.

Consent in Writing

24.06 The respondent may consent in writing to the order sought upon terms included in a draft order in Form 14 filed and a judge, satisfied that the relief sought by the applicant should be granted, may grant the order on such terms without the attendance of counsel.

Order for Examination

Contents of Order

24.07 (1) Where an order is made that the evidence of a witness may be taken by a commissioner, the judge granting the order may determine:

(a) the time and place of the examination;

(b) the minimum notice period required;

(c) the name of the commissioner;

(d) the witness fee, if any, to be paid to the witness whose evidence is to be taken by the commissioner; and,

(e) any other matter respecting the holding of the examination including the presence of the accused and their counsel of record upon such commission and payment of those expenses of the commission which are to be borne by the applicant.

Commission and Letter of Request

(2) Where the witness is to be examined outside Ontario, the order under subrule 24.07(1) shall, upon the request of the applicant, provide for the issuing of:

(a) a commission in Form 14 authorizing the taking of evidence before a named commissioner; and,

(b) a letter of request in Form 15 directed to the judicial authorities of the jurisdiction in which the proposed witness is to be found, requesting the issuing of such process as is necessary to compel the witness to attend and be examined before the commissioner, and the order shall be in Form 16.

(3) The commission and letter of request shall be prepared and issued by the clerk of the court.

Duties of Commissioner

(4) A commissioner shall, to the extent that it is possible to do so, conduct the examination in the form of oral questions and answers in accordance with these rules, the law of evidence applicable to criminal trials and the terms of the commission, unless some other form of examination is required by the order or the law of the place where the examination is conducted.

(5) As soon as the transcript of the examination is prepared, the commissioner shall:

> **(a)** return the commission, together with the original transcript and exhibits, to the clerk who issued it;
>
> **(b)** keep a copy of the transcript and, where practicable, the exhibits; and,
>
> **(c)** notify the parties who appeared at the examination that the transcript is complete and has been returned to the clerk of the court who issued the commission.

Applicant to Serve Transcript

(6) The clerk of the court shall send the electronically certified transcript to counsel of record for the applicant or the applicant, as the case may be, who shall forthwith serve every other party with the transcript free of charge.

Witness to be Examined Under Oath or Upon Affirmation

Examination in Ontario

24.08 (1) Before being examined, the witness shall take an oath or make an affirmation or, where the conditions of subsection 16(3) of the *Canada Evidence Act* have been met, make a promise to tell the truth, and, where the examination is conducted in Ontario, the oath or affirmation shall be administered by the commissioner or by another person authorized to administer oaths in Ontario, or where the conditions of subsection 16(3) of the *Canada Evidence Act* have been met, the promise to tell the truth shall be made to that person.

Examination Outside Ontario

(2) Where the examination is conducted outside Ontario, the Court shall give directions respecting

> **(a)** the place of examination,
>
> **(b)** the person before whom the examination is to be conducted,

(c) the length of notice to be given, and

(d) the appointment of an interpreter, if any.

(3) Where the examination is conducted outside Ontario, the oath or affirmation may be administered by or the promise to tell the truth made to the person before whom the examination is conducted, a person authorized to administer oaths in Ontario, or a person authorized to take affidavits or administer oaths or affirmations in the jurisdiction where the examination is conducted.

Interpreter

General Rule

24.09 (1) Where the witness does not understand the language or languages in which the examination is to be conducted or is unable to hear or verbally communicate, a competent and independent interpreter shall, before the witness is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions put to and the answers given by the witness.

Supply of Interpreter

(2) Where an interpreter is required by subrule 24.09(1) for the examination of a witness, unless the interpretation is from English to French or from French to English in which case the interpreter shall be provided by the Attorney General, the applicant shall provide an interpreter satisfactory to the parties.

Production of Documents

General Requirement

24.10 (1) The witness shall bring to the examination and produce for inspection all documents and things in their possession, control, or power that are not privileged and that the process compelling attendance requires the person to bring.

Process May Require Documents and Things

(2) The process which compels the attendance of a witness may require the witness to bring to the examination and produce for inspection:

(a) all documents and things relating to any matter in issue in the proceeding that are in their possession, control, or power and are not privileged; or,

(b) such documents or things described in subrule 24.10(2)(a) as are specified in the process compelling attendance, unless the commissioner orders otherwise in the interests of justice.

Duty to Produce Other Documents

(3) Where a witness, on examination upon a commission, admits that they have the possession, control, or power over any other document that relates to a matter in issue in the proceeding and is not privileged, the witness shall produce it for inspection by the examining party forthwith, if the person has the document at the examination, and if not, within 2 days thereafter, unless the commissioner orders otherwise in the interests of justice.

The Course of Examination

Examination-In-Chief

24.11 (1) Counsel of record for the applicant shall examine the witnesses whose evidence is to be taken upon commission, in-chief, in accordance with the rules of evidence which would apply at trial.

Cross-Examination

(2) After examination in-chief by counsel of record for the applicant has been concluded, counsel of record for the respondent may cross-examine the witness in accordance with the rules of evidence which would apply at trial.

Re-Examination

(3) After cross-examination has been completed, counsel of record of the applicant may re-examine the witness in accordance with the rules of evidence which would apply at trial.

Objections and Rulings

Objections

24.12 (1) Where objection is taken to a question, the objector shall state briefly the reason for the objection, and the question and the brief statement concerning the objection shall be recorded.

Rulings on Answers Under Objection

(2) A question to which objection is taken may be answered with the objector's consent, and where the question is answered, a ruling shall be obtained from the trial judge before the evidence is used at trial.

Rulings on Answers Not Given

(3) A ruling on the propriety of a question to which objection is made and an answer not given may be obtained from the trial judge.

Rulings by Commissioner

24.13 A commissioner who is not the trial judge may make rulings with respect to the conduct of an examination, other than a ruling on the propriety of a question, but the ruling of a commissioner who is not the trial judge is subject to review by the trial judge.

Evidence Taken to be Recorded

24.14 All evidence taken by a commissioner shall be recorded in its entirety in question and answer form in a manner that permits the preparation of a transcript of the examination, unless the Court orders otherwise in accordance with rule 2.01.

Transcript

Preparation of Transcript

24.15 (1) Where a party so requests, the person who recorded evidence taken upon commission shall have a transcript of the evidence prepared and completed within 30 days after receipt of the request.

Certification

(2) The transcript shall be certified as correct by the person who recorded the evidence taken, but need not be read to or signed by the witness.

Delivery to Other Parties and the Court

(3) As soon as the transcript is prepared, the person who recorded the evidence taken on commission shall send one copy to each party who has ordered and paid for a transcript and, if a party so requests it, shall provide an additional copy for the use of the Court.

Additional Transcripts

(4) Where a party requests an additional transcript copy in accordance with subrule 24.15(3), an electronic version of the transcript shall be filed with the Court and uploaded.

Use of Evidence at Trial

24.16 The judge presiding at the trial, where the evidence taken upon commission is tendered for admission, shall determine the extent to which and manner in which, if at all, the evidence shall be received in the proceedings.

Videotaping or Other Recording of Evidence on Commission

General Rule

24.17 (1) On consent of the parties or by order of the Court, evidence taken on commission may be recorded by videotape or other similar means and the tape or other recording may be filed and uploaded for the use of the Court along with the transcript.

Application of Rule 24.16

(2) Rule 24.16 applies, with necessary modifications, to a tape or other recording made under subrule 24.17(1).

Rule 25: Applications for Removal as Counsel of Record

Application of the Rule

25.01 (1) This rule applies to applications by counsel of record for an accused to be removed as counsel of record, and to applications by the prosecutor to have counsel of record for an accused removed as counsel of record.

(2) Counsel of record for an accused shall act as and remain counsel for the accused until an order removing counsel from the record has been made by a judge under Rule 25.

To Whom Application Made

25.02 Applications under rule 25.01 shall be made to a judge of the Court in the place where the proceedings are scheduled to take place, as soon as is reasonably practicable and sufficiently in advance of the scheduled date of trial to ensure that no adjournment of the proceedings will be required for such purpose, or, where the matter arises at trial, to the trial judge.

Filing and Service of Notice

General Rule

25.03 (1) Service of the notice of application under rule 25.03 and the supporting materials required by rule 25.04 shall be made upon the prosecutor and the accused at least 30 days before the date fixed for the hearing of the application, unless otherwise directed by the Court, with the hearing date to be set by the Court.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with rule 5 and where the application is made by counsel of record for the accused, upon the accused by email, or any electronic means provided for by the Court. Where a party is unable to serve the notice electronically, the application shall be served personally.

Filing with Proof of Service

(3) The notice of application and supporting materials, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 10 days before the date fixed for the hearing of the application, unless otherwise directed by the Court.

Materials for Use on the Application

Materials to be Filed

25.04 (1) The notice of application in Form 1 under this rule shall be accompanied by an affidavit by or on behalf of the applicant, deposing to the matters described in subrule 25.04(2).

Affidavit by or on Behalf of the Applicant

(2) The affidavit by or on behalf of the applicant required by subrule 25.04(1) shall contain:

(a) particulars of the charge, including a statement of the date upon which trial proceedings are scheduled to commence and their anticipated length (if a date has been set);

(b) particulars of any prior applications, whether on behalf of the accused or the prosecutor, to have counsel of record for the accused removed as counsel of record, including, where available, transcripts of proceedings taken upon such applications;

(c) where the application is made by counsel of record for an accused or on behalf of an accused, a full statement of all facts material to a determination of the application, 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 application is made by or on behalf of the prosecutor, a full statement of all facts material to a determination of the application, including a statement of the reasons why the order sought should be given;

(e) a statement whether an adjournment of trial proceedings is likely or will be required to enable the accused to retain and instruct a new counsel of record to proceed to trial and, if so, when it is proposed that trial proceedings shall commence; and,

(f) where applicable, a statement of the identity of the new counsel of record and their undertaking to proceed to trial or other disposition on the date specified under subrule 25.04(2)(e).

Factum May be Required

(3) A judge may require that factums complying with rule 33 be filed and uploaded on applications under this rule**.**

Consent in Writing

25.05 The parties and/or counsel of record may consent in writing to the order sought upon terms included in a draft order, and a judge, if satisfied that the order sought by the parties and/or counsel of record should be granted, may grant the order on such terms without the attendance of the parties.

Rule 26: Applications for Adjournment

Application of the Rule

26.01 This rule applies to applications on behalf of an accused or the prosecutor for an order adjourning trial proceedings, after a date has been fixed for trial, but prior to commencement of the trial.

To Whom Application Made

26.02 Applications under rule 26.01 shall be made to a judge of the Court in the place where the trial is scheduled to be held upon the indictment, after the matters giving rise thereto have arisen, whether before or after the trial date has been fixed.

Filing and Service of Notice

General Rule

26.03 (1) Service of the notice of application under this rule and the supporting materials required by rule 26.04 shall be made upon the prosecutor or accused, as the case may be, in accordance with rule 5, as soon as possible and at least 30 days before the date fixed for trial, unless otherwise directed by the Court.

Filing with Proof of Service

(2) The notice of application and supporting materials, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 30 days before the date fixed for the hearing of the application.

Materials for Use on the Application

Materials to be Filed

26.04 (1) The notice of application in Form 1 under this rule shall be accompanied by an affidavit by or on behalf of the applicant deposing to the matters described in subrule 26.04(2).

Affidavit by or on Behalf of the Applicant

(2) The affidavit by or on behalf of the applicant required by subrule 26.04(1) shall contain:

> **(a)** particulars of the indictment containing the charge upon which the trial proceedings are scheduled to commence;
>
> **(b)** particulars of any prior applications, whether on behalf of the accused or the prosecutor, to have the trial adjourned from a date fixed for trial to a subsequent date, including, where available, transcripts of proceedings taken on any prior applications;
>
> **(c)** all facts material to a determination of the application without disclosing any solicitor-client communications in respect of which solicitor-client privilege has not been waived;
>
> **(d)** any prior waiver of delay by the accused;
>
> **(e)** the date or dates to which it is proposed to adjourn the matter for trial and whether the delay caused by the adjournment is waived by the accused; and,
>
> **(f)** the date on which the 11(b) *Charter* ceiling is exceeded.

Application Record and Factum Not Required

(3) No application record or factum is required on applications under this rule unless otherwise directed by the Court.

Consent in Writing

26.05 The parties may consent in writing to the order sought upon terms included in a draft order, and a judge, if satisfied that the order sought by the parties should be granted, may grant the order on such terms without the attendance of the parties.

Rule 27: Constitutional Issues

Application of the Rule

27.01 This rule applies to applications in criminal proceedings:

> **(a)** to declare unconstitutional and of no force and effect, in whole or in part, any enactment of the Parliament of Canada;
>
> **(b)** to declare unconstitutional and of no force and effect, in whole or in part, any rule or principle of law applicable to criminal proceedings, whether on account of subsections 8(2) or 8(3) of the *Criminal Code* or otherwise; and,
>
> **(c)** to stay proceedings upon an indictment against an accused, in whole or in part, or for any other remedy under subsection 24(1) of the *Charter*, and/or subsection 52(1) of the *Constitution Act, 1982* on account of an infringement or denial of any right or freedom guaranteed under the *Charter* or otherwise.

To Whom Application Made

27.02 (1) Applications under this rule shall be made to a judge of the Court in the place where the criminal proceedings are being or are to be heard.

(2) If an application made under subrule 27.01(1)(a) or 27.01(1)(b) relates to an application under Part III of these rules, the application under this rule shall be heard and determined by the judge who hears the applications under Part III of these rules.

Contents of Notice

27.03 The notice of application and constitutional issue in Form 5 shall state:

> **(a)** the place and date of hearing in accordance with rules 27.02 and 27.04;

(b) the precise relief sought upon the application;

(c) the grounds to be argued, including a concise statement of the constitutional issue to be raised, a statement of the constitutional principles to be argued and a reference to any statutory provision or rule upon which reliance will be placed;

(d) the documentary, affidavit and other evidence to be used at the hearing of the application; and,

(e) whether any order is required abridging or extending the time for service or filing of the notice of application or supporting materials required under rule 6.05.

Filing and Service of Notice

General Rule

27.04 (1) An applicant shall serve a notice of application and constitutional issue in Form 5 and in accordance with rule 27.03, not later than 30 days before the date on which the application is scheduled to be heard.

Manner of Service

(2) For applications under rule 27.01 for a declaration or remedy, service of the notice of application and constitutional issue in Form 5 and other materials required by these rules, the *Criminal Code*, or federal statute shall be made upon:

(a) the Constitutional Law Division of the Ministry of the Attorney General of Ontario;

(b) the regional office of the Attorney General of Canada at Toronto or the office of the Attorney General of Canada at Ottawa;

(c) all other parties to the proceedings;

(d) the office of the prosecutor having carriage of the proceedings; and,

(e) upon such other persons and upon such terms as the Court or trial judge may direct.

Filing with Proof of Service

(3) The notice of application and constitutional issue in Form 5 and supporting material, together with proof of service thereof, shall be filed with the court office in the place where the application is to be heard, and uploaded, at least 30 days before the date fixed for the hearing of the application.

Materials for Use on the Application

Applicant's Application Record

27.05 (1) Unless otherwise directed by the Court, the applicant shall serve, on every other party, an application record in accordance with subrule 6.05(2) and file, and upload, the application with the court office in the place where the application is to be heard, not later than 30 days before the date on which the application is scheduled to be heard.

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall serve on every other party, file, and upload a respondent's application record in accordance with subrule 6.05(4), not later than 10 days before the date of the hearing of the application, unless otherwise directed by the Court.

Intervener's Application Record

(3) Where an intervener seeks to rely on material other than that filed by the applicant, respondent, or any other person granted leave to intervene, the intervener shall serve on every party and every other intervener, file, and upload an intervener's application record in accordance with subrule 27.05(4) not later than 5 days before the date of the hearing of the application, unless otherwise directed by the Court.

(4) An intervener's application record shall contain, in consecutively numbered pages:

> **(a)** a table of contents describing each document, including each exhibit, by its nature and date and in the case of an exhibit, by exhibit number or letter; and
>
> **(b)** a copy of any material to be used by the intervener on the application and not included in any other application record filed on the application.

Documents May be Filed as Part of Record

(5) Any documents served by a party for use on an application may be filed and uploaded, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material.

Transcript of Evidence

(6) A party who intends to refer to a transcript of evidence at the hearing of an application shall file and upload a copy of the transcript as provided by rule 4.07.

Books of Authorities

(7) Unless otherwise ordered by a judge of the Court, books of authorities complying with rule 32 are required and shall be served, filed within the time limits described in subrules 6.05(1) and 6.05(3), and uploaded.

Factum Required

(8) Factums complying with rule 33 are required on applications under this rule unless otherwise directed by the Court.

(9) Factums shall be served, filed within the time limits described in subrules 6.05(1) and 6.05(3), and uploaded, unless otherwise directed by a judge of the Court.

The Hearing of Applications

Place of Hearing

27.06 Applications under this rule shall be heard at the place provided for in rule 6.06.

Evidence on Applications

27.07 Rules 6.07 to 6.09 govern the evidence that may be adduced on an application under this rule.

Abandonment of Applications

27.08 Rule 6.10 governs the abandonment of applications under this rule.

Dismissal on Reference or Application

27.09 Rule 6.11 governs the dismissal of applications for lack of merit.

Interventions

27.10 Any person interested in a proceeding between other parties may, by leave of the judge presiding over that proceeding, or by leave of the Chief Justice or a judge designated by the Chief Justice, intervene therein upon such terms and conditions and

with such rights and privileges as the judge, the Chief Justice, or the designated judge may determine.

Rule 28: Pre-Trial Conferences

Application of the Rule

28.01 This rule applies to pre-trial conferences conducted under section 625.1 of the *Criminal Code*.

Place of Conference

28.02 A pre-trial conference shall be held in the place where the indictment has been filed, and at such further dates, times and places as the pre-trial conference judge or another judge of the Court may direct.

When Required

General Rule

28.03 (1) A pre-trial conference shall be held within 60 days of the order to stand trial or, where an indictment has been preferred under section 577 of the *Criminal Code*, within 60 days of the Attorney General's consent or judge's order, unless otherwise directed by a judge of the Court.

Further Pre-Trial Conferences

(2) The pre-trial conference judge or another judge of the Court may direct that further pre-trial conferences be held to consider any matters that would promote a fair and expeditious trial or other disposition of the case.

(3) Nothing in these rules shall be construed or interpreted to preclude the pre-trial conference or other judge of the Court from conducting any other pre-trial conferences, in addition to the conference for which section 625.1 provides.

Pre-Trial Conference Report

Form of Report

28.04 (1) The pre-trial conference report shall be in Form 17/18-A1.

Completion of Joint Report

(2) The prosecutor and the accused shall complete the pre-trial conference report in Form 17/18-A1 and shall serve, file, and upload one joint report in accordance with this rule, unless otherwise directed by the Court, or unless the accused will be pleading guilty and has complied with subrule 28.04(20).

(3) The prosecutor and the accused shall complete their positions on each issue in Form 17/18-A1, and not indicate “will advise”, “not as yet”, or words of similar effect.

(4) The prosecutor’s copy of Form 17/18-A1 shall also include the following information based on the information available to the prosecutor at the time of completion of the pre-trial conference report:

> **(a)** a brief synopsis of the allegations, including how the prosecutor intends to prove them;
>
> **(b)** a statement of the prosecutor’s position on sentence if there were to be a plea of guilty prior to trial, including any requirement of a joint submission and plea on certain counts of the indictment; and,
>
> **(c)** a statement of the prosecutor’s position on sentence upon conviction after trial, including whether dangerous or long-term offender proceedings may be taken in the event of conviction.

Service of Report – One Accused

(5) Where there is one accused on the indictment**,** the prosecutor shall complete and serve the accused with the report not later than 10 days before the date scheduled for the pre-trial conference, unless otherwise directed by the Court.

(6) Where there is one accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1, the accused shall complete and serve the prosecutor with the report not later than 4 days before the date scheduled for the pre-trial conference, unless otherwise directed by the Court.

Service of Report – Two Accused

(7) Where there are two accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1, the prosecutor shall serve both accused not later than 10 days before the date scheduled for the pre-trial conference, unless otherwise directed by the Court.

(8) Where there are two accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1:

> **(a)** the accused who appears first on the indictment shall serve the prosecutor and the other party not later than 7 days before the date scheduled for the pre-trial conference; and,
>
> **(b)** the accused who appears second on the indictment shall serve the prosecutor and the other party not later than 4 days before the date scheduled for the pre-trial conference,

unless otherwise directed by the Court, or unless the accused comply with subrules 28.04(15) and 28.04(16).

Service of Report – Three Accused

(9) Where there are three accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1, the prosecutor shall serve all accused not later than 10 days before the date scheduled for the pre-trial conference, unless otherwise directed by the Court.

(10) Where there are three accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1:

> **(a)** the accused who appears first on the indictment shall serve the prosecutor and the other parties not later than 8 days before the date scheduled for the pre-trial conference;
>
> **(b)** the accused who appears second on the indictment shall serve the prosecutor and the other parties not later than 6 days before the date scheduled for the pre-trial conference; and,

(c) the accused who appears third on the indictment shall serve the prosecutor and the other parties not later than 4 days before the date scheduled for the pre-trial conference,

unless otherwise directed by the Court, or unless the accused comply with subrules 28.04(15) and 28.04(16).

Service of Report – More Than Three Accused

(11) Where there are more than three accused on the indictment, upon completion of the pre-trial conference report in Form 17/18-A1, the prosecutor shall serve all accused not later than 20 days before the date scheduled for the pre-trial conference, unless otherwise directed by the Court.

(12) Where there are more than three accused on the indictment, the pre-trial conference report in Form 17/18-A1, shall be completed by each accused in the order in which they appear on the indictment, and upon completion of the report, each accused shall serve the prosecutor and each other accused forthwith, unless otherwise directed by the Court or unless the accused comply with subrules 28.04(15) and 28.04(16).

Filing of Report

(13) One pre-trial conference report in Form 17/18-A1, completed by all parties, shall be filed with the court office not later than 4 days before the date scheduled for the pre-trial conference.

(14) The last party to complete the pre-trial conference report in Form 17/18-A1, is responsible for:

(a) filing the final copy, completed by all parties, with the court office as set out in subrule 28.04(13); and,

(b) uploading the final copy, completed by all parties.

Variation of Service Requirements

(15) Where there is more than one accused, one pre-trial conference report in Form 17/18-A1 may be filed by all accused at the same time so long as it is filed with the court office and uploaded not later than 4 days before the date scheduled for the pre-trial conference.

(16) Where the accused will be filing the pre-trial conference report in Form 17/18-A1 in accordance with subrule 28.04(15), notice shall be given to the prosecutor not later than 2 days after the prosecutor's pre-trial conference report has been served on the accused.

Non-Compliance

(17) Where the prosecutor or the accused are not served with the final copy of the pre-trial conference report as set out in subrules 28.04(5) to 28.04(16), each other party shall file their individual pre-trial conference reports with the court office and upload, not later than 3 days before the date scheduled for the pre-trial conference.

(18) Failure to comply with subrules 28.04(5) to 28.04(17) may result in the pre-trial conference being rescheduled by the pre-trial conference judge.

Direction of the Court

(19) The Court may direct service and filing requirements for the pre-trial conference report in Form 17/18-A1 to assist the Court in receiving one pre-trial conference report completed by all parties.

Where the Accused Pleads Guilty

(20) Where the accused will be pleading guilty on the indictment, the accused shall advise the prosecutor and, where required, obtain the prosecutor's consent to the entry of the plea, at least 10 days before the date scheduled for the pre-trial conference, or as soon as counsel has received appropriate instructions about the plea of guilty.

(21) Where the accused will be pleading guilty, the prosecutor shall file and upload a synopsis of the allegations upon which the guilty plea will be based at least 3 days before the date scheduled for the pre-trial conference.

Changes of Position

(22) If a party changes a position taken on the pre-trial conference report in Form 17/18-A1, the party shall provide written notice of the change in position to the other party or parties and the trial coordinator forthwith, and at the request of any party or the Court, a further pre-trial conference may be held to discuss the potential impact the change of position has on the proceedings.

Changes in Estimated Court Time

(23) Where the change(s) to the positions taken in the pre-trial conference report in Form 17/18-A1 may increase or decrease the estimated court time, the party making the change shall arrange for a further pre-trial conference forthwith, unless otherwise directed by the Court.

Changes Requiring an Additional Application

(24) Where the change(s) to the position(s) taken in the pre-trial conference report in Form 17/18-A1 involve an additional application, the party making the change shall arrange for a further pre-trial conference forthwith, unless otherwise directed by the Court, and shall serve, file, and upload any notices, records, factums, books of authorities or other materials required by these rules.

(25) Failure to comply with subrules 28.04(22) to 28.04(24) may result in any application resulting from a change in position not being heard by the trial judge.

Change or Removal of Counsel

(26) Where new counsel has been retained or where an accused who was represented by counsel is no longer represented by counsel after the pre-trial conference and pre-trial conference reports have been completed, counsel or the self-represented accused shall review the pre-trial conference report filed earlier and notify all parties of any changes in position in accordance with subrules 28.04(22) to 28.04(24).

Custody and Distribution of Pre-Trial Conference Reports and Materials

(27) The pre-trial conference reports and any other materials filed for use at the pre-trial conference shall be kept in the custody of the Court and not disclosed except in accordance with these rules.

(28) The pre-trial conference report and any material filed for use on the pre-trial conference shall be provided to the trial judge, with the exception of any reference to the accused's criminal record, counsels' and the pre-trial judge's positions on resolution, including the sentence and offences, and any material filed for use at the pre-trial conference that the pre-trial conference judge determines should not be viewed by the

trial judge. The listed exceptions shall be clearly marked that they should not be reviewed by the trial judge.

Completion of Report to Trial Judge

(29) The pre-trial conference judge shall complete a Report to Trial Judge in Form 17/18-A1 which shall be forwarded to the trial judge not later than 10 days prior to the date on which pre-trial applications or the trial is scheduled to commence.

Completion of Report to Trial Coordinator

(30) The pre-trial conference judge shall complete a Report to Trial Coordinator in Form 18-B at the conclusion of the pre-trial conference and forward this form to the trial coordinator on completion.

Confirmation of Trial Readiness

(31) In jurisdictions where trial readiness court is held, the pre-trial conference or case management judge or another judge of the Court shall direct that counsel or self-represented accused conducting a case shall appear in a trial readiness court unless all counsel and self-represented accused have not changed their position from the position described in the most recent pre-trial conference report, have complied with all filing requirements, and have completed and filed a trial readiness report in Form 18-C1, not later than 3 days prior to the trial readiness court unless otherwise directed by the trial coordinator.

(32) In jurisdictions where trial readiness courts are not held, the pre-trial conference or case management judge or another judge of the Court shall direct that counsel and self-represented accused conducting a case shall complete and file a trial readiness report in Form 18-C2 not later than 10 days prior to the date on which pre-trial applications, the trial or the sittings at which the case is scheduled to be heard. If any counsel or self-represented accused has changed their position from the position described in the most recent pre-trial conference report, failed to comply with all filing requirements or failed to file a trial readiness report, a judge of the Court may direct that a further pre-trial conference or court attendance be required prior to the scheduled date.

The Hearing

General Nature of Pre-Trial Conference

28.05 (1) A pre-trial conference shall be conducted virtually unless otherwise directed by the Court.

(2) The pre-trial conference shall be closed to the public.

(3) Where an accused is not represented by counsel, a pre-trial conference shall be recorded and the proceedings not published, broadcast or transmitted in any other way, except by order of the pre-trial conference judge.

(4) No transcript of any pre-trial conference shall be ordered by anyone without notice to all parties and the written approval of the pre-trial conference judge or another judge of the Court.

(5) Where a transcript has been ordered under subrule 28.05(4), no information contained in it shall be published in any document or broadcast or transmitted in any way without the approval of the pre-trial conference judge, on notice to all parties.

Attendance at Pre-Trial Conference

(6) Unless otherwise directed by the pre-trial conference judge or a judge of the Court, counsel for each accused or, where the accused is self-represented, the accused and the prosecutor shall attend the pre-trial conference and be in a position to make commitments on behalf of the party whom each represents on issues reasonably anticipated to arise from the contents of the pre-trial conference reports.

(7) Unless otherwise directed by the pre-trial conference judge or a judge of the Court, an accused who is represented by counsel only for the purpose of the pre-trial and obtaining the trial date shall attend the pre-trial with counsel.

(8) An accused who is represented by counsel is bound by all positions taken at the pre-trial conference by that counsel

(9) The pre-trial conference judge or another judge of the Court may require that an accused represented by counsel and an investigating officer attend or be available for consultation at the pre-trial conference.

Specific Inquiries to be Made

(10) The pre-trial conference judge shall inquire about and discuss any matter that may promote a fair and expeditious hearing of the charges contained in the indictment.

(11) Without restricting the generality of subrule 28.05(10) or any other rule, the pre-trial conference judge may inquire about and discuss:

(a) the contents of the pre-trial conference reports submitted by counsel or self-represented accused;

(b) any issues that arise from the contents of the pre-trial conference reports;

(c) the issues in dispute between the parties;

(d) any admissions of fact or other agreements about uncontested issues or the evidence of witnesses;

(e) the simplification of any issues that remain in controversy at trial;

(f) the resolution of any outstanding disclosure issues;

(g) the nature and particulars of any pre-trial application under these rules including, but not only:

(i) the necessity to make orders about the notices of application to be filed;

(ii) the setting of schedules for serving and filing notices of application, application records, and other materials in support of pre-trial applications;

(iii) whether factums, other memoranda or written submissions should be required for pre-trial applications and the schedule set for their filing and service;

(iv) whether time limits should be imposed for oral arguments of pre-trial applications; and,

(v) whether evidence on pre-trial applications may be provided by an agreed statement of facts, excerpts of transcripts of the preliminary inquiry, affidavits, “will states” or otherwise than by the testimony of witnesses;

(h) the possibility that the parties will consent to a judge other than the trial judge hearing and deciding the pre-trial applications and incorporating any rulings made into the trial record to permit appellate review;

(i) the possibility that the prosecutor may reduce the number of counts in the indictment to facilitate jury comprehension and promote a fair, just, and expeditious trial;

(j) the manner in which evidence may be presented at trial to facilitate jury comprehension;

(k) the necessity for interpreters during any part of the proceedings;

(l) the necessity of any technological equipment to facilitate the introduction of evidence at trial or jury comprehension of the evidence; and,

(m) the estimated length of pre-trial applications and trial proceedings; and the advisability of fixing a date for commencement of pre-trial applications and trial proceedings.

Resolution Issues

(12) The pre-trial conference judge shall inquire about and discuss:

(a) the prosecutor's position on sentence before trial and after trial in the event of conviction, including the counts upon which pleas of guilty would be sought, the credit to be given for pre-sentence custody or release on stringent terms, any corollary orders sought upon conviction, and whether further proceedings would be taken upon conviction of any serious personal injury offence as defined in section 752 of the *Criminal Code*; and

(b) the position of each accused on sentence, both before and after trial.

(13) The pre-trial conference judge may express an opinion about the appropriateness of any proposed sentencing disposition based upon the circumstances disclosed at the pre-trial conference.

Recommendations of Pre-Trial Conference Judge

(14) The pre-trial conference judge may make recommendations about:

(a) admissions of fact or other agreements about uncontested issues or the evidence of witnesses;

(b) the resolution of outstanding disclosure issues;

(c) the manner in which evidence should be introduced on pre-trial applications and the order in which the applications should be heard;

(d) requiring the prosecutor to provide a list of names who will or may be called as witnesses for the prosecution;

(e) the filing of notices of applications, application records, factums, other memoranda or written materials for pre-trial applications;

(f) the time limits to be imposed on oral argument of pre-trial applications;

(g) the appointment of a judge other than the trial judge to hear and determine pre-trial applications;

(h) arrangements for persons requiring the assistance of interpreters to meet with proposed interpreters in advance of the commencement of pre-trial applications or trial proceedings to ensure that the interpretation will be satisfactory;

(i) any arrangements required to ensure that any technological equipment necessary is available for use as required;

(j) the appointment of a case supervision judge under rule 29.02;

(k) a trial management conference before the trial judge prior to the date scheduled for pre-trial applications or trial, as the case may be; and,

(l) the appointment of a case management judge under rules 29A or 29B.

Rule 29: Case Supervision Judges and Conferences

Authority for Rule

29.01 This rule is made under the authority of section 482.1(1) of the *Criminal Code*.

Designation of Case Supervision Judge

General Rule

29.02 (1) The Regional Senior Judge, or a judge designated by the Regional Senior Judge, on the recommendation of the pre-trial conference judge or otherwise, may assign a case supervision judge to any case to be tried or otherwise determined in the region**.**

Criteria for Designation of Case Supervision Judge

(2) In considering whether to assign a case supervision judge to any proceeding, the Regional Senior Judge or designated judge shall take into account all the relevant circumstances, including, but not limited to:

(a) the recommendation of the pre-trial conference judge;

(b) the purpose of case supervision;

(c) the complexity of the proceeding, including issues of fact and law involved in any pre-trial applications;

(d) the importance to the parties and the administration of justice of the issues of fact and law raised in the proceedings;

(e) the number of parties involved in the proceedings and whether all parties are represented by counsel;

(f) the number of proceedings involving the same or related parties;

(g) the nature and extent of intervention by the case supervision judge that the proceedings are likely to require;

(h) the time reasonably required for any pre-trial applications in the proceedings;

(i) the time reasonably required for completion of the proceeding;

(j) the number of witnesses likely to testify in the proceeding; and,

(k) any other factors that the judge considers relevant.

Assistance with Administrative Matters

29.03 The case supervision judge may designate court personnel to deal with administrative matters relating to proceedings out of court, provided any accused affected by those matters is represented by counsel.

Case Supervision Conferences

29.04 The case supervision judge may schedule and convene a case supervision conference from time to time, on their own initiative or at the request of a party, to ensure efficient case supervision and the orderly and expeditious conduct of the proceedings.

Attendance at Case Supervision Conference

General Rule

29.05 (1) Unless otherwise directed by the case supervision judge, the accused and the prosecutor shall attend the case supervision conference, be fully acquainted with the factual and legal issues likely to arise at the conference and be in a position to make decisions that bind the party during the proceedings.

Accused Represented by Counsel

(2) Unless otherwise ordered by the case supervision judge, an accused who is represented by counsel who has completed a Designation of Counsel in Form 18 is not required to attend a case supervision conference.

Requirement of Presence

(3) The case supervision judge may require that an accused represented by counsel and an investigating officer be present or available for consultation at the case supervision conference.

Case Supervision Conference

General Nature of the Case Supervision Conference

29.06 (1) Unless otherwise directed by the case supervision judge, a case supervision conference in proceedings where all parties are represented by counsel, shall be conducted in the case supervision or pre-trial conference room, judges' chambers or other suitable rooms in the courthouse.

Self-Represented Accused

(2) Where any party to a proceeding in which a case supervision conference is held is not represented by counsel, the case supervision conference shall be held in accordance with rule 28.05.

Specific Authority of the Case Supervision Judge

(3) The case supervision judge may:

> **(a)** establish or revise any schedule for pre-trial applications, trial or other proceedings;

(b) secure the parties' agreement or give directions about the order in which pre-trial applications or other preliminary applications shall be heard;

(c) secure the parties' agreement or give directions about the manner in which evidence will be presented on pre-trial or other preliminary applications;

(d) secure the parties' agreement to or give directions about a judge other than the trial judge hearing and determining pre-trial or other preliminary applications;

(e) secure the parties' agreement or give directions about the manner in which decisions made by a judge other than the trial judge on pre-trial or other preliminary applications are to be incorporated into the record or other proceedings;

(f) secure the parties' agreement or give directions about the materials to be filed in support of and in response to any pre-trial or other preliminary applications;

(g) establish a schedule for the service and filing of any materials required for any pre-trial or other preliminary applications;

(h) secure the parties' agreement to or give directions about admissions of fact or other agreements about issues of fact and the attendances of witnesses on issues not in dispute;

(i) require the prosecutor to provide a list of the names of the persons who will or may be called as witnesses for the prosecution;

(j) secure the parties' agreement or give directions about any interpreters or technological equipment required in the proceedings and make arrangements through court personnel to ensure such requirements are met;

(k) secure the parties' agreement to or give directions about the manner in which evidence may be presented at trial to assist its comprehension by jurors;

(l) identify contested issues of fact and law and explore methods to resolve them; and,

(m) recommend the appointment of a case management judge under rule 29A or 29B.

Role of Trial Judge

(4) Any directions given by the case supervision judge are subject to revision by the judge presiding in the proceedings according to the best interests of the administration of justice.

Rule 29A: Appointment of a Case Management Judge

Application of the Rule

29A.01 Rules 29A.02 to 29A.06 apply to the appointment of a case management judge under sections 551.1 to 551.6 of the *Criminal Code*.

Appointment by Notice of Application

29A.02 A party seeking the appointment of a case management judge pursuant to section 551.1 of the *Criminal Code* shall serve, file, and upload a notice of application briefly setting out:

(a) why the appointment would be "necessary for the proper administration of justice" in the case, and,

(b) the jurisdiction the case management judge may exercise in the case having regard to section 551.3 of the *Criminal Code.*

Filing and Service of Notice

29A.03 The notice of application shall be served on:

(a) counsel acting on behalf of all the parties in the case in which the application is being brought; and,

(b) the accused, where the accused does not have counsel of record in the case in which the application is being brought,

and shall be filed with the court office, and uploaded, at least 1 clear day before the pre-trial conference or case supervision conference at which the issue of the appointment will be raised.

Judge May Require One Party to Prepare Application

29A.04 Where no notice of application has been filed and the pre-trial or case supervision judge and at least one party agrees that a case management judge should be appointed, the judge may require one party to prepare the notice of application.

Waiver of Notice of Application Requirement

29A.05 (1) Where no notice of application has been filed, the judge conducting the pre-trial conference or case supervision conference may waive compliance with the notice of application requirement where:

(a) the judge is the Regional Senior Judge, or,

(b) the judge is the designate of the Regional Senior Judge for the appointment of a case management judge.

(2) Where subrule 29A.05(1) applies, the presiding judge shall endorse the indictment or prepare a separate endorsement setting out:

(a) why the appointment is "necessary for the proper administration of justice", and,

(b) the jurisdiction of the case management judge, having regard to section 551.3 of the *Criminal Code*.

Service to Regional Manager of Judicial Services

29A.06 A copy of the notice of application, or a copy of the endorsement where subrule 29A.05(2) applies, shall be provided by the pre-trial or case supervision judge to the Regional Manager of Judicial Services.

Rule 29B: Appointment of a Judge to Determine Issues that Are to be Adjudicated in Related Trials

Application of the Rule

29B.01 Rules 29B.02 to 29B.08 apply to the appointment of judges to determine issues that are to be adjudicated in related trials under section 551.7 of the *Criminal Code.*

Appointment by Notice of Application

29B.02 A party seeking the appointment of a judge to determine issues that are to be adjudicated in related trials pursuant to section 551.7 of the *Criminal Code*, shall serve, file, and upload a notice of application briefly setting out:

(a) why the appointment would be "in the best interests of the administration of justice, including ensuring consistent decisions";

(b) the “common issues” that would be adjudicated by the judge;

(c) the related trials;

(d) the jurisdiction in which those prosecutions were commenced; and,

(e) whether there has been a committal for trial in related trials.

Filing and Service of Notice

29B.03 (1) The notice of application shall be served on:

(a) counsel acting on behalf of all the parties in the case in which the application is being brought, and

(b) the accused, where the accused does not have counsel of record in the case in which the application is being brought,

and shall be filed with the court office, and uploaded, at least 5 days before the pre-trial conference or case supervision conference at which the issue of the appointment will be raised.

(2) The notice of application shall also be served on:

(a) all counsel in the related cases, and

(b) all accused where the accused does not have counsel of record in the related cases,

and shall be filed with the court office, and uploaded, at least 5 days before the pre-trial conference or the case supervision conference at which the issue of the appointment will be raised.

Judge May Require One Party to Prepare Application

29B.04 Where no notice of application has been filed and the pre-trial or case supervision judge or a party seek the appointment of a judge to adjudicate the issues in related trials, the judge may:

(a) require one party to prepare the notice of application, and,

(b) give directions with respect to service on counsel or any accused who do not have counsel of record in the related proceedings.

When the Related Trials Are in the Same Region

29B.05 Where all related trials are in the same region, the Regional Senior Judge or their designate shall determine whether a judge should be appointed to adjudicate the issues in related trials.

Where the Related Trials Are in Different Regions

29B.06 Where one or more of the related trials are in different regions, the application shall be made to the Chief Justice or a judge designated by the Chief Justice to determine the issue.

Waiver of Notice of Application Requirement

29B.07 (1) Where no notice of application has been filed, the judge conducting the pre-trial conference or case supervision conference may waive compliance with the notice of application requirement where:

> **(a)** all parties are represented at the pre-trial or case supervision conference,
>
> **(b)** the judge is the Regional Senior Judge, or,
>
> **(c)** the judge is the Regional Senior Judge's designate for the appointment of judges to adjudicate the issues in related trials.

(2) Where subrule 29B.07(1) applies, the presiding judge shall endorse the indictment or prepare a separate endorsement setting out:

> **(a)** why the appointment is "in the interests of justice, including ensuring consistent decisions", and,
>
> **(b)** the issues to be adjudicated by the appointed judge after receiving input from all parties in the related proceedings.

Service on Regional Manager of Judicial Services

29B.08 A copy of the notice of application, or a copy of the endorsement where subrule 29B.07(2) applies, shall be provided by the pre-trial or case supervision judge to the Regional Manager of Judicial Services.

PART III: Trial Proceedings and Evidence [Rules 30 – 35]

Rule 30: Applications to Admit Evidence

Application of the Rule

30.01 This rule applies where a party to a proceeding seeks to have evidence admitted that a common law rule or other rule of admissibility renders presumptively inadmissible, including but not limited to:

> **(a)** evidence of disreputable conduct by an accused, other than the conduct charged in the indictment;
>
> **(b)** evidence of similar acts, whether included as other counts or not;
>
> **(c)** evidence of an alternate suspect;
>
> **(d)** evidence of a witness whose competence is governed by section 4 of the *Canada Evidence Act*; and,
>
> **(e)** evidence of a witness whose testimony, in whole or in part, is subject to a privilege.

Requirement of Notice

Form of Notice

30.02 (1) Applications to admit evidence under this rule shall be commenced by a notice of application in Form 1.

Contents of Notice

(2) The notice of application in Form 1 shall state:

> **(a)** the place and date of hearing as determined in accordance with these rules;
>
> **(b)** a detailed description of the presumptively inadmissible evidence the applicant seeks to introduce in the proceedings;
>
> **(c)** a precise, case-specific statement of the basis and grounds upon which the evidence is said to be admissible;

(d) a detailed summary of the evidence or other material upon which the party seeking admission relies, and a statement of the manner in which the applicant proposes to introduce the evidence;

(e) an estimate of the time required to introduce the evidence and other material to be relied upon in support of the application; and,

(f) whether any order is required abridging or extending any times established by the pre-trial conference or case management judge or required for service and filing by this rule.

Filing and Service of Notice

General Rule

30.03 (1) Any party who seeks to have evidence admitted under this rule shall give the notice required by rule 30.02 not less than 30 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise specified by the *Criminal Code* or directed by the Court.

Manner of Service

(2) Unless otherwise directed by the Court, the applicant shall serve the notice of application in Form 1 and any other supporting materials required by these rules in accordance with rule 5.

Filing of Proof of Service

(3) The notice of application in Form 1 and any other supporting materials required by these rules or directed by the Court, together with proof of service, shall be filed with the court office in the place where the application is to be heard, and uploaded, not later than 30 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court.

Materials for Use on Application

Applicant's Application Record

30.04 (1) In addition to any other materials that may be required by these rules or directed by the Court, an applicant under this rule shall include in an application record:

(a) the notice of application in Form 1;

(b) a copy of the indictment to which the application relates;

(c) materials relied upon in support of the application where it is proposed to argue the case for admissibility in whole or in part on a basis other than the testimony of witnesses;

(d) where it is proposed to argue the case for admissibility in whole or in part on the basis of testimony of witnesses, copies of prior statements or statements of anticipated evidence in sufficient detail to show the essential features of the evidence proposed for admission; and,

(e) any other materials that may assist the judge in identifying and determining the admissibility issues raised.

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall file and upload a respondent's application record and any other materials on which the respondent proposes to rely.

Books of Authorities

(3) Books of authorities shall be served, filed, and uploaded in accordance with rule 32, unless otherwise directed by the Court.

Factum Required

(4) Factums complying with rule 33 are required on applications under this rule unless otherwise directed by the Court.

Rule 31: Applications to Exclude Evidence

Application of the Rule

31.01 This rule applies where a party seeks to exclude evidence that is presumptively admissible at common law for all issues that it is reasonably foreseeable another party will seek to introduce in the proceedings, including but not limited to:

(a) evidence of prior criminal convictions of an accused;

(b) evidence of after-the-fact or post-offence conduct; and,

(c) evidence alleged to have been obtained by constitutional infringement exclusion of which is sought under subsection 24(2) of the *Charter*.

Requirement of Notice

Form of Notice

31.02 (1) Applications to exclude evidence under this rule shall be commenced by a notice of application in Form 1.

Contents of Notice

(2) The notice of application in Form 1 shall state:

(a) the place and date of hearing as determined in accordance with these rules;

(b) a detailed description of the presumptively admissible evidence the applicant seeks to exclude in the proceedings;

(c) a precise, case-specific statement of the basis and grounds upon which the evidence is said to be inadmissible;

(d) a detailed summary of the evidence or other material upon which the party seeking exclusion relies and a statement of the manner in which the applicant proposes to introduce the evidence;

(e) an estimate of the time required to introduce the evidence and other material to be relied upon in support of the application; and,

(f) whether any order is required abridging or extending any times established by the pre-trial conference or case management judge or required for service and filing by this rule.

Filing and Service of Notice

General Rule

31.03 (1) Any party who seeks to have evidence excluded under this rule shall give the notice required by rule 31.02 not less than 30 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court.

Manner of Service

(2) Service of the notice of application in Form 1 and any other supporting materials required by these rules or directed by the Court shall be made in accordance with rule 5.

Filing of Proof of Service

(3) The notice of application in Form 1 and any other supporting materials required by these rules or directed by the Court, together with proof of service, shall be filed with the court office in the place where the application is to be heard, and uploaded, not later than 30 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court.

Materials for Use on Application

Applicant's Application Record

31.04 (1) In addition to any other materials that may be required by these rules or directed by the Court, an applicant under this rule shall include in an application record:

(a) the notice of application in Form 1;

(b) a copy of the indictment to which the application relates;

(c) materials relied upon in support of the application where it is proposed to argue the case for exclusion in whole or in part on a basis other than the testimony of witnesses;

(d) where it is proposed to argue the case for exclusion in whole or in part on the basis of testimony of witnesses, copies of prior statements or statements of anticipated evidence in sufficient detail to show the essential features of the evidence proposed for admission; and,

(e) any other materials that may assist the judge in identifying and determining the admissibility issues raised.

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall file and upload a respondent's application record and any other materials on which the respondent proposes to rely.

Books of Authorities

(3) Books of authorities shall be served, filed, and uploaded in accordance with rule 32, unless otherwise directed by the Court.

Factum Required

(4) Factums complying with rule 33 are required on applications under this rule unless otherwise directed by the Court.

Rule 32: Books of Authorities

32.01 (1) Books of authorities shall be served, filed, and uploaded by the applicant not later than 30 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court.

Respondent's Authorities

(2) Where factums are required, books of authorities shall be served, filed, and uploaded by the respondent not later than 10 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court or a practice direction.

Authorities Included

(3) Unless directed otherwise by the Court, where a factum contains hyperlinks to the authorities being relied upon, a book of authorities is not required to be filed and uploaded.

(4) Only authorities being referred to in oral argument shall be included in a book of authorities.

Marking of Authorities

(5) Unless directed otherwise by the Court, where authorities being relied upon are not available on free public websites and cannot be hyperlinked in a factum, an abbreviated book of authorities shall be filed electronically and uploaded in PDF format.

(6) Abbreviated books of authorities filed and uploaded electronically shall include a table of contents with internal hyperlinks to the cases and textbook excerpts contained within it.

Duplication of Authorities

(7) A party shall not duplicate authorities filed and uploaded by any other party.

Joint Books of Authorities

(8) If the parties agree to file a joint electronic book of authorities, it shall be served, filed, and uploaded by one of the parties on behalf of all parties not later than 10 days before the date fixed for the hearing of the pre-trial applications or trial, unless otherwise directed by the Court or practice direction.

Title of Book of Authorities

(9) A book of authorities filed only by the applicant shall be titled "*Applicant's Book of Authorities*"; a book of authorities filed only by the respondent shall be titled "*Respondent's Book of Authorities*"; and a joint book of authorities shall be titled "*Joint Book of Authorities*".

(10) Where the Court appoints *amicus curiae*, and a book of authorities is permitted or required in accordance with these rules, a book of authorities filed by the *amicus* shall be titled "*Amicus Curiae's Book of Authorities*".

Practice Directions

(11) The Court may provide further direction regarding the format and content of books of authorities through its practice directions.

Rule 33: Factums

General Rule

33.01 (1) Where factums are required, each party shall serve, file, and upload a factum in accordance with rule 5 and rule 33, unless directed otherwise by the Court.

Service and Filing of Factums

(2) Factums shall be served, filed, and uploaded:

> **(a)** by the applicant not later than 30 days before the date fixed for the hearing of the pre-trial applications or trial;
>
> **(b)** by the respondent not later than 10 days before the date fixed for the hearing of the pre-trial applications or trial; and,
>
> **(c)** by an intervener, as the case may be, not later than 5 days before the date fixed for the hearing of the pre-trial applications or trial.

Factum to be Signed and Dated

(3) A factum shall be signed by counsel of record or on counsel's behalf by someone specifically authorized to do so, or by the applicant or respondent, if self-represented, and the signature shall be followed by the typed name of the person who signed the factum, along with the date the factum was signed.

Contents of Applicant's Factum

(4) The applicant's factum shall consist of the following parts in consecutively numbered paragraphs, with references to authorities hyperlinked throughout the factum:

> **(a)** Part I, with the caption, "Statement of the Case", containing a brief but specific summary of the evidence to which the application relates, together with a statement, with reasonable particularity, of the grounds upon which admission or exclusion is made;
>
> **(b)** Part II, with the caption, "Summary of the Facts", containing a concise summary of the facts relevant to the issues in the application;
>
> **(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;
>
> **(e)** Schedule A, with the caption, "Authorities to be Cited", containing a list of the authorities referred to in the factum, together with citations, in the order in which they appear in Part III or in alphabetical order; and
>
> **(f)** Schedule B, with the caption, "Relevant Legislative Provisions", containing the text of all relevant statues except for any provisions of the *Constitution Act*, *Criminal Code*, or *Youth Criminal Justice Act*.

Contents of Respondent's Factum

(5) The respondent's factum shall consist of the following parts in consecutively numbered paragraphs with references to authorities hyperlinked throughout the factum:

> **(a)** Part I, with the caption, "Respondent's Statement of the Facts", containing a statement of the facts in Part II of the applicant's factum that the respondent

accepts as correct or substantially correct, and those facts with which the respondent disagrees, along with a concise summary of any additional facts upon which the respondent relies;

(b) Part II, with the caption, “Response to Applicant’s Issues”, containing the respondent’s position on each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities, relating to that issue;

(c) Part III, with the caption, “Additional Issues”, and 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;

(d) Part IV, with the caption, “Order Requested”, containing a statement of the order that the respondent will ask the Court to make;

(e) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities referred to in the factum, together with citations in the order in which they appear in Part II and Part III, or in alphabetical order; and

(f) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes, except for any provisions of the *Constitution Act*, *Criminal Code* or *Youth Criminal Justice Act*,

Contents of Intervener’s Factum

(6) Every intervener shall prepare, file, and upload an “Intervener’s Factum” that shall consist of the following parts in consecutively numbered paragraphs with references to authorities hyperlinked throughout the factum:

(a) Part I, with the caption, “Intervener’s Status and Statement as to Facts”, containing the wording of the order granting intervener status and a statement of the facts in Part II of the applicant’s factum that the intervener accepts as correct or substantially correct, and those facts with which the intervener disagrees, along with a concise summary of any additional facts upon with the intervener relies;

(b) Part II, with the caption, “Response to Applicant’s Issues”, containing the intervener’s position on each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities relating to that issue;

(c) Part III, with the caption, “Additional Issues”, containing a statement of any additional issues raised by the intervener, immediately followed by a concise statement of the law and the authorities relating to that issue;

(d) Part IV, with the caption, “Order Requested”, containing a statement of the order that the intervener will ask the Court to make;

(e) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities referred to in the factum, together with citations in the order in which they appear in Parts II and Part III, or in alphabetical order; and,

(f) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes, except for any provisions of the *Constitution Act*, *Criminal Code*, or *Youth Criminal Justice Act*.

Title of Factums

(7) A factum filed by the applicant shall be titled “Applicant’s Factum”; a factum filed by the respondent shall be titled “Respondent’s Factum”; and a factum filed by an intervener shall be titled “Intervener’s Factum”.

(8) Where the Court appoints *amicus curiae*, and a factum is required or permitted in accordance with these rules, a factum filed by the *amicus* shall be titled “*Amicus Curiae’s Factum*”.

Authorities Included

(9) Unless directed otherwise by the Court, all caselaw and other source materials referenced in the factum shall be hyperlinked to a publicly available free website.

(10) Where caselaw and other source materials are not available on a free public website, or where the factum references an unreported decision or excerpt from a textbook, the authority being relied upon shall be filed and uploaded in an abbreviated book of authorities in compliance with subrules 32.01(5) and 32.01(6).

(11) Only authorities being referred to in oral argument shall be included in a factum.

(12) A factum shall not include multiple authorities for the same legal argument or principle.

Form and Length of Factum

(13) All factums shall be filed and uploaded in PDF format and shall not exceed 20 pages in length, unless directed otherwise by the Court.

Document Standards

(14) Unless otherwise directed by the Court, all factums shall:

(a) be typed and have double spaces between the lines, except for quotations longer than four lines and footnotes;

(b) have a margin of approximately 25 millimetres on all sides;

(c) be in 12-point or larger font size in Times New Roman font style; and,

(d) be divided into a single series of consecutively numbered paragraphs.

(15) Factums that do not comply with this rule may not be accepted unless directed otherwise by a judge.

Practice Directions

(16) The Court may provide further direction regarding the format of factums through its practice directions.

Rule 34: Hearing of Pre-Trial and Other Applications

Order and Manner of Applications

34.01 The presiding judge shall determine the order in which pre-trial and other applications shall be heard and the manner in which the evidence in support of any application shall be presented.

Preliminary Assessment of Application

34.02 The presiding judge may conduct a preliminary assessment of the merits of any pre-trial or other application and may dismiss the application without further hearing or inquiry where the application is manifestly frivolous.

Dismissal for Non-Compliance with Rules

34.03 Where an applicant has failed to comply with the rules governing an application, the application shall not be heard unless the presiding judge grants leave, after taking into account all the circumstances of the case, including but not limited to:

(a) the nature of the applicant's non-compliance with these rules;

(b) the apparent merits of the application as reflected in any materials filed and any submissions made in the proceeding;

(c) the right of the applicant to raise issues, including issues relating to the admissibility of evidence and to have those issues determined on their merits;

(d) the right of other parties to have a reasonable opportunity to respond to any issues raised by an applicant;

(e) the need for an expeditious determination of pre-trial applications and the orderly conduct of trial proceedings;

(f) the history of the pre-trial applications and the proceedings;

(g) any notice given to other parties about the issues raised in the pre-trial applications;

(h) any prejudice to any other party in the proceeding;

(i) the nature of the issues raised and the extent of their impact on the course of the trial or other proceeding;

(j) any explanation advanced for failure to comply with these rules; and,

(k) any other factors the judge considers relevant.

Limitations on Oral Argument

34.04 The presiding judge may impose limits on oral submissions on any pre-trial or other application.

Written Argument

34.05 The presiding judge may order that the parties provide written submissions about any issue to be heard and determined as a pre-trial application.

34.06 Where written submissions are required by the Court, the presiding judge will determine the manner in which each party is to provide their written submissions to the Court and to each other party.

Rule 35: Dangerous and Long-Term Offender Applications

Application of the Rule

35.01 This rule applies when the prosecutor indicates an intention to apply to have an offender declared a dangerous offender or a long-term offender under Part XXIV of the *Criminal Code*.

Pre-Trial Conference Report Form

35.02 (1) If the prosecutor indicates an intention to apply to have the offender declared a dangerous offender or a long-term offender, the prosecutor and counsel of record shall complete questions 1 to 7 of Form 23 prior to the application.

(2) If the Court grants the application under subsection 752.1(1) of the *Criminal Code*, the prosecutor and counsel of record shall complete questions 8 to 30 of Form 23 prior to the proceedings described in sections 753 or 753.1 of the *Criminal Code*, as the case may be.

Case Supervision Required

35.03 (1) Upon the prosecutor's indication to apply to have the offender declared a dangerous offender or a long-term offender under Part XXIV of the *Criminal Code*, the sentencing hearing may be subject to case supervision under section 482.1 of the *Criminal Code* and rule 29.

(2) The case supervision judge may be the trial judge, the judge designated to conduct the dangerous offender or long-term offender application if different than the trial judge, or a judge designated by the Regional Senior Judge.

Powers of Case Supervision Judge

35.04 The case supervision judge may:

(a) establish or revise any schedule for pre-trial applications;

(b) secure the parties' agreement, or give directions, about the order in which pre-trial applications shall be heard;

(c) secure the parties' agreement, or give directions, about the manner in which evidence will be presented on the pre-trial applications and at the hearing;

(d) secure the parties' agreement to, or give directions about, a judge other than the sentencing judge hearing and determining pre-trial applications;

(e) secure the parties' agreement, or give directions about, the manner in which decisions made by a judge other than the sentencing judge on pre-trial applications are to be incorporated into the record or other proceedings;

(f) secure the parties' agreement, or give directions, about the materials to be filed in support of and in response to any pre-trial applications;

(g) establish a schedule for the service and filing of any materials required for any pre-trial applications;

(h) secure the parties' agreement to, or give directions about, admissions of fact or other agreements about issues of fact, and the attendances of witnesses on issues not in dispute;

(i) require the prosecutor to provide a list of the names of the persons who will, or may, be called as witnesses for the prosecution;

(j) secure the parties' agreement, or give directions, about any interpreters or technological equipment required in the proceedings, and make arrangements through court personnel to ensure such requirements are met;

(k) secure the parties' agreement to, or give directions about, the manner in which evidence may be presented at the application; and,

(l) identify contested issues of fact and law and explore methods to resolve them.

PART IV: Summary Conviction Appeals and Extraordinary Remedies [Rules 40-43]

Rule 40: Summary Conviction Appeals

Definitions

40.01 In this rule, and in rules 41 and 42, unless the context requires otherwise,

accused means the accused before the appeal court; (*l'accusé*)

adjudication means

(a) in appeals under paragraph 813(a) of the *Criminal Code*,

(i) a conviction or order made against a defendant,

(ii) a sentence passed on a defendant, or

(iii) a verdict of unfit to stand trial or not criminally responsible on account of mental disorder;

(b) in appeals under paragraph 813(b) of the *Criminal Code*,

(i) an order that stays proceedings on an information or dismisses an information,

(ii) a sentence passed upon a defendant, or

(iii) a verdict of not criminally responsible on account of mental disorder or unfit to stand trial; and

(c) in appeals under subsection 830(1) of the *Criminal Code*, a conviction, judgment, verdict of acquittal, or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial, or other final order or determination of a summary conviction court; (*décision*)

appeal means an appeal from a decision of a summary conviction court under Part XXVII of the *Criminal Code*; (*appel*)

appeal court means the Superior Court of Justice, and in the case of appeals under section 813 of the *Criminal Code*, means the Superior Court of Justice in the place where the adjudication under appeal was made; (*cour d'appel*)

appellant means

(a) in appeals under paragraph 813(a) of the *Criminal Code*, the defendant,

(b) in appeals under paragraph 813(b) of the *Criminal Code*, the informant, the Attorney General or the Attorney General's agent;

(c) in appeals under subsection 830(1) of the *Criminal Code*, the person who has filed the appeal. (*appellant*)

Attorney General means either the Attorney General for the Province of Ontario where the prosecution was initiated or conducted by the Attorney General of Ontario, or, where the prosecution was initiated or conducted at the instance of the Government of Canada, the Attorney General of Canada, or the Director of Public Prosecutions appointed under subsection 3(1) of the *Director of Public Prosecutions Act*; (*procureur général*)

clerk of the appeal court means a clerk of the Superior Court of Justice and includes the Registrar and local registrars of the Superior Court of Justice;

convicted person includes a person who has been granted a discharge under section 730 of the *Criminal Code*; (*personne condamnée*)

counsel or counsel of record means a lawyer who is authorized to represent a party in relation to any legal proceedings, including a party to an appeal; (*avocat ou avocat au dossier*)

file means to file electronically with the court office; (*déposer*)

inmate appeal means an appeal by a person who is in custody at the time the notice of appeal is given and is not represented by counsel for the appeal; (*appel d'un détenu*)

judge means a judge of the appeal court; (*juge*)

summary conviction court means a court that has jurisdiction in the place where the proceedings under Part XXVII of the *Criminal Code* have arisen and is given jurisdiction over the proceedings by an enactment; (*cour des poursuites sommaires*)

trial court means the summary conviction court from or against whose adjudication an appeal is being taken; (*tribunal de première instance*)

upload means to upload to CaseLines or such other online platform directed to be used by the Court.

Application of the Rule

40.02 This rule applies to appeals as defined in rule 40.01 except otherwise provided by the *Criminal Code*, any other Act of the Parliament of Canada or enactment made thereunder.

Extension or Abridgment of Time, Applications for Directions, and Orders without the Attendance of Counsel

40.03 (1) Any time limited by this rule may be extended or abridged by a judge, in accordance with rule 3.02, except for the time limited by subrule 40.18(1) for a trial *de novo* where the time limit shall not be extended.

Factors Considered

(2) Factors the appeal court may consider for an extension or abridgement of time include, but are not limited to:

> **(a)** whether the applicant has shown a *bona fide* intention to appeal within the appeal period;
>
> **(b)** whether the applicant has accounted for or explained the delay;
>
> **(c)** whether there is merit to the proposed appeal; and/or
>
> **(d)** any other factors the appeal court considers relevant.

(3) Any party to an appeal or the clerk of the appeal court may apply to a judge for directions regarding the appeal, on notice to every other party.

Notice of Application

(4) Except in an inmate appeal, notice of an application to extend or abridge the time limit or for directions, unless on consent or otherwise directed by the appeal court, shall be served on every other party or as otherwise specified by this rule.

(5) Where an extension or abridgement of time relating to an inmate appeal is granted by a judge, the endorsement to that effect shall constitute an order extending or abridging the time.

(6) Except for an order for release from custody under section 816 of the *Criminal Code*, any order provided for in rules 40 to 42 may be made with the consent in writing of the parties, without the attendance of counsel.

Form of Appeal

40.04 (1) The notice of appeal shall be in the following forms:

(a) The notice of appeal in an inmate appeal shall be in Form 20 to the *Criminal Appeal Rules* of the Court of Appeal for Ontario, with necessary modifications.

(b) The notice of appeal in any other appeal by a convicted person shall be in Form 2 to the *Criminal Proceeding Rules.*

(c) A notice of appeal by the Attorney General shall be in Form 2 to the *Criminal Proceeding Rules*, with necessary modifications.

Notice of Appeal Contents

(2) All notices of appeal shall be:

(a) dated and signed by the appellant, or the counsel of record of the appellant, and

(b) directed to the clerk of the appeal court.

Constitutional Question

(3) Where a notice of appeal raises a constitutional question as set out in section 109 of the *Courts of Justice Act*, the notice shall be titled “Notice of Appeal and Constitutional Question” and shall be served and filed in accordance with rule 40.06.

Times for Service and Filing

40.05 An appellant shall serve and file the notice of appeal,

(a) where the appeal is from a conviction or sentence or both, within 30 days after the day on which the sentence was imposed; or,

(b) in any other case, within 30 days after the day on which the adjudication under appeal was made.

Service and Filing

40.06 (1) In an inmate appeal, a notice of appeal shall be given by providing the notice to the senior official of the institution where the appellant is confined.

(2) After receiving the notice of appeal, the senior official of the institution shall provide the notice to the clerk of the appeal court in the place where the proceeding appealed from was held.

(3) Where documents are sent to the inmate by the clerk of the appeal court, the senior official of the institution shall forthwith give the documents to the inmate and shall inform the clerk of the appeal court in writing of doing so.

(4) In an appeal other than an inmate appeal, a notice of appeal shall be given:

> **(a)** Where the appeal is by the defendant, by serving and filing with the clerk of the appeal court in the place where the proceeding appealed from was held a copy of the notice of appeal with proof of service, if required, on the Attorney General, at the office designated for service of notice of summary conviction appeals in the place in which the trial was held.
>
> **(b)** Where the appeal is by the Attorney General, by filing with the clerk of the appeal court in the jurisdiction where the proceeding appealed from was held a copy of the notice of appeal with proof of service, if required, on each respondent to the appeal.

(5) A notice of appeal shall be served on the parties and the appeal court by email, or any electronic means provided by the appeal court. Where a party is unable to serve the notice electronically, personal service will be permitted.

(6) Where the notice of appeal raises a constitutional question as set out in section 109 of the *Courts of Justice Act*, by also serving:

> **(a)** The Civil Law Division, Constitutional Law Branch of the Ministry of the Attorney General; and,
>
> **(b)** The Attorney General of Canada at the Regional Office of the Public Prosecution Service of Canada at Toronto or at Ottawa.

Proof of Service

(7) When a notice of appeal is served by email and is being filed electronically, a formal affidavit of service is not required to be filed but shall be produced if requested by the appeal court.

(8) Unless otherwise directed by the appeal court, where a notice of appeal is not served by email or is not filed electronically, the party serving a notice of appeal shall file and upload proof of service within the time specified in rule 40.05, by affidavit of the person who served it, or by a counsel of record's written and dated admission or acceptance of service.

Substituted Service

(9) Where a respondent cannot be found after reasonable efforts have been made to serve the notice of appeal, the appellant may apply for directions pursuant to subrule 40.03(3) without notice to effect substituted service in the manner directed and within the period directed by a judge, pursuant to section 678.1 of the *Criminal Code*.

Processing Appeals

40.07 (1) Upon receipt of a notice of appeal, the clerk of the appeal court shall forthwith provide a copy to the clerk of the trial court in the place in which adjudication was made.

Transmission of Exhibits and Documents

(2) Upon receipt of a notice of appeal, the clerk of the trial court, unless otherwise directed by the appeal court, shall forthwith provide to the clerk of the appeal court all documents and exhibits which were before the trial court, including the information, all notices of motion or applications, motion records, and factums.

(3) Notwithstanding subrule 40.07(2), currency, valuable securities, jewellery, narcotics, and exhibits which are inherently dangerous (for example, explosives) shall not be provided to the clerk of the appeal court unless otherwise directed by the appeal court.

Transmission of Copy

(4) It shall be sufficient under subrule 40.07(2) for the clerk of the trial court to provide the clerk of the appeal court with a certified copy of the information upon which trial proceedings took place, unless otherwise directed by the appeal court.

(5) Upon receipt of the documents and exhibits from the trial court, the clerk of the appeal court shall make a copy of all the documents and exhibits that are capable of reproduction, and notify the appellant that they are available.

(6) Where the exhibits transmitted are voluminous, the clerk of the appeal court may notify the parties to the appeal that an application for directions will be made to a judge regarding the exhibits, pursuant to subrule 40.03(3).

Transcripts and Agreements Respecting Evidence

Transcript of Evidence

40.08 (1) Unless otherwise directed by the appeal court, the appellant is responsible for providing all transcripts of the trial proceedings to the appeal court and the respondent for use on the appeal.

Exception

(2) Where the appellant and respondent are filing an agreed statement of facts pursuant to subrule 40.08(7) or 40.08(8), the agreed statement of facts may take the place of the transcripts of the evidence and the appellant need only file and upload transcripts of:

(a) the reasons for judgment;

(b) reasons for sentence;

(c) submissions and closing arguments;

(d) any ruling pertaining to the issues under appeal; and,

(e) if there is an appeal of the sentence, submissions and evidence called at the sentencing hearing.

Certificate Respecting Evidence

(3) At the time the notice of appeal is filed, the appellant shall also file Form 2C certificates from each authorized court transcriptionist who are transcribing the trial proceedings stating that copies of the transcript as required by these rules have been ordered.

(4) Where the appellant is unable to obtain a certificate in Form 2C from each authorized court transcriptionist by the time of filing the notice of appeal, the appellant may file the notice of appeal, the certificates in Form 2C that have been obtained and written confirmation that all other transcripts have been ordered. Where all certificates in Form 2C are not filed at the time the notice of appeal is filed, the appellant shall file the outstanding certificates in Form 2C within 30 days of filing the notice of appeal.

(5) Where an appellant has applied for legal aid and is waiting for a determination on whether they qualify for legal aid, the notice of appeal may be filed without ordering the transcripts where the appellant files, at the time of filing the notice of appeal, proof of their legal aid application.

(6) Unless otherwise directed by the appeal court, where the appellant has filed a notice of appeal without ordering transcripts subject to subrule 40.08(5) the appellant shall file

the outstanding certificates in Form 2C within 15 days of receiving the decision on whether they have been granted or refused legal aid.

Agreed Statement of Facts

(7) In appeals under section 813 of the *Criminal Code* where the facts are not in dispute, an agreed statement of facts served and filed within 30 days of the filing of the notice of appeal may take the place of the transcript of trial evidence.

(8) In appeals under section 830 of the *Criminal Code,* where the facts are not in dispute, an agreed statement of facts served and filed within 15 days of the filing of the notice of appeal pursuant to subsection 830(2) of the *Criminal Code* may take the place of the transcript of trial evidence.

(9) Where the appellant intends to file an agreed statement of facts, counsel may serve and file a written notification that they intend to do so at the time of filing the notice of appeal, without filing a certificate in Form 2C.

(10) Where the parties have not filed an agreed statement of facts within 45 days of filing the notice of appeal pursuant to section 813 of the *Criminal Code*, the appellant shall serve and file a certificate in Form 2C within 60 days of filing the notice of appeal unless otherwise directed by the appeal court.

(11) Where the parties have not filed an agreed statement of facts within 15 days of filing the notice of appeal pursuant to section 830 of the *Criminal Code,* the appellant shall serve and file a certificate in Form 2C within 30 days of filing the notice of appeal unless otherwise directed by the appeal court.

(12) Where the appellant cannot comply with the 15-day period mentioned in subrule 40.08(8), and applies for an extension of time under rule 3.02, the judge hearing the application or determining the application in chambers on consent shall consider whether the 15-day period is reasonable in the circumstances, and whether this period shall be extended.

Contents of Transcripts for Conviction Appeals

(13) Unless requested by a party to the proceedings, all transcripts shall omit:

> **(a)** opening remarks by the prosecutor, unless the circumstances in subrule 40.08(15)(a) apply;
>
> **(b)** argument on pre-trial motions or applications made at trial with the exception of a notation that an application or motion was made (the ruling of the summary conviction court shall be transcribed), unless a ground of appeal to be argued relates to the pre-trial motion or application, in which case the transcript of the argument shall be included in the transcript; and,

(c) objections to the admissibility of evidence, with the exception of a notation that the objection was made (the ruling of the summary conviction court shall be transcribed), unless a ground of appeal to be argued relates to the ruling on the admissibility of evidence, in which case the transcript of the argument shall be included in the transcript.

Additional Portions of Transcript

(14) Everything that occurred following a finding of guilt shall be transcribed for use on the hearing of the appeal whether the appeal is against the finding of guilt or conviction and sentence or is against the sentence only.

Contents of Transcripts for Appeals Against Sentence

(15) With respect to appeals as to sentence only:

(a) where there was a plea of guilty at the opening of trial before any evidence was taken, the transcript shall include the entire proceedings before the Court, including the statement of the prosecutor, any evidence as to the facts, any submissions of the prosecutor for the Crown or the counsel for defence, and the reasons of the summary conviction court as to sentence;

(b) where the original plea was one of not guilty, and was followed by the adducing of evidence, the parties shall make every effort to agree on a statement of facts in accordance with subrules 40.08(7) or (8) as the case may be, unless otherwise directed by the appeal court. Where the appellant cannot comply with the time limits required by subrules (7) or (8), the appellant may seek an extension of the time pursuant to rule 3.02; and

(c) in the event of difficulty in settling the statement of facts, counsel for either party may, on notice, attend upon a judge in chambers for assistance. In the event of a failure to agree as to the facts, the provisions of subrules 40.08(1), 40.08(3), and 40.08(10) to 40.08(12) apply.

Completion of Transcripts

(16) Upon signing a certificate, each authorized court transcriptionist shall proceed with reasonable diligence to prepare and certify the transcript. All transcripts shall be prepared no longer than 90 days after the date the transcript was ordered.

(17) If the transcript has not been completed within 90 days from the date the transcript was ordered, the authorized court transcriptionist shall notify the parties to the appeal and the clerk of the appeal court, in writing, of the reason for the delay, and the date upon which the transcript will be prepared forthwith.

(18) Upon completion of the transcript, the authorized court transcriptionist shall forthwith notify the parties to the appeal and the clerk of the appeal court, in writing, that the transcript has been completed, by filing a certificate in Form 2D, which shall include the date(s) to which the transcript relates.

(19) The appellant shall serve on the respondent and all other parties to the appeal, and file and upload together with proof thereof, a copy of the transcript within 30 days of receipt of a certificate in Form 2D from each authorized court transcriptionist responsible for preparing a portion of the transcript.

(20) Unless an appeal has been wholly abandoned, after a transcript has been ordered, the completion of the transcript shall not be suspended nor the order countermanded except pursuant to an order of a judge made in accordance with rule 2.01.

Costs Sanction for Unnecessary Evidence

(21) In considering whether to award costs on an appeal under section 826 or subsection 834(1) of the *Criminal Code*, a judge may consider whether evidence has been transcribed or exhibits reproduced unnecessarily.

Amendment of Notice of Appeal

Supplementary Notice to be Served and Filed

40.09 (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 the party or parties upon whom the notice was served a supplementary notice of appeal in Form 2A and filing it with proof of service.

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 upon at the hearing of the appeal, except with leave of the judge 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, except with the leave of the judge hearing the appeal.

Appeal Books

Service and Filing of Appeal Books

40.10 (1) Unless otherwise directed by the appeal court, the appellant shall

(a) serve on the respondent and any person entitled by order of the judge,

(b) file with the court office in the place where the appeal is to be heard, and

(c) upload to the Court's online platform

a copy of the appellant's appeal book within 15 days after receiving notice that the transcript of evidence is ready, or where a transcript of evidence is not required on appeal, within 30 days after filing the notice of appeal.

Where the Appellant is not Represented by Counsel

(2) Where the appellant is not represented by counsel, a judge may require the respondent to prepare the appeal book.

Contents of Appeal Book

(3) The appeal book shall contain, in consecutively numbered pages arranged in the following order, a copy of:

(a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) the notice of appeal and any supplementary notice of appeal;

(c) any direction or order made with reference to the appeal;

(d) the information, including all endorsements thereon or as adjuncts thereto;

(e) the formal order or decision appealed from, as signed and entered, if any;

(f) the reasons for judgment, if not included in the transcript of proceedings;

(g) any order for release from custody pending appeal;

(h) All documentary exhibits filed at the trial that the parties have not agreed to omit, arranged in order by date or, where there are documents having common characteristics, arranged in separate groups in order by date;

(i) all notices of application filed at or before the trial;

(j) all maps, plans, photographs, drawings and charges that were before the summary conviction court and are capable of reproduction that the parties have not agreed to omit;

(k) the agreed statement of facts, if any;

(l) where there is an appeal as to sentence, any pre-sentence report, the criminal record of the appellant (if any), and any exhibits filed on the sentencing proceedings that are relevant to an issue on the appeal;

(m) the certificates respecting evidence referred to in subrule 40.08(3).

(n) a copy of any notice of constitutional question served in accordance with section 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and rule 27 and proof of service of the notice upon the Attorney General of Ontario and the Attorney General of Canada;

Non-Compliance

(4) Unless otherwise directed by the appeal court, an appeal book which does not comply with this rule may not be accepted by the judge.

Relief from Compliance

(5) Where compliance with this rule would cause undue expense or delay, a judge may give special directions.

Factums

General Requirement

40.11 (1) Factums are required from each party to the appeal and from all persons who have been granted the right to be heard and shall be served, filed, and uploaded in accordance with rule 5 and rule 40, unless otherwise directed by these rules or the Court.

Service and Filing of Factums

(2) Factums shall be served, filed, and uploaded:

(a) by the appellant not later than 60 days before the date fixed for the hearing, unless it is for an extraordinary remedy application, in which case the appellant shall serve, file, and upload their factum not later than 30 days before the day first scheduled for the hearing;

(b) by the respondent not later than 20 days before the date fixed for the hearing, unless it is for an extraordinary remedy application, in which case the respondent shall serve, file, and upload their factum not later than 10 days before the day first scheduled for the hearing; and,

(c) by an intervener, if any, not later than 10 days before the date fixed for the hearing, unless it is for an extraordinary remedy application, in which case the intervener shall serve, file, and upload their factum not later than 5 days before the day first scheduled for the hearing.

Factum to be Signed and Dated

(3) A factum shall be signed by counsel of record or on counsel's behalf by someone specifically authorized to do so, or by the appellant or respondent, if self-represented, and the signature shall be followed by the typed name of the party who signed the factum, along with the date the factum was signed.

Contents of Appellant's Factum

(4) Except in appeals from sentence only, the appellant's factum shall consist of the following parts, in consecutively numbered paragraphs, with references to authorities hyperlinked throughout the factum:

(a) Part I, with the caption, "Statement of the Case", containing a statement identifying the appellant, the court in which the proceedings arose, the nature of the charge or charges, the result in that court and the nature of each order to which the appeal relates;

(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 references to the transcript evidence by page and line, or paragraph, as the case may be;

(c) Part III, with the caption, "Issues and the Law", containing a statement of each issue raised, immediately followed by a concise statement of the law and any 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;

(e) Part V, with the caption, “Time Limits for Oral Argument”, containing a statement whether the appellant’s oral argument will be in accordance with subrule 40.21(1) or whether additional time for oral argument will be requested, including the total amount of time being requested.

(f) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities (with citations) to which reference was made in Part III and in the order in which they there appear in consecutively numbered paragraphs throughout the factum.

(g) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes, except any provisions of the *Constitution Act*, *Criminal Code*, and *Youth Criminal Justice Act*.

Contents of Respondent's Factum

(5) Except in appeals from sentence only, the respondent’s factum shall consist of the following parts in consecutively numbered paragraphs with references to authorities hyperlinked throughout the factum:

(a) Part I, 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 and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with such reference to the transcript evidence by page and line or paragraph, as the case may be;

(b) Part II, 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;

(c) Part III, 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;

(d) Part IV, with the caption, “Order Requested”, containing a statement of the order that the Court will be asked to make;

(e) Part V, with the caption, “Time Limits for Oral Argument”, containing a statement whether the respondent’s oral argument will be in accordance with

subrule 40.21(1) or whether additional time for oral argument will be requested, including the total amount of time being requested.

(f) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities (with citations) referred to in the order in which they appear in Parts II and III in consecutively numbered paragraphs throughout the factum.

(g) Schedule B, with the caption “Relevant Legislative Provisions”, containing the text of all relevant statutes except any provisions of the *Constitution Act*, *Criminal Code*, and *Youth Criminal Justice Act*.

Contents of Intervener’s Factum

(6) Every intervener shall prepare, file, and upload an “Intervener’s Factum” that shall consist of the following parts in consecutively numbered paragraphs, with authorities hyperlinked, throughout the factum:

(a) Part I, with the caption, “Intervener’s Status”, containing the wording of the order granting intervener status;

(b) Part II, with the caption, “Response to Appellant’s Issues”, containing the intervener’s position on each issue raised by the appellant immediately followed by a concise statement of the law and the authorities relating to that issue;

(c) Part III, with the caption, “Additional Issues”, containing a statement of any additional issues raised by the intervener, immediately followed by a concise statement of the law and the authorities relating to that issue;

(d) Part IV, with the caption, “Order Requested”, containing a statement of the order that the intervener will ask the Court to make;

(e) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities referred to in the factum, together with citations in the order in which they appear in Parts II and Part III, or in alphabetical order; and

(f) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes, except any provisions of the *Constitution Act*, *Criminal Code*, and *Youth Criminal Justice Act*.

Title of Factums

(7) A factum filed by the appellant shall be titled “Appellant’s Factum”; a factum filed by the respondent shall be titled “Respondent’s Factum”; and a factum filed by an intervener shall be titled “Intervener’s Factum”.

Authorities Included

(8) Unless directed otherwise by the Court, all caselaw and other source materials referenced in the factum shall be hyperlinked to a publicly available free website.

(9) Where caselaw and other source materials are not available on a free public website, or where the factum references an unreported decision or excerpt from a textbook, the authority being relied on shall be filed and uploaded in an abbreviated book of authorities in compliance with subrules 40.13(5) and 40.13(6).

(10) Only authorities being referred to in oral argument shall be included in a factum.

(11) A factum shall not include multiple authorities for the same legal argument or principle.

Form and Length of Factum

(12) All factums shall be filed and uploaded in PDF format.

(13) The appellant and respondent’s factum shall not exceed 20 pages in length (excluding any schedules) and an intervener’s factum shall not exceed 5 pages in length (excluding any schedules), unless directed otherwise by the Court.

Document Standards

(14) Factums shall comply with the following document standards unless directed otherwise by the Court:

> **(a)** be typed and have double spaces between the lines, except for quotations longer than four lines and footnotes;
>
> **(b)** have a margin of approximately 25 millimetres on all sides;
>
> **(c)** be in 12-point or larger font size in Times New Roman font style; and
>
> **(d)** be divided into a single series of consecutively numbered paragraphs.

Non-Compliance

(15) Factums that do not comply with this rule may not be accepted unless directed otherwise by a judge.

Practice Directions

(16) The Court may provide further direction regarding the format of factums through its practice directions.

Appeals from Sentence Only

40.12 (1) For an appeal from sentence only, the factum submitted by the appellant (other than the Attorney General) shall be in Form 19.

(2) Where the Attorney General is the appellant, such changes shall be made in the form of the factum as may be required.

Books of Authorities

40.13 (1) Books of authorities shall be served, filed, and uploaded by the appellant at the time of filing the appellant's factum.

(2) Books of authorities shall be served, filed, and uploaded by the respondent and other parties to the appeal at the time of filing the respondent's or other party's factum and shall not contain any authorities in the appellant's book of authorities.

Authorities Included

(3) Unless directed otherwise by the appeal court, where a factum contains hyperlinks of the authorities being relied on, a book of authorities is not required to be filed or uploaded.

(4) Only authorities being referred to in oral argument shall be included in a book of authorities.

Marking of Authorities

(5) Unless directed otherwise by the Court, where authorities being relied upon are not available on free public websites and cannot be hyperlinked in a factum, an abbreviated book of authorities shall be filed and uploaded in PDF format.

(6) Abbreviated books of authorities filed electronically shall include a table of contents with internal hyperlinks to the cases and textbook excerpts contained within it.

(7) The portions of the authorities to which reference may be made in oral argument shall be highlighted or sidebarred.

Perfecting Appeals

40.14 (1) An appeal is perfected when:

(a) the material described in subsection 821(1) of the *Criminal Code* and in subrule 40.07(2) has been received by the clerk of the appeal court;

(b) a copy of the transcript, agreed statement of facts, if any, and appeal book have been received by the clerk of the appeal court, or a judge has made an order dispensing with the filing thereof;

(c) any application made under subsection 822(4) of the *Criminal Code* and subrule 40.18 has been dismissed; and,

(d) the appellant's factum has been filed.

Consequences of Perfecting Appeal

(2) When an appeal is perfected, it is ready for hearing and may be entered on a list for hearing.

Failure to Perfect Appeal and Supervision Hearings

40.15 (1) Where an appellant fails to comply with any provision of subrule 40.14, the appeal court, on notice to both parties, may require a supervision hearing or place the appeal before the Court to dismiss the appeal as abandoned.

(2) Unless directed otherwise by the appeal court, a supervision hearing will take place before a judge at a time and place specified in the notice.

(3) Counsel of record for the appellant and respondent, or counsel on their behalf fully instructed and fully authorized to deal with the matter, shall appear at any supervision hearing required by the Court.

(4) After hearing from counsel of record or counsel appearing on their behalf, or if no one appears on behalf of the appellant, the judge may make any order concerning the appeal, including dismissing the appeal as abandoned.

Fixing Date for Hearing

40.16 When an appeal is listed for hearing, the clerk of the appeal court shall contact the parties and fix the date for the hearing of the appeal, or where dates are not so fixed, shall give notice to the parties of a date at which the parties shall appear before a judge, for the purpose of scheduling a date for the hearing of the appeal.

Appeals in Writing

Notice of Intention

40.17 (1) Where an appellant in an appeal wishes to present their case on appeal and argument in writing, the appellant shall give notice of such intention in Form 2B within the time and in the manner prescribed in subrule 40.10(1) respecting appeal books.

Materials to be Filed

(2) On an appeal in writing, the appellant shall serve, file, and upload transcripts of evidence (if any), appeal books and all other material, except factums, within such time and within such manner as would be required if the appeal were to be heard with oral argument and shall further serve, file, and upload their written argument within 90 days of the appeal being perfected.

Consideration of Materials Filed

(3) The material on the appeal in writing shall be considered by a judge in chambers who may give directions as to whether the respondent should be requested to serve, file, and upload written argument and prescribe the times for doing so as well as for the service and filing of any reply in writing by the appellant.

(4) Where the judge in chambers considers that no written argument from the respondent is required, the judge shall prepare written reasons for dismissing the appeal.

(5) Where the judge in chambers directs that the respondent provide written argument and the appellant provide written argument in reply, the appeal shall be considered by the judge in chambers who required argument, or any other judge, who shall give written reasons for their decision.

(6) The reasons described in subrules 40.17(4) and 40.17(5) shall be dealt with as if they were a reserved judgment.

Trials *De Novo*

Notice of Application

40.18 (1) An application under subsection 822(4) of the *Criminal Code* for a trial *de novo* shall be made by notice of an application before a date has been fixed for hearing the appeal under rule 40.16.

Service of Notice

(2) Notice of an application for a trial *de novo* shall be served on every other party at least 7 days in advance, except that, if the notice is filed with the notice of appeal, it shall be served with the notice of appeal in accordance with subrules 40.06(1) to 40.06(6).

Date for Hearing of Application

(3) Upon receipt of an application under subrule 40.18(1), the clerk of the appeal court shall enter the application for hearing on a date fixed by a judge or, where hearing dates are not so fixed, enter the application on a list of applications to be heard at a regular or special sitting of the appeal court.

Notice of Hearing Date

(4) Unless directed otherwise by the Court, the clerk of the appeal court shall serve each party with a notice of the date on which the application is to be heard.

Abandonment of Appeals

Notice of Abandonment

40.19 (1) Where an appellant wishes to abandon their appeal, in whole or in part, they shall serve on the respondent, in the manner provided in rule 5, a notice of abandonment in Form 9, signed by the counsel of record in the appeal, or by the appellant.

Dismissal as Abandoned

(2) A judge in chambers may thereupon dismiss the appeal as an abandoned appeal, without the attendance of the counsel of record or the appellant.

Appeals Alleging Ineffective Assistance or Incompetence of Counsel

40.20 (1) Where a notice of appeal, factum, or appeal in writing includes a direct or indirect allegation that the appellant's trial counsel was incompetent or for any other reason provided ineffective assistance, both the counsel filing the notice of appeal, factum

or appeal in writing and the respondent shall notify the clerk of the appeal court forthwith of the allegation.

(2) Upon being notified in accordance with subrule 40.20(1), the clerk of the appeal court shall set a date for the attendance of the parties for directions by a judge.

(3) Where a notice of appeal directly or indirectly raises the issue of incompetence or ineffective assistance of counsel at trial, the parties to the appeal shall comply with the Superior Court of Justice Protocol – Allegations of Incompetence (Schedule 1).

Time Limits for Oral Hearings

40.21 (1) Unless otherwise directed or ordered by a practice direction, the Court or a judge, oral arguments shall be limited to:

(a) In a summary conviction appeal,

(i) 30 minutes for the appellant;
(ii) 20 minutes for the respondent; and,
(iii) 5 minutes reply for the appellant.

(b) In a sentence appeal,

(i) 15 minutes for the appellant;
(ii) 10 minutes for the respondent; and,
(iii) 5 minutes reply for the appellant.

(c) In a summary conviction and sentence appeal,

(i) 40 minutes for the appellant;
(ii) 25 minutes for the respondent; and,
(iii) 5 minutes reply for the appellant.

(2) In cases of complexity, a party may request additional time for oral argument by:

(a) making the request in their factum; and

(b) filing a separate notice of application, in Form 1, at the time of filing the factum.

(3) The application for additional time for oral argument shall be decided by:

(a) a judge assigned to review the application in chambers; or,

(b) where directed by the Court, a judge sitting in practice court, assignment court, or criminal motions court.

(4) Where a judge is assigned to review the application in chambers, the appeal court, or the clerk of the appeal court, shall notify the parties, in writing, of the judge's decision.

(5) Unless otherwise directed by the judge presiding over the hearing of the appeal, the parties shall adhere to the time assigned for oral argument.

Failure to Appear for the Hearing of the Appeal

Failure to Appear

40.22 (1) Where an appellant fails to appear personally or by counsel of record on the date and at the time fixed for the hearing a judge may, on proof that notice of hearing of the appeal has been given, dismiss the appeal for want of prosecution.

(2) Where a respondent fails to appear personally or by counsel of record on the date and at the time fixed for the hearing of the appeal a judge may, upon being satisfied that the appellant has not also defaulted under subrule 40.22(1), determine the appeal in the absence of the respondent or argument from the respondent, as the case may be.

Reasons for Judgment

Where Reasons in or Reduced to Writing

40.23 (1) In every appeal where reasons are given in writing or given orally and later reduced to writing, the clerk of the appeal court shall send a copy of the reasons:

> **(a)** where an appellant or respondent has appeared in person, to the appellant or respondent, as the case may be,
>
> **(b)** where the appellant or respondent has appeared by a counsel of record, to the counsel of record for the appellant or respondent, as the case may be,
>
> **(c)** to the trial court from which the appeal was taken, and,
>
> **(d)** to the Regional Senior Judge of the Ontario Court of Justice in the place where the proceedings arose.
>
> **(e)** to any other party or persons who were given intervener status.

Where Reasons in Writing Not Given

(2) Where reasons in writing are not given, the clerk of the appeal court shall notify the trial court of the result of the appeal.

Rule 41: Stays and Suspensions Pending Appeal

Application of the Rule

41.01 This rule applies to applications for an order:

(a) under section 261 of the *Criminal Code*, directing that any order under subsection 259(1) or (2) of the *Criminal Code* arising out of a conviction or discharge in respect of an offence under any of sections 220, 221, 236, 249 to 255 or 259 of the *Criminal Code* be stayed pending the final disposition of an appeal or until otherwise ordered by the Court; and,

(b) under subsection 683(5) of the *Criminal Code*, directing that any order there described be suspended until an appeal under section 813 of the *Criminal Code* has been determined.

To Whom Application Made

41.02 Applications under rule 41.01 shall be made to a judge in the place in which the appeal to which the application relates is to be heard.

Materials for Use on Application

Materials to be Filed

41.03 (1) Applications under rule 41.01 shall be commenced by a notice of application in Form 1 and shall be accompanied by:

(a) a copy of the information upon which the applicant was convicted or discharged of the offence to which the application relates;

(b) a copy of the notice of appeal and any supplementary notice of appeal;

(c) a properly signed and commissioned affidavit of the applicant deposing to the matters described in subrule 41.03(3);

(d) material related to the merits of the ground, or grounds, of the appeal; and,

(e) a copy of any other material in the court file that is necessary for the hearing and determination of the application.

(2) Material related to the merits of the ground, or grounds, of the appeal shall be provided to the respondent and the appeal court in one of the following forms:

(a) the written reasons, if available; or,

(b) a transcript of the reasons, if available; or,

(c) a written agreement between the parties, in accordance with subrule 41.03(8), setting out the reasons and evidentiary basis for the ruling; or,

(d) where an agreement cannot be reached, a copy of the digital audio recording of the reasons that are subject of the appeal and a detailed summary outlining the reasons and evidentiary basis for the ruling with timestamps of where the portions relied on are located on the digital audio recording.

Affidavit of the Applicant

(3) The affidavit of the applicant required by subrule 41.03(1)(c) shall contain:

(a) particulars of the offence of which the applicant was convicted or discharged, including reference to the results of any analyses of the applicant's bodily substances to determine the presence of alcohol or drugs, and whether the offence involved property damage, bodily harm or death;

(b) particulars of the applicant's driving record, if any;

(c) a statement of the applicant's places of abode in the three years preceding their conviction or discharge and where the applicant proposes to reside pending the determination of the appeal;

(d) particulars of the applicant's employment prior to conviction or discharge, and whether such employment is reasonably expected to continue pending the determination of the appeal;

(e) particulars of the applicant's criminal record, if any;

(f) a statement whether the applicant is addicted to the use of alcohol or other drugs and, if so, what steps, if any, the applicant has undertaken or proposes to undertake for the treatment of such addiction pending the determination of the appeal;

(g) particulars of what unnecessary hardship would be caused to the applicant if the stay or suspension were not entered;

(h) 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;

(i) the appellant's agreement that failure to comply with any condition of the release order or stay order may result in the revocation of the release or stay order and incarceration/ revocation of the stay order;

(j) the appellant's agreement that the appeal will be pursued with all due diligence; and,

(k) 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/expiry date of the stay order.

Applicant's Application Record

(4) Unless otherwise ordered by the judge hearing the application, the applicant shall prepare, serve, file, and upload an application record in accordance with rule 41.03, but no factum shall be required.

Respondent's Application Record

(5) The respondent may prepare, serve, file, and upload a respondent's application record in accordance with rule 41.03, but no factum shall be required.

(6) The material in relation to the merits of the appeal in subrule 41.03(1)(d) shall include the evidentiary basis and law upon which the ground of appeal is based as well as an opinion regarding the merits of the appeal.

(7) The presiding judge may determine that the material filed in regard to the merits of the appeal is insufficient for the assessment to be made and give any directions required to obtain the relevant information.

(8) Where a written agreement between the parties is filed in accordance with subrule 41.03(2)(c), the written agreement may take the form of:

(a) an agreed statement of facts signed by the parties; or,

(b) a detailed summary of the reasons and evidentiary basis for the ruling in the applicant's application with a statement that the respondent has agreed, in writing, to the facts as set out in the application; or,

(c) a detailed summary of the reasons and evidentiary basis for the ruling in the applicant's or counsel's affidavit with a statement that the respondent has agreed, in writing, to the facts as set out in the affidavit.

Service and Filing of Notice

General Rule

41.04 (1) The notice of application under subrule 41.03(1) and the supporting materials required by subrule 41.03(2) shall be served upon the respondent, in accordance with rule 5, at least 2 clear days before the date fixed for the hearing of the application.

Filing with Proof of Service

(2) The notice of application and supporting materials, together with proof of service thereof, shall be filed and uploaded at least 2 clear days before the date fixed for the hearing of the application.

Consent in Writing

41.05 The respondent may consent in writing to the order sought upon terms included in a draft order filed and a judge, satisfied that the relief sought by the applicant should be granted, may grant the order on such terms without the attendance of counsel.

Rule 42: Release from Custody Pending Appeal

Application of the Rule

42.01 This rule applies to applications in Form 1 by a person who was the defendant in a summary conviction proceeding and by whom an appeal has been taken under sections 813 or 830 of the *Criminal Code* for release from custody pending the hearing or determination of the appeal.

To Whom Application Made

42.02 An application referred to in rule 42.01 shall be made to a judge in the place where the appeal to which the application relates is to be heard.

Materials for Use on Application

Materials to be Filed

42.03 (1) Unless otherwise directed by the Court, the notice of application in Form 1 under this rule shall be accompanied by:

(a) a copy of the information upon which the appeal is taken;

(b) a copy of the notice of appeal and any supplementary notice of appeal;

(c) a properly signed and commissioned affidavit of the applicant deposing to the matters described in subrule 42.03(6);

(d) material related to the ground, or grounds, of the appeal in accordance with subrule 42.03(2);

(e) the pre-sentence report, if any;

(f) copies of any pre-trial release orders, together with the Court's reasons for the order(s);

(g) copies of any existing release orders in relation to other matters;

(h) a draft release order; and,

(i) a copy of any other material in the court file that is necessary for the hearing and determination of the application.

(2) Material related to the ground, or grounds, of the appeal shall be provided to the respondent and the appeal court in one of the following forms:

(a) the written reasons, if available; or,

(b) a transcript of the reasons, if available; or,

(c) a written agreement between the parties, in accordance with subrule 42.03(5), setting out the reasons and evidentiary basis for the ruling or,

(d) where an agreement cannot be reached, a copy of the digital audio recording of the reasons that are subject of the appeal and a detailed summary outlining the reasons and evidentiary basis for the ruling with timestamps of where the portions relied on are located on the digital audio recording.

(3) The material in relation to the merits of the appeal in subrule 42.03(1)(d) shall include the evidentiary basis and law upon which the ground of appeal is based as well as an opinion regarding the merits of the appeal.

(4) The presiding judge may determine that the material filed in regard to the merits of the appeal is insufficient for the assessment to be made and give any directions required to obtain the relevant information.

(5) Where a written agreement between the parties is filed in accordance with subrule 42.03(2)(c), the written agreement may take the form of:

(a) an agreed statement of facts signed by the parties; or,

(b) a detailed summary of the reasons and evidentiary basis for the ruling in the applicant's application with a statement that the respondent has agreed, in writing, to the facts as set out in the application; or

(c) a detailed summary of the reasons and evidentiary basis for the ruling in the applicant's or counsel's affidavit with a statement that the respondent has agreed, in writing, to the facts as set out in the affidavit.

Affidavit of the Applicant

(6) The affidavit of the applicant required by subrule 42.03(1)(c) shall state:

(a) the particulars of the conviction and, where applicable, sentence imposed at trial;

(b) any grounds of appeal not specified in the notice of appeal or supplementary notice of appeal;

(c) the places of abode of the appellant in the three years preceding the conviction, and where the appellant proposes to reside if released;

(d) the employment of the appellant prior to conviction and whether the appellant expects to be employed if released and, if so, where;

(e) the criminal record of the appellant, if any;

(f) what hardship would be caused if the appellant were to be detained in custody pending the determination of the appeal; and,

(g) where the appellant proposes to be bound by a release order with sureties, the amount of money or value of other security that the appellant proposes should be deposited and, where practicable, the names of the sureties and the amount for which each is to be liable.

Affidavit on Behalf of the Prosecutor

(7) Where the prosecutor wishes to assert that the detention of the applicant is necessary in the public interest, and to rely on material other than required to be filed under subrule 42.03(1) or 42.03(6), the prosecutor shall serve, file, and upload an affidavit setting out the facts upon which reliance is placed.

Cross-Examination on Affidavits

(8) Where an affidavit has been filed under this rule, the party opposite may cross-examine on such affidavit in accordance with rule 6.07.

Applicant's Application Record

(9) The applicant shall prepare an application record which shall contain, in consecutively numbered pages arranged in the following order:

> **(a)** a table of contents describing each document, including each exhibit, 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;
>
> **(c)** a copy of all material required to be filed under subrule 42.03(1), and,
>
> **(d)** a copy of any other material in the court file that is necessary for the hearing of the application,

but, unless a judge otherwise orders, no factum is required.

Respondent's Application Record

(10) Where the respondent is of the opinion that the application record is incomplete, the respondent shall, as soon as practicable after being served with the application record, prepare, serve, file, and upload with the clerk of the appeal court in the place where the application is to be heard the respondent's application record containing:

> **(a)** a table of contents describing each document, including each exhibit, by its nature and date and in the case of an exhibit, by exhibit number or letter; and,
>
> **(b)** a copy of the material to be used by the respondent on the application and not included in the application record,

but, unless a judge otherwise orders, no factum shall be required.

Material May be Filed as Part of Record

(11) Any material served by a party for use on an application may be filed and uploaded, together with proof of service, as part of the party's application record and need not be filed separately if the record is filed within the time prescribed for filing the notice or other material.

Responding Party's Position on the Application

(12) If the responding party is consenting or does not oppose any part of the application, they shall notify the applicant and the Court.

(13) If the responding party is consenting to the release of the applicant but opposing the proposed terms of release, they shall notify the applicant and the Court.

(14) Where the respondent is required to notify the applicant or the appeal court in accordance with subrule 42.03(12) or (13) they shall do so no later than 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 appeal court as soon as possible.

Filing and Service of Notice

General Rule

42.04 (1) The notice of application and the supporting materials required by subrule 42.03(1) shall be served upon the respondent, in accordance with rule 5, at least 2 clear days prior to the date fixed for the hearing of the application.

Filing with Proof of Service

(2) The notice of application and supporting materials, together with proof of service thereof, shall be filed with the office of the clerk of the appeal court in the place where the application is to be heard, and uploaded, at least 2 clear days before the date fixed for the hearing of the application.

Consent to Abridgment or Extension of Time

(3) Any time prescribed by this rule for serving or filing the notice of application or supporting materials may be abridged or extended by consent in writing endorsed on the relevant document by the party served.

Order Directing Release

Form of Order

42.05 (1) An order directing the terms upon which an accused is to be released from custody pending appeal upon application under this rule may be in Form 10.

Sufficiency of Order

(2) An order in Form 10 shall be sufficient authority for a justice to prepare the necessary release order when satisfied that any condition precedent thereto has been met.

Consent in Writing

(3) The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 10A, and a judge may grant such order without the attendance of counsel.

Conditions of Release

(4) Unless otherwise ordered by the judge hearing the application, every order for release from custody pending appeal shall contain the following terms:

> **(a)** that the appellant will surrender into custody at the institution from which they are released, or such other institution specified in the order, by 6:00 p.m. on the day prior to the hearing of the appeal or such other day as is specified in the order, whichever is earliest;
>
> **(b)** that the appellant will surrender on a date that pre-dates the expiry of the order, which, unless otherwise directed by the Court, is not more than 9 months from the date of the order;
>
> **(c)** 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;
>
> **(d)** that the appeal will be pursued with all due diligence;
>
> **(e)** that the appellant will keep the peace and be of good behaviour;
>
> **(f)** that the appellant will advise the clerk of the appeal court of his or her place of residence;
>
> **(g)** 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;
>
> **(h)** 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; and,
>
> **(i)** that the appellant will notify the clerk of the court and the Attorney General in writing within 24 hours of any change in their address and/or email address.

Expiration of Release Orders

(5) Unless otherwise ordered by the judge hearing the application, an order directing the release of the appellant from custody pending appeal shall contain a date when the order will expire that is not more than 9 months from the date of the order.

Variation of Release Order

(6) A judge may, on cause being shown, cancel an order previously made under section 816 of the *Criminal Code* and may make any order that could have been made under that section.

Order May be Made without Attendance of Counsel

(7) A new release order varying a condition may be made by a judge without the attendance of counsel, upon filing the written consent of counsel for the respondent.

Contents of Material to be Filed

(8) Where the appellant seeks an order under subrule 42.05(6) which varies the condition referred to in subrule 42.05(4)(a), the material filed in support of the application shall contain a summary of the status of the appeal, an explanation for any failure to comply with the rules and, where applicable, the earliest feasible date on which the appeal may be heard.

Rule 43: Extraordinary Remedies

Application of the Rule

43.01 This rule applies to applications in criminal matters by way of *certiorari*, *habeas corpus*, *mandamus*, *procedendo*, and prohibition, including applications to quash a *subpoena*, warrant, conviction, inquisition, or other order or determination and applications for discharge of a person in custody.

To Whom Application Made

43.02 Applications made under rule 43.01 shall be made to a judge of the Court in the place in which the proceedings to which the application relates have been, are being or are to be taken.

Contents of Notice

General Rule

43.03 (1) A notice of application under this rule shall be in Form 1 and comply with rule 6.03 and shall also specify the *subpoena*, warrant or other order or determination to which the application relates.

Applications to Quash

(2) Where an applicant seeks to quash a warrant, conviction, order or determination, other than a *subpoena* or warrant to compel the attendance of a witness, there shall be endorsed upon the notice of application a notice in the following form addressed to the Manager of Court Operations or the coroner, as the case may be:

> By virtue of subrule 43.03(3) of the *Criminal Proceedings Rules for the Superior Court of Justice (Ontario)*, you are, upon receiving this notice, to return forthwith to the clerk of the court at the place where the application is returnable true copies of the conviction (or as the case may be) herein referred to, together with true copies of the indictment, information, exhibits and papers or other documents touching the matter, as fully and as entirely as they remain in your custody, together with this notice and the certificate prescribed in the said rule.
>
> Dated this ____day of ____, 2___
>
> C.D,
>
> Counsel for the Applicant
>
> To: A.B.
>
> Manager of Court Operations at _____ (or the coroner, as the case may be)

Return to Clerk of the Court

(3) Upon receipt of the notice of application endorsed under subrule 43.03(2), the Manager of Court Operations or the coroner, as the case may be, shall forthwith return to the clerk of the court at the place where the application is returnable true copies of the conviction, order, or warrant, together with true copies of the indictment, information, exhibits, and any other proceedings or documents touching the matter, and the notice served with a certificate attached thereto in the following form:

> Pursuant to the accompanying notice I herewith return to this Honourable Court the following:
>
> True copies of:
>
> (1) the information;
> (2) the conviction (or as the case may be);
> (3) the exhibits, if capable of reproduction and relevant to the matters in question; and,
> (4) any other papers or documents touching the matter, if capable of reproduction and relevant to the matters in question.

And I hereby certify to this Honourable Court that I have above truly set forth all exhibits, papers, and documents in my custody or power relating to the matter set forth in the said notice of application.

Date: _____

Manager of Court Operations at _____ (or coroner, as the case may be)

Effect of Return

(4) Subject to subrules 43.03(5) and 43.03(6), the documents listed in the certificate under subrule 43.03(3), together with any transcript of the proceedings filed by the applicant, shall have the same effect in law as a return to a writ of *certiorari*.

(5) Subject to subrule 43.03(6), service of a notice of application to quash under subrule 43.03(2) upon a provincial court judge, justice or justices, coroner, or as the case may be, suspends the proceedings which are the subject of the application.

(6) A judge may, upon service of a notice of application, order that the proceedings which are the subject of the application to quash shall continue upon such terms as appear just.

Further or Amended Return

(7) The judge hearing an application to quash may direct a further or amended return.

Filing and Service of Notice

Time for Giving Notice of Application

43.04 (1) An applicant shall give notice of application in Form 1 and in accordance with rule 43.03 within 30 days after the day on which the order which is the subject of the application was made or given.

General Rule

(2) The notice of application shall be given:

(a) where the application includes an application for *certiorari*, *habeas corpus*, *mandamus*, *procedendo*, or prohibition, by personal service upon the provincial court judge, justice or justices, coroner or other person whose order is the subject of the application, in accordance with rule 5; and,

(b) where the applicant is His Majesty the King in Right of Ontario or Canada, as represented by the Attorney General, and the respondent is an accused, by

personal service on the respondent or counsel of record for the respondent, in accordance with rule 5;

(c) where the respondent is His Majesty the King in Right of Ontario or Canada, as represented by the Attorney General, by service upon the prosecutor in accordance with rule 5; and,

(d) by filing, with the clerk of the court in the place where the application is to be heard, two copies of the notice of application, together with proof of service thereof,

and the application shall be returnable within 30 days of service.

Extension of Time

(3) A judge, either before or upon the hearing of the application may, by order, extend any time prescribed by this rule, on such terms as appear just.

Consent to Extension of Time

(4) Any time prescribed by this rule for serving or filing the notice of application or supporting materials may be extended by consent in writing endorsed on the relevant document by the party served or in such other form as a judge of the Court may direct.

Materials for Use on Application

Materials to be Filed

43.05 (1) The notice of application in Form 1 shall be accompanied by:

(a) a copy of the *subpoena*, warrant, conviction, or other order or determination which is the subject of the application;

(b) a copy of the indictment (information) containing the charge to which the application relates;

(c) where there is no or an incomplete record of the proceedings giving rise to the issuance of the *subpoena*, warrant, or other order or determination which is the subject of the application, an affidavit of or on behalf of the applicant deposing to the matters described in subrule 43.05(2);

(d) a transcript of the proceedings giving rise to the issuance of the *subpoena*, warrant, or other order or determination which is the subject of the application; and,

(e) a copy of any other material in the court file that is necessary for the hearing and determination of the application.

Affidavit of or on Behalf of the Applicant

(2) The affidavit of or on behalf of the applicant described in subrule 43.05(1)(c) shall include:

(a) a description of the affiant's status and the basis of the affiant's knowledge of the matters deposed;

(b) a statement of the particulars of the charge to which the application relates, together with a date or dates scheduled for trial or preliminary inquiry in respect of such charge;

(c) a statement of all facts material to a just determination of the application which are not disclosed in any other materials filed in support of the application;

(d) where the applicant seeks *habeas corpus* to obtain release from custody, the consent of the applicant to dispense with the issue of the writ of *habeas corpus*, the return thereto, and the presence of the applicant before the judge determining the application; and,

(e) where the applicant seeks *habeas corpus* to obtain release from custody, a statement that the applicant is not required to be detained in custody in respect of any other matter.

Cross-Examination on Affidavits

(3) Where an affidavit has been filed under this rule, the party opposite may cross-examine on such affidavit in accordance with rule 6.07.

Use of Agreed Statement of Facts

(4) A judge, before or upon the hearing of the application, may act upon a statement of facts in accordance with rule 6.09.

Applicant's Application Record and Factum

(5) The applicant shall prepare, serve, file, and upload an application record and factum in accordance with subrules 6.05(1) and 6.05(2) and rule 33.

Respondent's Application Record and Factum

(6) The respondent shall prepare, serve, file, and upload an application record and factum in accordance with subrules 6.05(3) and 6.05(4) and rule 33.

Consent in Writing

43.06 The respondent may consent in writing to the order sought upon terms included in a draft order filed and a judge, satisfied that the relief sought by the applicant should be granted in the circumstances, may grant the order on such terms as are contained in the draft order filed without the attendance of counsel.

PART V: Parole Ineligibility Rules [Rule 50]

As per rule 1.02(3) this rule replaces the now repealed "Ontario Review of Parole Ineligibility Rules (Rule 50)", SOR/2013-249

Rule 50: Application for Reduction of Parole Ineligibility

Interpretation

50.01 In this rule, unless context requires otherwise,

applicant means a person who makes an application and includes counsel acting for that person; (*requérant*)

application means an application for the reduction in the number of years of imprisonment without eligibility for parole made under subsection 745.6(1) of the *Criminal Code*; (*demande*)

Attorney General means the Attorney General of Ontario and includes counsel acting for the Attorney General; (*procureur général*)

case management hearing means a hearing held before the jury is empanelled to hear the application; (*audience sur la gestion de l'instance*)

Chief Justice means the Chief Justice of the Superior Court of Justice (Ontario); (*juge en chef*)

clerk of the court means clerk of the Superior Court of Justice and includes the Registrar and local registrars of the Superior Court of Justice; (*greffier*)

Commissioner means the Commissioner of Corrections appointed pursuant to subsection 6(1) of the Corrections and Conditional Release Act; (*commissaire*)

institutional head in relation to a penitentiary, means the person who is normally in charge of the penitentiary. (Version anglaise seulement)

judge means a judge of the Superior Court of Justice (Ontario); (*juge*)

presiding judge means the judge who is designated by the Chief Justice under subsection 745.61(5) of the Code to empanel a jury. (*juge qui préside*)

Application of the Rule

Filing and Contents of Application

50.02 (1) The application shall be in Form 20 of the schedule and shall include the following information:

(a) the applicant's full name and date of birth;

(b) the name and address of the institution where the applicant is currently detained;

(c) the offence for which the applicant was convicted, the date of the offence, the date that the applicant was convicted of the offence, the place of trial where the applicant was convicted of the offence, the sentence and the date of sentencing;

(d) if the applicant was convicted of more than one murder, the reasons why subsection 745.6(2) of the Code does not apply to the application;

(e) the number of years of imprisonment without eligibility for parole imposed upon the applicant;

(f) the number of years of imprisonment served by the applicant on the date of the application;

(g) all relevant information, including judicial orders and reasons, pertaining to any previous application made by the applicant;

(h) a statement specifying how the applicant complies with the time limits set out in subsections 745.6(2.1) to (2.7) of the Code as well as any reasons for any extension of the time limits being sought;

(i) the name and address of each institution in which the applicant has been detained since the day of the arrest for the offence for which the applicant was convicted, as well as the date of entry and transfer into each institution;

(j) the applicant's criminal record;

(k) if they are reported, the reasons for trial judgment, sentence and any appeal, or the citations for the trial judgment, sentence and any appeal. If reasons are not reported, a summary of the offence for which the applicant was convicted;

(l) all grounds relied upon in support of the application and an outline of the evidence the applicant intends to seek to introduce at the hearing before the jury, stated precisely and concisely; and,

(m) the name and address of counsel for the applicant, if represented, and the applicant's address and email address for service.

Affidavit

(2) The application shall be accompanied by an affidavit of the applicant in Form 21 of the schedule.

Other Written Evidence

(3) The application shall include any other written evidence, including any report made available to the applicant by Correctional Service Canada or other correctional authorities.

Service And Filing of Notice

Service to Chief Justice

50.03 (1) The applicant shall serve an application on the Chief Justice by email to SCJOfficeoftheChiefJustice.Mail@ontario.ca.

(2) Where an applicant does not have legal counsel and does not have access to email, the applicant may serve an application on the Chief Justice at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5 by registered mail.

Service on Other Parties

(3) The applicant shall also serve a copy of the application on

(a) the Crown Attorney in the location where the applicant's trial took place, who shall receive it on behalf of the Attorney General;

(b) the Commissioner, at Correctional Service of Canada, 340 Laurier Avenue West, 9B-18, Ottawa, Ontario K1A 0P9; and,

(c) the institutional head of the penitentiary where the applicant is detained.

(4) The application shall be served on each party by registered mail, unless a party or the parties consent to receiving the application by email or any other electronic means agreed to.

Date of effective service

(5) Where the application is served by registered mail, it is deemed to be effective on the fifth day after the day on which it is mailed.

(6) Where the application is served electronically, it is deemed to be effective on the day it is sent, except where it is sent after 4 p.m. or at any time on a holiday, in which case it is deemed to have been made on the next day that is not a holiday.

Proof of service

(7) Proof of service of an application shall be established by the person who effected the service by emailing a copy of Form 7 (Affidavit of Service) in the schedule to the Criminal Proceedings Rules for the Superior Court of Justice (Ontario) to the Chief Justice, unless the applicant does not have legal counsel and does not have access to email, in which case proof of service may be established by mailing a copy of Form 7 (Affidavit of Service) to the Chief Justice.

Judicial Screening Under Section 745.61 of the *Criminal Code*

Designation of judge

50.04 (1) On receipt of an application, the Chief Justice shall notify the following persons of their determination as to whether they will conduct a judicial screening under subsection 745.61(1) of the *Criminal Code* or designate a judge in writing to do so:

(a) the applicant;

(b) the Crown Attorney in the location where the applicant's trial took place, who shall receive notice on behalf of the Attorney General;

(c) the Commissioner at Correctional Service of Canada, 340 Laurier Avenue West, 9B-18, Ottawa, Ontario K1A 0P9; and

(d) the institutional head of the penitentiary where the applicant is detained.

Eligibility

(2) The Chief Justice or the judge conducting the judicial screening shall determine whether the applicant is eligible to apply for judicial review, in accordance with the criteria set out in section 745.6 of the *Criminal Code*.

Submission of Written Evidence by Attorney General

(3) The Attorney General may, within 120 days after the day on which the notification referred to in subrule 50.04(1) is received, submit any written evidence under paragraph 745.61(1)(c) of the *Criminal Code* to be considered at the judicial screening.

Report

(4) The material of the Attorney General may include any report made available to the Attorney General by Correctional Service of Canada or any other correctional authorities.

Service of Evidence

(5) The material referred to in subrules 50.04(3) and 50.04(4) shall be served on the following persons, in accordance with rule 50.03:

(a) the Chief Justice or the judge;

(b) the applicant;

(c) the Commissioner at Correctional Service of Canada, 340 Laurier Avenue West, 9B-18, Ottawa, Ontario, K1A 0P9; and,

(d) the institutional head of the penitentiary where the applicant is in custody.

Deadline for Report

(6) Correctional Service of Canada or other correctional authorities may, within 120 days after the day on which the notification referred to in subrule 50.04(1) is received, submit any report under paragraph 745.61(1)(b) of the *Criminal Code* to be considered at the judicial screening.

Service of Report

(7) The report referred to in subrule 50.04(6) shall be served, in accordance with rule 50.03, on the following persons:

(a) the Chief Justice or the judge;

(b) the applicant; and

(c) the Crown Attorney in the location where the applicant's trial took place, who shall receive it on behalf of the Attorney General.

Judicial Screening to be on the Basis of Written Material Unless Otherwise Ordered

(8) Unless otherwise ordered by the Chief Justice or the judge conducting the judicial screening, the decision on the judicial screening of the application will be based entirely

on the written material submitted by the applicant, the Attorney General and Correctional Service Canada or other correctional authorities.

Granting Judicial Screening Application

(9) If the Chief Justice or the judge determines that the applicant has established their eligibility to apply for judicial review and that there is sufficient merit to warrant empanelling a jury in accordance with the *Criminal Code*, the Chief Justice or the judge conducting the judicial screening shall grant the application for judicial screening and may issue reasons for their decision.

Dismissal of Application

(10) If the Chief Justice or the judge determines that the applicant has not established their eligibility to apply for judicial review or there is not sufficient merit to warrant empanelling a jury in accordance with the *Criminal Code*, the Chief Justice or the judge conducting the judicial screening shall dismiss the application with reasons and may render a decision under subsection 745.61(3) of the *Criminal Code*.

Notification of Decision

(11) The Chief Justice or the judge shall notify the following persons of their decision to grant or dismiss the application:

(a) the applicant;

(b) the Crown Attorney in the location where the applicant's trial took place, who shall receive it on behalf of the Attorney General;

(c) the Commissioner at Correctional Service of Canada, 340 Laurier Avenue West, 9B-18, Ottawa, Ontario K1A 0P9; and

(d) the institutional head of the penitentiary where the applicant is in custody.

Notification to Chief Justice

(12) If the decision has been made by a judge conducting the judicial screening, the judge shall notify the Chief Justice of their decision.

(13) If the Chief Justice or the judge grants the application for judicial screening, they shall make an order that a parole eligibility report be prepared in respect of the applicant, containing the information set out in subrule 50.07(2) and having regard to the criteria referred to in subsection 745.63(1) of the *Criminal Code*.

Designation of Presiding Judge

50.05 (1) If the Chief Justice grants the application for judicial screening in accordance with subrule 50.04(9), the Chief Justice shall designate, in writing, a presiding judge who will empanel a jury to hear the application under subsection 745.61(5) of the *Criminal Code*.

Presiding Judge

(2) If the judge grants the application for judicial screening in accordance with subrule 50.04(9), the judge shall be designated by the Chief Justice as the presiding judge who will empanel a jury to hear the application under subsection 745.61(5) of the *Criminal Code*.

Assignment of Another Judge

(3) The Chief Justice may decide to assign another presiding judge to empanel a jury under subsection 745.61(5) of the *Criminal Code* to hear the application. The Chief Justice shall provide notice in writing of the assignment to the applicant and the Attorney General.

Place of Hearing

(4) The hearing of the application shall be held in the jurisdiction in which the applicant's trial was held, unless the Chief Justice or the presiding judge orders otherwise.

Case Management Hearings

50.06 (1) The presiding judge shall hold a case management hearing or hearings in connection with the application, and the local clerk of the court shall give written notice of the date and time of the hearing to the applicant and the Attorney General.

Place of Hearing

(2) A case management hearing shall be held in the jurisdiction in which the jury will be empanelled, unless the presiding judge orders otherwise.

Applicant's Obligation to Attend

(3) If evidentiary or other rulings will be made at a case management hearing, the applicant shall attend the hearing either in person or, if the necessary facilities are available and the applicant is able to communicate privately with their counsel during the case management hearing, by video conference.

Optional Attendance

(4) If evidentiary or other rulings will not be made at a case management hearing, the applicant is not required to attend the hearing but may, at the discretion of the presiding judge, attend the hearing in person or by video conference in accordance with subrule 50.06(3).

Information to be Provided

(5) At a case management hearing, the applicant and the Attorney General shall inform the presiding judge of

(a) any evidence that they intend to present at the hearing of the application and the manner in which they intend to present it; and

(b) the names of witnesses, if any, to be called by the parties.

Powers of Presiding Judge

(6) At a case management hearing, the presiding judge may

(a) determine the date and place for the hearing of the application;

(b) permit the proof of facts by affidavit;

(c) make rulings regarding the admissibility of any evidence, including on any information that a victim may wish to provide at the hearing, having regard to paragraph 745.63(1)(d) and subsection 745.63(1.1) of the *Criminal Code*;

(d) determine any matter or give any directions necessary that may promote a fair and expeditious hearing of the application; and

(e) adjourn the hearing, if the presiding judge considers it appropriate, and resume the hearing at a time and place determined by the presiding judge.

Deponents' Attendance at Hearing

(7) If the presiding judge makes an order under subrule 50.06(6)(b), the judge may require the attendance of the deponent at a case management hearing or at the hearing of the application, for the purpose of cross-examination on the affidavit.

Parole Eligibility Report

Adjournment

50.07 (1) The presiding judge may adjourn a case management hearing until the parole eligibility report ordered by the Chief Justice or by the judge conducting the judicial screening under subrule 50.04(13) is received by the judge.

Author and Contents of Parole Eligibility Report

(2) The parole eligibility report shall be prepared by a person designated by the institutional head of the penitentiary where the applicant is detained and shall contain

(a) a summary of the applicant's social and family background;

(b) a summary of the applicant's classification and discipline evaluations;

(c) a summary of the regular reports on the applicant's conduct;

(d) a summary of any psychological and psychiatric assessments that have been made of the applicant;

(e) any other information relevant to a complete description of the applicant's character and conduct; and,

(f) any other information relevant to the issue of the applicant's parole eligibility.

Filing and Delivery of Parole Eligibility Report

(3) Upon completion, the parole eligibility report shall be filed without delay with the local clerk of the court at the place where the management hearing is held, and uploaded, and the local clerk of the court shall deliver a copy of the report to the presiding judge, the applicant and the Attorney General.

Resumption of Case Management Hearing

(4) On receipt of the parole eligibility report, the presiding judge may set a date for the resumption of the case management hearing which shall be at least 30 days after the day on which the parole eligibility report is received and direct the local clerk of the court to notify the applicant and the Attorney General of the date set.

Dispute of Parole Eligibility Report

(5) If the applicant or the Attorney General disputes any part of the parole eligibility report, they may require that the author of the report attend at a case management hearing for the purpose of cross-examination.

Determination by Presiding Judge

(6) The presiding judge may determine the admissibility of any part of the parole eligibility report.

Hearing of Applications

Disclosure

50.08 (1) The applicant and the Attorney General shall ensure that full disclosure of all documents has been made to the other party in accordance with any instructions given by the presiding judge.

Empanelling Jury

(2) A jury referred to in subsection 745.61(5) of the *Criminal Code* shall be empanelled in accordance with Part XX of the *Criminal Code*.

Challenges for Cause

(3) The provisions of sections 638 and 639 of the *Criminal Code* with respect to challenges for cause apply to the jury selection with any modifications that the circumstances require.

Record of Proceedings

(4) The hearing shall be recorded in the same manner as trials in the Superior Court of Justice (Ontario).

In-camera Hearings

(5) On application by either party or if the presiding judge is of the opinion that it is necessary to do so in the maintenance of order or the proper administration of justice, the presiding judge may, on notice to the media, order that any part of a proceeding in relation to an application be held in camera or order a total or partial publication ban of any evidence presented at any such proceeding.

Conduct of Hearing

(6) At the hearing of an application or during a case management hearing, the presiding judge may hold a voir dire on the admissibility of any proposed evidence, including the parole eligibility report.

Additional Orders

(7) The presiding judge may, at any time, make any order or give any direction that the judge considers necessary in the interests of justice, including

> **(a)** an order setting time limits on the presentation of evidence, submissions and closing arguments; and
>
> **(b)** an order requiring that the applicant be brought before the Court.

Application of Section 527 of the *Criminal Code*

(8) If the presiding judge makes an order under subrule 50.08(7)(b), section 527 of the *Criminal Code* applies with any modifications that the circumstances require.

Evidence of the Applicant

(9) Unless the presiding judge orders otherwise, at the hearing of an application, the applicant shall present evidence first and may, if the presiding judge permits, present rebuttal evidence after the evidence of the Attorney General is presented.

Evidence of Attorney General

(10) In presenting the evidence of the Attorney General, the Crown Attorney shall have regard to paragraph 745.63(1)(d) and subsection 745.63(1.1) of the *Criminal Code*.

Address to Jury

(11) Unless the presiding judge orders otherwise, after all of the evidence has been presented, the applicant shall address the jury first.

Instructions by Presiding Judge

(12) After the address to the jury by the applicant and the Attorney General, the presiding judge shall give instructions to the jury on the applicable law and evidence.

Transcripts

(13) A duly certified transcript of the proceedings at the trial and the sentencing of the applicant shall be admissible as evidence at the hearing of the application.

Schedule 1

Superior Court of Justice Protocol – Allegations of Incompetence

1. Before raising the incompetence or ineffective assistance of counsel, or that counsel otherwise contributed to a miscarriage of justice, appellate counsel has an obligation to satisfy themselves as soon as possible, by personal inquiry or investigation, that there is some factual foundation for the allegation, apart from the instructions of the appellant: *R. v. Elliott* (1975), 28 C.C.C. (2d) 546 (Ont. C.A.), *R. v. Hofung* (2001), 154 C.C.C. (3d) 257 at paras. 47-48 (Ont. C.A.), *R. v. Wells* (2001), 139 O.A.C. 356 at para. 76.

2. Appellate counsel should provide trial counsel, including duty counsel, with informal notice of the general nature of the potential allegations concerning ineffective assistance, and give counsel a reasonable opportunity to respond to the potential allegations. While not essential to permit trial counsel to respond (*R. v. Dunbar and Logan* (1982), 68 C.C.C. (2d) 13 (Ont. C.A.)), appellate counsel should seek a waiver in writing of solicitor-client privilege with respect to communications between the Appellant and trial counsel, insofar as it is necessary to preserve the professional integrity of counsel, while responding to the allegation. The waiver should be filed with the Notice of Appeal, or Supplementary Notice of Appeal.

3. When appellate counsel decides to make the allegation public in a Notice of Appeal, Supplementary Notice of Appeal, Factum or affidavit, appellate counsel must first provide trial counsel with a copy of the document. Similarly, appellate counsel must provide trial counsel with a copy of subsequent documents that deal with the allegations.

4. When the Notice of Appeal alleging the incompetence or ineffective assistance of counsel, or that counsel otherwise contributed to a miscarriage of justice, is filed, appellate counsel shall notify the clerk of the appeal court and the Crown Attorney or Federal Prosecutor that a judge is required to supervise the appeal.

5. Where the Crown receives a Notice of Appeal in which the ineffective assistance of trial counsel etc. is raised by appellate counsel or an unrepresented litigant, and no request has been made for the appointment of a judge to supervise the appeal, the Crown shall notify the clerk of the appeal court that a judge is required to supervise the appeal.

6. Upon receipt of a request for the appointment of a judge to supervise an appeal, the clerk of the appeal court shall transfer the appeal file to the Regional Senior Justice or his / her designate, to appoint a judge to supervise the appeal.

7. A Crown Attorney shall be assigned to deal with all issues relating to the appeal, not later than the date upon which the request is made to appoint a judge to supervise the appeal.

8. The assigned judge shall conduct conference(s) with counsel to supervise the subsequent progress of the perfection and argument of the appeal and hear pre-appeal applications by counsel. The judge shall conduct the supervision in the manner that best accomplishes the objectives of fairness in dealing with allegations of professional incompetence, and the need to have appeals heard in a timely fashion. This may, but not necessarily must, involve the procedures covered in the Court of Appeal's Procedural Protocol (Appendix A). Conferences with counsel representing both parties shall be held in chambers or by conference call, subject to the discretion of the assigned judge. Conferences with unrepresented litigants should be held in court with a court reporter present.

9. Whether or not trial counsel has filed an affidavit, either party to the appeal may apply to the assigned judge to compel the appearance of trial counsel to be examined, either in or out of court, before the appeal.

10. The assigned judge shall make rulings necessary to promote a full and fair hearing of the issues raised. For example, the assigned judge may rule on claims of privilege, the production to appellate and Crown Counsel of trial counsel's file where necessary, requiring the attendance of trial counsel and others for examinations in or out of court before the hearing of the appeal, and costs associated with those attendances and transcript production, and the schedule and procedure for the examinations.