

**CRIMINAL APPEAL RULES OF THE SUPREME COURT OF  
NEWFOUNDLAND AND LABRADOR**

In force September 2, 1986

Amended by:

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## SHORT TITLE

1. These rules may be cited as the *Criminal Appeal Rules of the Supreme Court of Newfoundland and Labrador*.

## INTERPRETATION

2. In these rules
  - (a) **appeal** means an appeal pursuant to Part XXVII of the Code;
  - (b) **appeal court** means the Judicial Centre of the Supreme Court of Newfoundland and Labrador, nearest to the place where the cause of the proceedings arose;
  - (c) **Registrar** means a clerk carrying out the functions of the Registrar in the Appeal Court;
  - (d) **Code** means the *Criminal Code*; and
  - (e) **judge** means the judge of the appeal court except when preceded by the word "trial" in which case it means the judge or magistrate of the summary conviction court appealed from.

## APPELLANT TO PREPARE NOTICE OF APPEAL

3. Where an appeal is taken under Section 813 of the Code, the appellant shall prepare a written notice of appeal which shall be dated and signed by the appellant or the appellant's solicitor.

## CONTENTS OF NOTICE OF APPEAL

4. A notice of appeal shall be directed to the respondent and shall set forth
  - (a) the summary conviction court that entered or made the conviction or order or imposed the sentence appealed against;
  - (b) the conviction or order entered or made or the sentence imposed by the summary conviction court;
  - (c) the offence with which the defendant was charged and the place at which it was committed;
  - (d) the place where the trial in the summary conviction court was held;

(e) the date on which the conviction or order was entered or made or on which the sentence was imposed;

(f) whether the appeal is from the conviction, order for dismissal or other order or against sentence or against the conviction or order and sentence;

(g) concisely and precisely the nature of the order or other relief which the appellant intends to ask the appeal court to make or give and the reasons for asking for that order or other relief;

(h) whether the appellant, if the appellant is in custody, wishes to be present in person when the appeal is heard; and

(i) the appellant's address for service.

### **FORM OF NOTICE OF APPEAL**

5. Where the appellant is the defendant the notice of appeal may be in Form 1 in the schedule to these rules and where the appellant is the prosecutor the notice of appeal may be in Form 2 in the schedule, varied in each case as the circumstances require.

### **SERVICE BY APPELLANT-DEFENDANT**

6. Where the appellant is the defendant, the appellant shall

(a) within 30 days after the conviction or order was made or the sentence was imposed, whichever is later, file the notice of appeal with the Registrar and cause a copy of it to be served personally or by pre-paid registered mail on the respondent or on the respondent's solicitor or agent; and

(b) not later than seven clear days after the last day for service of the notice of appeal file with the Registrar proof of service of the notice on the respondent or on the respondent's solicitor or agent.

### **SERVICE BY APPELLANT-PROSECUTOR**

7. Where the appellant is the prosecutor, the appellant shall

(a) within 30 days after the conviction or order was made or the sentence was imposed, whichever is later, file the notice of appeal with the Registrar and cause a copy of it to be served personally or by pre-paid registered mail on the respondent or the respondent's solicitor or on such other person or in such other manner as the appeal court may order in accordance with Rule 8; and

(b) not later than seven clear days after the last day for service of the notice of appeal file with the Registrar proof of service of the notice on the respondent or the respondent's solicitor or other person, if any, ordered by the appeal court under Rule 8.

### **ORDER FOR SUBSTITUTED SERVICE ON DEFENDANT**

8. The appeal court may on an *ex parte* application by the prosecutor order that a notice of appeal directed to a defendant may be served on such other person instead of the defendant or in such other manner as the appeal court may order.

### **COPY OF NOTICE TO TRIAL COURT**

9. (1) After a notice of appeal has been filed the Registrar shall forthwith deliver or send a copy of the notice to the summary conviction court.

#### **Trial Court to send material to Registrar**

(2) Subject to the Code and these rules, a summary conviction court shall, within 10 days after receipt of a copy of a notice of appeal, transmit to the Registrar the material referred to in subsection (1) of Section 821 of the Code.

### **APPELLANT TO ORDER TRANSCRIPT OF EVIDENCE AND REASONS**

10. (1) Subject to these rules, the appellant shall, before or at the time of filing a notice of appeal, notify the summary conviction court that four copies of a transcript of the evidence in that court and of the reasons for judgment and sentence are required for the use of the appeal court.

#### **Appellant to file certificate that transcripts ordered**

(2) Subject to these rules, where the evidence at the trial in the summary conviction court was taken by a court reporter duly sworn or was recorded by a sound recording apparatus, the appellant shall, when the appellant files a notice of appeal, file with the Registrar a certificate of the court reporter in the summary conviction court, in Form 3 in the schedule to these rules, that four copies of the transcript of the evidence taken in the summary conviction court and of the reasons for judgment and sentence have been ordered and will be provided.

#### **Court Reporter to prepare transcript and send to Registrar**

(3) Upon signing the certificate required under paragraph (2), the court reporter shall proceed with all reasonable diligence to prepare the transcript of the evidence and of the reasons for judgment and sentence and shall on completion transmit four copies of each, duly certified as to their correctness and authenticity, to the Registrar.

### **Certificate *prima facie* proof of accuracy of transcript**

(4) A certificate furnished by a court reporter under paragraph (3) is *prima facie* proof of the accuracy of the transcript of the evidence and of the reasons for judgment and sentence.

### **Registrar to send copies of transcript to parties**

(5) Forthwith upon receipt of the transcript of the evidence and the reasons for judgment and sentence the Registrar shall send a copy of each to the appellant and to the respondent or to the solicitor for each.

### **REPEALED**

11. [Repealed]

### **TRANSCRIPT MAY BE DISPENSED WITH ON APPEAL FROM SENTENCE**

12. If the parties agree or if the appeal is from sentence only, the appellant need not cause the transcript of the evidence to be furnished to the appeal court if the appeal court on a preliminary application orders that it may be dispensed with.

### **APPELLANT TO FILE STATEMENT OF POINTS TO BE ARGUED ON APPEAL**

13. (1) Except where otherwise ordered by the appeal court, the appellant shall file with the Registrar a signed, concise statement of the points of fact and law to be argued with references to the evidence and to the authorities relied upon and shall deliver a copy to the respondent.

#### **Respondent to file statement in reply**

(2) The respondent shall within 14 days after delivery of the statement under paragraph (1) file a similar statement with the Registrar and deliver a copy to the appellant.

#### **Respondent to state facts accepted or rejected**

(3) In the statement which the respondent files under paragraph (2) the respondent shall, where possible, state those facts in the appellant's statement which the respondent accepts or rejects and reply to the points which the appellant intends to argue.

#### **Statement not requisite**

(4) The filing of statements under this rule shall not be a requisite in the perfecting of an appeal but their omission or delay may be reflected in costs.

#### **TIME MAY BE EXTENDED FOR FILING, ETC.**

14. (1) Subject to the Code, the appeal court may on application, before or after the expiration of the time fixed for doing anything in accordance with these rules, extend that time.

##### **Application for extension may be *ex parte***

(2) An application under paragraph (1) may be made *ex parte* but the appeal court may direct service of notice of the application on the other party who may then be heard on the application.

#### **APPLICATION TO WITHDRAW GUILTY PLEA**

15. If an appellant entered a guilty plea at the trial in the summary conviction court, the Registrar shall enter the appeal for a hearing on the preliminary point as to whether the appellant may withdraw the guilty plea and the appeal court, on hearing that point, may, if it decides in favour of the appellant, give such directions or make such order as it deems just.

#### **APPLICATION FOR TRIAL *DE NOVO***

16. (1) An application for a trial *de novo* pursuant to subsection (4) of Section 822 of the Code shall be made by notice of motion with supporting material within seven days after the appellant receives the transcript of the evidence from the summary jurisdiction court or a certificate from the court reporter that a transcript cannot be provided.

##### **Service of copy of Notice of Motion on Respondent**

(2) Service of a copy of the notice of motion and supporting material under paragraph (1) shall be made upon the respondent not later than seven days before the return date thereof and proof of service shall be filed with the Registrar not later than two days before the return date.

##### **Evidence on application for trial *de novo***

(3) On the hearing of an application for a trial *de novo* the evidence supporting the application shall be provided orally but, with the approval of the appeal court, it may be supported by affidavits.

#### **APPLICATION FOR RELEASE OF DEFENDANT**

17. An application under subsection (1) of Section 816 of the Code may be made orally, provided the applicant has given the prosecutor one clear day's written notice and filed a copy with the Registrar.

### **REGISTRAR TO ENTER APPEAL ON LIST AND FIX TIME AND PLACE OF HEARING**

18. (1) The time and place for the hearing of an appeal need not be stated in a notice of appeal but upon receipt of the material required to be transmitted by the summary jurisdiction court under the Code and a transcript of the evidence, unless the appeal court has dispensed with the transcript, the Registrar shall
  - (a) forthwith enter the case on a list of appeals to be heard by the appeal court; and
  - (b) subject to directions by the judge and to an application having been filed for a trial *de novo* pursuant to subsection (4) of Section 822 of the Code, fix the time and place for the hearing of the appeal.

#### **Notice of hearing of appeal**

- (2) The date fixed for the hearing of an appeal shall be fixed so that at least 14 days' notice of the hearing may be given to the appellant and the respondent or to their solicitors.

#### **Service of notice**

- (3) Service of notice under this rule may be made by prepaid registered mail.

### **ARGUMENT MAY BE IN WRITING**

19. (1) Any party to an appeal may, if the party wishes, present the party's argument in writing to the appeal court or by filing it with the Registrar at any time before the day fixed for the hearing of the appeal.

#### **Formal hearing may be dispensed with**

- (2) Where all parties to an appeal submit written arguments the appeal court may dispense with a formal hearing.

### **REGISTRAR TO SEND COPY OF JUDGMENT TO TRIAL JUDGE**

20. Immediately after the appeal court has disposed of an appeal the Registrar shall send a copy of the judgment and reasons therefor, if any are given, to the judge before whom the trial was held in the summary conviction court.

## **NOTICE OF ABANDONMENT OF APPEAL**

21. (1) Where an appellant wishes to abandon an appeal the appellant shall serve a notice of abandonment on the respondent and file a copy of the notice with the Registrar before the date set for the hearing of the appeal.

### **Signature to notice of abandonment**

(2) A notice served under paragraph (1) may be signed by the solicitor for the appellant or by the appellant, provided that where the appellant signs it the signature shall be verified by an affidavit or witnessed by

- (a) the Registrar;
- (b) a solicitor; or
- (c) an officer of the institution, if any, in which the appellant is confined.

### **Disposal of abandoned appeal**

(3) Where an appellant files a notice of abandonment under this rule, the judge in chambers may dismiss the appeal as an abandoned appeal without attendance of counsel.

## **SUMMARY CONVICTION COURT TO RETAIN EXHIBITS, ETC.**

22. Subject to 821 of the Code and to Rules 23 and 24 a summary conviction court shall retain all documents, exhibits and other things connected with the trial of a person convicted at the trial or, in the case of chattels of inconvenient size, shall direct that they be retained by the proper police officers, for 35 days after the sentence, unless in the meantime the judge of the appeal court has made an order respecting the custody and control of those documents, exhibits and other things.

## **SUMMARY CONVICTION COURT MAY DELIVER DOCUMENTS, ETC.**

23. A summary conviction court may at any time after a trial, upon having filed with it the written consent, whether absolute or upon terms, of the prosecutor and the defendant or their solicitors, deliver any documents, exhibits or other things produced at the trial to the person who produced them.

## **ORDER AS TO CUSTODY OR CONDITIONAL RELEASE OF EXHIBITS, ETC.**

24. A summary conviction court may at any time after a trial, and upon such terms as it may impose, make an order as to the custody or conditional release of any documents, exhibits or other things as special circumstances or the special nature of the documents, exhibits or other things may make desirable and proper.

## **NON-COMPLIANCE WITH RULES AND ORDERS TO VALIDATE PROCEEDINGS, ETC.**

25. Non-compliance with these rules shall not render any proceedings void but the appeal court may direct that any document shall be amended or may, if it deems fit, give directions and make any order necessary to validate the proceeding, or it may set them aside as irregular or otherwise deal with them in such manner as it deems just.

## **MATTERS NOT DEALT WITH BY THESE RULES**

26. In matters not specifically provided for by these rules, the practice and procedure of the Supreme Court of Newfoundland and Labrador relating to civil proceedings, as far as they can be made applicable, apply with appropriate changes.

## **COPIES OF RULES FOR CONVICTED PERSONS**

27. The Superintendent of Her Majesty's Penitentiary and the person in charge of every jail or other place of detention in the Province shall furnish a copy of these rules to any convicted person in his custody who asks for them.

## **EFFECTIVE DATE**

28. These rules shall come into force on the 2nd day of September, 1986.

**SCHEDULE**

**FORM 1**

20\_\_ 01G \_\_\_\_\_ CR  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

A. B. Appellant

AND:

C. D. Respondent

**NOTICE OF APPEAL**

TAKE NOTICE that the appellant intends to appeal and hereby appeals from the conviction entered (or) the order made (and) (or) the sentence imposed by (state either or both) (state the name of the presiding judge in the summary conviction court) in (state the name of the summary conviction court) at (state place in which the trial was held) on (state date on which conviction was entered or date on which the order was made or sentence was imposed or both if appeal is from conviction or order and sentence).

The offence of which the appellant was convicted was (state fully the offence or offences of which the appellant was convicted).

The offence was committed at (state place at which the offence was committed).

(If applicable) The order of the summary conviction court that convicted the appellant was (state the order made) and it was made on (state date of order).

(If applicable) The sentence of the summary conviction court that convicted the appellant was (state sentence imposed) and it was imposed on (state date of sentence).

The appeal is (from the conviction or against the order or sentence or each) on the grounds that (set out grounds fully).

The appellant asks for the following order or other relief (set out concisely and precisely the nature of the order or other relief which the appellant asks the court of appeal to make or give, and the reasons for asking for the order or other relief).

(If appellant is in custody, state where the appellant is being held and whether the appellant wishes to be present in person when the appeal is heard).

My address for service is:

Dated at \_\_\_\_\_ in the Province of Newfoundland and Labrador  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature of appellant or the appellant's solicitor)  
(Phone number and email address of appellant or the appellant's solicitor)

To: (name and address of the respondent)

**FORM 2**

20\_\_ 01G \_\_\_\_\_ CR

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

A. B. Appellant

AND:

C. D. Respondent

**NOTICE OF APPEAL**

(If appeal is from an order of dismissal)

TAKE NOTICE that the appellant intends to appeal and hereby appeals from an order dismissing the information of (state name of informant) against the respondent made by (state the name of the presiding judge in the summary conviction court) in (state name of summary conviction court) at (state place in which the trial was held) on (state date on which order of dismissal was made).

The information that was dismissed charged the respondent (state fully the offence or offences charged and the place at which the alleged offence or offences were committed).

(If appeal is from sentence)

TAKE NOTICE that the appellant intends to appeal and hereby appeals the sentence imposed upon the respondent following conviction(s) entered by (state the name of the presiding judge in the summary conviction court) in (state name of summary conviction court) at (state place in which the trial was held) on (state date on which conviction was entered)

The offence of which the respondent was convicted was (state fully the offence or offences of which the respondent was convicted)

The offence was committed at (state place at which the offence was committed)

The sentence of the summary conviction court that convicted the respondent was (state sentence imposed) and was imposed on (state date of sentence)

The appeal is on the grounds that (set out grounds fully)

The appellant asks for the following order or other relief (set out concisely and precisely the nature of the order or other relief which the appellant asks the court of appeal to make or give and the reasons for asking for the order or other relief)

The address for service of the appellant is

Dated at \_\_\_\_\_ in the Province of Newfoundland and Labrador  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature of appellant or the appellant's solicitor)  
(Phone number and email address of appellant or the appellant's solicitor)

To: (name and address of the respondent)

**FORM 3**

(Heading of matter as in trial court)

**CERTIFICATE OF COURT REPORTER**

I certify that the \_\_\_\_\_ has ordered a transcript of the evidence at the trial of this matter in the (name of summary conviction court) at (location of court) together with reasons for judgment and sentence. I undertake to deliver to you for appeal purposes four copies of the transcript and of the reasons for judgment and sentence when I have completed each

Dated at \_\_\_\_\_ in the Province of Newfoundland and Labrador this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature of Court Reporter)  
(set out name and location of summary conviction court)

To: Supreme Court of Newfoundland and Labrador  
(Address of judicial centre)