

**COURT OF APPEAL CRIMINAL APPEAL RULES (2002)
PRACTICE NOTE – CRIMINAL PROCEEDINGS**

CAPN No. 2018-16

FREQUENTLY CITED CASES – CRIMINAL

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The following Practice Note was filed with the registrar of the Court of Appeal and is published under rule 27 of the *Supreme Court of Newfoundland and Labrador – Court of Appeal Criminal Appeal Rules (2002)* and rule 4 of the *Court of Appeal Rules*, NLR 38/16.

Background

Rules 14 and 15 of the *Court of Appeal Criminal Appeal Rules (2002)* require a party to file copies of case authorities. However, where a case is included in a list of “Frequently Cited Cases” in a practice note, it is unnecessary to include a copy in the Book of Authorities. This is because the members of the panel will have copies of those cases, or portions thereof, readily accessible. Providing an additional copy is unnecessary and inefficient.

Appended to this Practice Note is a list of “Frequently Cited Cases – Criminal”, in alphabetical order. There is also a list of the same cases arranged by topic. The lists will be reviewed and updated periodically.

It is important to note that the citations refer to specific paragraphs or pages of the case. It is only those paragraphs or pages, together with the headnote, that will be readily accessible to the judges.

The rationale for limiting the copies in this way is that these cases are generally lengthy and the reason they are frequently cited is to state general principles or

legal tests. Accordingly, if a party is relying on additional portions of the case, it will be necessary to include a copy in the Book of Authorities.

Practice Note

1. A copy of the case referenced in the appended list should not be included in the Book of Authorities. Where reliance is placed on paragraphs or pages in addition to those cited in the list, it will be necessary to provide a copy.
2. It is essential that the citation be included in the Index of Authorities in the factum. This Practice Note affects only copying of cases to be filed. It does not alter the requirement for a correct and complete citation.
3. The inclusion of a case, or portions thereof, on the appended list is simply an indication that it is frequently cited and that a copy is readily accessible to the judges.
4. The appended list will be periodically assessed and updated in accordance with the procedure adopted by the Court.

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Appendix to CAPN No. 2018-16

(1) Alphabetical List of Frequently Cited Cases – Criminal

Palmer v. The Queen, [1980] 1 S.C.R. 759 - page 775 (test for the admission of fresh evidence on appeal)

R. v. Adams, 2011 NLCA 3, 303 Nfld. & P.E.I.R. 247 - paras. 7-8 (leave to appeal from summary conviction appeal)

R. v. Anthony-Cook, 2016 SCC 43, [2016] 2 S.C.R. 204 - paras 34-32 and 50-60 (when can a court reject a joint submission on sentencing)

R. v. Babos, 2014 SCC 16, [2014] 1 S.C.R. 309 - paras. 31-47 (stay of proceedings for abuse of process)

R. v. Biniaris, 2000 SCC 15, [2000] 1 S.C.R. 381 - para. 18 (right to appeal from a substituted verdict); para. 23 (application of a legal standard is a question of law); paras. 36-42 (test for unreasonable verdict)

R. v. Cody, 2017 SCC 31 - paras. 20-39, 44-48, 63-65, 67-71 (unreasonable delay)

R. v. Côté, 2011 SCC 46, [2011] 3 S.C.R. 215 - paras. 45-89 (test for exclusion of evidence under s. 24(2) of the *Charter*)

R. v. Dinardo, 2008 SCC 24, [2008] 1 S.C.R. 788 - paras. 24-35 (duty to give reasons)

R. v. Gagnon, 2006 SCC 17, [2006] 1 S.C.R. 621 - para. 10 (credibility findings overturned only if a palpable and overriding error is shown); paras. 13-16, 20-23 (duty to give reasons)

R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353 - paras. 28-44 (test for detention); paras. 71-128 (test for exclusion of evidence under s. 24(2) of the *Charter*)

R. v. Hillier, 2016 NLCA 21, 377 Nfld. & P.E.I.R. 121 - para. 7 (test for granting leave to appeal sentence)

R. v. Hutchings, 2012 NLCA 2, 316 Nfld. & P.E.I.R. 211 - para. 84 (applying the totality principle when sentencing)

R. v. J.M.H., 2011 SCC 45, [2011] 3 S.C.R. 197 - paras. 24-39 (what questions are “questions of law alone”)

R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631 - paras. 46-117 (unreasonable delay)

R. v. Khan, [1990] 2 S.C.R. 531 - pages 538 (when can a person give evidence under oath); 546-548 (test for the admissibility of hearsay evidence)

R. v. Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089 - paras. 36-55 (when a court of appeal may intervene in a sentence appeal); paras. 56-67 (the relevance of sentencing ranges)

R. v. M. (C.A.), [1996] 1 S.C.R. 500 - para. 90 (when a court of appeal may intervene in a sentence appeal)

R. v. McDonnell, [1997] 1 S.C.R. 948 - para. 16 (when a court of appeal may intervene in a sentence appeal)

R. v. Meer, 2016 SCC 5 - all (ineffective assistance of trial counsel)

R. v. Mian, 2014 SCC 54, [2014] 2 S.C.R. 689 - paras. 29-60 (new issues on appeal)

R. v. Murphy, 2011 NLCA 16, 304 Nfld. & P.E.I.R. 266 - para. 27 (breaches of probation - sentencing)

R. v. Nixon, 2011 SCC 34, [2011] 2 S.C.R. 566 - paras. 18-32 (review of prosecutorial discretion); paras 33-54 (stay of proceedings for abuse of process)

R. v. Oakes, [1986] 1 S.C.R. 103 - para. 70 (s. 1 of the *Charter*)

R. v. O'Connor, [1995] 4 S.C.R. 411 - paras. 59-83 (abuse of process at common law and under s. 7 of the *Charter*); 97-187 (process for getting disclosure in possession of third parties)

R. v. Oland, 2017 SCC 17, [2017] 1 S.C.R. 250 - all (judicial interim release in an appellate court)

R. v. Oxford, 2010 NLCA 45, 299 Nfld. & P.E.I.R. 327 - para. 61 (when can a court reject a joint submission on sentencing)

R. v. Proulx, 2000 SCC 5, [2000] 1 S.C.R. 61 - para. 127 (when is it appropriate to impose a conditional sentence order)

R. v. R.E.M., 2008 SCC 51, [2008] 3 S.C.R. 3 - paras. 8-36 (duty to give reasons)

R. v. R.P., 2012 SCC 22, [2012] 1 S.C.R. 746 - paras. 9-10 (test for unreasonable verdict)

R. v. Ryan, 2008 NLCA 42, 277 Nfld. & P.E.I.R. 167 - para. 9 (test for appointment of counsel under s. 684 of the *Criminal Code*)

R. v. Sheppard, 2002 SCC 26, [2002] 1 S.C.R. 869 - para. 55 (duty to give reasons)

R. v. Shropshire, [1995] 4 S.C.R. 227 - paras. 38-42 (sentencing and the right to silence); paras. 46-48 (when a court of appeal may intervene in a sentence appeal)

R. v. Stinchcombe, [1991] 3 S.C.R. 326 - pages 336-348 (Crown's disclosure obligations)

R. v. Suberu, 2009 SCC 33, [2009] 2 S.C.R. 460 - paras. 21-25 (test for detention); para. 41 (meaning of "without delay" in s. 10(b) of the *Charter*)

R. v. W. (D.), [1991] 1 S.C.R. 742 - pages 757-758 (assessing evidence when accused testifies)

R. v. Yebe, [1987] 2 S.C.R. 168 - pages 180-190 (test for unreasonable verdict)

(2) Topical List of Frequently Cited Cases – Criminal

Appellate Procedure in Criminal Cases

New issues on appeal: *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689 - paras. 29-60

Test for the admission of fresh evidence on appeal: *Palmer v. The Queen*, [1980] 1 S.C.R. 759 - page 775

Test for appointment of counsel under s. 684 of the *Criminal Code*: *R. v. Ryan*, 2008 NLCA 42, 277 Nfld. & P.E.I.R. 167 - para. 9

Leave to appeal from summary conviction appeal: *R. v. Adams*, 2011 NLCA 3, 303 Nfld. & P.E.I.R. 247 - paras. 7-8

Leave to appeal sentence: *R. v. Hillier*, 2016 NLCA 21, 377 Nfld. & P.E.I.R. 121 - para. 7

Ineffective assistance of trial counsel: *R. v. Meer*, 2016 SCC 5 - all

Sentencing Issues

When a court of appeal may intervene in a sentence appeal: *R. v. Shropshire*, [1995] 4 S.C.R. 227 - paras. 46-48; sentencing and the right to silence - paras. 38-42

When a court of appeal may intervene in a sentence appeal: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 - para. 90

When a court of appeal may intervene in a sentence appeal: *R. v. McDonnell*, [1997] 1 S.C.R. 948 - para. 16

When a court of appeal may intervene in a sentence appeal: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089 - paras 36-55; relevance of sentencing ranges - paras. 56-67

Breaches of probation - sentencing: *R. v. Murphy*, 2011 NLCA 16, 304 Nfld. & P.E.I.R. 266 - para. 27

When is it appropriate to impose a conditional sentence order: *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61 - para. 127

Applying the totality principle when sentencing: *R. v. Hutchings*, 2012 NLCA 2, 316 Nfld. & P.E.I.R. 211 - para. 84

When can a court reject a joint submission on sentencing: *R. v. Oxford*, 2010 NLCA 45, 299 Nfld. & P.E.I.R. 327 - para. 61

When can a court reject a joint submission on sentencing: *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204 - paras 34-32 and 50-60

Evidence

Assessing evidence when accused testifies: *R. v. W. (D.)*, [1991] 1 S.C.R. 742 - pages 757-758

Test for exclusion of evidence under s. 24(2) of the Charter: *R. v. Côté*, 2011 SCC 46, [2011] 3 S.C.R. 215 - paras. 45-89

Test for exclusion of evidence under s. 24(2) of the Charter: *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 - paras. 71-128

Test for the admissibility of hearsay evidence: *R. v. Khan*, [1990] 2 S.C.R. 531 - page 538; When can a person give evidence under oath - pages 546-548

Credibility findings overturned only if a palpable and overriding error is shown: *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621 - para. 10

Crown's disclosure obligations: *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 - pages 336-348

Judicial Interim Release

Test for detention: *R. v. Suberu*, 2009 SCC 33, [2009] 2 S.C.R. 460 - paras. 21-25; meaning of “without delay” in s. 10(b) of the Charter - para. 41

Test for detention: *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 - paras. 28-44

Test in an appellate court: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250 - all

General

What questions are “questions of law alone”: *R. v. J.M.H.*, 2011 SCC 45, [2011] 3 S.C.R. 197 - paras. 24-39

Application of a legal standard is a question of law: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381 - para. 23

Duty to give reasons: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869 - para. 55

Duty to give reasons: *R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788 - paras. 24-35

Duty to give reasons: *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621 - paras. 13-16 and 20-23

Duty to give reasons: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3 - paras. 8-36

Test for unreasonable delay: *R. v. Cody*, 2017 SCC 31 - paras. 20-39, 44-48, 63-65, 67-71

Test for unreasonable delay: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631 - paras. 46-117

Test for unreasonable verdict: *R. v. R.P.*, 2012 SCC 22, [2012] 1 S.C.R. 746 - paras. 9-10

Test for unreasonable verdict: *R. v. Yebe*, [1987] 2 S.C.R. 168 - pages 180-190

Test for unreasonable verdict: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381 - paras. 36-42; right to appeal from a substituted verdict - para. 18

Abuse of process at common law and under s. 7 of the *Charter*: *R. v. O'Connor*, [1995] 4 S.C.R. 411- paras 59-83; process for getting disclosure in possession of third parties - paras. 97-187

Stay of proceedings for abuse of process: *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309 - paras. 31-47

Stay of proceedings for abuse of process: *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566 - paras. 33-54, review of prosecutorial discretion - paras. 18-32

Section 1 of the *Charter*: *R. v. Oakes*, [1986] 1 S.C.R. 103 - para. 70