

Rules of the Supreme Court of Newfoundland, 1986

COURT OF APPEAL PRACTICE NOTE

CAPN No. 2010-01

DATE ISSUED: June 28, 2010

RULES AFFECTED: Civil Appeal Rule 57.18; Criminal Appeal Rule 18

EFFECTIVE DATE: July 16, 2010

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 also applies to the Supreme Court of Newfoundland and Labrador - Court of Appeal Criminal Appeal Rules (2002).

Setting Dates for Hearing of Appeals

Background and Purpose

1. Under the existing rules of court, a party wishing to obtain a date for the hearing of an appeal must file an application under Rule 57.18(1) of the civil appeal rules in respect of a civil appeal and under Rule 18(1) of the criminal appeal rules in respect of a criminal appeal, and then appear in court to obtain a date.
2. With a view to reducing costs to litigants by eliminating unnecessary court appearances on routine matters, it has been decided that it is appropriate to permit the deputy registrar, in certain circumstances, to set a date without a court appearance by the parties. While this procedural change may be able to be accomplished within the existing rules of court, it has been decided nevertheless to amend both the civil and criminal rules to clarify the matter. Accordingly, Rule 57.18 has been amended effective March 1, 2010 to recognize the change. The text of the amendment can be found in NL Reg 10/10 or online at <http://assembly.nl.ca/Legislation/sr/regulations/RulesSC/Rc86ru57.htm#57.18>. The Court is also in the process of amending Rule 18(1) of the criminal rules in similar fashion.
3. Pending completion of the amendments, it has been considered appropriate to issue this Practice Note, Part (a), which will be effective immediately.
4. In some cases following perfection of an appeal, the parties will delay making a request to set a date for a hearing. While parties may have legitimate reasons for so doing, the Court is concerned that there may be other cases, especially in criminal

and family matters, where the public interest in the timely administration of justice may not be served by delay.

5. Even though there are mechanisms within the civil rules for dealing with inactive cases through deemed abandonment after 12 months of inactivity, and allowing the deputy registrar to set a matter down after 6 months of inactivity to consider whether an appeal should be struck out, it has nevertheless been decided that there should be additional procedures made available within a shorter time frame to ensure that cases that are perfected and awaiting a hearing can be advanced, if that is appropriate to do so. Those procedures are outlined in this Practice Note, Part (b).

Practice Note

(a) Facilitating the Setting of Hearing Dates

6. The deputy registrar will entertain telephone, fax or email requests from counsel or a party to an appeal to set a date for the hearing of an appeal within the two months following the month in which a request is received where:
 - (a) the appeal has been perfected by the filing of an appeal book and all factums;
 - (b) the specific direction of the Court is not required on any matter prior to the setting of a date; and
 - (c) there is no other special circumstance requiring a court appearance.
7. Parties and their counsel are encouraged to determine, by reference to the Court's published calendar of sitting dates, mutually acceptable dates during the following two months when the parties will be available to appear on the appeal.
8. At the time of making the request, the requesting party must:
 - (a) confirm to the deputy registrar that conditions (a), (b) and (c) in paragraph 6 are satisfied;
 - (b) provide a list of the dates during the next two months of the court's published sitting calendar:
 - (i) when both parties are available to appear on the appeal, as determined in accordance with paragraph 7; or
 - (ii) if no mutually acceptable dates are offered, when the requesting party will not be available to appear on the appeal.

For requests made by fax or email, the form annexed to this Practice Note as Schedule "A" should be used and copied to the other parties. Where a request is

- made by telephone, the requesting party should notify the other parties that the request has been made.
9. The deputy registrar will, if necessary, attempt to contact the other parties or their counsel to confirm an acceptable date for the hearing of the appeal. If the deputy registrar does not receive a reply from such parties or their counsel within 3 days of having attempted to contact them, the deputy registrar may proceed to set a date for the hearing in accordance with the requesting party's proposal.
 10. The deputy registrar may convene a conference call with all parties or their counsel, with or without the participation of the Chief Justice or his or her designate, to resolve scheduling arrangements.
 11. The deputy registrar may decline to set a date in accordance with this procedure and require an application be made to the Court where:
 - (a) it appears that any of the conditions in paragraph 6 is not satisfied;
 - (b) one of the parties objects to setting a date without an application being made;
 - (c) the deputy registrar concludes that for any other reason an application should be made.
 12. If the deputy registrar sets a date pursuant to this procedure, the parties or their counsel will be notified in writing that the appeal will be heard on that date.
 13. No date set pursuant to this procedure will be changed unless:
 - (a) the deputy registrar, after consultation with all parties or their counsel and with the Chief Justice, consents;
 - (b) unless an application is made for that purpose; or
 - (c) the Court otherwise directs.
 14. Parties and their counsel are encouraged to adopt this procedure for setting dates, in appropriate cases, instead of using the application procedure.
 15. Where a party unnecessarily or unreasonably requests that a date be set by means of the application procedure, the presiding judge may take that fact into consideration in deciding to award costs of the application in a civil proceeding against that party.
 16. Taxing masters may also take into consideration whether an application to set a date was unnecessarily or unreasonably made in deciding to deny costs of such application to a party who is otherwise entitled to costs following a civil appeal.

(b) Delays in Setting Dates

17. Barring good reasons to the contrary, an appellant or his or her counsel will be expected to apply for or request a date for the hearing of the appeal within 60 days of the filing of the respondent's factum.
18. Where 60 days have elapsed since the filing of the respondent's factum, the deputy registrar will contact counsel or the parties to inquire as to the reasons for not requesting a hearing date and may require that the reasons be stated in writing.
19. Where the deputy registrar is of the opinion that there are no, or inadequate, reasons given for not requesting a hearing date, she may give notice to the parties that the matter will be called at a subsequent applications date for a judge to determine whether a hearing date should nevertheless be set.
20. Practice Note CAPN 2001-02 is amended to conform to this Practice Note.

Authorized by:

Chief Justice of Newfoundland and Labrador
Court of Appeal
Supreme Court of Newfoundland and Labrador

Christopher P. Curran, Q.C.
Registrar of the Supreme Court of
Newfoundland and Labrador
Secretary, Rules Committee of the
Court of Appeal

Schedule "A"
CAPN-2010-01 (Form)

2010 01H ____

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

BETWEEN:

APPELLANT

AND:

RESPONDENT

REQUEST TO SET A DATE BY THE DEPUTY REGISTRAR

I hereby confirm that:

- (a) the appeal has been perfected by the filing of an appeal book and all factums;
- (b) the specific direction of the Court is not required on any matter prior to the setting of a date; and
- (c) there is no other special circumstance requiring a court appearance

and that the matter is therefore ready to be heard.

I hereby:

- (i) request that the deputy registrar set a date for the hearing of this appeal; and
- (ii) confirm that I have consulted with the other parties to this appeal, or their counsel, and that the following dates in the two months following the month in which this request is being made are mutually acceptable for the hearing of the appeal:

[Insert dates]

- (iii) [in the alternative to (ii)] confirm that the following dates in the two months following the month in which this request is being made are dates on which I will NOT be available to appear on the appeal:

[Insert dates]

DATED at _____, this _____ day of _____, 20__.

[Requesting party or Counsel]

TO: [Other parties or Counsel]

