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**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL CRIMINAL APPEAL RULES (2002)**

The Supreme Court of Newfoundland and Labrador – Court of Appeal, pursuant to subsection 482(1) of the *Criminal Code*, hereby makes the annexed *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)*.

St. John's, Newfoundland and Labrador, June 4, 2002.

Honourable Clyde K. Wells
Chief Justice of Newfoundland and Labrador
Supreme Court of Newfoundland and Labrador –
Court of Appeal

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL CRIMINAL APPEAL RULES (2002)**

The following Rules are made pursuant to subsection 482(1) of the *Criminal Code* of Canada.

INTERPRETATION

1. (1) In these Rules, unless the context otherwise requires:

"appeal" includes an application for leave to appeal and cross-appeal. (*appel*)

"appellant" means the person who is appealing from conviction or sentence, or both, and in an appeal by the Crown means Her Majesty the Queen represented by the Attorney General and includes an appellant by cross-appeal. (*appelant*)

"Attorney General" means the Attorney General as defined in section 2 of the Code and includes counsel instructed by him or her, and Her Majesty the Queen represented in an appeal by the Attorney General. (*procureur général*)

"Chief Justice" means the Chief Justice of Newfoundland and Labrador or, in the absence of the Chief Justice of Newfoundland and Labrador, the next senior judge. (*juge en chef*)

"Code" means the *Criminal Code*. (*Code*)

"Court" means the Supreme Court of Newfoundland and Labrador – Court of Appeal or a judge or judges. (*cour*)

"judge" means a judge of the Court and includes a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador, whenever any such judge is sitting ex-officio, as a judge of the Court. (*juge*)

"judgment" means the formal disposition of an appeal by the Court and includes an order for judgment. (*jugement*)

"notice of appeal" includes notice of application for leave to appeal and notice of cross-appeal. (*avis d'appel*)

"prisoner appeal" means an appeal by a person who at the time of the filing of the notice of appeal is in custody and not represented by counsel. (*appel d'un détenu*)

"provincial court judge" includes the definition ascribed to that term by the Code. (*juge de la cour provinciale*)

"Registrar" means the officer of the Court appointed as deputy registrar or a clerk of the Court discharging the functions of deputy registrar. (*registraire*)

"respondent" means Her Majesty the Queen represented by the Attorney General in the case of a person who appeals against conviction or sentence, and where an appeal is by Her Majesty the Queen represented by the Attorney General, means the person whose acquittal or sentence is appealed, or in whose favour a court has refused to exercise its jurisdiction or has issued an order to quash or stay an indictment. (*intimé*)

"time prescribed" means the time limited or appointed by these Rules or by a judgment or order. (*délai prescrit*)

"trial judge" means the judge who presided at trial. (*juge de première instance*)

- (2) The interpretation sections of the Code apply to these Rules.

APPLICATION OF RULES

2. (1) These Rules shall apply to appeals under Part XXI and under sections 784, 830 and 839 of the Code, and to any other appeal filed in the Court in relation to any cause or matter processed in accordance with criminal procedures, so far as the Rules are not inconsistent with any provision of the Code or any other statute or any uniform rules of court made by the Governor in Council under subsection 482(5) of the Code.
- (2) The provisions of these Rules relating to prisoner appeals shall, subject to Rule 2(1) and with the necessary modifications, apply to an appeal by any person who, although not convicted, is detained in custody and appeals under section 672.72 of the Code.

NOTICE OF APPEAL

3. (1) The notice of appeal shall set out the grounds of appeal. In appeals by a convicted person not represented by counsel, the notice shall be in the manner set out in Form B. In all other appeals by a convicted person or by the Attorney General or an informant, the notice shall be in Form A.
- (2) The senior official of every penal institution shall supply to any prisoner in custody, on request, forms of notice of appeal for the prisoner's use.
- (3) Except where Rules 3(4), (5) or (6) apply, a notice of appeal
 - (a) from conviction, or conviction and sentence, or sentence only, shall be filed not later than 30 days after the date of sentence; and
 - (b) from acquittal shall be filed not later than 30 days after the date of acquittal.
- (4) Where a person is acquitted of an offence but is convicted instead of an included offence, a notice of appeal from the acquittal shall be filed not later than 30 days after the date of sentence imposed in respect of the included offence.
- (5) Where an appeal is to be taken in respect of one or more counts in an indictment, a notice of appeal from conviction, acquittal or sentence shall be filed not later than 30 days after the acquittal or sentence, in respect of any count in the indictment.
- (6) Where an appeal is to be taken under section 784 or 839 of the Code, a notice of appeal shall be filed not later than 30 days after the date of pronouncement of the decision in the court appealed from or, if the decision is reserved, after the date of the filing of written reasons for the decision.

FILING AND SERVICE OF THE NOTICE OF APPEAL

4. (1) In a prisoner appeal, filing of a notice of appeal shall be effected by delivering the notice of appeal to the senior official of the penal institution in which the appellant is imprisoned. The senior official shall endorse on the document the date of receipt and shall then return a copy so endorsed to the appellant and forthwith forward the original to the Registrar.
- (2) In all cases where the Attorney General is not the appellant, other than in a prisoner appeal, filing of a notice of appeal shall be effected by
 - (a) filing the original and four copies of a notice of appeal with the Registrar; or
 - (b) mailing the documents to the Registrar by prepaid registered mail.
- (3) The Registrar shall, on receipt of the notice of appeal under Rules 4(1) and (2), effect service by forwarding a copy to the Attorney General and to the court appealed from.

- (4) In an appeal by the Attorney General, the notice of appeal shall be filed with the Registrar. Service by the Attorney General on the respondent or other parties shall be effected within 30 days after such filing by
 - (a) personal service on the respondent;
 - (b) service on the respondent's legal counsel, if counsel accepts service on behalf of the respondent or if counsel already appears as counsel of record in the Court;
 - (c) service on the appropriate senior official of the penal institution if the respondent is in custody;
 - (d) verified facsimile transmission; or
 - (e) any other manner as may be directed by the Court.
- (5) Proof of service of the notice of appeal, in appeals under Rule 4(4), shall be filed with the Registrar forthwith.
- (6) A notice of cross-appeal shall be filed not later than 30 days after receipt by the cross-appellant of the notice of appeal and shall be served in accordance with this Rule.

INTERVENTION

5. (1) Any person, including an Attorney General, interested in an appeal between other parties may, by leave of the Court, intervene in the appeal on any terms and conditions that the Court determines.
- (2) An application for intervention shall briefly
 - (a) describe the intervenor and the intervenor's interest in the appeal;
 - (b) identify the position to be taken by the intervenor on the appeal; and
 - (c) set out the submissions to be advanced by the intervenor and their relevance to the appeal, and the reasons for believing that those submissions will be useful to the Court and different from those of the parties or other intervenors.

LEAVE TO APPEAL

6. (1) Where leave to appeal is required, arguments respecting leave shall be presented at the hearing of the appeal unless
 - (a) the appellant or respondent applies, with appropriate supporting materials, for the issue of leave to be determined prior to the hearing of the appeal; or
 - (b) the Court of its own motion requires the parties to appear, with appropriate supporting materials, at a hearing to determine the issue of leave.
- (2) On the hearing of an application, the Court may grant leave, refuse leave or postpone the decision until the hearing of the appeal.

REPORT OF A TRIAL JUDGE

7. (1) Where the Court or one of the parties requests that the trial judge furnish a report on the case or on any matter relating to the case, notice shall be given to the parties who shall have the opportunity to make submissions to the Court concerning

- (a) whether the trial judge's report is to be furnished; and
 - (b) if the report is to be furnished, the scope of the report to be requested.
- (2) Where the Court directs that a report of the trial judge is to be furnished, the Registrar shall, on receipt of the report, mail copies to the parties to the appeal.

APPEALS IN WRITING

8. (1) Where an appellant desires to present argument on appeal in writing instead of appearing in person or by counsel, he or she shall state the intention to do so in the notice of appeal and may include in it points of argument, or file and serve a factum in the manner and within the time prescribed by these Rules.
- (2) Where a respondent desires to present argument on appeal in writing instead of appearing in person or by counsel, he or she shall advise the Registrar and the appellant of their intention to do so at the time he or she files and serves a factum. Such factum shall be filed and served in the manner and within the time prescribed by these Rules.

EXTENSION OR ABRIDGMENT OF TIME

9. (1) Any time prescribed by these Rules, including the time prescribed for the filing of a notice of appeal, may be extended or abridged by the Court before or after the expiration of the period.
- (2) Notice of an application to extend or abridge the time shall be given to the opposite party, unless such application is made by consent or unless otherwise directed by the Court.
- (3) An application to extend or abridge the time for filing a notice of appeal shall include an affidavit and any other relevant material indicating
- (a) the potential merits of the appeal, including any questions of law that may be in issue on the appeal;
 - (b) an explanation for the failure to have filed the notice of appeal in accordance with the time limits prescribed by these Rules;
 - (c) whether the applicant had demonstrated an intention to appeal within the appeal period;
 - (d) the existence of any prejudice to the intended respondent and any third parties if the appeal were allowed to proceed;
 - (e) the existence of any special circumstances that might cause an injustice to the applicant if the application were refused; and
 - (f) any other information or factors as might reasonably have a bearing on the application.
- (4) An appellant not represented by counsel may apply for an extension or abridgement of time by including with the proposed Form B notice of appeal an application for such extension. The Court may, on notice to the Attorney General and on giving the Attorney General an opportunity to be heard, consider the application and either grant or refuse the requested extension. The Registrar shall send to each party a copy of the Court's order.
- (5) Where an application under this Rule is heard by a judge, and the judge dismisses it, the applicant may, by filing a notice in writing with the Court within seven days after such dismissal, have the application to extend or abridge the time determined by a panel of the Court.

EFFECT OF NON-COMPLIANCE WITH RULES

10. (1) Subject to Rule 10(3), non-compliance with these Rules does not render a proceeding void, but where non-compliance occurs, the Court may give any direction or make any order it considers appropriate to give effect to the intent of these Rules.
- (2) Where a party to an appeal or counsel fails to perfect the appeal within a period of 6 months after the filing of the transcript or, where no transcript is filed, within a period of 12 months after the filing of the notice of appeal, or a party or their counsel otherwise fails to comply with these Rules, the Court, on application of any other party to the appeal or of its own motion, on giving to the parties such notice, if any, as the Registrar is able to effect, or without notice if reasonable notice cannot be effected, may
 - (a) strike out the appeal;
 - (b) direct the appellant to perfect the appeal within a specified time;
 - (c) fix a date for hearing of the appeal; or
 - (d) make any other order as may be just.
- (3) Where the notice of appeal was filed prior to January 1, 2000, and 12 months after the day on which these Rules come into force have passed since the last step was taken, and no other order has been made under these Rules, the appeal shall be deemed to have been abandoned and the Registrar shall file a notice of deemed abandonment.
- (4) On filing a notice of deemed abandonment of the appeal, the Registrar shall send a copy of the notice by ordinary mail or by facsimile transmission to counsel of record or to the parties at the last known addresses, if any, of such counsel or parties indicated in the documents filed in the appeal. The Registrar shall, within three months of filing of such notice of deemed abandonment, publish notice of it in *The Newfoundland and Labrador Gazette*, or publish notice in a single notice containing a list of all the appeals abandoned during the preceding three months.
- (5) Inability or failure of the Registrar to effect any notice required by this Rule shall not affect the deemed abandonment or striking out of an appeal.
- (6) No proceedings shall thereafter be taken in any appeal deemed abandoned or struck out under this Rule unless the appeal is reinstated by the Court, which the Court may do on such terms as the Court deems just.
- (7) The Court shall, on application by a party prior to the date on which the appeal would be deemed to be abandoned, on such terms as the Court deems just, order that the appeal not be deemed abandoned.

TRANSCRIPTS

11. (1) Subject to this Rule, the parties to an appeal shall file with the Court only those portions of the transcript of the proceedings in the court appealed from that are necessary to enable the issues raised on appeal to be determined.
- (2) Except:
 - (a) in a prisoner appeal,
 - (b) in an appeal from a summary conviction appeal court, or
 - (c) where a judge otherwise orders,

an appellant shall file with the notice of appeal a copy of the request for transcript and certificate in Form D requesting the preparation of those portions of the record in the proceedings that he or she believes are necessary to enable the

issues on appeal to be determined and containing certificates stating that the request has been sent to other parties and to the court reporter's office.

- (3) The appellant shall, within 15 days after filing the notice of appeal, file with the Registrar a certificate of court reporter in Form E certifying receipt of the request for transcript.
- (4) In a prisoner appeal, the Attorney General shall, after receiving a notice of appeal
 - (a) send a request for transcript and certificate in Form D and a certificate of court reporter in the manner set out in Form E, with such modifications as may be necessary;
 - (b) file copies of the completed certificates with the Registrar; and
 - (c) forward copies to the prisoner.
- (5) In an appeal from a summary conviction appeal court, the transcript shall, unless otherwise ordered by the Court, consist of
 - (a) the transcript of proceedings in the trial court as it was submitted on appeal to the summary conviction appeal court, and
 - (b) only those portions of the transcript of proceedings in the summary conviction appeal court as may be necessary to enable the issues on appeal to be determined,and the appellant shall file with the notice of appeal a request for transcript and certificate in Form D and, within 15 days thereafter a certificate of court reporter in Form E, with such modifications as may be necessary, in relation to any portions of the proceedings in the summary conviction appeal court which the appellant believes are necessary to enable the issues on appeal to be determined.
- (6) Unless the Court otherwise orders, where an appeal is against sentence only, the transcript shall be limited to
 - (a) the evidence given and submissions made on the issue of sentence; and
 - (b) the reasons for sentence given by the sentencing judge.
- (7) Where a party to an appeal receives a copy of a request for transcript and certificate prepared by another party, the receiving party may
 - (a) where he or she believes that additional portions of the transcript of the proceedings are necessary to enable the issues on appeal to be determined, and
 - (b) within 15 days after receipt, or within such longer time as the Court may allow,deliver a request for further portions of transcript and certificate in Form F to the applicable court reporter's office and to the other parties to the appeal, file a copy of it with the Registrar, and within 15 days thereafter file with the Registrar a certificate of court reporter in Form E, with such modifications as may be necessary, certifying receipt of the request for additional transcript.
- (8) A party to an appeal may at any time apply to the Court for an order
 - (a) excising portions of the transcript of the proceedings which have been requested or prepared and which are unnecessary or inappropriate for the determination of the issues on an appeal; and
 - (b) adding such further portions of the transcript of the proceedings as may be determined to be necessary to the determination of the issues on an appeal.

- (9) The Court may at any time of its own motion order that the transcript of the proceedings be abridged or amplified.
- (10) The parties to an appeal may agree, in writing to be filed in the Court:
 - (a) to substitute an agreed statement of facts in place of all or any portion of the transcript of the proceedings and the exhibits; and
 - (b) to submit a joint request for transcript in Form D and certificate of court reporter in Form E, with such modifications as may be required.
- (11) Where the Court concludes that all or any parties to an appeal have not made reasonable efforts to abridge the transcript of the proceedings so that only those portions as may be reasonably necessary to enable the issues on appeal to be determined are filed with the Court, the Court may make any order that it deems appropriate in the circumstances.
- (12) When the transcript of the proceedings has been prepared as requested, the court reporter shall forthwith forward the original transcript and three copies, together with the original file, to the Registrar and shall make arrangements for the delivery of copies to the parties to the appeal, or their counsel. The Attorney General shall, in the case of a prisoner appeal, be responsible for service of the transcript on the parties to the appeal.
- (13) The Registrar shall, on receipt of the original transcript and copies, notify the parties that the transcript has been received by the Court.

EXHIBITS

12. (1) Except where otherwise provided by the Code, all documents, exhibits and other things received in connection with a trial or proceeding that is appealable under these Rules shall be retained by the trial court, the Crown or the Registrar, as the case may be, for a period of 90 days after the expiration of the time limited for filing a notice of appeal. If an appeal is not commenced before that time and unless a judge or the trial judge otherwise orders, all such documents, exhibits or other things shall be returned to and received by the party who produced them at the trial or proceeding or who had custody and control of them at the trial or proceeding or to counsel.
- (2) On receipt or filing of a notice of appeal, the Registrar or clerk of the trial court shall forthwith
 - (a) cause to be sent to the Registrar a list of all documents, exhibits and other things that were before the trial court; and
 - (b) advise any other person who has custody of those documents, exhibits and other things of the appeal.Thereafter the documents, exhibits and other things shall be retained in the custody of that person until the appeal is finally disposed of. On the final disposition of the appeal and subject to any order that may be made by a judge, the custodian of those items shall dispose of them in the manner provided in Rule 12(1).
- (3) Notwithstanding the provisions of this Rule, the Court may at any time prior to the final disposition of the appeal request the custodian of the documents, exhibits and other things to forward all or any of them to the Court, and the custodian shall immediately comply with such request.
- (4) Nothing in this Rule shall alter the results of application of the provisions of the *Controlled Drugs and Substances Act* or of any other federal or provincial enactment insofar as they relate to documents, exhibits or other things seized and to their forfeiture.

APPEAL BOOK

13. (1) Subject to Rule 13(3), the appellant shall prepare an appeal book which shall contain, where applicable, in the following order:

- (a) an index;
 - (b) a copy of the notice of appeal and notice of cross-appeal;
 - (c) a copy of any order respecting conduct of the appeal;
 - (d) a copy of the information or indictment;
 - (e) a copy of any decision of the trial court that is the subject of the appeal or related to it, whether or not it is included in the transcript;
 - (f) a copy of any agreed statement of facts entered at the trial or agreed to under these Rules;
 - (g) any portions of the transcript as the appellant deems appropriate; and
 - (h) any other item that was before the trial court which the appellant deems necessary for the appeal.
- (2) In the case of an appeal against sentence, in addition to the items mentioned in Rule 13(1), there shall be filed
- (a) a completed Form G;
 - (b) a copy of any pre-sentence report and victim impact statement;
 - (c) a copy of any compensation, probation, or conditional sentence order or any other order which is the subject of the appeal;
 - (d) a copy of the criminal record of the offender if one is entered at the trial; and
 - (e) any medical or psychiatric reports filed at the time of sentence.
- (3) Where the appellant is a convicted person not represented by counsel, the Attorney General shall, unless otherwise ordered by the Court, prepare the appeal book required under this Rule and shall forward a copy of the appeal book to the appellant free of charge.
- (4) The respondent may file an appeal book.
- (5) The Registrar may refuse to accept an appeal book that does not comply with these Rules or that is not legible.
- (6) Unless the Court otherwise orders or on consent by the parties, exhibits shall be retained by the trial court, Crown or the Registrar as provided by Rule 12 and need not be reproduced in the appeal book. Counsel may prepare copies of key documents or extracts therefrom for the use of the Court.

FACTUMS

Appellant's Factum

14. (1) An appellant shall prepare an appellant's factum unless
- (a) the appellant is not represented by counsel and has stated in the notice of appeal that he or she desires to present oral argument only;
 - (b) the appeal is against sentence only; or
 - (c) the Court orders otherwise.

- (2) The appellant's factum shall be signed by the appellant or the appellant's counsel and shall consist of
- (a) Part I, containing a concise summary of the facts relevant to the issues in the appeal, including identification of the court appealed from and the result in the court appealed from, with reference to the evidence by page and line,
 - (b) Part II, containing a concise statement setting out clearly and particularly the points in issue in the appeal,
 - (c) Part III, containing a concise statement of the argument, law and authorities relied on,
 - (d) Part IV, containing a statement of the order that the Court will be asked to make,
in paragraphs numbered consecutively throughout the factum; and
 - (e) Schedule A, containing a list of the authorities relied on with a reported citation if available and a court citation if not, and
 - (f) Schedule B, containing
 - (i) an index,
 - (ii) the headnote and the relevant portions of the text, or the complete text if most of the text is relevant to the issues on appeal, of the authorities relied on, and
 - (iii) all relevant provisions of statutes, regulations and by-laws, with each authority and relevant provision separately tabbed.
- (3) Unless authorized by the Chief Justice, Part III, excluding the Schedules, shall not ordinarily exceed 40 pages in length.

Respondent's Factum

15. (1) Subject to Rules 15 (4) and 17(2), each respondent shall prepare and file a respondent's factum.
- (2) The respondent's factum shall be signed by the respondent or the respondent's counsel and shall consist of
- (a) Part I, containing a statement of the facts in the appellant's summary of relevant facts 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 reference to the evidence by page and line,
 - (b) Part II, containing the position of the respondent on the points in issue in the appeal,
 - (c) Part III, containing a concise statement of the argument, law and authorities relied on,
 - (d) Part IV, containing a statement of the order that the Court will be asked to make,
in paragraphs numbered consecutively throughout the factum; and
 - (e) Schedule A, containing a list of the authorities relied on with a reported citation if available and a court citation if not, and
 - (f) Schedule B, containing
 - (i) an index,

- (ii) the headnote and the relevant portions of the text, or the complete text if most of the text is relevant to the issues on appeal, of the authorities relied on, and
 - (iii) all relevant provisions of statutes, regulations and by-laws, with each authority and relevant provision separately tabbed.
- (3) Unless authorized by the Chief Justice, Part III, excluding the Schedules, shall not ordinarily exceed 40 pages in length.
 - (4) A respondent who is not represented by counsel need not comply with this Rule.

Form of Appeal Book and Factum

- 16. (1) An appeal book shall be printed double-spaced on one side of letter size paper with the printed pages to the left and with each page numbered at the upper left corner. Printing includes reproduction of copies by typing, offsetting, mimeographing, photocopying or any other process. The cover of the appeal book shall be grey and each volume shall have marked on it its volume number and a reference to index page numbers contained in it.
- (2) A factum shall be double-spaced on one side of the paper only with printed pages to the left. All pages shall be numbered consecutively. All paragraphs in a factum shall be numbered consecutively throughout the factum. The covers of an appellant's factum shall be coloured buff or yellow, and the covers of the respondent's factum, including the factum of a cross-appellant, shall be coloured blue.

PERFECTING APPEALS

- 17. (1) Subject to Rule 17(2), within 60 days after being notified that the evidence has been transcribed, or if no evidence is to be transcribed, within 60 days after the filing of the notice of appeal, an appellant shall
 - (a) serve on each party
 - (i) a copy of the appeal book, and
 - (ii) a copy of the appellant's factum, if one is required; and
 - (b) file with the Registrar
 - (i) proof of service of the notice of appeal,
 - (ii) four copies of the appeal book,
 - (iii) the original and three copies of the appellant's factum, if one is required, and
 - (iv) written confirmation that the appeal book and, if required, a factum have been forwarded to the respondent.
- (2) Where the appellant is a convicted person not represented by counsel, within the time prescribed by Rule 17(1)
 - (a) the Attorney General shall file with the Registrar four copies of the appeal book;
 - (b) if the appellant files a factum, the appellant shall file with the Registrar the original and four copies of the appellant's factum; and
 - (c) the Registrar shall forward to the respondent a copy of the appellant's factum, if any.

- (3) Within 30 days after receipt of the appellant's factum, the respondent shall
 - (a) file with the Registrar the original and three copies of the respondent's factum, if one is required; and
 - (b) serve on each party a copy of the respondent's factum, if one is required.
- (4) When Rule 17(1) or (2) is complied with, then, on the expiration of 30 days or on the filing of a factum by every respondent, and intervenor if any, entitled to do so, whichever shall first occur, either the appellant or a respondent may file an application to set a date for a hearing, the filing of which shall perfect the appeal.

APPEAL PROCESS

Hearing of Appeals

18. (1) The Court may on application by any party after perfection of the appeal or at any time of its own motion, whether the appeal is perfected or not, set a time for the hearing of any appeal. If the appeal has not been perfected, the Court may direct which materials may be filed and when they may be filed.
- (2) A perfected cross-appeal may, with leave of the Court, be set down for hearing even though the main appeal has not been perfected.

Evidence on Appeal

19. (1) In seeking to adduce evidence on appeal under the Code, the applicant shall file an interlocutory application, which shall concisely set out the nature of the evidence sought to be adduced and the manner in which such evidence is said to bear on a decisive or potentially decisive issue at trial.
- (2) The interlocutory application shall
 - (a) be supported by affidavit(s) as to the facts raised and to be relied on in support of the application;
 - (b) set out the order sought; and
 - (c) be accompanied by a memorandum of the points of argument and a list of authorities relied on.
- (3) A party opposing the application shall file with the Registrar any affidavit or memorandum on which that party relies and serve a copy of it on the applicant and on any other parties. The memorandum shall contain the points of argument and a list of authorities relied on.
- (4) Either prior to or after ruling on the admissibility of the proposed evidence, the Court may, of its own motion or that of counsel, order that the evidence be taken by oral examination before the Court, by affidavit, by commission evidence, by deposition or in any other manner that the Court directs.

Abandonment of Appeals

20. (1) An appellant who desires to abandon an appeal shall complete a notice of abandonment of appeal in Form C, signed by the appellant or the appellant's counsel of record on the appeal.
- (2) The notice of abandonment shall be filed, directly or by facsimile transmission, with the Registrar and the Registrar shall forward a copy to the respondent and to the court reporter's office.
- (3) Where a notice of abandonment has been filed, no formal order shall be required. If requested, the Registrar may provide a certificate of abandonment of appeal.

- (4) Except where there is a formal order dismissing the appeal, the Court may, at any time on application, grant an order permitting withdrawal of the notice of abandonment if, in its opinion, it is in the interest of justice to do so.

Failure to Appear at Hearing of Appeal

21. Where a party fails to appear at the hearing of the appeal, the Court may adjourn the hearing or hear the appeal in that party's absence.

Pre-hearing Conferences

22. (1) At any time after the notice has been filed, the Chief Justice may direct a pre-hearing conference.
- (2) Where a direction is made under this Rule, the parties or their counsel shall attend before a judge, at the time and place directed, to consider one or more of:
- (a) the reduction in size of the appeal book or transcript;
 - (b) the simplification or clarification of issues in the appeal;
 - (c) the fixing of the time for the hearing of the appeal;
 - (d) the conduct of the hearing of the appeal; and
 - (e) any other matter that might expedite the appeal.
- (3) After a pre-hearing conference, the judge who held it may make a direction on any matter referred to in Rule 22(2) and that direction shall govern the conduct of the appeal unless the Court orders otherwise.
- (4) The judge conducting a pre-hearing conference shall not sit on the hearing of the appeal, except by request of the parties, and shall not disclose to the appeal panel positions taken or admissions or concessions made by the parties or their counsel at the conference.

Release from Custody Pending Appeal

23. (1) An application, under the provisions of the Code, for release pending appeal shall set forth the evidence and argument to be presented in support of the requirements stipulated by the Code for release.
- (2) The application shall be accompanied by affidavit or affidavits, including where practicable an affidavit of the applicant, setting forth
- (a) the particulars respecting the conviction and sentence;
 - (b) any grounds of appeal not specified in the notice of appeal;
 - (c) the applicant's
 - (i) age, marital status, and dependents if any,
 - (ii) places of abode in the three years preceding conviction,
 - (iii) proposed place of abode if released,
 - (iv) employment prior to conviction and expected employment and address of employment if released, and
 - (v) criminal record, if any; and

- (d) where the appeal is as to sentence only, any unnecessary hardship that would be caused if the applicant were detained in custody and the reasons why leave to appeal the sentence should be granted.
- (3) Where the Attorney General desires to assert that the detention of the applicant is necessary and to rely on material other than that contained in the material filed by the applicant, the Attorney General shall file an affidavit setting out the facts on which the Attorney General relies.
 - (4) The applicant and the Attorney General may, with leave of the Court, cross-examine on affidavits filed by the opposite party.
 - (5) A judge may dispense with the filing of the affidavits referred to in this Rule and act on a statement of facts agreed on by counsel for the applicant and the Attorney General.
 - (6) The applicant may file a concise memorandum of fact and law and any portions of the transcript of the trial or hearing that may be required, in support of the argument that the appeal or application for leave to appeal is not frivolous. The Attorney General may file in reply.
 - (7) When granting an application for judicial interim release, the judge may make a separate order requiring that the applicant is to file his or her factum within a specified time period after receipt of the transcript by the Registrar, or after release is granted, if the transcript has been filed. The factum shall not be filed after the time specified except with the leave of the Chief Justice or the Court.
 - (8) Where judicial interim release is granted, the applicant shall prepare and file with the Registrar the order for judicial interim release, any recognizance or undertaking, which may take the form provided in the Code or the *Young Offenders Act*, and a notice to release from custody in Form H of these Rules.

Post Sentence Report

24. (1) A party to the appeal may apply to the Court for an order that a post-sentence report be prepared.
- (2) A party to the appeal may, with consent of the other party or with leave of the Court, file post-sentence information.
- (3) Where a post-sentence report is ordered by the Court, the report shall be prepared in writing by the appropriate official of the penal institution and filed with the Registrar within any time limits specified in the order, and the Registrar shall forward a copy of the report to counsel for each party to the appeal and to any party who is not represented by counsel.

Delivery of Judgment

25. (1) The judgment of the Court may be given orally or determined from the judge's written reasons for judgment to be filed with the Registrar.
- (2) An oral judgment may be given at the conclusion of the hearing of an appeal, or subsequently. The Court may, at the time of giving oral judgment or subsequently, file written reasons explaining the oral judgment. Where, at the time of delivery of oral judgment, the Court does not file, or express an intention to file, written reasons explaining the oral judgment, the chairperson of the appeal panel shall prepare, sign and file with the Registrar a memorandum succinctly explaining the disposition of the matter by the Court.
- (3) Written reasons explaining an oral judgment or, where none are filed, the memorandum of disposition shall be the decision of the Court.
- (4) Where separate written reasons are filed by more than one judge, the judgment of the Court shall be that indicated by the majority of the panel hearing an appeal.
- (5) Unless delivered orally, the judgment of the Court shall be deemed to have been delivered on the day when a majority of the decisions of the judges of the panel hearing the appeal have been filed or, if those decisions are in conflict, when

a sufficient number of written decisions have been filed or assented to from which the majority view of the panel hearing the appeal may be determined.

- (6) The Registrar shall send a copy of all written reasons for judgment, the reasons explaining oral judgment or the memorandum of disposition, as the case may be, without charge to the parties or their counsel, to the court appealed from, and to any libraries and other persons as the Chief Justice authorizes in the particular case or generally. Copies may be supplied to other persons on payment of the applicable charges.

Formal Order

26. (1) On a decision having been filed or deemed filed, an order shall be prepared by the appellant or may be prepared by any party stating the disposition of the appeal as directed by the Court and served on the opposite party. The order shall be approved by the judge who acted as chairperson of the appeal panel, or in the absence of that judge, the next senior judge on the panel, and shall be signed by and filed with the Registrar, who shall then notify all parties of the filing.
- (2) Any party to an appeal who wishes the order amended to express better the intent of the decision of the Court may apply to the Court, which may correct or otherwise amend the formal order, and the amended order shall then without a change of date, be signed and entered by the Registrar as the formal order disposing of the appeal.

GENERAL

Civil Procedure Rules to Apply

27. The rules, with any necessary modifications, of the Supreme Court of Newfoundland and Labrador relating to civil procedure and other related rules of the Court shall, if not inconsistent with these Rules, the Code or any other statute having application, apply to these Rules in all matters not provided for herein.

Time with Respect to Applications and Responses

28. (1) Any party may seek from the Registrar a date and time for the hearing of an interlocutory application. When the date and time are set, the applicant shall serve copies of the documentation to be relied on, on all other parties at least four clear days before the hearing, unless the application is made by consent or the Court otherwise directs.
- (2) Any written response to the application shall be filed with the Registrar and served on all other parties at least one clear day before the hearing.

Manner of Service of Other Notices and Documents in Prisoner Appeals

29. (1) In a prisoner appeal, service of all notices and other documents pertaining to the appeal, other than the notice of appeal, shall be effected by delivery to the senior official of the penal institution in which the appellant is imprisoned.
- (2) Where a notice or document is initiated by the appellant, the official shall endorse on it the date of receipt, return a copy so endorsed to the appellant and forthwith forward the original to the Registrar. The Registrar shall file the original and forward a copy to the Attorney General.
- (3) Where a notice or document is initiated by the Attorney General, the original shall be filed with the Registrar. Service shall be effected by delivery to the senior official of the penal institution in which the appellant is imprisoned who shall forthwith deliver the notice or document to the appellant. Delivery may be carried out by
 - (a) delivery to the official;
 - (b) prepaid registered or certified mail or courier to the official;

- (c) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages; or
- (d) any other manner that may be directed by the Court.

Manner of Service of Other Notices and Documents in All Other Appeals

- 30. (1) In all other appeals, where the Attorney General is not the appellant, or a party is not represented by counsel, or both, service of notices and documents, other than the notice of appeal,
 - (a) when directed to the Attorney General shall be effected by
 - (i) service on legal counsel instructed by the Attorney General,
 - (ii) prepaid registered mail to the Attorney General or counsel directed by the Attorney General, or
 - (iii) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages; and
 - (b) when directed to another party, shall be effected by
 - (i) personal service,
 - (ii) prepaid registered or certified mail to the address of the party set out in the notice of appeal or as filed with the Registrar,
 - (iii) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages, or
 - (iv) any other manner that may be directed by the Court.
- (2) In all other appeals, service of notices and documents shall be effected by
 - (a) personal service;
 - (b) service on legal counsel;
 - (c) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages; or
 - (d) any other manner that may be directed by the Court.
- (3) In all appeals referred to in this Rule, the original notice or document, and documents evidencing proof of service, if necessary, shall be filed with the Registrar.

COMING INTO FORCE AND REPEALING

- 31. (1) These Rules come into force on July 1, 2002, without prejudice to any proceeding which may have been taken prior to that date.
- (2) The *Criminal Appeal Rules of the Newfoundland Supreme Court, Court of Appeal*, registered in the *Canada Gazette* SI/87-129, are repealed effective July 1, 2002.

FORM A

(Rule 3(1))

(To be used where Notice is filed by Counsel on Behalf of Appellant)

(This Form A may be varied to meet the case where the Attorney General is the appellant, or where circumstances require changes in it.)

20.... No.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

BETWEEN:

(Name of Appellant)

Appellant

AND:

HER MAJESTY THE QUEEN
as represented by the Attorney General

Respondent

**NOTICE OF APPEAL (OR NOTICE OF APPLICATION FOR LEAVE TO
APPEAL) (OR NOTICE OF CROSS-APPEAL)**

1. Section of the *Criminal Code* pursuant to which the appeal is taken _____
2. Place of trial _____
3. Name of judge _____
4. Name of court _____
5. Name of crown prosecutor at trial _____

6. Name of defence counsel at trial _____

7. Offence(s) of which appellant convicted _____

8. Sections of the *Criminal Code* or other statutes under which appellant convicted

9. Plea at trial _____

10. Length of trial _____

11. Sentence imposed _____

12. Date of conviction _____

13. Date of imposition of sentence _____

14. If the appellant is in custody, place of incarceration _____

15. Appellant's date of birth _____

16. Appellant's last known address _____

17. Trial court case number _____

Take notice that the appellant (insert whichever of the following is applicable)

- (a) appeals against conviction on grounds involving a question of law alone;
- (b) applies for leave to appeal conviction on grounds involving a question of fact alone or a question of mixed law and fact, and if leave is granted, hereby appeals against the said conviction; or
- (c) applies for leave to appeal against sentence, and if leave be granted hereby appeals against sentence.

The grounds of appeal are annexed hereto as "Appendix A".

The relief sought is _____

Note: If the appellant had a right to be tried by judge and jury originally but chose a judge alone, the appellant would have the right to be tried by judge and jury if a new trial is ordered but only if the appellant indicates a desire to be so tried in this notice.

If a new trial is ordered and the appellant would have the right to trial by judge and jury, does the appellant wish trial by judge and jury? Yes _____ No _____

The appellant's address for service is _____

Dated at _____, Newfoundland and Labrador, this _____ day of _____, 20____

(Counsel on behalf of appellant)

TO: The Registrar
Court of Appeal
P.O. Box 937
287 Duckworth Street
St. John's
Newfoundland and Labrador
A1C 5M3

FORM B

(Rules 3(1) and 9(4))

(To be used where Accused is not Represented by Counsel)

20....No.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

BETWEEN:

(Name of Appellant)

Appellant

AND:

HER MAJESTY THE QUEEN
as represented by the Attorney General

Respondent

**NOTICE OF APPEAL (OR NOTICE OF APPLICATION
FOR LEAVE TO APPEAL)**

1. Name of appellant _____

2. Place of trial _____

3. Name of judge _____

4. Name of court (Supreme Court of Newfoundland and Labrador – Trial Division; Provincial Court or Youth Court)

5. Name of your defence counsel (if any) at the trial _____

6. Offence(s) of which appellant was convicted (example: theft, forgery, sexual assault)

7. Plea at trial _____

8. Sentence imposed _____

9. Date of conviction _____

10. Date of imposition of sentence _____

11. Is your appeal from a conviction or sentence under the *Young Offenders Act*?

Yes _____ No _____

12. (*If applicable*) If the appellant is a young person as defined in the *Young Offenders Act* and has applied for legal aid, indicate the location of the legal aid office.

Has the appellant been refused a legal aid certificate? Yes _____ No _____

13. Name and address of place where appellant is in custody, or if not in custody, the appellant's address

14. If the appellant is in custody, appellant's address other than institution

Note: The Rules of Court provide for delivery of certain materials to you at the address stated in the notice of appeal. If you change your address, notify the Registrar. If you do not notify the Registrar, delivery of documents at your old address will be deemed to constitute proper delivery to you and the appeal may proceed in your absence (even if you have not received the documents).

15. Appellant's date of birth _____

16. Trial court case number _____

I, the above appellant, hereby give notice that I desire to appeal and if necessary for me to do so, to apply for leave to appeal against

(a) conviction only _____;

(b) sentence only _____; or

(c) both conviction and sentence _____.

I desire to present my case and argument

- (a) in writing only _____ ;
- (b) in person _____ ; or
- (c) in writing and in person _____ .

Note: If you desire to submit your case and argument in writing, you must file with the Court your written argument within 60 days after receiving the transcript and the appeal book from the Attorney General, unless otherwise allowed by the Court.

Note: If you had the right to be tried by judge and jury originally but chose a judge alone, you would have the right to be tried by judge and jury if a new trial is ordered but only if you indicate a desire to be so tried in this notice.

If a new trial is ordered and you would have the right to trial by judge and jury, do you wish trial by judge and jury?
Yes _____ No _____

Dated at _____, Newfoundland and Labrador, this _____ day of _____, 20_____

(Signature of appellant)

Note: You must sign this notice. If you cannot write you must affix your mark in the presence of a witness. The name and address of the witness must be given.

TO: The Registrar,
Court of Appeal,
P.O. Box 937,
287 Duckworth Street,
St. John's, Newfoundland and Labrador
A1C 5M3

(if you are not in custody) or

TO: The Senior Official of the Penal Institution (if you are in custody)

If you are in custody, this notice of appeal is to be provided to the senior officer of the institution in which the appellant is imprisoned not later than 30 days after the date of sentence. If you are not in custody, this notice of appeal is to be provided to the Registrar not later than 30 days after the date of sentence.

Note: If more than 30 days have expired since the date of your sentence, then you must apply for an extension of time by completing the application below. If you do not apply to the Court for such extension of time or if your application for extension is refused, your appeal will be dismissed without further hearing.

APPLICATION FOR EXTENSION OF TIME

I hereby apply for an extension of time, within which I may launch the within appeal, on the following grounds. (**State reasons for delay below.**)

Signed _____ Date _____

FORM C

(Rule 20(1))

20.... No

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

BETWEEN:

(Name of Appellant)

Appellant

AND:

HER MAJESTY THE QUEEN
as represented by the Attorney General

Respondent

NOTICE OF ABANDONMENT OF APPEAL

I hereby give notice that I, _____, abandon the appeal herein.

Dated at _____, Newfoundland and Labrador, this ____ day of _____, 20____

(Appellant or appellant's counsel, as the case may be.)

TO: The Registrar,
Court of Appeal
P.O. Box 937
287 Duckworth Street
St. John's, Newfoundland and Labrador
A1C 5M3

FORM D

(Rule 11)

20.... No

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

REQUEST FOR TRANSCRIPT AND CERTIFICATE

To: Court Reporters' Office of the Supreme Court of Newfoundland and Labrador – Trial Division (or the Provincial Court of Newfoundland and Labrador, as the case may be) located at _____ (town/city) in the Province of Newfoundland and Labrador.

REQUEST FOR TRANSCRIPT

Pursuant to *Rule 11* of the *Criminal Appeal Rules*, you are hereby requested to prepare a transcript of those portions of the record in the proceeding known as

_____ v. _____,

cause no. _____ as are specified as follows:

Note: Check only such items as are applicable, and delete such portions of items as are inapplicable.

- The evidence taken at trial (whether taken in the presence or in the absence of the jury) together with objections to and rulings on admissibility of that evidence;
- The evidence taken at trial in the presence of the jury together with
 - objections to and rulings on admissibility of that evidence;
 - evidence taken on the *voir dire(s)* in relation to _____, and submissions made and rulings given in respect of same;
 - _____;
- The evidence of the following witnesses together with objections to and rulings on admissibility of that evidence:
 - _____
 - _____

- _____
- _____;
- The evidence taken and submissions made on the issue of sentence;
- Proceedings in respect of the selection of the jury;
- The opening address of the trial judge;
- Submissions as to the proposed content of the judge's charge to the jury and the judge's rulings thereon and reasons;
- The closing addresses to the jury;
- The final arguments, where there is no jury;
- Any objections to the judge's charge to the jury and the judge's rulings thereon and reasons;
- Submissions respecting questions from the jury and the judge's rulings thereon and reasons;
- The recording of the verdict of the jury;
- The reasons for judgment, if any;
- The reasons for sentence given by the judge;
- _____,
- _____,
- _____.

On completion of preparation of the transcript, you are hereby requested to

- (a) deliver the original and three copies to the

Registrar, Court of Appeal,
P.O. Box 937,
287 Duckworth Street,
St. John's, Newfoundland and Labrador,
A1C 5M3; and

- (b) either

(i) notify the appellant(s) and respondent(s) that the transcript has been prepared and may be collected from your office; or

(ii) forward one copy of the transcript by ordinary mail to each of the appellant(s) and respondent(s) as follows:

Appellant(s):

Respondent(s):

(Signature of the appellant or appellant's counsel)

CERTIFICATE OF APPELLANT OR APPELLANT'S COUNSEL

I hereby certify that I have sent to the respondent's counsel (or the respondent(s), if unrepresented,) and the court reporters' office a true copy of the foregoing request for transcript by leaving it at, (or mailing it by ordinary mail to,) the following addresses:

or by sending the same by facsimile transmission to _____ (state facsimile number) _____ on the _____ day of _____, 20 __.

(Signature of the appellant or appellant's counsel)

FORM E
(Rule 11)

20.... No.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

CERTIFICATE OF COURT REPORTER

I, (name of court reporter or supervisor of court reporters' office) _____, hereby certify that the court
reporters' office received the within request for transcript on the _____ day of _____, 20__ and
acknowledge that, on completion of preparation of same shall cause the original and copies to be delivered, provided or
forwarded as requested.

(Supervisor or court reporter)

FORM F

(Rule 11)

20.... No.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

REQUEST FOR FURTHER PORTIONS OF TRANSCRIPT AND CERTIFICATE

To: Court Reporters' Office of the Supreme Court of Newfoundland and Labrador – Trial Division (or the Provincial Court of Newfoundland and Labrador, as the case may be) located at _____ (town/city) in the Province of Newfoundland and Labrador.

Pursuant to *Rule 11(7)* of the *Criminal Appeal Rules*, you are hereby requested to prepare a transcript of additional portions of the record in the proceeding known as _____ v. _____, cause no. _____ as follows:

- _____
- _____
- _____
- _____

Note: On completion of preparation of these additional portions of the transcript, you are hereby requested to deliver the original and copies to the Court and the parties in the same manner as the other portions of the transcript already requested.

CERTIFICATE OF REQUESTING PARTY

I hereby certify that I have delivered to counsel for the other parties or the parties themselves, if unrepresented, and the court reporters' office a true copy of the foregoing request

by _____

_____ on the _____ day of _____, 20 ____.

(Requesting party or party's counsel)

FORM G

(Rule 13(2)(a))

20.... No.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF

(name of appellant) who was
convicted at _____
(name of town/city) in the Province
of Newfoundland and Labrador
by Judge _____

QUESTIONNAIRE CONCERNING SENTENCE

1. Length of trial _____
2. Present place of incarceration (if applicable) _____
3. If appellant released on bail pending appeal, date of release _____
4. Period spent in pre-trial or pre-sentence incarceration _____
5. Parole eligibility date _____
6. Date of mandatory release _____
7. Names of co-accused (if any) and sentences imposed for offences of which they were convicted

8. Prior criminal record (if any, if such was introduced at trial) _____
9. Present employment _____
10. Present marital status _____
11. Appellant's present age and age at time of offence _____
12. Was a pre-sentence report prepared? Yes _____ No _____
13. Was there a victim impact statement? Yes _____ No _____
14. Were there any medical or psychiatric reports? Yes _____ No _____

FORM H
(Rule 23(8))

20.... No

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR –
COURT OF APPEAL

IN THE MATTER OF an Appeal by

(name of appellant) from a conviction
and (or) sentence entered against him (her)
by _____ Judge,
on _____, 20 ____, for a
breach of section _____ of the
Criminal Code or section _____
of the *Young Offenders Act*

AND IN THE MATTER OF an application
by _____ for bail
pending appeal pursuant to subsection 679(3)
of the *Criminal Code*

BETWEEN:

(Name of Appellant)

Appellant

AND:

HER MAJESTY THE QUEEN
as represented by the Attorney General

Respondent

NOTICE TO RELEASE FROM CUSTODY

An order has been made to allow the release of _____ (name of appellant)
from custody pending appeal, on the following terms and conditions:

Note: List terms and conditions.

Therefore, pursuant to the provisions of the *Criminal Code* of Canada, I hereby notify and direct you that
_____ has the right to be released from custody
pending appeal (unless he or she is detained for some reason other than the sentence imposed in relation to the subject of
the appeal).

Dated at St. John's, Newfoundland and Labrador, this _____ day of _____, 20__.

(Deputy Registrar)

June 28

CRIMINAL CODE OF CANADA

RCMP/RNC

ATTORNEY GENERAL OF NEWFOUNDLAND
ANNUAL REPORT
SECTION 195 CRIMINAL CODE OF CANADA

This report covers the period January 1, 2001 to December 31, 2001

Section 195(5)(a)

- (a) The list of designated agents who made applications in accordance with Section 185 C.C.C.
- (i) Harold Porter
 - (ii) Del Atwood

Section 195(2)

- (a) The number of applications made for authorizations
- (i) 185 C.C.C. 2
 - (ii) 188 C.C.C. 0
- (b) The number of applications made for renewals of authorizations 1
- (c) The number of applications granted:
- (i) Original authorizations 185 2
 - (ii) Original authorizations 188 0
 - (iii) Renewals of authorizations 185 1
- The number of applications refused under
- (i) 185 0
 - (ii) 188 0
- (d) The number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Newfoundland in respect of:
- (i) An offence specified in the authorization 1
 - (ii) An offence other than an offence specified in such an authorization but in respect of which an authorization may be given 0
 - (iii) An offence other than an offence specified in such an authorization for which

	no such authorization may be given	0
(e)	The number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Newfoundland in respect of	
	(i) An offence specified in such an authorization	0
	(ii) An offence other than an offence specified in such an authorization but in respect of which an authorization may be given	0
	(iii) An offence other than an offence specified in such an authorization for which no such authorization may be given	0
(f)	The average period for which authorizations were given and for which renewals thereof were granted	
	S. 185	60 days
(g)	The number of authorizations, by virtue of one or more renewals thereof, were valid	
	(i) for more than 60 days	1
	(ii) for more than 120 days	0
	(iii) for more than 180 days	0
	(iv) for more than 240 days	0
(h)	The number of notifications given pursuant to Section 196	9
(i)	The offences in respect of which authorizations were given, specifying the number of authorizations given in respect of each such offence	
	(i) S. 465 C.C.C.	3
	(ii) S. 279 C.C.C.	1
	(iii) S. 235 C.C.C.	1
	(iv) S. 343 C.C.C.	2
	(v) S. 348 C.C.C.	1
(j)	A description of all classes of places specified in authorizations and the number of authorizations in each such class of place specified	
	(i) Residence, permanent	7
	(ii) Residence, temporary	1
	(iii) Business premises	0
	(iv) Vehicles	1
(k)	A general description of the methods of interception involved in each interception under an authorization	

(i)	Telecommunications	
(ii)	Oral Communications	
(l)	The number of persons arrested whose identity became known to a Peace Officer as a result of an interception under an authorization	
(i)	Number of persons	0
(m)	The number of criminal proceedings commenced at the instance of the Attorney General of Newfoundland in which private communication obtained by interception under an authorization were adduced in evidence and the number of such proceedings that resulted in a conviction	
(i)	Criminal proceedings adduced in evidence	1
(ii)	Resultant convictions	0
(n)	The number of criminal investigations in which information obtained as a result of the interception was used although the private communications were not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Newfoundland as a result of investigations	
(i)	Intercepted information used but not adduced	0

Section 195(3)

Other Information

(a)	The number of prosecutions commenced against officers or servants of Her Majesty in Right of Canada or members of the Canadian Forces for offences under Section 184 or Section 193	
(i)	Number of prosecutions	0

No changes to report from previous years.

JOHN R . CUMMINGS
Deputy Minister of Justice
and Deputy Attorney General

June 28

JUDICATURE ACT

RULES OF THE SUPREME COURT, 1986

PRACTICE NOTE
P.N. (TD) No. 2002-01

DATE ISSUED:	June 20, 2002
RULES AFFECTED:	8.06; 8.07; 8.08
EFFECTIVE DATE:	Upon publication
PREVIOUS PRACTICE NOTES REVISED:	N/A

The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published pursuant to rule 4.04 of the *Rules of the Supreme Court, 1986*.

SETTLEMENTS INVOLVING MINORS

Background

1. Approval of a settlement of a claim by a minor involves the exercise of the parens patriae jurisdiction of the Court. Whenever that jurisdiction is invoked, the Court must be placed in a position to enable it to make an informed decision as to whether the proposed settlement and the manner of its distribution are in the best interests of the minor.
2. Although **rule 8.06** requires that a settlement, compromise or acceptance of money paid into court in relation to a proceeding must first be approved by the Court, and **rule 8.08** provides that the Court may give directions as to how any settlement money is to be dealt with, the Rules of Court do not specify what material should be placed before the Court to enable its duties to be properly discharged.
3. The practice respecting the information provided to the Court on an application to approve a minor's settlement has varied widely. Not infrequently, the information provided has been inadequate to provide a basis for the Court to conclude that the proposed settlement is fair and reasonable in all the circumstances. The Court cannot be put in the position of being asked to merely "rubber stamp" a proposed settlement.
4. The role of counsel advocating approval of a settlement has a special dimension. To a great extent, the Court must rely on the counsel's background knowledge and assessment of the case and on the recommendations being made. In so acting, counsel will be acting as an officer of the court and must disclose to the Court all relevant information that may affect the Court's willingness to sanction the settlement.
5. Occasionally, counsel seek to have the Court approve their specific legal fees and approve their deduction from the settlement amount. In so doing, there is a potential conflict of interest between counsels' own interests and their duties to the minor client and the Court.

6. For the purpose of distribution and payment of an approved settlement, an application for approval will usually be accompanied by a separate application for Letters of Guardianship to be granted, most often to the Registrar or, occasionally, to a parent of the minor or some other person who must be bonded. The guardian so appointed will then be vested with responsibility for receiving the settlement money, paying any expenses, including legal fees, associated with the settlement, distributing the money as and when required for the minor, and executing and delivering a release of the minor's claim to the party paying the settlement. The appointment of the Registrar as Guardian obviates the necessity for inquiry by the Court into the suitability of the guardian to perform the task and the provision of security.
7. Draft orders, as submitted to the Court, approving the settlement should provide adequate authorization for the guardian to carry out his or her duties with respect to implementation of the settlement.
8. **Rule 8.07** contemplates Court sanction of a settlement of a minor's claim even where no court proceeding has been commenced. In such a case, the matter is to be brought before the Court by way of Originating Application (Inter Partes).
9. Occasionally, counsel seek court approval, by way of an interlocutory application in a proceeding commenced by a minor as plaintiff against a defendant, of a settlement between the minor and the minor's own insurers rather than the insurers of the defendant. Such a settlement is not a settlement of a "proceeding" within the meaning of **rule 8.06** and therefore ought not to be brought by way of interlocutory application in the existing cause; rather it should be brought by way of a separate originating application under **rule 8.07** naming the minor as plaintiff and the minor's insurers as defendant.
10. In order to standardize practice and procedure with respect to court approval of minor's settlements it is appropriate to issue this Practice Note.

Practice Note

11. **Applications for court approval of a settlement, compromise or acceptance of money paid into court relating to a claim by a minor should include or be accompanied by:**
 - (a) **a statement of the nature of the minor's claim and a description of the degree of damages suffered by the minor;**
 - (b) **sufficient documentation, such as medical reports, supporting the degree of damages suffered;**
 - (c) **the rationale for the conclusion that the proposed settlement is fair and reasonable in the circumstances, including, where appropriate, a brief discussion of sufficient available case law to demonstrate that any apportionment of liability is appropriate and that the settlement falls at least within the range of other damage awards of generally similar type, or such other information supporting any calculations used as the basis of the claim;**
 - (d) **an affidavit from the minor's guardian ad litem confirming that he or she has been made aware of the implications of the settlement and that, he or she believes it to be fair and reasonable in the interests of the minor, and finds it acceptable;**
 - (e) **an affidavit from counsel for the minor verifying that he or she is fully familiar with the case, has**

reviewed the applicable law and is satisfied that the settlement proposal is fair and reasonable in all the circumstances.

12. It is not sufficient for the affidavit of counsel referred to in paragraph 11(e) to state that it is the opinion of counsel that the settlement “should be sanctioned by the court”; it must go further and state that based on a review of the matter he or she is of the opinion that the proposed settlement is fair and reasonable in all the circumstances.
13. Except in special circumstances, the Registrar should be the guardian of choice for the purpose of receiving and administering the settlement funds on behalf of the minor.
14. As a general rule, the sanctioning court should not be asked to approve the specific legal account of the minor’s counsel or to ratify a contingency fee agreement. Exceptions to this approach might be where the settlement amount is small and the Guardian ad litem has approved the amount or where a "mature minor" has himself or herself approved the amount. As a general rule, there are separate and more appropriate procedures under rule 55 for taxation of solicitors’ accounts and approval of contingency fee agreements which may be followed.
15. The full amount of any approved settlement should be paid to the guardian in order that the guardian may sign a receipt and release for the full amount of the settlement and be in a position ultimately to account to the minor with respect to the full amount upon the minor attaining the age of majority.
16. The order approving a settlement should generally authorize the guardian to pay the reasonable expenses, including legal fees and disbursements satisfactory to the Registrar as Guardian or otherwise to be taxed, and to sign a release. If in exceptional cases, specific fees are considered and approved by the Court for payment, the amounts to be paid by the guardian should be specified in the order.
17. Subject to appropriate variations in individual cases, the form of the approval order should be substantially in the form attached as Schedule “A”.
18. Applications for approval of a settlement of a minor’s claim against his or her own insurers, where no proceeding has been brought against those insurers, should not be brought by way of interlocutory application in the proceeding between the minor and another defendant, but should be brought by way of a separate originating application in which the minor, by guardian ad litem, is plaintiff and the minor’s insurer is defendant.

AUTHORIZED BY:

J. DEREK GREEN
Chief Justice of the Supreme Court
of Newfoundland and Labrador, Trial Division

BARRY R. SPARKES, B.C.L.
Registrar of the Supreme Court
Secretary, Rules Committee

June 28

Schedule "A"

[style of cause]

ORDER SANCTIONING SETTLEMENT

Before the Honourable Justice

UPON IT APPEARING that the plaintiff has made application under **rule 8.06** for approval of a minor's settlement AND UPON READING the affidavits of _____ [guardian ad litem], father (or mother, etc.) of the minor _____, and of _____ [counsel], counsel for the minor _____, AND UPON HEARING _____ of _____ of _____ counsel for the plaintiff IT IS ORDERED THAT:

1. The compromise settlement of \$_____ be sanctioned and approved.
2. The said sum of \$_____ in full and final settlement of the claim of _____ [minor], a minor, be paid to [the Registrar or other guardian], as Guardian of the Estate and Effects of _____ [minor], to be administered for the benefit of the said minor.
3. The Guardian is hereby authorized:
 - (A) to pay the reasonable legal fees and disbursements [satisfactory to the Registrar as Guardian or otherwise to be taxed] of the solicitors for the minor, incidental to this proceeding;
 - (B) to pay all other reasonable expenses and fees incidental to the proceeding;
 - (C) to execute and deliver to the defendant a receipt, release and discharge in such form as may be approved by the Guardian as appropriate to release the claims of the minor against the defendant relating to this proceeding [or to execute and deliver to the defendant a receipt, release and discharge substantially in the form annexed to this order marked "A" which form is hereby approved];
 - (D) to advance to or for the benefit of the minor from time to time

[if the Guardian is the Registrar] such amounts from the capital of, and income from, the settlement funds as in his or her discretion may be deemed proper;

or

[if the Guardian is someone other than the Registrar] such amounts from the income from the settlement funds as in his or her discretion may be deemed proper;

(E) to pay to or for the benefit of the minor the balance of the funds upon the minor's attainment of the age of majority.

DATED at _____, in the Province of Newfoundland and Labrador, this ____ day of _____, 20__.

June 28

CITY OF ST. JOHN'S ACT



ST. JOHN'S MUNICIPAL COUNCIL

NOTICE
ST. JOHN'S PROPERTY TAX EXEMPTION-
ST. JOHN'S SPORTS & ENTERTAINMENT LTD.
BY-LAW

TAKE NOTICE that the St. John's Municipal Council has enacted an amendment to the ST. JOHN'S PROPERTY TAX EXEMPTION-ST. JOHN'S SPORTS & ENTERTAINMENT LTD. BY-LAW.

The said By-Law was passed by Council on the 17th day of June, 2002 and will have the effect of exempting St.

John's Sports & Entertainment Ltd. from the real property tax.

All persons are hereby required to take notice that any person who wishes to view such By-Law may view same at the Office of the City Solicitor of the St. John's Municipal Council at City Hall, and that any person who wishes to obtain a copy thereof may obtain it at the said office upon the payment of a reasonable charge as established by the St. John's Municipal Council for such copy.

Dated this 21st day of June, 2002.

DAMIAN RYAN
City Clerk

P. O.# 45116
June 28

URBAN AND RURAL PLANNING ACT

NOTICE OF REGISTRATION
TOWN OF BURIN
DEVELOPMENT REGULATIONS
AMENDMENT NO. 5, 2002

TAKE NOTICE that the Town of Burin Development Regulations Amendment No. 5, 2002, adopted on the 10th day of June, 2002 (as amended) and approved on

the 10th day of June, 2002, has been registered by the Minister of Municipal & Provincial Affairs.

In general terms, the purpose of Development Regulations Amendment No. 5, 2002 is to accommodate marinas in the Mixed Development Zone; and to accommodate apartment buildings as a permitted use in the Commercial Zone.

The Town of Burin Development Regulations Amendment No. 5, 2002 come into effect on the day that this notice is published in *The Newfoundland and Labrador Gazette*. Anyone who wishes to inspect a copy of the Town of Burin's Development Regulations Amendment No. 5, 2002 may do so at the Town Office during normal working hours. (Mon. - Fri., 8:00 a.m. - 4:00 p.m.)

TOWN OF BURIN
Town Clerk

P.O. # 19701
June 28

LANDS ACT

NOTICE OF INTENT

Lands Act, Chapter 36, S.N. 1991

Notice is hereby given that B & B Forest Products Limited of Northern Arm, Newfoundland and Labrador intends to apply to the Department of Government Services and Lands, two months from the publication of this notice, to acquire title, pursuant to Section 7(2) of the said Act, all that piece or parcel of Crown Land situated within fifteen metres of the waters of Brook Harbour, Exploits Bay, in the Electoral District of Exploits, Newfoundland and Labrador, for the purpose of an Aquaculture Facility and being more particularly described as follows:

*Bounded on the North by C-114040
for a distance of 90 m;
Bounded on the East by Brook Harbour
for a distance of 60 m;
Bounded on the South by Crown Land
for a distance of 90 m;
Bounded on the West by Crown Land
for a distance of 60 m;*

*and containing an area of
approximately 5400 square metres.*

Any person wishing to object to the application must file the objection, in writing, within one month from the date of publication of this notice, with reasons for it, to the Minister of Government Services and Lands, c/o Central Regional Lands Office, P. O. Box 2222, Gander, NF., A1V 2N9.

For further information regarding the proposed application, please contact Geoffrey Ball, (709) 257-3227.

Requests for information on the processing of Crown Land applications under Section 7(2) of the Lands Act, may be sent to the Central Regional Office at the above address. Telephone (709) 729-3699.

June 28

CHANGE OF NAME ACT

C-8 RSN 1990

**NOTICE OF APPLICATION
FOR CHANGE OF NAME**

NOTICE is hereby given that an application will be made to the Minister of Government Services and Lands for a change of name, pursuant to the provisions of the *Change of Name Act*, by me:-

COLLEEN VATCHER

of 26-A Winslow Street, St. John's, in the Province of Newfoundland and Labrador, as follows:

To change my minor unmarried child's name from

NICOLE SHIRLEY FARRELL
to
NICOLE SHIRLEY FARRELL VATCHER

DATED this 22nd day of May, 2002.

COLLEEN VATCHER
(Signature of Applicant)

June 28

**NOTICE OF APPLICATION
FOR CHANGE OF NAME**

NOTICE is hereby given that an application will be made to the Minister of Government Services and Lands for a change of name, pursuant to the provisions of the *Change of Name Act*, by me:-

JEAN ANDREA MICHELIN

of P. O. Box 70, Hopedale, A0A 1G0, in the Province of Newfoundland and Labrador, as follows:

To change my name from

JEAN ANDREA MICHELIN

to

JEAN ANDREA FLOWERS

DATED this 16th day of June, 2002.

JEAN ANDREA MICHELIN
(Signature of Applicant)

June 28

**NOTICE OF APPLICATION
FOR CHANGE OF NAME**

NOTICE is hereby given that an application will be made to the Minister of Government Services and Lands for a change of name, pursuant to the provisions of the *Change of Name Act*, by me:-

JENNIFER LYNN SUTTON

of 282 Waterford Bridge Road, St. John's, in the Province of Newfoundland and Labrador, as follows:

To change my name from

JENNIFER LYNN SUTTON

to

JENNIFER LYNN GHANEY

DATED this 17th day of June, 2002.

JENNIFER SUTTON
(Signature of Applicant)

June 28

**NOTICE OF APPLICATION
FOR CHANGE OF NAME**

NOTICE is hereby given that an application will be made to the Minister of Government Services and Lands for a change of name, pursuant to the provisions of the *Change of Name Act*, by me:-

BEVERLY YOUNG

of 30 Quinton Street, Corner Brook, A2H 1M8, in the Province of Newfoundland and Labrador, as follows:

To change my minor unmarried child's name from

MARK ALEXANDER YOUNG

to

MARK ALEXANDER GILLIS

DATED this 14th day of June, 2002.

BEVERLY YOUNG
(Signature of Applicant)

June 28



THE NEWFOUNDLAND GAZETTE

PART II

SUBORDINATE LEGISLATION FILED UNDER THE STATUTES AND SUBORDINATE LEGISLATION ACT

Vol. 76

ST. JOHN'S, FRIDAY, JUNE 28, 2002

No. 26

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PART II

CONTINUING INDEX OF SUBORDINATE LEGISLATION

Title of Act and Subordinate Legislation made thereunder	CNR or Nfld. Reg.	Amendment	Nfld. Gazette Date & Page No.
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**No Subordinate Legislation
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Web site www.gov.nf.ca/hoa/sr

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