

# **JUDICATURE ACT – CRIMINAL CODE**

## **Rules of the Supreme Court, 1986 – Criminal Appeal Rules**

### **COURT OF APPEAL PRACTICE NOTE**

**CAPN No. 2006-01**

**DATE ISSUED:** December 20, 2006

**RULES AFFECTED:** Civil Appeal Rules 57.14, 57.15 and 57.16 and Criminal Appeal Rules 13, 14, 15 and 16

**EFFECTIVE DATE:** January 1, 2007

The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Court of Appeal, and is published pursuant to Rule 57.31(3) of the Rules of the Supreme Court, 1986. **Note: This Practice Note applies to both the Civil Appeal Rules and the Criminal Appeal Rules.**

### **CONFORMING TO RULES RESPECTING FILING** **AN APPEAL BOOK AND A FACTUM**

#### **Background and Purpose**

The Court has become concerned about the significant number of instances in which counsel are filing an appeal book or a factum, or both, which do not conform to the requirements of the rules. There are three specific areas of concern: (i) conformity with the technical requirements of the rules; (ii) failure to provide indexing and proper references to relevant portions of the transcript; and (iii) citation and provision of copies of authorities.

While it does not impact content or merit, failure to conform to the technical requirements of the rules and provide proper indexing, references and citations creates inconveniences and difficulties for the judges which results in delay in filing the decision. These failures to conform include: filing extensive transcripts

without indexing, dating, tabbing or any other means for the judges to find evidence that may not be specifically referred to by a page number; failure to conform to the cover colour requirements; failure to provide an index of authorities or placing it in an unusual position in the factum; failure to bind the document properly; filing the decision appealed from in other than Part I of the appeal book; and occasionally, a variety of other deficiencies.

In addition, there is a growing inconsistency in the filing of copies of authorities. Since implementation of Practice Note CAPN 2001-03, relating to submission of case authorities to the Court, there have been some improvements in the reliability of the paragraph numbering, pagination references and presentation generally of electronic versions of cases reported in official law reports and semiofficial law reports. A further purpose of this note is to address concerns of the profession with respect to existing limitations on the ability to use electronic versions of case authorities and, at the same time, address concerns of the Court that it be provided with reports of case authorities that can reasonably be relied upon by the Court in expressing its reasons for judgment. To better accommodate the profession, in the submission of authorities in the course of proceedings before it, CAPN 2001-03 will be replaced with the provisions of this Practice Note that deal with the filing of authorities.

This Practice Note also addresses the procedure to be followed when seeking leave to file a factum in excess of 40 pages.

## **Practice Note**

### **Conformity with Technical Requirements**

1. Counsel are asked to review the above mentioned Civil Appeal rules and Criminal Appeal rules and the content of this Practice Note and ensure that, in future, any factum or appeal book filed conforms with the requirements of both the Rules and this Practice Note. In the absence of reasonable conformity the Registry will not accept the document tendered.

2. Particular attention is drawn to the requirements that
  - (a) an unmarked copy of the decision appealed from is to be filed as an item in Part I of the appeal book, and not as part of the book of authorities or the factum as frequently occurs, and
  - (b) a factum, including authorities (case law and legislation) unless printed both sides which the Court prefers, is to be bound with the typed pages on the left, and this is not achieved by simply binding on the right edge without changing the page order.

### **Transcripts**

3. Trial and discovery transcripts must include, at the front, and if more than one volume, at the front of every volume, a table of contents consisting of the names of all of the witnesses together with the page references for the commencement of the examination, cross-examination and re-examination of each of the witnesses, and
4. References in the factum to portions of the transcript must include the specific page numbers of the evidence being referenced.

### **Citation of and Filing Copies of Authorities**

5. The Court accepts, as **official reports**, reports that are authorized by the court whose decisions they report (e.g. Supreme Court Reports, Federal Court Reports) and, as **semiofficial reports**, reports published by commercial law publishers but which have a measure of authority nonetheless through custom and practice (e.g. Dominion Law Reports, Canadian Criminal Cases, Newfoundland and P.E.I. Reports, Ontario Reports).
6. Reports of cases obtained from electronic data bases may be used provided the report of the judgment contains paragraph numeration consistent with the numbering of the paragraphs in the judgment as released from the court, or inserted page numbers that indicates the point at which that page number

changes in the official or semi-official report from which the electronic report originates.

7. In all cases where counsel have a choice, it is greatly more beneficial for the Court to be provided with copies of authorities taken from official or semi-official reports, as those are the citations which the Court must use in writing its reasons. Where, however, counsel is confident that there are no textual or formatting differences (as is presently asserted by CanLII to be the case with reports taken from its database), any one of the official, semi-official or electronic version is, subject to the above, acceptable.
8. Casebooks of authorities filed in connection with a proceeding in the Court should conform to the following guidelines.
  - (a) Only the cases to which counsel have referred in the factum should be included;
  - (b) When a copy of an authority is contained in materials already filed by another party, it is not necessary to produce an additional copy. Reference may be made to the copy filed by the other party specifically indicating where the authority is to be found.
  - (c) There should be a tab for each case (either numerical or alphabetical), and an index of the authorities which indicates the tab where the authority is reproduced; and
  - (d) The index must include the official report citation where one exists, or the semi-official report if no official report exists and the neutral citation where one has been issued, and where the case report used is taken from an electronic source, the electronic citation.
9. Citations, in the factum, of authorities should
  - (a) be placed in the body of the factum, not in footnotes,
  - (b) include the tab reference each time the authority is cited, and

- (c) include reference to specific paragraphs or pages each time the authority is cited.
- 10. Copies of the authorities may, if counsel wishes, be highlighted, or otherwise marked to identify the portion of the authority, to which counsel wishes to draw attention.
- 11. When citing a decision of the Supreme Court of Canada, if the copy provided in the authorities is not from the Supreme Court Reports, the citation from the Supreme Court Reports must be included with the citation listed in the index of authorities.
- 12. When citing a decision of the Trial Division or of this Court, if the copy provided in the authorities is not from the Newfoundland and P.E.I. Reports, the citation from the Newfoundland and P.E.I. Reports must be included with the citation listed in the index of authorities.
- 13. When the factum and authorities are contained in a single volume the index of authorities must be placed immediately after the factum, just before the copies of the authorities. Where there is a separate book of authorities, or more than one book of authorities, the index of authorities shall be placed at the front of each book.

**Limiting Argument to 40 pages**

- 14. Civil Appeal rule 57.15(3)(d) and Criminal Appeal rules 14(3) and 15(3) limit the argument portion of the factum to not more than forty pages, unless otherwise authorized by the Court. On those rare occasions when it may be necessary to seek such leave, an Appellant or Respondent seeking leave, pursuant to those rules to file a factum containing argument in excess of forty pages, must make an application to the Court setting out the applicant's reasons for requesting that the Court grant such leave, and must file with that application a copy of the factum which the Applicant proposes to submit. An application for leave to file a factum in excess of forty pages will not be considered by the Court, without submission in draft of the factum proposed to be filed.

Authorized by:

---

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

---

Madonna Morris  
Deputy Registrar, Court of Appeal  
Supreme Court of Newfoundland and Labrador