

[Canada Federal Rules](#)

[Can. Reg. SI/2004-134 — Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings](#)

SI/2004-134

to

SI/2004-134, Sched., Form 14

C

made under the *Criminal Code*

SI/2004-134

Part I — General | Rule 1 — Citation, Application and Interpretation

1 Citation, Application and Interpretation

The full text for this rule can be found by accessing its specific sections:

1.01

1.02

1.03

1.04

1.05

1.06

Part I — General | Rule 1 — Citation, Application and Interpretation | Citation

1.01

1.01(1) Title

These rules may be cited as the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*.

1.01(2) Subdivision

In these rules,

- (a) all the provisions identified by the same number to the left of the decimal point comprise a Rule (for example, Rule 1, which consists of rules 1.01 to 1.06);
- (b) a provision identified by a number with a decimal point is a rule (for example, rule 1.01); and
- (c) a rule may be subdivided into
 - (i) subrules (for example, subrule 1.01(1)),
 - (ii) clauses (for example, clause 1.01(2)(a) or 4.06(1)(b)), and
 - (iii) subclauses (for example, subclause 1.01(2)(c)(i) or 4.08(11)(a)(i)).

1.01(3) Alternative References

In a proceeding in the court, it is sufficient to refer to a rule or subdivision of a rule as a "rule" followed by the number of the rule, subrule, clause or subclause (for example, rule 1.01, rule 1.01(2), rule 1.01(2)(c) or rule 1.01(2)(c)(iii)).

Part I — General | Rule 1 — Citation, Application and Interpretation | Application

C

1.02

1.02(1) Provincial Court of Newfoundland and Labrador

These rules are enacted under subsection 482(2) of the *Criminal Code* and apply to prosecutions, proceedings and applications, as the case may be, within the jurisdiction of the Provincial Court of Newfoundland and Labrador, instituted in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding or application.

1.02(2) Coming into Force

These rules come into force on November 1, 2004.

Part I — General | Rule 1 — Citation, Application and Interpretation | Definitions



1.03

The following definitions apply in these rules, unless the context otherwise requires.

"**affidavit**" means a written statement in Form 2 confirmed by oath, or a solemn affirmation. ("*affidavit*")

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

"**application**" means a proceeding commenced by a Notice of Application in Form 1, whether described in the enabling legislation or other authority as an application or motion. ("*application*")

"**Charter**" means the *Canadian Charter of Rights and Freedoms*. ("*Chartre*")

"**clerk**" means the clerk of the court. ("*greffier*")

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

"**counsel**" means a barrister and solicitor entitled to practise in the Province of Newfoundland and Labrador. ("*avocat*")

"**counsel of record**" means the counsel who represents or represented the accused in the proceedings that are the subject of the application. ("*procureur commis au dossier*")

"**court**" means the Provincial Court of Newfoundland and Labrador for the court centre in which a proceeding is commenced or pending or being heard, as the case may be. ("*tribunal*")

"**court office**" means the office of the clerk for the court centre in which the proceeding is commenced, pending or being heard, as the case may be. ("*greffe*")

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

"**document**" includes a Notice of Application, affidavit or any other material required or permitted to be served and filed under these rules. ("*document*")

"**hearing**" means the hearing of an application, motion or preliminary inquiry, or a trial. ("*audience*")

"**holiday**" means

- (a) any Saturday or Sunday;
- (b) any proclaimed under or in accordance with the *Shops Closing Act*;
- (c) any special holiday proclaimed by the Governor General or the Lieutenant Governor; and
- (d) that, if New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

("jour férié")

"**information**" includes

(a) a count in an information; and

(b) a complaint in respect of which a judge is authorized by an Act of Parliament or an enactment made thereunder to make an order.

("dénonciation")

"**judge**" means a judge of the court and includes a justice of the peace when the context requires. ("juge")

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

"**order**" includes a judgment. ("ordonnance")

"**proceeding**" includes an application, trial, preliminary inquiry or other hearing. ("instance")

"**prosecutor**" means the Attorney General or, if the Attorney General does not intervene, means the person who institutes proceedings to which the Code applies, and includes counsel acting on behalf of either of them. ("poursuivant")

"**respondent**" means a person against whom an application is made. ("intimé")

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

Part I — General | Rule 1 — Citation, Application and Interpretation | Interpretation



1.04

1.04(1) General Principle

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

1.04(2) Matters Not Provided For

If matters are not provided for in these rules, the practice shall be determined by analogy to them.

1.04(3) Party Not Represented by Counsel

If an accused is not represented by counsel, anything that these rules require or permit counsel to do shall be done by or on behalf of the accused.

Part I — General | Rule 1 — Citation, Application and Interpretation | Application of code provisions

1.05

The interpretation sections of the Code apply to these rules.

Part I — General | Rule 1 — Citation, Application and Interpretation | Forms

1.06

The forms set out in the schedule shall be used when applicable and with such variations as the circumstances require.

Part I — General | Rule 2 — Non-Compliance with the Rules



2 Non-Compliance with the Rules

The full text for this rule can be found by accessing its specific sections:

2.01

2.02

Part I — General | Rule 2 — Non-Compliance with the Rules | Effect of non-compliance

C

2.01

A failure to comply with these rules is an irregularity that does not render a proceeding or a step, document or order in a proceeding a nullity, and the court

- (a) may grant all necessary amendments or other relief in accordance with rule 2.02, on any terms that are just, to secure the just determination of the real matters in dispute; or
- (b) only if and as necessary in the interests of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

Part I — General | Rule 2 — Non-Compliance with the Rules | Court may dispense with compliance

C

2.02

The court may, only if and as necessary in the interests of justice, dispense with compliance with any rule at any time.

Part I — General | Rule 3 — Time

3 Time

The full text for this rule can be found by accessing its specific sections:

3.01

3.02

Part I — General | Rule 3 — Time | Computation

3.01

3.01(1) In the computation of time under these rules or an order, except if a contrary intention appears,

- (a) if there is a reference to a number of clear days or "at least" a number of days between two events, in calculating the number of days, there shall be excluded the days on which the events happen;
- (b) if a period of less than six days is prescribed, holidays shall not be counted;
- (c) if the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday; and
- (d) service of a document made after 4 p.m., or at any time on a holiday, shall be deemed to have been made on the next day that is not a holiday.

3.01(2) If a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

Part I — General | Rule 3 — Time | Extension or abridgment

C

3.02

3.02(1) General Powers of Court

Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order in accordance with rule 2.02, on such terms as are just.

3.02(2) An application for an order extending time may be made before or after the expiration of the time prescribed.

3.02(3) Consent in Writing

Any time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by consent in writing endorsed on the relevant document by the party to whom the document is intended, or in such other form as a judge may direct.



4 Court Documents

The full text for this rule can be found by accessing its specific sections:

4.01

4.02

4.03

4.04

4.05

4.06

4.07

4.08

4.09

4.10

4.01

Unless the nature of the document renders it impracticable, every document prepared by a party for use in a proceeding shall be legibly printed, typewritten, written or reproduced on durable white paper 279 mm in length and 216 mm in width, with a margin on the left side of the face of the page and, if the reverse side is used, on the right side of the reverse.



4.02

4.02(1) General Heading

Every document in a proceeding shall have a heading in accordance with Form 1 (Notice of Application) that sets out

- (a) the name of the court and the information number; and
- (b) the title of the proceeding but, in a document other than a record, order or report, if there are more than two parties to the proceeding, a short title showing the names of the first party on each side followed by the words "and others" may be used.

4.02(2) Body of Document

Every document in a proceeding shall contain

- (a) the title of the document;
- (b) its date;
- (c) if the document is filed by a party and not issued by a clerk, the name, address and telephone number of counsel filing the document or, if a party is not represented by counsel, the name of the party, their address for service and their telephone number; and
- (d) if the document is issued by a clerk, the address of the court office in which the proceeding was commenced.

4.03

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

Part I — General | Rule 4 — Court Documents | Notice to be in writing

4.04

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

Part I — General | Rule 4 — Court Documents | Filing of documents

4.05

4.05(1) Place of Filing

All documents required to be filed in a proceeding shall be filed in the court office for the place where the proceeding was commenced or pending or being heard, as the case may be, except if they are filed in the course of a hearing or if these rules provide otherwise.

4.05(2) An affidavit, transcript, record or factum to be used on the hearing of an application shall be filed in the court office for the place where the hearing is to be held.

4.05(3) Filing by Leaving in Court Office or by Mail

Any document, other than one that is to be issued, may be filed by leaving it in the proper court office or mailing it to the proper court office accompanied by, if applicable, the prescribed fee.

4.05(4) Date of Filing if Filed by Mail

If a document is filed by mail, the date of the filing stamp of the court office on the document is deemed to be the date of its filing, unless the court orders otherwise in accordance with rule 2.02.

4.05(5) If Document Filed by Mail Not Received

If a court office has no record of the receipt of a document alleged to have been filed by mail, the document is deemed not to have been filed, unless the court orders otherwise in accordance with rule 2.02.

Part I — General | Rule 4 — Court Documents | Affidavits



4.06

4.06(1) Format

An affidavit used in a proceeding shall

- (a) be in Form 2;
- (b) be expressed in the first person;
- (c) state the full name of the deponent and, if the deponent is a party or counsel, officer, director, member or employee of a party, state that fact;
- (d) be divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular statement of fact; and
- (e) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations.

4.06(2) Contents

An affidavit shall be confined to a statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except that an affidavit may contain statements of the deponent's belief with respect to facts that are not contentious, so long as the source or sources of the information and the fact of belief are specified in the affidavit, or unless these rules provide otherwise.

4.06(3) Exhibits

An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit and if the exhibit is

- (a) referred to as being attached to the affidavit, it shall be attached to and filed with the affidavit;

(b) referred to as being produced and shown to the deponent, it shall not be attached to the affidavit or filed with it, but shall be left with the clerk for the use of the court, and on the disposition of the matter in respect of which the affidavit was filed, and after the appeal period has expired, the exhibit shall be returned to counsel or the party who filed the affidavit, unless the court orders otherwise in accordance with rule 2.02; and

(c) a document, a copy shall be served with the affidavit, unless it is impractical to do so.

4.06(4) Two or More Deponents

If an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents make the affidavit before the same person at the same time, in which case one jurat containing the words "Sworn (or Affirmed) by the above-named deponents" may be used.

4.06(5) A Corporation

If these rules require an affidavit to be made by a party and the party is a corporation, the affidavit may be made for the corporation by an officer, director or employee of the corporation.

4.06(6) Affidavit by Illiterate or Blind Person

If it appears to a person before whom an affidavit is sworn or affirmed that a deponent is illiterate or blind, that person shall certify in the jurat that

(a) the affidavit was read in his or her presence to the deponent, who seemed to understand it, and

(b) the deponent signed the affidavit or placed his or her mark on it in his or her presence,

and unless it is so certified the affidavit shall not be used without leave of the court.

4.06(7) Alterations

Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person taking the affidavit and, unless so initialled, the affidavit shall not be used without leave of the presiding judge or officer.

Part I — General | Rule 4 — Court Documents | Binding of transcripts

4.07

Transcripts of evidence for use on an application or preliminary inquiry or at trial shall have a light blue back sheet of cover stock.

Part I — General | Rule 4 — Court Documents | Transcripts

4.08

4.08(1) Paper Size

Evidence shall be transcribed on paper 216 mm by 279 mm in size with a margin 25 mm wide on the left side delimited by a vertical line.

4.08(2) Heading

The name of the court or, in the case of an examiner, the examiner's name, title and location shall be stated on a single line not more than 15 mm from the top of the first page and each page, other than the first page, shall be numbered consecutively at the top of each page.

4.08(3) Standards

The text shall be typewritten on 30 lines numbered in the margin every fifth line.

4.08(4) Headings, such as "Swearing of a Witness" or "Direct Examination and Cross-examination", shall be capitalized and separated from the preceding text by the space of a numbered line, and the number of lines of text on the page may be reduced by one for each heading that appears on the page.

4.08(5) Every question shall commence on a new line and shall begin with the designation "Q." followed, within 10 mm, by the question.

4.08(6) Every answer shall commence on a new line and shall begin with the designation "A." followed, within 10 mm, by the answer.

4.08(7) The first line of a question or answer shall be indented 35 mm from the margin and be no more than 130 mm in length.

4.08(8) In a transcript of evidence taken in court, every line of a question or answer, other than the first line, shall begin at the margin and be no more than 165 mm in length.

4.08(9) In a transcript of evidence taken out of court, every line of a question or answer, other than the first line, shall begin 15 mm from the margin and be no more than 150 mm in length, and questions shall be numbered consecutively by means of a number placed within the 15 mm to the right of the margin.

4.08(10) Lines of text other than questions and answers shall be indented 35 mm from the margin and be no more than 130 mm in length.

4.08(11) Every transcript of evidence taken in or out of court shall have

(a) a cover page setting out

- (i) the name of the court,
- (ii) the title of the proceeding,
- (iii) the nature of the hearing or examination,
- (iv) the place and date of the hearing or examination,
- (v) the name of the presiding judge or officer, and
- (vi) the names of counsel; and

(b) a table of contents setting out

- (i) the name of each witness with the page numbers at which the examination, cross-examination and re-examination of the witness commence,
- (ii) the page number at which the reasons for judgment commence,
- (iii) a list of the exhibits, with the page number at which they were made exhibits, and
- (iv) at the foot of the page, the date the transcript was ordered, the date it was completed and the date the parties were notified of its completion.

Part I — General | Rule 4 — Court Documents | Transmission of documents

4.09

4.09(1) If documents filed with the court or exhibits in the custody of an officer are required for use at another location, the clerk shall send them to the clerk at the other location on receipt of a party's requisition in Form 14.

4.09(2) Documents or exhibits that have been filed at or sent to a location other than where the proceeding was commenced for a hearing at that location shall be sent by the clerk, after completion of the hearing, to the clerk at the court office where the proceeding was commenced.

Part I — General | Rule 4 — Court Documents | Notice of constitutional issue

4.10

If an issue is raised as to the constitutionality of an Act or regulation, the party raising the issue shall serve a Notice of Application and Constitutional Issue in Form 3.

Part I — General | Rule 5 — Service of Documents



5 Service of Documents

The full text for this rule can be found by accessing its specific sections:

5.01 Notices of Application and Other Documents

5.02

5.03

5.04

5.05

5.06

5.07

5.08

5.09

Part I — General | Rule 5 — Service of Documents | General rules for manner of service



5.01 Notices of Application and Other Documents

5.01(1) A notice of application or other document need not be served personally or by an alternative to personal service unless these rules or an order of the court requires personal service or an alternative to personal service.

5.01(2) Any document that is not required to be served personally or by an alternative to personal service

(a) shall be served on a party who has counsel of record by serving counsel in a manner provided in rule 5.05; and

(b) may be served on a party not represented by counsel or on a person who is not a party

(i) by mailing a copy of the document to the most recent address for service provided by the party or person or, if no such address has been provided, to the party's or person's latest known address, or

(ii) by personal service or by an alternative to personal service.

Part I — General | Rule 5 — Service of Documents | Personal service

5.02

5.02(1) If a document is to be served personally, the service shall be made

(a) Individual

— on an individual, by leaving a copy of the document with the individual;

(b) Corporation

— on any corporation, by leaving a copy of the document with an officer or director of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;

(c) Judge

— on any judge, by leaving a copy of the document with the judge, or with a person in charge of the court office in the court centre where the adjudication was or is to be made;

(d) Attorney General of Canada

— on the Attorney General of Canada, by leaving a copy of the document at the office of the Attorney General of Canada at St. John's, the office of the Attorney General of Canada at Ottawa or the office of the prosecutor retained by the Attorney General of Canada having carriage of the proceedings; and

(e) Attorney General of Newfoundland and Labrador

— on the Attorney General of Newfoundland and Labrador, by leaving a copy of the document at the office of the crown attorney having carriage of the proceedings.

5.02(2) A person effecting personal service of a document need not produce the original document or have it in his or her

possession.

Part I — General | Rule 5 — Service of Documents | Alternatives to personal service



5.03

5.03(1) Available

If these rules or an order of the court permit service by an alternative to personal service, service shall be made in accordance with this rule.

5.03(2) Acceptance of Service by Counsel

Service on a party who has counsel may be made by leaving a copy of the document with the counsel, but service under this subrule is effective only if counsel endorses, on the document or a copy of it, an acceptance of service and the date of acceptance.

5.03(3) By accepting service, counsel shall be deemed to represent to the court that counsel has the authority of his or her client to accept service.

5.03(4) Service by Mail to Latest Known Address

Service of a document may be made by sending a copy of the document together with an Acknowledgment of Receipt Card in Form 4 by mail to the latest known address of the person to be served, but service by mail under this subrule is effective

(a) only if the Acknowledgment of Receipt Card or a post office receipt bearing a signature that purports to be the signature of the person to be served is received by the sender; and

(b) on the day on which the sender first receives either receipt, signed as provided by clause (a).

5.03(5) Service at Place of Residence

Where an attempt is made to effect personal service at a person's place of residence cannot be effected, the document may be served

(a) by leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and

(b) on the same day or the following day, by mailing another copy of the document to the person at the place of residence, and service in this manner is effective on the fifth day after the document is mailed.

5.03(6) Service on a Corporation

Where the head office or principal place of business of a corporation cannot be found at the most recent address recorded with the Registry of Companies, service may be made on the corporation by mailing a copy of the document to the corporation at that address.

Part I — General | Rule 5 — Service of Documents | Substituted service or dispensing with service



5.04

5.04(1) Order by the court

Where personal service of a document is required by these rules, and it appears to the court that it is impractical to effect personal service, the court may make an order for substituted service or, if necessary in the interests of justice, may dispense with service.

5.04(2) Effective Date of Service

In an order for substituted service, the court shall specify when service in accordance with the order is effective.

5.04(3) If an order is made dispensing with service of a document, the document is deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

Part I — General | Rule 5 — Service of Documents | Service on counsel of record

5.05

5.05(1) Service of a document on counsel of record of a party may be made by

- (a) mailing a copy to counsel's office;
- (b) leaving a copy with counsel or an employee in counsel's office; or
- (c) transmitting the document by telecopier in accordance with subrule (2).

5.05(2) A document that is served telecopier shall include a cover page indicating

- (a) the sender's name, address and telephone number;
- (b) the name of counsel of record to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

Part I — General | Rule 5 — Service of Documents | Service by mail

5.06

5.06(1) Manner of Service

Where a document is to be served by mail under these rules, a copy of the document shall be sent by pre-paid first class mail or by registered mail.

5.06(2) Effective Date

Service of a document by mail, except under subrule 5.03(4), is effective on the fifth day after the document is mailed.

Part I — General | Rule 5 — Service of Documents | Document does not reach person served

5.07

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

- (a) did not come to his or her notice; or
- (b) came to his or her notice only at some time later than when it was served or is deemed to have been served.

Part I — General | Rule 5 — Service of Documents | Validating service

C

5.08

If a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service when the court is satisfied that the document

- (a) came to the notice of the person to be served; or
- (b) was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Part I — General | Rule 5 — Service of Documents | Proof of service

C

5.09

5.09(1) Affidavit of Service

Service of a document may be proved by an affidavit of the person who served it in Form 5.

5.09(2) Counsel of Record's Admission or Acceptance

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

Part I — General | Rule 6 — Applications



6 Applications

The full text for this rule can be found by accessing its specific sections:

6.01

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6.12 Evidence by Examination of Witnesses

6.13 Use of Agreed Statement of Facts

6.14

Part I — General | Rule 6 — Applications | Applications



6.01

6.01(1) If a Statute authorizes, permits or requires that an application or motion be made to or an order or determination be made by a judge, other than a judge presiding at preliminary inquiry or trial, the application shall be commenced by a Notice of Application in Form 1.

6.01(2) This rule applies to all proceedings commenced by a Notice of Application, except if otherwise expressly provided by these rules or as otherwise ordered by a judge in accordance with rule 2.02.

Part I — General | Rule 6 — Applications | Applications — to whom to be made



6.02

6.02(1) An application shall be made to a judge sitting at the court centre in which the proceeding is being or is to be held, unless otherwise provided by these rules.

6.02(2) The party making an application shall obtain from the clerk a place, date and time of hearing of the application.

Part I — General | Rule 6 — Applications | Content of notice

C

6.03

6.03(1) Every Notice of Application shall state

- (a) the place and date of hearing in accordance with rule 6.02 and any other rule relating thereto;
- (b) the precise relief sought;
- (c) the grounds to be argued, including a reference to any statutory provision or rule to be relied on;
- (d) the documentary, affidavit and other evidence to be used at the hearing of the application; and
- (e) whether any order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials required under these rules.

Part I — General | Rule 6 — Applications | Service of notice

C

6.04

6.04(1) Generally

The Notice of Application shall be served on all parties and, if there is uncertainty as to whether anyone else should be served, the applicant may apply *ex parte* to a judge for an order for directions.

6.04(2) Minimum Notice Period

Except if otherwise expressly provided by the Code or these rules, or as ordered by a judge in accordance with rule 2.02, the Notice of Application shall be served not later than 15 days before the date of the hearing of the application.

6.04(3) Filing Proof of Service

Except if otherwise expressly provided by the Code or these rules, or except as ordered by a judge in accordance with rule 2.02, the Notice of Application shall be filed with proof of service not later than 10 days before the date of the hearing of the application, in the court office for the place where the application is to be heard.

Part I — General | Rule 6 — Applications | Material for use on applications

C

6.05

6.05(1) Application Record and Factum

The applicant shall, when the court requires under subrule (4),

- (a) serve an application record, together with a factum prepared in accordance with rule 6.07 if a judge of the court orders that a factum be filed or if these rules expressly provide for the filing of a factum, not later than 15 days before the date of the hearing, on every respondent; and
- (b) file the application record, including any factum, not later than 10 days before the date of the hearing of the application, in the court office for the place where the application is to be heard.

6.05(2) The applicant's application record shall contain, in consecutively numbered pages arranged in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the Notice of Application;
- (c) a copy of the information to which the application relates;
- (d) a copy of all affidavits and other material served by the applicant and any party other than the respondent for use on the application;

- (e) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
- (f) a copy of any other material in the court file that is necessary for the hearing of the application.

6.05(3) Respondent's Application Record and Factum

The respondent shall, if a judge orders that a factum shall be filed or if these rules expressly provide for the filing of a factum, serve on every other party a factum prepared in accordance with rule 6.08 and may, if the respondent is of the opinion that the application record is incomplete, serve on every other party a respondent's application record containing, in consecutively numbered pages arranged in the following order,

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

The respondent's application record, including any factum, shall be filed, with proof of service, in the court office for the place where the application is to be heard, not later than five days before the date of the hearing of the application.

6.05(4) Record and Factum

If and as necessary in the interests of justice, a judge, before or at the hearing of the application, may order compliance with this rule in whole or in part.

6.05(5) Documents May Be Filed as Part of Record

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

6.05(6) Transcript of Evidence

A party who intends to refer to a transcript of evidence at the hearing of an application shall file a copy of the transcript as provided by rule 4.08.

Part I — General | Rule 6 — Applications | Factums



6.06

6.06(1) Application of the Rule

If a filing of a factum is required by order of a judge or if these rules expressly provide for the filing of a factum, this rule and rules 6.07 to 6.09 apply with any necessary modifications to all applications.

6.06(2) General Requirement

If a filing of a factum is required by order of a judge or if these rules expressly provide for the filing of a factum, all parties to an application and persons who have been granted the right to be heard shall deliver a factum, to be entitled on its cover "Applicant's Factum", "Respondent's Factum" or "Intervenor's Factum", as the case may be.

6.06(3) Signatures on Factums

All factums shall be signed by counsel or on counsel's behalf by someone specifically authorized to do so or, if a party is not represented by counsel, by the applicant or respondent, as the case may be, and the signature shall be followed by the typed name of counsel, if any, and the date.

Part I — General | Rule 6 — Applications | Applicant's factum



6.07

6.07(1) Filing and Service

Every applicant shall prepare an applicant's factum and shall file in the court office for the place where the application is to be heard one copy and serve a copy on each of the other parties and persons who have been granted the right to be heard in the proceeding.

6.07(2) Time for Delivery

The factum prepared on behalf of the applicant shall be served and filed in accordance with rule 6.05.

6.07(3) Contents

The applicant's factum shall consist of

- (a) Part I, entitled "Summary of the Facts", which shall contain a concise summary of the facts relevant to the issues on the application, with such references to the transcript of evidence by page and line, or paragraph, as the case may be, as may be necessary,
- (b) Part II, entitled "Issues and the Law", which shall contain a statement of each issue raised, immediately followed by a concise statement of the law and any authorities relating to that issue,
- (c) Part III, entitled "Order Requested", which shall contain a statement of the order that the court will be asked to make, and
- (d) a schedule, entitled "List of Authorities", which shall contain a list of the authorities (with citations) to which reference was made in Part II and in the order in which they there appear

in paragraphs numbered consecutively throughout the factum.

Part I — General | Rule 6 — Applications | Respondent's factum

**6.08****6.08(1) Filing and Service**

Every respondent shall prepare a respondent's factum and shall file in the court office for the place where the application is to be heard one copy and serve a copy on each of the other parties and persons who have been granted the right to be heard in the proceedings.

6.08(2) Time for Delivery

The respondent's factum shall be delivered to the court office for the place where the application is to be heard within seven days after service of the applicant's factum, and not later than three days before the date on which the application is scheduled to be heard.

6.08(3) Contents

The respondent's factum shall consist of

- (a) Part I, entitled "Respondent's Statement of Facts", which shall contain a statement of the facts in Part I of the applicant's factum that the respondent accepts as correct or substantially correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with any reference to the transcripts of the evidence, by page and line or paragraph, as the case may be, that is necessary,
- (b) Part II, entitled "Response to Applicant's Issues", which shall contain the position of the respondent with respect to each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities relating to that issue,
- (c) Part III, entitled "Additional Issues", which shall contain a statement of any additional issues raised by the respondent, immediately followed by a concise statement of the law and the authorities relating to that issue,
- (d) Part IV, entitled "Order Requested", which shall contain a statement of the order that the court will be asked to make, and
- (e) a schedule, entitled "List of Authorities", which shall contain a list of the authorities (with citations) referred to in the order in which they appear in Parts II and III

in paragraphs numbered consecutively throughout the factum.

Part I — General | Rule 6 — Applications | Intervenor's factum

**6.09**

6.09(1) Filing and Service

Every intervenor shall prepare an intervenor's factum and shall file in the court office for the place where the application is to be heard one copy and serve one copy on each of the other parties and persons who have been granted the right to be heard in the proceedings.

6.09(2) Time for Delivery

The intervenor's factum shall be delivered to the court office for the place where the application is to be heard within three days after service of the respondent's factum, and not later than three days before the date on which the application is scheduled to be heard.

6.09(3) Contents

The intervenor's factum shall consist of

- (a) Part I, entitled "Intervenor's Statement as to Facts", which shall contain a statement of the facts in Part I of the applicant's factum that the intervenor accepts as correct or substantially correct and those facts with which the intervenor disagrees and a concise summary of any additional facts relied on, with any reference to the transcripts of evidence by page and line or paragraph, as the case may be, that is necessary,
- (b) Part II, entitled "Response to Applicant's Issues", which shall contain the position of the intervenor with respect to each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities relating to that issue,
- (c) Part III, entitled "Additional Issues", which shall contain a statement of any additional issues raised by the intervenor, immediately followed by a concise statement of the law and the authorities relating to that issue,
- (d) Part IV, entitled "Order Requested", which shall contain a statement of the order that the court will be asked to make, and
- (e) a schedule, entitled "List of Authorities", which shall contain a list of the authorities (with citations) referred to in the order in which they appear in Parts II and III

in paragraphs numbered consecutively throughout the factum.

Part I — General | Rule 6 — Applications | Hearing of applications

**6.10**

Unless otherwise ordered, an application shall be heard and determined by a judge sitting in the court centre in which the proceeding is being or is to be held.

Part I — General | Rule 6 — Applications | Evidence on applications — evidence by affidavit

**6.11****6.11(1) General Rule**

Evidence on an application may be given by affidavit in Form 2 and in accordance with rule 4.06, unless a statute provides or a judge orders otherwise in accordance with rule 2.02.

6.11(2) Service and Filing

If an application is made on notice, the affidavits on which the application is founded shall be served with the Notice of Application and shall be filed in the court office for the place where the motion or application is to be heard, in accordance with clause 6.05(1)(b).

6.11(3) All affidavits to be used at the hearing in opposition to an application or in reply shall be served and filed in the court office for the place where the application is to be heard, in accordance with subrule 6.05(3).

6.11(4) Cross-examination on Affidavit

Subject to any statute or rule of law, an affiant may be cross-examined on his or her affidavit before the judge presiding on the hearing of the application.

Part I — General | Rule 6 — Applications | Evidence on applications — evidence by affidavit

6.12 Evidence by Examination of Witnesses

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

Part I — General | Rule 6 — Applications | Evidence on applications — evidence by affidavit

6.13 Use of Agreed Statement of Facts

A judge, before or on the hearing of the application, may dispense with the filing of any transcript or affidavit required in these rules and act on a statement of facts agreed on by the prosecutor and the accused person or his or her counsel of record.

Part I — General | Rule 6 — Applications | Abandonment of Applications

6.14

6.14(1) Notice

If an applicant desires to abandon the application, the applicant shall serve, in any manner provided by Rule 5, a Notice of Abandonment in Form 6, signed by counsel of record in the application, or by the applicant, in which case the signature shall be witnessed by counsel or an officer of the institution in which the applicant is confined, or a person authorized to administer oaths.

6.14(2) Dismissal as Abandoned

A judge in chambers may thereon dismiss the application as an abandoned application, without the attendance of counsel of record or the applicant.

6.14(3) Dismissal for Failure to Appear

An applicant who fails to appear at the hearing of an application shall be deemed to have wholly abandoned the application, unless the court orders otherwise in accordance with rule 2.02.

Part I — General | Rule 7 — Directions

7 Directions

The full text for this rule can be found by accessing its specific sections:

7.01 Power to Issue Directions

Part I — General | Rule 7 — Directions

7.01 Power to Issue Directions

The Chief Judge may from time to time issue directions not inconsistent with these rules, in relation to the supervision and direction of the sittings and the assignment of judicial duties.

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing

8 Release of Exhibits for Scientific Testing

The full text for this rule can be found by accessing its specific sections:

8.01

8.02 To Whom Application Made

8.03

8.04

8.05

8.06

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Application

8.01

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

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Application

8.02 To Whom Application Made

Applications under rule 8.01 shall be made to a judge sitting at the court centre in which the proceeding is being held or is to be held.

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Service of Notice

8.03

8.03(1) General Rule

Service of a Notice of Application under this rule and the supporting materials required by rule 8.04 shall be made on the prosecutor or accused, as the case may be, in accordance with Rule 5, not later than three days before the date fixed for the hearing of the application.

8.03(2) Filing with Proof of Service

The Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than one day before the date fixed for the hearing of the application.

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Material for Use on Application

8.04

8.04(1) Materials to Be Filed

The Notice of Application under this rule shall be accompanied by an affidavit by or on behalf of the applicant deposing to the reasons for the application and setting out the measures proposed to ensure the safeguarding of the exhibit and its preservation for use at the trial.

8.04(2) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Consent in Writing

8.05

The respondent may consent in writing to the order sought, on terms included in a draft order in Form 7, and a judge may grant the order without the attendance of counsel.

Part II — Pre-Trial Proceedings | Rule 8 — Release of Exhibits for Scientific Testing | Order Directing Release of Exhibits

8.06

8.06(1) Form of Order

An order directing the release of exhibits for the purpose of a scientific test or other examination under subsection 605(1) of the Code and that order shall be in Form 7.

8.06(2) Sufficiency of Order

The order shall be sufficient authority for the person with custody of the exhibit to be tested or examined to release the exhibit for that purpose and thereafter to regain custody of it in accordance with its terms.

Part II — Pre-Trial Proceedings | Rule 9 — Applications to Change the Venue of Trial



9 Applications to Change the Venue of Trial

The full text for this rule can be found by accessing its specific sections:

9.01

Part II — Pre-Trial Proceedings | Rule 9 — Applications to Change the Venue of Trial



9.01

An information is returnable to the judicial centre of the judicial district where it is alleged that the offence occurred, and shall be dealt with in that judicial district unless, on application made, it is ordered by a judge in Form 8 to be transferred to another judicial district.

Part II — Pre-Trial Proceedings | Rule 10 — Applications to Procure Attendance of Prisoners

10 Applications to Procure Attendance of Prisoners

The full text for this rule can be found by accessing its specific sections:

10.01

10.02

10.03

10.04

Part II — Pre-Trial Proceedings | Rule 10 — Applications to Procure Attendance of Prisoners | Application

10.01

This rule applies to applications under subsection 527(1) of the Code to procure the attendance of a person who is confined in a prison in Newfoundland and Labrador and under subsection 527(7) of the Code to transfer a prisoner or a person in the custody of a peace officer in Newfoundland and Labrador to the custody of another peace officer to assist a peace officer acting in the execution of his or her duties.

Part II — Pre-Trial Proceedings | Rule 10 — Applications to Procure Attendance of Prisoners | To Whom Application Made

10.02

10.02(1) Applications for Attendance at Court Proceedings

Applications under rule 10.01 made under subsection 527(1) of the Code shall be made to a judge sitting in the court centre in which the proceedings to which the application relates are scheduled to take place, as soon as is reasonably practicable and sufficiently in advance of the required attendance to ensure that no adjournment of the proceedings will be required for that purpose.

10.02(2) Applications for Transfer from Custody

Applications under rule 10.01 made under subsection 527(7) of the Code shall be made to a judge sitting in the court centre to which the prisoner or the person in the custody of a peace officer is to be transferred or in which the prisoner is incarcerated or in which the person is in the custody of a peace officer.

Part II — Pre-Trial Proceedings | Rule 10 — Applications to Procure Attendance of Prisoners | Filing of Notice

10.03

The Notice of Application and supporting materials shall be filed in the court office for the place where the application is to be determined, as soon as is reasonably practicable, before the day on which the application is to be determined.

Part II — Pre-Trial Proceedings | Rule 10 — Applications to Procure Attendance of Prisoners | Materials for Use on Application

10.04

10.04(1) Materials to Be Filed

The Notice of Application under this rule shall also be accompanied

- (a) if the application is made under subsection 527(1) of the Code, by an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2);
- (b) if the application is made under subsection 527(7) of the Code, by an affidavit by or on behalf of the prosecutor setting out the matters described in subrule (3);

- (c) if the application is made under subsection 527(7) of the Code, by the written consent of the prisoner or of the person in the custody of a peace officer to the order proposed;
- (d) by a draft order in Form 9(a) or 9(b), as the case may be; and
- (e) by a copy of any other material in the court file that is necessary for the determination of the application.

10.04(2) Affidavit of or on Behalf of the Applicant

The affidavit of or on behalf of the applicant required by clause (1)(a) for an application under subsection 527(1) of the Code shall contain

- (a) particulars of the charge in respect of which the application is made, including a statement of the date on which the proceedings in which the prisoner's attendance is required are scheduled to commence or resume, as the case may be;
- (b) particulars of the date on or period within which, as well as the locations at which, the attendance of the prisoner will or may be required;
- (c) particulars relating to the detention of the prisoner; and
- (d) a statement of the reasons why the prisoner's attendance is required.

10.04(3) The affidavit of or on behalf of the applicant required by clause (1)(b) for an application under subsection 527(7) of the Code shall contain

- (a) a description of the status of the peace officer to whose custody it is sought to transfer the prisoner or person in the custody of a peace officer;
- (b) a statement or description of the purpose for which the transfer is sought;
- (c) particulars relating to the detention of the prisoner or of the person in the custody of a peace officer;
- (d) a statement or description of the nature of the assistance that it is reasonably anticipated the prisoner or person in the custody of a peace officer will provide, if transferred;
- (e) a statement of whether the assistance reasonably anticipated is available from other sources;
- (f) a statement of whether notice of the application has been given to the solicitor of record of the prisoner or of the person in the custody of a peace officer;
- (g) as an exhibit, the written consent of the prisoner or of the person in the custody of a peace officer to the proposed transfer;
- (h) a description of the procedures to be followed to ensure the custody and security of the prisoner or of the person in the custody of a peace officer;
- (i) a statement of particulars of the period for which the transfer is required; and
- (j) a general description of the locations at which the attendance of the prisoner or of the person in the custody of a peace officer will be required.

10.04(4) Application Record and Factum

Unless otherwise ordered by the judge before whom an application referred to in this rule, made under subsection 527(1) or (7) of the Code, is returnable, no application record or factum is required.

10.04(5) Attendance Not Required

Unless otherwise ordered by the judge before whom an application under this rule, made under subsection 527(1) or (7) of the Code, is returnable, the order sought may be given *ex parte* and without the attendance of the counsel of record for the applicant.

11 Applications to Take Evidence on Commission

The full text for this rule can be found by accessing its specific sections:

11.01

11.02

11.03

11.04

11.05

11.06

11.07

11.08

11.09

11.10

11.11

11.12

11.13

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11.15

11.16

11.17

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Application

11.01

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | To Whom Application Made

11.02

Applications under rule 11.01 shall be made to a judge sitting in the court centre in which the preliminary inquiry or trial is being held or is to be held, either before or as soon as is reasonably practicable after the date has been fixed for the preliminary inquiry or trial.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Contents of Notice

11.03

A Notice of Application under rule 11.01 shall include a statement of whether the presence of the accused is required on the taking of the evidence and whether the proceedings on commission are to be videotaped.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Service of Notice

11.04

Service of the Notice of Application under rule 11.03 and the supporting materials required by rule 11.05 shall be made on the prosecutor or accused, as the case may be.

11.05**11.05(1) Materials to Be Filed**

The Notice of Application in Form 1 under rule 11.03 shall be accompanied

- (a) by an affidavit by or on behalf of the applicant and deposing to the matters described in subrule (2);
- (b) if the application is made under subparagraph 709(1)(a)(i) of the Code, by the affidavit of a registered medical practitioner describing the nature and extent of the illness and the disability arising therefrom or, if the prosecutor and accused consent, the report in writing of the practitioner; and
- (c) by a draft order that, if the person is to be examined outside Newfoundland and Labrador, provides for the issuing of a Commission in Form 10 authorizing the taking of evidence before a named commissioner and a letter of request directed to the judicial authorities of the jurisdiction in which the witness is to be found, requesting the assistance of any process that is necessary to compel the witness to attend and be examined before the named commissioner.

11.05(2) Affidavit by or on Behalf of the Applicant

The affidavit by or on behalf of the applicant required by clause (1)(a) shall contain

- (a) particulars of the charge in respect of which the application is made, including a statement of the date on which the preliminary inquiry or trial is scheduled to commence and its anticipated length;
- (b) a statement of all material facts relied on to justify the belief that an order should be given including, if applicable, a statement of whether
 - (i) the requested jurisdiction will or is likely to respond favourably to a request for judicial assistance,
 - (ii) the manner of response, if favourable, is compatible with the manner in which evidence is taken in criminal proceedings in Canada,
 - (iii) the circumstances of the witness' residence outside Canada render return to Canada for the preliminary inquiry or trial likely or unlikely, thereby affecting the necessity for the taking of evidence on commission,
 - (iv) the witness has relevant and material evidence to give, receivable in accordance with the rules of evidence applicable in the Canadian proceedings,
 - (v) the witness is willing to attend to give evidence on commission and, if not, the means whereby his or her attendance may be compelled or otherwise ensured,
 - (vi) there will be unfair prejudice to the party opposite by the order of a commission,
 - (vii) there will be any serious disruption of the preliminary inquiry or trial by the taking of such evidence, and
 - (viii) the trier of fact will be disadvantaged, to the prejudice of the parties or either of them, by being unable to observe the demeanour of the witnesses;
- (c) if known, a statement of the time and place at which the proposed examination is to be conducted;
- (d) if known, a statement of the identity of the proposed commissioner and of his or her consent to act in that capacity;
- (e) a description of the manner in which it is proposed to conduct and record the examination, including whether an interpreter will be required and whether it is proposed that the proceedings be videotaped; and
- (f) a statement of whether the presence of the accused is sought, permitted or required and, if applicable, what arrangements, if any, are proposed in respect of his or her attendance or detention in custody.

11.05(3) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Consent in Writing

11.06

The respondent may consent in writing to the order sought on terms included in a draft order in Form 10 that is filed and a judge, satisfied that the relief sought by the applicant should be granted, may grant the order on those terms without the attendance of counsel.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Order for Examination

11.07

11.07(1) Contents of Order

If an order is made that the evidence of a witness may be taken by a commissioner, the judge granting the order may determine

- (a) the time and place of the examination;
- (b) the minimum notice period required;
- (c) the name of the commissioner;
- (d) the witness fee, if any, to be paid to the witness whose evidence is to be taken by the commissioner; and
- (e) any other matter respecting the holding of the examination, including the presence of the accused and his or her counsel on any commission and payment of those expenses of the commission that are to be borne by the applicant.

11.07(2) Commission and Letter of Request

If the witness is to be examined outside Newfoundland and Labrador, the order under subrule (1) shall be in Form 12 and shall, at the request of the applicant, provide for the issuing of

- (a) a commission in Form 10 authorizing the taking of evidence before a named commissioner; and
- (b) a letter of request in Form 11, directed to the judicial authorities of the jurisdiction in which the proposed witness is to be found, requesting the issuing of any process that is necessary to compel the witness to attend and be examined before the commissioner.

11.07(3) The commission and letter of request shall be prepared and issued by the clerk.

11.07(4) Duties of Commissioner

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

11.07(5) As soon as the transcript of the examination is prepared, the commissioner shall

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

11.07(6) Applicant to Serve Transcript

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Witness to Be Examined under Oath or on Affirmation

11.08

11.08(1) Examination in Newfoundland and Labrador

Before being examined, the witness shall take an oath or make an affirmation or, if the conditions of subsection 16(3) of the *Canada Evidence Act* have been met, make a promise to tell the truth, and if the examination is conducted in Newfoundland and

Labrador, the oath or affirmation shall be administered by the commissioner or by another person authorized to administer oaths in Newfoundland and Labrador, or if the conditions of subsection 16(3) of the *Canada Evidence Act* have been met, the promise to tell the truth shall be made to that person.

11.08(2) Examination Outside Newfoundland and Labrador

If the examination is conducted outside Newfoundland and Labrador, the oath or affirmation may be administered by, or the promise to tell the truth made to, the person before whom the examination is conducted, a person authorized to administer oaths in Newfoundland and Labrador or a person authorized to take affidavits or administer oaths or affirmations in the jurisdiction where the examination is conducted.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Interpreter

11.09

11.09(1) General Rule

If the witness does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the witness is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the witness.

11.09(2) Supply of Interpreter

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Production of Documents

11.10

11.10(1) General Requirement

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

11.10(2) Process May Require Documents and Things

Unless the commissioner orders otherwise in the interests of justice, the process that compels the attendance of a witness may require the witness to bring to the examination and produce for inspection

- (a) all documents and things relating to any matter in issue in the proceeding that are in his or her possession, control or power and are not privileged; or
- (b) any documents or things described in clause (a) that are specified in the process compelling attendance.

11.10(3) Duty to Produce Other Documents

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | The Course of Examination

11.11

11.11(1) Examination-in-Chief

Counsel of record for the applicant shall examine the witness whose evidence is to be taken on commission in-chief, in accordance with the rules of evidence that would apply at trial.

11.11(2) Cross-examination

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

11.11(3) Re-examination

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Objections and Rulings

11.12

11.12(1) Objections

If objection is taken to a question, the objector shall state briefly the reason for the objection, and the question and the brief statement concerning the objection shall be recorded.

11.12(2) Rulings on Answers under Objection

A question to which objection is taken may be answered with the objector's consent, and if the question is answered, a ruling shall be obtained from the preliminary inquiry or trial judge before the evidence is used at preliminary inquiry or trial.

11.12(3) Rulings on Answers Not Given

A ruling on the propriety of a question to which objection is taken and an answer not given may be obtained from the preliminary inquiry or trial judge.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Rulings by Commissioner

11.13

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Evidence Taken to Be Recorded

11.14

All evidence taken by a commissioner shall be recorded in its entirety in question-and-answer form in a manner that permits the preparation of a typewritten transcript of the examination, unless the court orders otherwise in accordance with rule 2.02 or the parties agree otherwise.

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Typewritten Transcript

11.15

11.15(1) Preparation of Transcript

If a party so requests, the person who recorded evidence taken on commission shall have a typewritten transcript of the evidence prepared and completed within four weeks after receipt of the request unless otherwise ordered by the court.

11.15(2) Certification

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

11.15(3) Delivery to Other Parties and Court

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Use of Evidence at Preliminary Inquiry or Trial

11.16

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

Part II — Pre-Trial Proceedings | Rule 11 — Applications to Take Evidence on Commission | Videotaping or Other Recording of Evidence on Commission

11.17

11.17(1) General Rule

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

11.17(2) Application of Rule 11.16

Rule 11.16 applies, with any necessary modifications, to a videotape or other recording made under subrule (1).

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record



12 Applications for Removal as Counsel of Record

The full text for this rule can be found by accessing its specific sections:

12.01

12.02

12.03

12.04

12.05

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record | Application



12.01

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

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record | To Whom Application Made

12.02

Applications under rule 12.01 shall be made to a judge sitting in the court centre in which the proceedings to which the application relates are scheduled to take place, as soon as is reasonably practicable and sufficiently in advance of the scheduled date of the preliminary inquiry or trial to ensure that no adjournment of the proceedings will be required for that purpose, or, if the matter arises at the preliminary inquiry or trial, to the presiding judge.

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record | Service of Notice

12.03

12.03(1) General Rule

Service of a notice of the application under this rule and the supporting materials required by rule 12.04 shall be made on the accused and other counsel, at least 15 days before the date fixed for the hearing of the application, which shall not be later than 10 days before the date fixed for the preliminary inquiry or trial.

12.03(2) Manner of Service

Service of the Notice of Application and supporting materials shall be made in accordance with Rule 5, and if the application is made by counsel of record, on the accused by mailing a copy to his or her latest known address.

12.03(3) Filing with Proof of Service

Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than 10 days before the date fixed for the hearing of the application.

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record | Materials for Use on Application

12.04

12.04(1) Materials to Be Filed

Notice of Application under this rule shall include, whether by affidavit by or on behalf of the applicant, or otherwise, an outline of the general circumstances of the application.

12.04(2) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part II — Pre-Trial Proceedings | Rule 12 — Applications for Removal as Counsel of Record | Consent in Writing

12.05

The respondent or accused may consent in writing to the order sought on terms included in a draft order that is filed, and a judge, satisfied that the relief sought by the applicant should be granted, may grant the order on those terms without the attendance of counsel.

Part II — Pre-Trial Proceedings | Rule 13 — Application for Adjournment



13 Application for Adjournment

The full text for this rule can be found by accessing its specific sections:

13.01

13.02

13.03 General Rule

Part II — Pre-Trial Proceedings | Rule 13 — Application for Adjournment | Application



13.01

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

Part II — Pre-Trial Proceedings | Rule 13 — Application for Adjournment | To Whom Application Made



13.02

Applications under rule 13.01 shall be made to a judge sitting in the court centre in which the proceeding is to be held as soon as practicable and, absent exigent circumstances, not later than 15 days before the date fixed for the proceeding.

Part II — Pre-Trial Proceedings | Rule 13 — Application for Adjournment | Service of Notice



13.03 General Rule

Service of the Notice of Application under this rule shall be made on the prosecutor or accused, and all other parties to the proceedings, as the case may be, in accordance with Rule 5, not later than three days before the date fixed for the hearing of the application.

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues



14 Constitutional Issues

The full text for this rule can be found by accessing its specific sections:

14.01

14.02

14.03

14.04

14.05

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues | Application



14.01

This rule applies to applications in criminal proceedings

(a) to declare unconstitutional and of no force and effect, in whole or in part, any enactment of the Parliament of Canada,

(b) to declare unconstitutional and of no force and effect, in whole or in part, any rule or principle of law applicable to criminal proceedings, whether on account of subsection 8(2) or (3) of the Code or otherwise, and

(c) to stay proceedings against an accused, in whole or in part, or for any other remedy under subsection 24(1) of the Charter or subsection 52(1) of the *Constitution Act, 1982*

on account of an infringement or denial of any right or freedom guaranteed under the Charter or otherwise.

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues | To Whom Application Made

14.02

Applications under this rule shall be made to a judge sitting in the court centre in which the proceeding is being held or is to be held in accordance with the times set out in rule 14.04.

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues | Contents of Notice

C

14.03

The Notice of Application and Constitutional Issue in Form 3 shall state

(a) the place and date of hearing as determined in accordance with rules 14.02 and 14.04;

(b) the precise relief sought on the application; and

(c) the grounds to be argued, including a concise statement of the constitutional issue to be raised and a summary of the nature of the facts in issue.

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues | Filing and Serving of Notice

C

14.04

14.04(1) In cases provided for by clauses 14.01(a) and (b), service of the Notice of Application and Constitutional Issue and of the supporting materials required by rule 14.05, shall be made on the prosecutor and all other parties to the proceedings, as the case may be, not later than 15 days before the date fixed for the hearing of the application or, if the application is to be made at trial before the trial judge, not later than 15 days before the date on which the proceeding is scheduled to commence.

14.04(2) In cases provided for by clause 14.01(c), service of the Notice of Application and Constitutional Issue and of the supporting materials required by rule 14.05, shall be made on the prosecutor and all other parties to the proceedings, as the case may be, not later than three days before the date fixed for the hearing of the application or, if the application is to be made at trial before the trial judge, not later than three days before the date on which the proceeding is scheduled to commence.

14.04(3) Manner of Service

Service of the Notice of Application and Constitutional Issue and supporting materials under clause 14.01(a) or (b) shall be made in accordance with Rule 5

(a) on the office of the prosecutor having carriage of the proceedings; and

(b) on the regional office of the Attorney General of Canada at St. John's, the office of the Attorney General of Canada at Ottawa or the office of the prosecutor retained by the Attorney General of Canada having carriage of the proceedings.

14.04(4) If the application is made under clause 14.01(c) at trial before the trial judge, service of the Notice of Application and Constitutional Issue, and of supporting materials, shall be made in accordance with Rule 5

(a) on the office of the prosecutor having carriage of the proceedings; and

(b) on any other person and any terms that the trial judge may direct.

Part II — Pre-Trial Proceedings | Rule 14 — Constitutional Issues | Materials for Use on Application

14.05

14.05(1) Materials to Be Filed — Documentary, Affidavit or Other Evidence

If any party seeks to rely on documentary, affidavit or other material, the material shall be filed not later than two days before the hearing.

14.05(2) Applicant's Application Record and Factum

The applicant shall prepare an application record and factum in compliance with subrules 6.05(1) and (2) and rules 6.06 and 6.07.

14.05(3) Respondent's Application Record and Factum

The respondent shall prepare an application record and factum in compliance with subrules 6.05(3) and 6.06(2) and (3) and rule 6.08.

14.05(4) Further Application Record and Factum

A judge, before the hearing of the application, may give directions concerning the filing of further application records and factums.

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences

15 Pre-hearing Conferences

The full text for this rule can be found by accessing its specific sections:

15.01

15.02

15.03

15.04

15.05

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences | Application

15.01

A pre-hearing conference in respect of a charge contained in an information shall be held by a judge at such time and date and in such place and manner as the judge may direct, or at such further dates, times and places as the judge who presides at the pre-hearing conference may direct.

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences | Attendance of Counsel of Record and Accused

15.02

15.02(1) Attendance at Conference

Unless otherwise ordered by a judge in accordance with rule 2.02, the prosecutor and counsel of record, each fully briefed in respect of the issues to be discussed at the pre-hearing conference, or, in the case of an accused who is not represented by counsel of record, the accused, shall be present at the pre-hearing conference.

15.02(2) Availability of Accused

A judge may require that an accused, represented by counsel of record, be available for consultation with counsel in respect of matters to be considered at the pre-hearing conference and that an investigating officer be available for consultation with the prosecutor.

15.02(3) Completion in Draft of Pre-hearing Conference Report

Prior to attending the pre-hearing conference, the prosecutor and counsel of record shall jointly prepare in draft a Pre-hearing Conference Report in Form 13, to be presented to the pre-hearing conference judge at the judge's request.

15.02(4) Completion of Pre-hearing Conference Report If Accused Not Represented by Counsel

If the accused is not represented by counsel, the prosecutor shall at the request of the pre-hearing conference judge complete in draft the Pre-hearing Conference Report in Form 13.

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences | The Pre-hearing Conference

15.03

15.03(1) General Nature

Unless otherwise ordered by the pre-hearing conference judge in accordance with rule 2.02, a pre-hearing conference shall be an informal meeting conducted in chambers at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any proceedings thereafter taking place.

15.03(2) Specific Inquiries to be Made

Without restricting the generality of rule 15.01 or subrule (1), a pre-hearing conference judge may inquire as to

- (a) the extent of disclosure made by the prosecutor and any or further requests therefor by an accused or counsel of record;
- (b) the nature and particulars of any applications to be made at the outset of the proceedings, including any application
 - (i) to contest the laying of the information or any count thereof,
 - (ii) to stay or otherwise determine the proceedings prior to plea or the introduction of evidence,
 - (iii) to change the venue of trial or adjourn the hearing of the proceeding,
 - (iv) to challenge the sufficiency of the information, to order particulars or to amend the information or any count thereof,
 - (v) to sever the trial of any count(s) or accused from the trial(s) of any other accused or count,
 - (vi) concerning the special pleas of *autrefois acquit*, *autrefois convict* or pardon, and
 - (vii) to determine the fitness of an accused to stand trial;
- (c) the possibility of resolution of any or all of the issues in the proceedings, including the possible disposition of any or all counts contained in the information whether by plea of guilty or otherwise;
- (d) the simplification of any issues that remain to be contested at the proceedings;
- (e) the possibility of obtaining admissions and agreements so as to facilitate an expeditious, fair and just determination of the proceedings;
- (f) the estimated duration of the proceedings;
- (g) the advisability of fixing a date for the commencement of the proceeding; and
- (h) any other matter that may assist in promoting a fair, just and expeditious proceeding.

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences | Pre-hearing Conference Report

15.04

15.04(1) Completion of Report

The pre-hearing conference judge, on the completion of the hearing, may complete a Pre-hearing Conference Report in Form 13, a copy of which shall be provided to the prosecutor and counsel of record, or to the accused if the accused is not represented by counsel of record, and may be provided to the trial judge, together with any materials filed by counsel of record on the pre-hearing conference relating to matters to be raised at trial.

15.04(2) No Disclosure

Except with the express consent of the prosecutor and counsel of record, the pre-hearing conference judge shall not disclose to the judge presiding at trial any communications or discussion relating to a plea of guilty unless, whether pursuant to subsection 606(4) of the Code or otherwise, a plea of guilty will be entered at trial.

Part II — Pre-Trial Proceedings | Rule 15 — Pre-hearing Conferences | Other Pre-hearing Conferences

15.05

Nothing in these rules shall be construed or interpreted so as to preclude a judge from conducting, with the consent of the prosecutor and counsel of record, any other informal pre-hearing conferences, in addition to the conference provided for in subsection 625.1(1) of the Code, on any terms that the judge deems fit.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts

16 Applications for Severance of Accused or Counts

The full text for this rule can be found by accessing its specific sections:

16.01

16.02

16.03

16.04

16.05

16.06

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | Application

16.01

This rule applies to applications under subsection 591(3) of the Code for an order that the accused be tried separately on one or more of the counts in an information or, if there is more than one accused, that one or more of them be tried separately on one or more of the counts.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | To Whom Application Made

16.02

Applications under rule 16.01 shall be made to the judge assigned to preside over the trial, in the court centre in which the trial is to be held.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | Contents of Notice

16.03

The Notice of Application shall include a statement of the manner in which it is proposed that the accused be tried separately on one or more of the counts in an information, or, if there is more than one accused, a statement of the manner in which it is proposed that one or more of them be tried separately on one or more of the counts.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | Service of Notice

16.04

16.04(1) General Rule

Service of the Notice of Application under this rule, and of the supporting materials required by rule 16.05, shall be made on the prosecutor and all other parties to the proceedings, as the case may be, in accordance with Rule 5, not later than 15 days before the date fixed for the hearing of the application, which shall be not later than 10 days before the date fixed for trial.

16.04(2) Filing with Proof of Service

The Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than 10 days before the date fixed for the hearing of the application.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | Materials for Use on Application

16.05

16.05(1) Materials to Be Filed

The Notice of Application shall include, whether by affidavit by or on behalf of the applicant or otherwise, the matters described in subrule (2).

16.05(2) Affidavit by or on Behalf of the Applicant

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

- (a) a copy of the information(s) to which the application relates;

(b) particulars of any prior applications to have the accused tried separately on one or more of the counts in an information or, if there is more than one accused, to have one or more of them tried separately on one or more of the counts, including, if available, transcripts of proceedings taken on those applications; and

(c) a full statement of all facts material to a determination of the application without disclosing any solicitor-client communications in respect of which solicitor-client privilege has not been waived.

16.05(3) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part II — Pre-Trial Proceedings | Rule 16 — Applications for Severance of Accused or Counts | Consent in Writing

16.06

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

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars

17 Applications for Particulars

The full text for this rule can be found by accessing its specific sections:

17.01

17.02

17.03

17.04

17.05

17.06

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | Application

17.01

This rule applies to applications under subsection 587(1) of the Code for an order that the prosecutor furnish particulars in respect of an information or a count in an information prior to commencement of the trial.

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | To Whom Application Made

17.02

Applications under rule 17.01 shall be made to a judge sitting in the court centre in which the trial is to be held.

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | Contents of Notice

17.03

The Notice of Application shall include a statement of the manner in which it is proposed that the information or a count in the information be particularized.

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | Service of Notice

17.04

17.04(1) General Rule

Service of the Notice of Application under this rule and the supporting materials required by rule 17.05 shall be made on the prosecutor and all other parties to the proceedings, as the case may be, in accordance with Rule 5, not later than 15 days before the date fixed for the hearing of the application, which shall be not later than 10 days before the date fixed for trial.

17.04(2) Filing with Proof of Service

Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than 10 days before the date fixed for the hearing of the application.

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | Materials for Use on Application

17.05

17.05(1) Materials to Be Filed

The Notice of Application under this rule shall include, whether by affidavit by or on behalf of the applicant or otherwise, the matters described in subrule (2).

17.05(2) Affidavit by or on Behalf of the Applicant

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

- (a) a copy of the information(s) to which the application relates;
- (b) a statement of any prior applications to have the information or a count thereof particularized, including, if available, transcripts of proceedings taken on those applications; and
- (c) a full statement of all facts material to a determination of the application, including
 - (i) the matters disclosed by the evidence taken on any other proceedings,
 - (ii) the evidence expected to be taken on the trial,
 - (iii) the circumstances of the case, and
 - (iv) whether, having regard to the merits of the case, it is necessary for a fair trial that particulars be furnished.

17.05(3) Application Record and Factum Not Required

No application record or factum is required on applications under this rule.

Part II — Pre-Trial Proceedings | Rule 17 — Applications for Particulars | Consent in Writing

17.06

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

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence



18 Exclusion of Evidence

The full text for this rule can be found by accessing its specific sections:

18.01

18.02

18.03

18.04

18.05

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence | Application



18.01

This rule applies to applications under subsection 24(2) of the Charter for the exclusion of evidence.

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence | To Whom Application Made

18.02

Applications under rule 18.01 shall be made to the judge assigned to preside over the trial, at the court centre in which the trial is to be held.

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence | Contents of Notice

18.03

The Notice of Application shall state

- (a) the place and date of hearing as determined in accordance with rules 18.02 and 18.04;
- (b) the nature of the application intended to be brought;
- (c) the anticipated evidence sought to be excluded, including any anticipated derivative evidence sought to be excluded;
- (d) the grounds to be argued, including a concise statement of the exclusionary issue under the Charter to be raised, a statement of the exclusionary principles under the Charter to be argued and a reference to any statutory provision or rule on which reliance will be placed;
- (e) the documentary, affidavit or other evidence to be used at the hearing of the application;
- (f) the precise relief under the Charter sought on the application; and
- (g) whether an order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials required under rule 6.05.

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence | Filing and Serving of Notice



18.04

18.04(1) General Rule

Service of the Notice of Application under rule 18.03 and the supporting materials required by rule 18.05 shall be made on the prosecutor and all other parties to the proceedings, as the case may be, in accordance with Rule 5, not later than 15 days before the date on which the trial proceedings are scheduled to commence.

18.04(2) Filing with Proof of Service

Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, at least 10 days before the date on which the trial proceedings are scheduled to commence.

Part III — Trial Proceedings and Evidence | Rule 18 — Exclusion of Evidence | Materials for Use on Application

18.05

18.05(1) Materials to Be Filed

In addition to any other materials that may be required in the proceedings in which the exclusionary issue under the Charter is raised, a Notice of Application under rule 18.03 shall be accompanied by

- (a) a copy of the information(s) to which the exclusionary issue raised in the Notice of Application relates;
- (b) a transcript of any proceedings earlier taken that are material to a determination of the exclusionary issue raised in the Notice of Application;
- (c) if necessary to complete the record, an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2); and
- (d) a copy of any other material in the court file that is necessary for the hearing and determination of the exclusionary issue raised in the Notice of Application.

18.05(2) Affidavit by or on Behalf of the Applicant

The affidavit filed by or on behalf of the applicant described in clause (1)(c) shall include

- (a) a description of the affiant's status and the basis of his or her knowledge of the matters deposed;
- (b) a statement of the particulars of the charge to which the application relates; and
- (c) a statement of the facts material to a just determination of the exclusionary issue that are not disclosed in any other materials filed in support of the application.

18.05(3) Respondent's Documentary, Affidavit or Other Evidence

If the respondent seeks to rely on material that is not required to be filed under subrule (1) or (2), the respondent shall file documentary, affidavit or other evidence on which reliance shall be placed not later than five days before the hearing of the application.

18.05(4) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity

19 Applications to Adduce Evidence of Complainant's Sexual Activity

The full text for this rule can be found by accessing its specific sections:

- 19.01
- 19.02
- 19.03
- 19.04
- 19.05

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity | Application

19.01

This rule applies to applications under section 276.1 of the Code to adduce evidence of the complainant's sexual activity.

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity | To Whom Application Made

19.02

Applications under rule 19.01 shall be made to the judge assigned to preside over the trial, in the court centre in which the trial is to be held.

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity | Contents of Notice

19.03

The Notice of Application shall state

- (a) the place and date of hearing as determined under rules 19.02 and 19.04;
- (b) detailed particulars of the evidence that the accused seeks to adduce and the relevance of that evidence to an issue at trial;
- (c) the grounds to be argued, including a concise statement of the probative value of the evidence sought to be adduced and a reference to any statutory provision or rule on which reliance will be placed;
- (d) the documentary, affidavit or other evidence to be used at the hearing of the application; and
- (e) whether an order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials required under rule 6.05.

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity | Filing and Serving of Notice

19.04

19.04(1) General Rule

Service of the Notice of Application under rule 19.03 and the supporting materials required by rule 19.05 shall be made on the prosecutor in accordance with Rule 5, not later than seven days before the date fixed for the hearing of the application.

19.04(2) Filing with Proof of Service

Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than seven days before the date fixed for the hearing of the application.

Part III — Trial Proceedings and Evidence | Rule 19 — Applications to Adduce Evidence of Complainant's Sexual Activity | Materials for Use on Application

19.05

19.05(1) Materials to Be Filed

In addition to any other materials that may be required in the proceedings in which it is sought to adduce evidence of the complainant's sexual activity, a Notice of Application under rule 19.03 shall be accompanied by

- (a) a copy of the information(s) to which the evidentiary issue raised in the Notice of Application relates;
- (b) a transcript of any proceedings earlier taken that are material to a determination of the evidentiary issue raised in the Notice of Application;
- (c) if necessary to complete the record, an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2); and
- (d) a copy of any other material in the court file that is necessary for the hearing and determination of the evidentiary issue raised in the Notice of Application.

19.05(2) Affidavit by or on Behalf of the Applicant

The affidavit filed by or on behalf of the applicant described in clause (1)(c) shall include

- (a) a description of the affiant's status and the basis of his or her knowledge of the matters deposed;

(b) a statement of the particulars of the charge to which the application relates; and

(c) a statement of the facts material to a just determination of the evidentiary issue that are not disclosed in any other materials filed in support of the application.

19.05(3) Respondent's Documentary, Affidavit or Other Evidence

If the respondent seeks to rely on material that is not required to be filed under subrule (1) or (2), the respondent shall file documentary, affidavit or other evidence on which reliance shall be placed not later than five days before the hearing of the application.

19.05(4) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor

20 Applications for Production of Records Not in Possession of Prosecutor

The full text for this rule can be found by accessing its specific sections:

20.01

20.02

20.03

20.04

20.05

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor
| Application

20.01

20.01(1) This rule applies to applications made under section 278.3 of the Code for the production of records not in the possession of the prosecutor.

20.01(2) Definition of "Record"

For the purposes of this rule, "**record**" means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes, without limiting the generality of the foregoing, medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any statute of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor
| To Whom Application Made

20.02

Applications under rule 20.01 shall be made to the judge assigned to preside over the trial, at the court centre in which the trial is to be held.

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor
| Contents of Notice

20.03

The Notice of Application shall state

(a) the place and date of hearing as determined under rules 20.02 and 20.04;

(b) detailed particulars identifying the record that the accused seeks to have produced and the name of the person who has possession or control of the record;

- (c) the grounds on which the accused relies to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify;
- (d) the documentary, affidavit or other evidence to be used at the hearing of the application; and
- (e) whether an order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials required under rule 6.05.

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor | Filing and Serving of Notice

20.04

20.04(1) General Rule

Service of the Notice of Application under rule 20.03 and the supporting materials required by rule 20.05 shall be made on the prosecutor, on the person who has possession or control of the record and on any other person to whom, to the knowledge of the accused, the record relates, in accordance with Rule 5, not later than seven days before the date fixed for the hearing of the application.

20.04(2) Filing with Proof of Service

Notice of Application and supporting materials, together with proof of service thereof, shall be filed in the court office for the place where the application is to be heard, not later than seven days before the date fixed for the hearing of the application.

Part III — Trial Proceedings and Evidence | Rule 20 — Applications for Production of Records Not in Possession of Prosecutor | Materials for Use on Application

20.05

20.05(1) Materials to Be Filed

In addition to any other materials that may be required in the proceedings in which the accused makes application for the production of records, a notice of application under rule 20.03 shall be accompanied by

- (a) a copy of the information(s) to which the production issue raised in the notice of application relates;
- (b) a transcript of any proceedings earlier taken that are material to a determination of the production issue raised in the notice of application;
- (c) if necessary to complete the record, an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2);
- (d) a copy of any other material in the court file that is necessary for the hearing and determination of the production issue raised in the notice of application; and
- (e) a copy of the subpoena served on the person who has possession or control of the record.

20.05(2) Affidavit by or on Behalf of the Applicant

The affidavit filed by or on behalf of the applicant described in clause (1)(c) shall include

- (a) a description of the affiant's status and the basis of his or her knowledge of the matters deposed;
- (b) a statement of the particulars of the charge to which the application relates; and
- (c) a statement of the facts material to a just determination of the production issue that are not disclosed in any other materials filed in support of the application.

20.05(3) Respondent's Documentary, Affidavit or Other Evidence

If the respondent seeks to rely on material that is not required to be filed under subrule (1) or (2), the respondent shall file documentary, affidavit or other evidence on which reliance shall be placed not later than five days before the hearing of the application.

20.05(4) Factum May Be Required

A judge may require that factums complying with rules 6.06 to 6.08 be filed on applications under this rule.

Schedule

Form 1 — Notice of Application

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specific name of accused*)
(*indicate whether applicant or respondent*)

NOTICE OF APPLICATION
(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Form 1*)

TAKE NOTICE that an application will be brought at (*time*) a.m./p.m. on the day of (*specify month*), (*year*), at Courtroom No., (*specify address of courthouse*), for an order granting (*set out relief sought*).

THE GROUNDS FOR THIS APPLICATION ARE:

1. That
2. That
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES ON THE FOLLOWING:

1. (*Set out documents such as transcripts, etc., on which the applicant relies.*)

THE RELIEF SOUGHT IS:

1. An Order allowing the application and granting (*indicate particular relief sought*).

THE APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION

1. By service in accordance with Rule 5, at (*specify address and fax number*)

Dated at,, this day of, (*year*).

.....
(*signature of applicant or counsel,*)
(*Set out name and address, as well as telephone and fax numbers with area code.*)

Schedule

Form 2 — Affidavit

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specify name of accused*)
(*indicate whether applicant or respondent*)

AFFIDAVIT OF (name)
(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 4, Form 2*)

I, (*full name of deponent*), of the (*city, town, etc.*) of,

(*set out the deponent's capacity*), MAKE OATH AND SAY (*or AFFIRM*):

1. (*Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.*)

Sworn (*or Affirmed*) before me at the (*city, town, etc.*) of in the Province of, on (*date*)

.....
Commissioner for oaths

.....
(*deponent's signature*)

Schedule

Form 3 — Notice of Application and Constitutional Issue

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specify name of accused*)
(*indicate whether applicant or respondent*)

NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE
(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, rule 4.10 and Rule 14, Form 3*)

TAKE NOTICE that the (*identify party*) will bring an application at (*time*) am./p.m. on the day of (*specify month*), (*year*), at Courtroom No. (*specify address of courthouse*), for an order granting (*set out precise relief sought*).

THE GROUNDS FOR THIS APPLICATION ARE:

1. That
2. That
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE CONSTITUTIONAL ISSUES TO BE RAISED ARE:

1. (State concisely each issue to be raised.)
2.
3.

THE CONSTITUTIONAL PRINCIPLES TO BE ARGUED ARE:

- 1.
- 2.
- 3.

STATUTORY PROVISIONS OR RULES ON WHICH THE APPLICANT PLACES RELIANCE ARE:

- 1.
- 2.
- 3.

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES ON THE FOLLOWING:

- 1. *(Briefly describe the documents such as affidavits, transcripts, etc., on which the applicant relies.)*

THE RELIEF SOUGHT IS:

- 1. An order allowing the application and granting *(indicate precise relief sought)*.

THE APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION

- 1. By service in accordance with Rule 5, at *(specify address and fax number)*

Dated at, this day of, (year).

.....
(signature of applicant or counsel)
 (Set out name and address, as well as telephone and fax number with area code.)

To:

The Attorney General Newfoundland and Labrador

The Attorney General Canada and *(office of the prosecutor)*

Schedule

Form 4 — Acknowledgment of Receipt Card

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(specify court centre)

BETWEEN:

HER MAJESTY THE QUEEN
(indicate whether applicant or respondent)

and

(specific name of accused)
(indicate whether applicant or respondent)

ACKNOWLEDGMENT OF RECEIPT CARD

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 5, Form 4)

To: *(state full name and address)*

You are served by mail with the documents enclosed with this card in accordance with the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*.

You are requested to sign the acknowledgment below and mail this card immediately after you receive it. If you fail to do so, the documents may be served on you in another manner.

Acknowledgment of Receipt

I ACKNOWLEDGE that I have received a copy of the following documents:

(To be completed in advance by the sender of the documents. Include sufficient particulars to identify each document)

.....
(date) (signature of person served)

(The reverse side of this card must bear the name and address of the sender and the required postage)

Schedule

Form 5 — Affidavit of Service

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(specify court centre)

BETWEEN:

HER MAJESTY THE QUEEN
(indicate whether applicant or respondent)
and
(specify name of accused)
(indicate whether applicant or respondent)

AFFIDAVIT OF SERVICE

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 5, Form 5)

I, *(full name)* of the *(city, town, etc.)* of, in the Province of,

Make Oath and Say (or Affirm):

(Specify one of the following:)

Personal Service

1. On *(date)*, at *(time)*, I served *(identify person served)* with the *(identify document(s) served)* by leaving a copy with him *(or her)* at *(address where service was made)*. *(If the rules provide for personal service on a corporation, etc., by leaving a copy of the documents with another person, substitute: by leaving a copy with (identify person by name and title) at (address where service was made).)*

2. I was able to identify the person by means of *(state the means by which the person's identity was ascertained)*.

Service by Leaving a Copy with an Adult Person in the Same Household as an Alternative to Personal Service

1. I served *(identify person served)* with the *(identify document(s) served)* by leaving a copy on *(date)*, at *(time)*, with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing, at *(address where service was made)*, and by sending a copy by prepaid first class *(or registered)* mail on *(date)* to *(identify person served)* at the same address.

2. I ascertained that the person was an adult member of the household by means of *(state how it was ascertained that the person was an adult member of the household)*.

3. Before serving the document(s) in this way, I made an unsuccessful attempt to serve (*identify person*) personally at the same address on (*date*). (*If more than one attempt has been made, add: and again on (date)*).

Service by Mail as an Alternative to Personal Service

1. On (*date*), I sent a copy of (*identify document(s) sent*) to (*identify person served*) by prepaid first class (*or* registered) mail to (*identify party*), at (*full mailing address*).

Service by Mail on Counsel

1. I served (*identify person served*) with the (*identify document(s) served*) by sending a copy by prepaid first class (*or* registered) mail on (*date*) to (*name of counsel*), counsel for the (*identify party*), at (*full mailing address*).

Service by Telephone Transmission of Facsimile

1. I served (*identify party served*) with the (*identify document(s) served*) by sending a copy by telephone transmission to (*telephone number*) on (*date*) to (*name of counsel*) for the (*identify party*).

Service by Mail on a Party Not Represented by Counsel or a Non-Party

1. I served (*identify party or person served*) with the (*identify document(s) served*) by sending a copy by prepaid first class (*or* registered) mail on (*date*) to (*full mailing address*), the latest known address of (*identify party or person*).

Sworn (*or* Affirmed) before me at the (*city, town, etc.*) of in the Province of, on (*date*)

.....
Commissioner for oaths

.....
(*deponent's signature*)

Schedule

Form 6 — Notice of Abandonment

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specific name of accused*)
(*indicate whether applicant or respondent*)

NOTICE OF ABANDONMENT
(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, rule 6.14, Form 6*)

TAKE NOTICE that the (*identify party*) hereby wholly abandons the application for (*indicate the nature of the order and relief sought*).

Dated at, this day of,, (*year*).

.....
(*signature of applicant or counsel*)
(*Set out name and address, as well as telephone and fax number with area code.*)

Schedule

Form 7 — Order Releasing Exhibit(s) for Scientific Testing

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(specify court centre)

BETWEEN:

HER MAJESTY THE QUEEN

(indicate whether applicant or respondent)

and

(specify name of accused)

(indicate whether applicant or respondent)

ORDER RELEASING EXHIBIT(S) FOR SCIENTIFIC TESTING
(Criminal Code, subsection 605(1))

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 8, Form 7)

ON THE APPLICATION made on the day of, (year), by [counsel of record] on behalf of the for an order releasing for purposes of scientific tests and examination of certain exhibit(s) currently in the custody of the Court;

AND ON reading the Notice of Application dated,, (day), (month) and (year),, and the Affidavit(s) of, sworn on (date), (year), and hearing the submissions made:

IT IS ORDERED that Exhibit(s) (specify number(s); briefly describe exhibit(s)) be released from the custody of the Clerk of the Provincial Court of Newfoundland and Labrador, subject to the following

TERMS AND CONDITIONS:

- (a) that the exhibit(s) shall be released forthwith to, who shall take such reasonable steps as he or she is advised by the proposed examiners to maintain the integrity of the exhibit(s) for scientific testing;
- (b) that the reasonable expenses of this examination shall be paid by the (specify prosecutor or accused);
- (c) that all reasonable steps shall be taken to preserve the samples for any further or other scientific testing;
- (d) that the results of the testing, together with any supporting or preliminary material, be disclosed to counsel for the accused forthwith on the preparation of a report of such finding, if any;
- (e) that there be no further or other testing or examination of the exhibit(s), or any product or result of such testing or examination, that is not disclosed to both parties through their counsel, both counsel undertaking that they will not direct, authorize or request any testing or examination of the exhibit(s), or anything produced by such testing or examination, without the consent of and complete disclosure to the party opposite through counsel;
- (f) that, on the completion of such testing, the exhibit(s) shall be returned to the custody of, who shall take all reasonable steps as he or she is advised by the examiners to maintain the integrity of the exhibit(s) for further scientific or other examination, if ordered, and for their presentation at the preliminary inquiry or trial;
- (g) that the making of the application, the submissions made, the reasons given and the result shall not be disclosed prior to the preliminary inquiry or trial of the accused, or until further order of this Court; and
- (h) (State any other reasonable conditions required by the circumstances of the case)

Dated at, Newfoundland and Labrador, this day of, (year).

.....

Judge
Provincial Court of Newfoundland and Labrador

Schedule

Form 8 — Order for Change of Venue of Trial

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specific name of accused*)
(*indicate whether applicant or respondent*)

ORDER FOR CHANGE OF VENUE OF TRIAL

(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 9, Form 8*)

ON THE APPLICATION made on the day of (*year*), by counsel on behalf of the for an order for change of venue of trial;

AND ON reading the notice of application dated the (*day*) of, (*year*), and the affidavits of sworn, (*year*), and hearing the submissions made;

1. IT IS ORDERED that the trial of (*specify name of accused*) be hereby transferred from the (*city, town, etc.*) of to the (*city, town, etc.*) of in the Province of Newfoundland and Labrador.

2. IT IS FURTHER ORDERED that the (*specify name of accused*) appear before the presiding judge of the Provincial Court of Newfoundland and Labrador at (*time*) a.m./p.m. on the day of, (*year*), at Courtroom No., (*specify address of courthouse*).

Dated at,, this day of, (*year*).

.....
Judge
Provincial Court of Newfoundland and Labrador

Schedule

Form 9(a) — Order for Attendance of Prisoner at Court Proceeding

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(specify name of accused)
(indicate whether applicant or respondent)

ORDER FOR ATTENDANCE OF PRISONER AT COURT PROCEEDING
(Criminal Code, subsection 527(2))

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 10, Form 9(a))

TO: (specify name of jailer), (specify position of the jailer, i.e., Superintendent) of (specify name of jail):

ON the application of (specify name of applicant) and on reading the affidavit of the said applicant;

IT IS ORDERED, pursuant to subsection 527(2) of the Code, that (specify name of prisoner), a prisoner confined in that above mentioned prison, be brought before the presiding judge or justice of the peace in the Provincial Court of Newfoundland and Labrador, at (time) a.m./p.m. on the day of (specify month), (year), at Courtroom No. (specify address of courthouse).

(Specify one of the following.)

to attend a preliminary inquiry into a charge(s) of against him/her,

to stand his/her trial on a charge(s) of

to attend to give evidence in a proceeding to which the Criminal Code applies, namely, a proceeding against or concerning (specify name of accused or party to proceeding, or nature of proceeding) from day to day as may be necessary.

YOU, THE SAID KEEPER, are hereby commanded to deliver the said prisoner to (specify name of officer who is to bring prisoner to court) for the aforesaid purpose.

IT IS HEREBY DIRECTED that the said prisoner be kept in custody in the manner in which accused persons who are remanded from time to time are kept in custody, so long as his/her attendance is required, and that (specify appropriate condition) (if he/she is committed for trial, he/she be kept in custom in the common jail so long as required by due course of law, and that, if he/she is discharged on the preliminary inquiry, if he/she is acquitted of the said charge(s) against him/her,) he/she be returned to the said prison, if required, by the said (specify name of person who is to bring prisoner to court) or by such person who may be named by a judge of the Provincial Court of Newfoundland and Labrador for such purpose.

Dated at,, this day of, (year).

.....
Judge
Provincial Court of Newfoundland and Labrador

Schedule
Form 9(b) — Order for Transfer of Prisoner or Person in the Custody of a Peace Officer to Custody of Another Peace Officer

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(specify court centre)

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

(specific name of accused)

Respondent

ORDER FOR TRANSFER OF PRISONER OR PERSON IN THE CUSTODY OF A PEACE OFFICER TO CUSTODY OF ANOTHER PEACE OFFICER
(*Criminal Code*, subsection 527(7))

(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*, Rule 10, Form 9(b))

TO: (specify name of jailer/peace officer), (specify position of the jailer/peace officer) of (specify name of prison):

ON application in writing this day by (specify name of prosecutor), for an order made pursuant to the provisions of subsection 527(7) of the Code, transferring (specify name of prisoner or person in custody of peace officer), presently in the custody of a peace officer or confined at (specify name of jail), at, Newfoundland and Labrador, to the custody of (specify name of peace officer), a peace officer, for (specify period of transfer), for the purpose of assisting (specify name of, or otherwise describe, peace officer) acting in the execution of his (or her) duties,

AND ON reading the said application dated this day of (month, year), and the consent in writing of the prisoner or person in the custody of a peace officer, filed,

AND ON being satisfied that the transfer is required for the purposes of assisting a peace officer acting in the execution of his (or her) duties;

1. IT IS ORDERED that (specify name of jailer/peace officer), (specify position of jailer/peace officer), of (specify name of jail), in, Newfoundland and Labrador, deliver the said (specify name of prisoner or person in the custody of a peace officer), to (specify name of officer to receive prisoner or person in the custody of a peace officer) who shall receive the said prisoner or person in the custody of a peace officer;

2. IT IS FURTHER ORDERED that the same (specify name of officer to receive the prisoner or a person in the custody of a peace officer), in company with such other peace officers as he (or she) deems necessary, shall keep the said (specify name of prisoner or person in the custody of a peace officer) in custody until the day of, (month, year), at which time he (or she) is to be redelivered to the said (specify name of prison or location in which the prisoner or person in the custody of a peace officer was kept prior to the order) by the said (specify name of officer who received the prisoner or person in the custody of a peace officer), in company with such other officers as he (or she) deems necessary.

Dated at,, this day of, (year).

(Court Seal)

.....
Judge
Provincial Court of Newfoundland and Labrador

Schedule

Form 10 — Commission

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(specify court centre)

BETWEEN:

HER MAJESTY THE QUEEN
(indicate whether applicant or respondent)

and

(specify name of accused)
(indicate whether applicant or respondent)

COMMISSION
(*Criminal Code*, section 709)

(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*, Rule 11, Form 10)

YOU HAVE BEEN APPOINTED A COMMISSIONER for the purpose of taking evidence in this proceeding now pending in this court by order of the court made on (*date*), a copy of which is attached.

YOU ARE GIVEN FULL AUTHORITY to do all things necessary for taking the evidence mentioned in the order authorizing this commission.

YOU ARE TO SEND TO THIS COURT a transcript of the evidence taken, together with this commission, forthwith after the transcript is completed.

IN CARRYING OUT THIS COMMISSION, you are to follow the terms of the attached order and the instructions contained in this commission.

THIS COMMISSION is signed and sealed by order of the court.

Dated at, this, day of, (*year*).

Issued by:
Clerk
(*address of court office*)

The clerk is to attach to this commission a copy of Rule 11 of the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*, and section 709 of the *Criminal Code*.

INSTRUCTIONS TO COMMISSIONER

1. This commission is to be conducted in accordance with Rule 11 of the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*, a copy of which is attached, to the extent that it is possible to do so. The law of Canada applies to the taking of the evidence.

2. Before acting on this commission, you must take the oath (*or* affirmation) set out below. You may do so before any person authorized to do so under the laws of Newfoundland and Labrador.

I, swear (*or* affirm) that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any of the parties, take the evidence of every witness examined under this commission, and cause the evidence to be transcribed and forwarded to the court. (In an oath, conclude: So help me God.) Sworn (*or* Affirmed) before me at the (*city, town, etc.*) of in the (*Province, State, Country, etc.*) of, on (*date*).

.....
(*signature of commissioner*)
(*name and address of commissioner*)

.....
(*signature and office of person before whom oath or affirmation is taken*)

3. The examining party is required to give the person to be examined at least days notice of the examination and, if the order so provides, to pay attendance money to the person to be examined.

4. You must arrange to have the evidence before you recorded and transcribed. You are to administer the following oath (*or* information) to the person who records and transcribes the evidence:

You swear (*or* affirm) that you will truly and faithfully record and transcribe all questions put to all witnesses and their answers in accordance with the directions of the commissioner. (*In an oath conclude: So help you God.*)

(*On consent of the parties, or where the order of this commission provides for it, the examination may be recorded by videotape or other similar means.*)

5. You are to administer the following oath (*or* affirmation) to each witness whose evidence is to be taken:

You swear (*or* affirm) that the evidence to be given by you touching the matters in question between the parties to this proceeding shall be the truth, the whole truth, and nothing but the truth. (*In an oath conclude: So help you God.*)

6. If a witness does not understand the language in which the examination is to be conducted or is deaf or mute, the evidence of the witness must be given through an interpreter. You are to administer the following oath (*or* affirmation) to the interpreter:

You swear (*or* affirm) that you understand the language and the language in which the examination is to be conducted and that you will truly interpret the oath (*or* affirmation) to the witness, all questions put to the witness and the answers of the witness, to the best of your skill and understanding. (*In an oath, conclude: So help you God.*)

7. You are to attach to this commission the transcript of the evidence and the exhibits, and any videotape or other recording of the examination. You are to complete the certificate set out below, and mail this commission, the transcript, the exhibits and any videotape or other recording of the examination to the court office where the commission was issued. You are to keep a copy of the transcript and, if practicable, a copy of the exhibits until the court disposes of this proceeding. Forthwith after you mail this commission and the accompanying material to the court office, you are to notify the parties who appeared at the examination that you have done so.

CERTIFICATE OF COMMISSIONER

I, certify that:

1. I administered the proper oath (*or* affirmation) to the person who recorded and transcribed the evidence, to the witness the transcript of whose evidence is attached and to any interpreter through whom the evidence was given.
2. The evidence of the witness was properly taken.
3. The evidence of the witness was accurately transcribed.

Dated at,, this day of, (*year*).

.....
(*signature of commissioner*)
(*name and address of commissioner*)

(Court seal)

Schedule

Form 11 — Letter of Request

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specify name of accused*)
(*indicate whether applicant or respondent*)

LETTER OF REQUEST
(*Criminal Code, section 709*)

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 11, Form 11)

TO THE JUDICIAL AUTHORITIES OF *(name of province, state or country)*

A CRIMINAL PROCEEDING IS PENDING IN THIS COURT at the *(city, town, etc.)* of Province of Newfoundland and Labrador, Canada, between Her Majesty The Queen and *(set out name of accused)*.

IT HAS BEEN SHOWN TO THIS COURT that it appears necessary for the purpose of justice that a witness residing within your jurisdiction be examined there.

THIS COURT HAS ISSUED A COMMISSION to *(name of commissioner)* of *(address of commissioner)*, providing for the examination of the witness *(name of witness)*, of *(address of witness)*.

YOU ARE REQUESTED, in furtherance of justice, to cause *(name of witness)* to appear before the commissioner by the means ordinarily used in your jurisdiction, if necessary to secure attendance, and to answer questions under oath or affirmation *(if desired, add:)* and to bring to and produce at the examination the following documents and things: *(set out the nature and date of each document and give particulars sufficient to identify each document and thing)*.

YOU ARE ALSO REQUESTED to permit the commissioner to conduct the examination of the witness in accordance with the law of evidence of Canada, the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings* and the commission issued by this court.

AND WHEN YOU REQUEST IT, the courts of Newfoundland and Labrador are ready and willing to do the same for you in a similar case.

THIS LETTER OF REQUEST is signed and sealed by order of the court made on *(date)*.

Dated at, this, day of, *(year)*.

Issued by:
Clerk
(address of court office)

Schedule

Form 12 — Order for Commission and Letter of Request

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN

(*indicate whether applicant or respondent*)

and

(*specify name of accused*)

(*indicate whether applicant or respondent*)

ORDER FOR COMMISSION AND LETTER OF REQUEST
(*Criminal Code, section 709*)

(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 11, Form 12*)

ON THE APPLICATION made on the day of, (*year*), by counsel on behalf of the for an order for a commission and letter of request;

AND ON reading the Notice of Application dated, (*day, month, year*), and the Affidavits of, sworn, (*year*), and hearing the submissions made;

1. IT IS ORDERED (*give particulars of any directions given by the court under Rule 11*).

2. IT IS FURTHER ORDERED that the clerk prepare and issue a commission naming (*name*), of (*address*), as commissioner to take the evidence of the witness(es) (*name of witness(es)*) in (*name of province, state or country*) for use at the preliminary inquiry or trial.

3. IT IS FURTHER ORDERED that the clerk prepare and issue a letter of request in Form 11 of the *Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings*, addressed to the judicial authorities of (*name of province, state or country*), requesting the issuing of such process as is necessary to compel the witness (or witnesses) to attend and be examined before the commissioner.

Dated at,, this day, (*month*) of (*year*).

.....

Judge

Provincial Court of Newfoundland and Labrador

Schedule

Form 13 — Pre-Hearing Conference Report

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN

and

(specify name of the accused)

PRE-HEARING CONFERENCE REPORT FORM
(Criminal Code, section 625.1)

(Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, Rule 15, Form 13)

NAME OF ACCUSED:

CHARGES:

DEFENCE COUNSEL: Tel.:

CROWN COUNSEL:

Tel.:

DATE OF OFFENCE:

DATE ACCUSED CHARGED:

DATE INFORMATION SWORN:

DATE OF FIRST APPEARANCE:

DATES OF SUBSEQUENT APPEARANCES:

DATE OF PROCEEDING:

FORM OF JUDICIAL INTERIM RELEASE:

DISCLOSURE ISSUES:

CHARTER ISSUES:

EXPECTED MODE OF TRIAL:

RE-ELECTION EXPECTED — CROWN CONSENTING (*if required*)

PRE-TRIAL MOTIONS:

VOIR DIRES:

UNDISPUTED ISSUES:

TRIABLE ISSUES:

LEGAL ISSUES:

LENGTH OF PRELIMINARY INQUIRY OR TRIAL:

.....
(Date)

.....
Judge
Provincial Court of Newfoundland and Labrador

Schedule

Form 14 — Requisition

Information No.

PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR
(*specify court centre*)

BETWEEN:

HER MAJESTY THE QUEEN
(*indicate whether applicant or respondent*)

and

(*specific name of accused*)
(*indicate whether applicant or respondent*)

REQUISITION

(*Rules of the Provincial Court of Newfoundland and Labrador in Criminal Proceedings, rule 4.09, Form 14*)

TO THE CLERK AT (place)

I REQUIRE (*Set out a concise statement of what is sought, and include all particulars necessary for the clerk to act. If what is sought is authorized by an order, refer to the order in the requisition and attach a copy of the entered order. If an affidavit or other document must be filed with the requisition, refer to it in the requisition and attach it.*)

Dated at,, this day of, (year).

.....
(*signature of person filing requisition or counsel*)
(*name and address, as well as telephone and fax number with area code, of counsel or person filing requisition*)

Currency

Federal English Statutes reflect amendments current to March 17, 2021

Federal English Regulations are current to Gazette Vol. 155:5 (March 3, 2021)

End of Document

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