



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

PRACTICE DIRECTIVE

P.D. (Crim.) No. 2020-01

RULES AFFECTED: *Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador, Rule 14.*

EFFECTIVE DATE: January 27, 2020

The following Practice Directive is issued pursuant to rule 1.04 of the *Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador*.

SURETY DECLARATIONS AND SURETY ATTENDANCE AT JUDICIAL INTERIM RELEASE HEARINGS

Background and Purpose

1. Recent amendments to the judicial interim release provisions of the *Criminal Code* have modified some of the procedures that must be followed and documents that must be filed at judicial interim release hearings. The purpose of the changes are to modernize and simplify the bail process.
2. The amended section 515.1 of the *Criminal Code* requires named sureties to provide a “Surety Declaration” in Form 12. This new provision expands the procedure previously followed in Practice Note *SCTD PN No. 2007-01*.
3. In light of these changes, the Court considers it advisable to issue the Practice Directive below, detailing the expectations this Court has of counsel, applicants, and those offering to become sureties.

Practice Directive

(a) Surety known in advance

4. When the identity of a proposed surety is known in advance, the applicant or their counsel shall provide a copy of the Surety Handout attached as Appendix “A” and the Surety Declaration in Form 12 attached as Appendix “B” to the proposed surety. These forms are available on the Supreme Court website:

<https://court.nl.ca/supreme/general/proceedings.html>

5. The proposed surety shall be advised that they may benefit from obtaining independent legal advice before deciding whether or not to become a surety.
6. Where possible, the completed and sworn or affirmed Surety Declaration should be filed with the court at least two clear days prior to the date fixed for the hearing as directed by Rule 14.07. The Surety Declaration is “the affidavit of any person who proposes to serve as a surety for the accused” referred to in Rule 14.05(1)(c).
7. Where a proposed surety is unable to provide a declaration in Form 12 in advance of the hearing, they will normally attend court and give evidence under oath or affirmation on the subjects listed in *Criminal Code* s. 515.1(1)(a) to (h).

(b) Surety challenged by Crown

8. The Crown may initiate an inquiry as to the suitability of a surety or sureties. If the Crown challenges the suitability of a proposed surety and that challenge is disputed by the accused, the matter will be brought before a judge who will hear evidence and make a determination on the suitability of that surety.
9. If there is a challenge, the proposed surety must appear in court and be prepared to give evidence under oath or affirmation on the subjects listed in *Criminal Code* s. 515.1(1)(a) to (h).

(c) Crown consenting to surety

10. Where the Crown consents to a proposed surety, the judge may require the proposed surety to provide a Surety Declaration in Form 12, or may exempt the surety from providing a declaration in accordance with *Criminal Code* s. 515.1(2)(a).
11. Counsel should advise the Court ahead of the hearing where it is known in advance that the Crown will be consenting to a proposed surety. The Court may advise counsel (or the

accused if unrepresented) that the proposed surety's attendance in Court is required, if it is in the interests of justice that the proposed surety be examined in court.

(d) When release is ordered with a surety or sureties

12. The Court Officer shall provide the proposed surety a copy of the Surety Handout attached as Appendix "A", reading it to them if necessary.
13. The Court Officer shall review the contents of the Release Order with the proposed surety.
14. The Court Officer shall inform the proposed surety of the benefit of obtaining independent legal advice. The proposed surety may seek counsel before signing the Release Order.
15. The Court Officer shall ensure that the Form 12 has been completed and declared, except where the Judge has determined that a Surety Declaration will not be required in accordance with s. 515.1(2).
16. After these steps have been taken, the Court Officer will permit the proposed surety to sign the Release Order.
17. If the proposed surety does not wish to sign the Release Order, or wishes to seek further advice before doing so, the Court Officer shall advise the Judge who presided over the matter, counsel, and the accused if unrepresented by counsel.

(e) Repeal

18. Practice Note *SCTD PN No 2007-01* is repealed.

Authorized by:

Raymond P. Whalen
CHIEF JUSTICE OF THE SUPREME COURT

Ethel Chaulk
REGISTRAR

Appendix “A”



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

SURETY HANDOUT

What Sureties Need to Know

Acting as a Surety is a Serious Matter

A surety is someone who agrees to take responsibility for ensuring that a person accused of a crime complies with the conditions of their release. Those conditions are set out in a court order that is called a 'Release Order'.

Before you accept this responsibility, there are a number of things you should think about:

- Before signing a Release Order, you can get independent legal advice to make sure you understand what this responsibility means.
- If the accused person does not obey the terms and/or conditions of the Release Order, you could lose the money that you deposited or promised.
- You should not agree to be a surety if you are not sure that you can supervise the accused person in the community.
- Your responsibility as a surety continues until the case is completely over. In some cases, this may take a long time.
- It is against the law to get paid or accept a fee for acting as a surety.

Responsibilities of a Surety

As a surety, you are responsible for:

- Making sure the accused person comes to court on time and on the right dates.

- Making sure you understand all of the conditions of the Release Order.
- Making sure that the accused person obeys all conditions of the Release Order.
- Reporting to the police or a crown prosecutor if the accused person does not obey one or more conditions of the Release Order.

There may be many conditions in a Release Order. For example, the accused person may be: required to report to the police at specified times and obey a curfew; prohibited from possessing weapons; prohibited from possessing or consuming alcohol and/or drugs; or prohibited from communicating (directly or indirectly) with the victim or the victim's family (This also means that you as the surety cannot communicate with the victim or victim's family on behalf of the accused person).

If you are accepted as a surety, you must sign a Surety Declaration and the Release Order. This means that you agree to pay a specified amount of money if the accused person fails to obey the Release Order.

Qualifications of a Surety

The Judge will decide whether you are suitable to act as a surety. Qualifications of a surety will depend on the allegations or charges against the accused person. The Judge will consider your finances, personal character, and background.

You may have to give evidence in court and be cross-examined about your qualifications.

Ending Your Obligations as a Surety

If you decide that you are no longer willing, or able, to supervise the accused person, you must go to the Court that issued the Release Order and make an application to be removed as a surety. The Court will then schedule the matter to be heard before a Judge.

The Court will then issue an order to arrest the accused person. Once the order is issued, your obligations as a surety will be over.

Failure to Obey a Court Order

If the accused person breaches the conditions of their Release Order while you were acting as a surety, the Crown may ask the Court to make you pay the money that you deposited or promised. A hearing may be scheduled in the Supreme Court. You and the accused person will be given at least 10 days notice of the date and place of the hearing. At the hearing, you will have an opportunity to explain why you should not lose your money. The judge may order that you pay all, part, or none of your money.

Appendix “B”

Surety Declaration Form 12 (Section 337)

1. Identification

Surname: _____ Given Name(s): _____
 Date of Birth: _____ Telephone: _____
 Address: _____ Other contact information (if any): _____
 Employment or occupation (if any): _____
 Name and contact info for employer (if any): _____

2. Information about the Accused

Surname: _____ Given Names(s): _____
 Date of Birth: _____ Court File Number(s): _____

3. Other information required:

Relationship to the accused: _____

I am acting as a surety in respect of another accused:

Yes No

If yes, name and date of birth of any other accused: _____

I have a criminal record or there are outstanding criminal charges against me:

Yes No

If yes, description of the criminal record, if any, and all outstanding criminal charges, specifying offence and year of conviction: _____

4. Charges against the accused:

I understand that the accused has been charged with: (•^oŃ ~ oš;ā-† Ń@Ń -Ń) &^š Ń^•J^&oŃ ~
, @š@Ńšš~ •^šŃ š š@š^š)

5. Other Outstanding Charges against the Accused:

I understand that the accused does not have any other outstanding criminal charges.

I understand that the accused has also been charged with: (•^oŃ ~ oš;ā-† Ń@Ń -Ń) &
š Ń^•J^&oŃ -Ń @š@Ńšš~ •^šŃ š š@š^š

but this declaration does not apply to those charges.

*"7fja JbU'FYwfx'cZH Y5WV gYX.

I understand that the accused does not have any other outstanding criminal charges.

I understand that the accused has a criminal record, which is described below or a copy of which I have attached and initialed.

Gi f Ymi8 YWU Ujcb Cont'd

+":]bUbVU`Dfca JgYcf`8 Ydcgjh

As a surety for the accused, I am willing to:

Promise

Deposit

to the court the amount of \$ _____.

, "5 W_bck`YX[Ya Ybh

I understand that failure on the part of the accused to follow any of the conditions in their release order or recognizance could lead to the forfeiture of the amount of money that has been promised or deposited.

I understand that I may, at any time, ask to no longer be a surety by making an application, by bringing the accused to the court in order to be discharged from my obligation (section 767 of the Criminal Code) or by taking and giving the accused into custody (768 of the Criminal Code).

I voluntarily make this declaration and it is my free choice to take on the responsibilities of a surety.

Signed on the _____ day of _____, A.D. _____ at _____, NL.

(Signature of the surety)

Sworn before me on the _____ day of _____, A.D., _____ at _____, NL.

(Signature of the person who is authorized to take or receive statements made under oath, solemn declaration or solemn affirmation)

Déclaration de la caution FORMULAIRE 12 (Section 337)

1. Identification

Nom: _____ Prénom(s): _____
Date de naissance: _____ N° de téléphone: _____
Adresse: _____ Autres coordonnées
(le cas échéant): _____
Emploi ou profession (le cas échéant): _____
Nom et coordonnées du représentant de l'employeur: _____

2. Renseignements sur le(la) prévenu(e)

Nom: _____ Prénom(s): _____
Date de naissance: _____ Numéro(s) de dossier
du greffe: _____

3. Autres renseignements exigés:

Relation avec le(la) prévenu(e): _____

J'agis à titre de caution par rapport à un(e) autre prévenu(e):

Oui Non

Le cas échéant, veuillez préciser le nom et la date de naissance de l'autre prévenu(e): _____

J'ai un casier judiciaire ou je fais l'objet d'accusations au criminel en instance:

Oui Non

S'il y a lieu, veuillez livrer le contenu de votre casier judiciaire et énumérer toutes les accusations criminelles en instance, le cas échéant, en précisant chaque infraction et l'année de la condamnation: _____

4. Accusations à l'endroit de le(la) prévenu(e):

Je comprends que le(la) prévenu(e) a été inculpé(e) de [décrivez brièvement l'infraction dont le/la prévenu(e) a été accusé(e)].

5. Si l'Yg'UMW'gUjcbg`Yb`jbgfUbwV'Ve`bfY`UfU'cdfj`Ybi`fM:

Je comprends que le(la) prévenu(e) ne fait face à aucune accusation au criminel en instance.

Je comprends que le(la) prévenu(e) a en outre été inculpé(e) de ce qui suit : [décrivez
à l'aide de { } ^) ^ (+ - * / } / [] ^ () ! . ^) ~ @ . c . & * . . @ E

mais la présente déclaration ne vaut pas pour ces accusations.

6. 7 UbjYf`i`XjWUjYXi`fKY`U'cdfj`Ybi`fM:

Je reconnais que le(la) prévenu(e) n'a pas de casier judiciaire.

Je reconnais que le(la) prévenu(e) a un casier judiciaire, lequel est présenté ci-dessous ou dont une copie paraphée est jointe à la présente.

Déclaration de la caution a continué

7. 9b[Uf Ya YbhiZbUbVYf'ci 'Xfd' h

À titre de caution du(de la) prévenu(e), je consens à:

Promettre

Déposer

au tribunal la somme de \$ _____ .

8. Acknowledgement

Je comprends que tout manquement de la part du(de la) prévenu(e) au respect de l'une ou l'autre des conditions de son ordonnance de mise en liberté ou de son engagement pourrait entraîner la confiscation de la somme d'argent qui a été promise ou mise en dépôt.

Je comprends que je peux, à tout moment, demander à ne plus servir de caution en présentant une demande à cet égard, en amenant le(la) prévenu(e) devant le tribunal afin d'être déchargé(e) de mon obligation (article 767 du Code criminel) ou en prenant le(la) prévenu(e) sous ma garde (article 768 du ~~Ôf à^Aā ā^)~~).

Je fais volontairement cette déclaration, et j'assume par mon libre choix les responsabilités d'une caution.

- "Gj[bUhi fY

Signée en ce _____ jour de _____ de notre ère à _____, à T.-N.-L.

(Signature de la caution)

Déclaration faite sous serment devant moi en ce _____ jour de _____
de notre ère à _____, à T.-N.-L.

(Signature de la personne qui est autorisée à
recueillir ou à recevoir des déclarations faites sous
serment ou des déclarations ou affirmations solennelles)