

CRIMINAL PROCEEDINGS RULES

The Ontario Court of Justice (General Division), pursuant to subsections 482(1) and (3)* of the *Criminal Code*, with the concurrence of a majority of the judges of that Court present at a meeting held for the purpose on May 9, 1992, revoked the Ontario Supreme Court Rules Respecting Criminal Proceedings--Part I, made on May 10, 1985**, the Ontario Supreme Court Rules Respecting Pre-hearing Conferences in Criminal Matters, made on April 12, 1986***, the Ontario District Court Rules Respecting Pre-hearing Conferences in Criminal Matters, made in May, 1986****, and the Ontario County and District Court Judges' Criminal Courts Summary Conviction Appeal Rules, made on October 5, 1977*****, and made the annexed Ontario Court of Justice Criminal Proceedings Rules, effective May 11, 1992.

Pursuant to s. 482.1 of the *Criminal Code*, those amendments to the Criminal Proceedings Rules identified as coming into force on October 16, 2006 shall apply to all cases in which the accused was ordered to stand trial or the indictment was preferred against the accused pursuant to s. 577 of the *Criminal Code* after October 15, 2006.

All references to "Ontario Court" or "Ontario Court (General Division)" are repealed and have been replaced with "Superior Court of Justice". [*Effective October 16, 2006*]

Dated October 13, 2006

H.J. SMITH
Chief Justice
Superior Court of Justice

* R.S., c. 27 (1st Supp.), s. 66(2)

** SI/85-152, 1985 *Canada Gazette* Part II, p. 3623

*** SI/86-145, 1986 *Canada Gazette* Part II, p. 3396

**** SI/86-214, 1986 *Canada Gazette* Part II, p. 5353

***** SI/77-213, 1977 *Canada Gazette* Part II, p. 4792

SUPERIOR COURT OF JUSTICE
CRIMINAL PROCEEDINGS RULES
[With amendments, effective October 16, 2006]

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**PART I:
GENERAL MATTERS [Rules 1-19]**

RULE 1 CITATION, APPLICATION AND INTERPRETATION

CITATION

Short Title

1.01 (1) These rules may be cited as the *Criminal Proceedings Rules*.

Subdivision

- (2) 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)).

Alternative References

(3) 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), rule 1.01(2)(c)(iii)).

APPLICATION OF RULES

Superior Court of Justice

1.02 (1) These rules are enacted pursuant to subsection 482(1) of the *Code* and apply to prosecutions, proceedings, applications and appeals, as the case may be, within the jurisdiction of the **Superior Court of Justice**, instituted in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding, application or appeal.

Parole Ineligibility Review Hearings

(2) Rule 50 which will be attached to these rules for administrative purposes is enacted by the Chief Justice of the **Superior Court of Justice** in accordance with subsection 745(5) of the *Code*.

Transitional Provisions

- (3) These rules come into force on May 11, 1992.
- (4) The following are repealed:
- (a) Part I of the *Rules Respecting Criminal Proceedings*, SI/85-152, *Canada Gazette* Part II, August 21, 1985 as amended;
 - (b) *Ontario Supreme Court Rules Respecting Pre-hearing Conferences in Criminal Matters*, SI/86-145, *Canada Gazette* Part II, August 20, 1986;
 - (c) *Ontario District Court Rules Respecting Pre-hearing Conferences in Criminal Matters*, SI/86-214, *Canada Gazette* Part II, December 24, 1986; and
 - (d) *Ontario County and District Court Judges' Criminal Courts Summary Conviction Appeal Rules*, SI/77-213, *Canada Gazette* Part II, November 9, 1977.

DEFINITIONS

1.03 In these rules, unless the context otherwise requires,

"affidavit" means a written statement in Form 4 confirmed by oath, or a solemn affirmation;
(*affidavit*)

"appellant" means a person who brings an appeal; (*appelant*)

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

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

"Charter" means the *Canadian Charter of Rights and Freedoms*; (*Charte*)

"Code" means *Criminal Code*; (*Code*)

"county" includes a district or a regional, district or metropolitan municipality; (*comté*)

"court" means the **Superior Court of Justice** in the county or district in which a proceeding is pending or being heard, as the case may be; (*tribunal*)

"court office" means the office of the registrar in the county, district or group of counties in which the proceeding is commenced; (*greffe*)

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

"document" includes a notice of application, notice of appeal, supplementary notice of appeal, 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, reference, appeal or assessment of costs, or a trial; (*audience*)

"holiday" means,

- (i) any Saturday or Sunday,
- (ii) New Year's Day,
- (iii) Good Friday,
- (iv) Easter Monday,
- (v) Victoria Day,
- (vi) Canada Day,
- (vii) Civic Holiday,
- (viii) Labour Day,
- (ix) Thanksgiving Day,
- (x) Remembrance Day,
- (xi) Christmas Day,
- (xii) Boxing Day, and
- (xiii) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (xiv) where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday; (*jour férié*)

"indictment" includes an information; (*acte d'accusation*)

"judge" means a judge of the court; (*juge*)

"judgment" means a decision that finally disposes of an application, trial, appeal 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*)

"originating process" includes a notice of application and notice of appeal; (*acte introductif d'instance*)

"proceeding" includes a trial, application, appeal or other hearing; (*instance*)

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

"registrar" means the Registrar of the **Superior Court of Justice**, or a local registrar of the **Superior Court of Justice**, as the circumstances may require; (*greffier*)

"region" means a region described in Ontario Regulation 705/89; (*région*)

"respondent" means a person against whom an application is made or an appeal is brought, as the circumstances may require; (*intimé*)

"solicitor" means a barrister and solicitor entitled to practise in the Province of Ontario; (*avocat*)

"solicitor of record" means the solicitor who represents or represented the accused in the proceedings that are the subject of the application or the appeal; (*procureur*)

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

INTERPRETATION

General Principle

1.04 (1) 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.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

Party Acting in Person

(3) Where an accused is not represented by a solicitor but acts in person, anything that these rules require or permit a solicitor to do shall be done by the accused.

APPLICATION OF CODE PROVISIONS

1.05 The interpretation sections of the *Code* apply to these rules.

FORMS

1.06 The forms prescribed in the Appendix of Forms shall be used where applicable and with such variations as the circumstances require.

RULE 2 NON-COMPLIANCE WITH THE RULES

COURT MAY DISPENSE WITH COMPLIANCE

2.01 A judge of the court may only dispense with compliance with any rule where and to the extent it is necessary in the interests of justice to do so. [*Effective October 16, 2006*]

RULE 3 TIME

COMPUTATION

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

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;

(b) where a period of less than 7 days is prescribed, holidays shall not be counted;

(c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) service of a document, other than an originating process, 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.

(2) Where 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.

EXTENSION OR ABRIDGMENT

General Powers of Court

3.02 (1) 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.

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

Consent in Writing

(3) 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 of the court may direct.

RULE 4 COURT DOCUMENTS

FORMAT

4.01 Every document in a proceeding shall be of good quality paper 216 millimetres by 279 millimetres in size and the text shall be printed, typewritten, written or reproduced legibly on one side only with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side.

CONTENTS

General Heading

4.02 (1) Every document in a proceeding shall have a heading in accordance with Form 1 (applications) or 2 (appeals) that sets out,

(a) the name of the court and the court file number; and

(b) the title of the proceeding in accordance with rule 6 (application) or rule 40 (appeal), but in a document other than an originating process, record, order or report, where 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.

Body of Document

(2) Every document in a proceeding shall contain,

(a) the title of the document;

(b) its date;

- (c) where the document is filed by a party and not issued by a registrar or is an originating process, the name, address and telephone number of the solicitor filing the document or, where a party acts in person, his or her name, address for service and telephone number; and
- (d) where the document is issued by a registrar, the address of the court office in which the proceeding was commenced.

Backsheet

(3) Every document in a proceeding shall have a backsheet in accordance with Form 3 that sets out,

- (a) the short title of the proceeding;
- (b) the name of the court and the court file number;
- (c) in the case of an affidavit, the deponent's name and the date when he or she swore or affirmed it;
- (d) the location of the court office in which the proceeding was commenced;
- (e) the title of the document; and
- (f) the name, address and telephone number of the solicitor serving or filing the document or, where a party acts in person, his or her name, address for service and telephone number.

CERTIFIED COPIES OF COURT DOCUMENTS

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

NOTICE TO BE IN WRITING

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

FILING OF DOCUMENTS

Place of Filing

4.05 (1) All documents required to be filed in a proceeding shall be filed in the court office in which the proceeding was commenced, except where they are filed in the course of a hearing or where these rules provide otherwise.

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

Filing by Leaving in Court Office or by Mail

(3) 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 the prescribed fee.

Date of Filing where Filed by Mail

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

Where Document Filed by Mail not Received

(5) Where a court office has no record of the receipt of a document alleged to have been filed by mail, the document shall be deemed not to have been filed, unless the court orders otherwise in accordance with rule 2.02.

AFFIDAVITS

Format

- 4.06** (1) An affidavit used in a proceeding shall,
- (a) be in Form 4;
 - (b) be expressed in the first person;
 - (c) state the full name of the deponent and, if the deponent is a party or a solicitor, officer, director, member or employee of a party, shall 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.

Contents

(2) 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 information and belief with respect to facts that are not contentious, provided that the source(s) of the information and the fact of belief are specified in the affidavit, or except where these rules provide otherwise.

Exhibits

- (3) An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit and where the exhibit,
- (a) is referred to as being attached to the affidavit, it shall be attached to and filed with the affidavit;
 - (b) is 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 registrar for the use of the court, and on the disposition of the matter in respect of which the affidavit was filed, the exhibit shall be returned to the solicitor or party who filed the affidavit, unless the court orders otherwise in accordance with rule 2.02; and
 - (c) is a document, a copy shall be served with the affidavit, unless it is impractical to do so.

By Two or More Deponents

(4) Where 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.

For a Corporation

(5) Where 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.

Alterations

(6) 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.

BINDING OF RECORDS, APPEAL BOOKS AND TRANSCRIPTS

- 4.07** (1) Application records shall have a light blue backsheet of 176g/m² weight cover stock.

(2) Transcripts of evidence for use on an application, at trial or on appeal shall have a red backsheet of 176g/m² weight cover stock.

(3) Appeal books shall be bound front and back in buff 176g/m² weight cover stock.

(4) Transcripts of evidence for use in an appeal shall be bound front and back in red 176g/m² weight cover stock, except where the transcript forms part of the appeal book or record, and where there is more than one volume of transcripts, the volumes shall be clearly numbered.

TRANSCRIPTS

Paper Size

4.08 (1) Evidence shall be transcribed on paper 216 millimetres by 279 millimetres in size with a margin 25 millimetres wide on the left side delimited by a vertical line.

Heading

(2) 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 no more than 15 millimetres from the top of the first page.

Standards

(3) The text shall be typewritten on thirty-two lines numbered in the margin at every fifth line.

(4) Headings, such as swearing of a witness, 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.

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

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

(7) The first line of a question or answer shall be indented 35 millimetres from the margin and shall be 130 millimetres in length.

(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 shall be 165 millimetres in length.

(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 millimetres from the margin and shall be 150 millimetres in length, and questions shall be numbered consecutively by means of a number placed in the 15 millimetres to the right of the margin.

(10) Lines of text other than questions and answers shall be indented 35 millimetres from the margin and shall be 130 millimetres in length.

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

(a) a cover page setting out,

(i) 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 the solicitors; and

(b) a table of contents setting out,

- (i) the name of each witness with the page number at which the examination, cross-examination and re-examination of the witness commence,
- (ii) the page number at which the charge to the jury, the objections to the charge and the re-charge commence,
- (iii) the page number at which the reasons for judgment commence,
- (iv) a list of the exhibits with the page number at which they were made exhibits, and
- (v) 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.

TRANSMISSION OF DOCUMENTS

4.09 (1) Where documents filed with the court or exhibits in the custody of an officer are required for use at another location, the registrar shall send them to the registrar at the other location on a party's requisition in Form 22, on payment of the prescribed fee.

(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 registrar, after the completion of the hearing, to the registrar at the court office where the proceeding was commenced.

NOTICE OF CONSTITUTIONAL ISSUE

4.10 Where an issue is raised as to the constitutionality of a statutory provision or rule of law, the party raising the issue shall serve a notice of constitutional issue in Form 5.

RULE 5 SERVICE OF DOCUMENTS

GENERAL RULES FOR MANNER OF SERVICE

Notices of Application

5.01 (1) A notice of application that includes an application for prohibition shall be served personally on the court, judge, justice, coroner or other person who issued the *subpoena* or warrant, conducted the inquisition or made the other order or determination or the person in charge of the place where the applicant or respondent is in custody.

(2) A notice of application that includes an application to quash a warrant, conviction, order or determination, other than a *subpoena* or warrant to compel the attendance of a witness, and that bears the endorsement set out in rule 43.03 shall be served upon the Court Services Manager,

(a) by mailing a copy to the Court Services Manager's office;

(b) by leaving a copy of such notice of application at the office of the Court Services Manager;

or

(c) by telephone transmission of a facsimile of the document, in which case the provisions of subrule 5.05(3) apply, *mutatis mutandis*.

Notices of Appeal

(3) Where the appellant is the Attorney General, his or her agent, or was the informant or any party other than the defendant (accused) in proceedings before the trial court, the notice of appeal shall be served personally on each person in respect of whom an appeal is brought against an acquittal, order of dismissal or staying proceedings on an information, sentence or other final order or other determination, as the case may be.

All Other Documents

(4) No other notice of application, notice of appeal or other document need 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) 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 a solicitor of record by serving the solicitor in a manner provided in rule 5.05;

(b) may be served on a party acting in person or on a person who is not a party,

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

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

PERSONAL SERVICE

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

Individual

(a) on an individual, other than a person under disability, by leaving a copy of the document with the individual;

Corporation

(b) on any corporation, by leaving a copy of the document with an officer, director or agent 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;

Judge or Justice

(c) on any judge or justice, by leaving a copy of the document with the judge or justice, or with a person in charge of the court office in the region, district, county or group of counties where the adjudication was made;

Attorney General of Canada

(d) on the Attorney General of Canada, by leaving a copy of the document with the regional office of the Attorney General of Canada at Toronto, 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,

Attorney General of Ontario

(e) on the Attorney General of Ontario, by leaving a copy of the document at the office of the Crown Attorney in the region, district, county or group of counties where the adjudication was made, or at the Crown Law Office (Criminal Law) of the Ministry of the Attorney General.

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

ALTERNATIVES TO PERSONAL SERVICE

Where Available

5.03 (1) Where 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.

Acceptance of Service by Solicitor

(2) Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor, or an employee in the solicitor's office, but service under this subrule is effective only if the solicitor endorses on the document or a copy of it an acceptance of service and the date of acceptance.

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

Service by Mail to Last Known Address

(4) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 6) by mail to the last 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 date on which the sender first receives either receipt, signed as provided by clause (a).

Service at Place of Residence

(5) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) 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 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.

Service on a Corporation

(6) Where the head office or principal place of business of a corporation cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation at that address.

SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE

Where Order May be Made

5.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt personal service of a notice of application, notice of appeal or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interests of justice, may dispense with service.

Effective Date of Service

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

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

SERVICE ON SOLICITOR OF RECORD

5.05 (1) Service of a document on the solicitor of record of a party may be made,
(a) by mailing a copy to the solicitor's office;
(b) by leaving a copy with a solicitor or employee in the solicitor's office;
(c) by depositing a copy at a document exchange of which the solicitor is a member or subscriber, but service under this clause is effective only if the document or a copy of it and the copy deposited are date stamped by the document exchange in the presence of the person depositing the copy; or
(d) by telephone transmission of a facsimile of the document in accordance with subrule (3).

(2) Service of a document by depositing a copy at a document exchange under clause (1)(c) is effective on the day following the day on which it was deposited and date stamped, unless that following day is a holiday, in which case service is effective on the next day that is not a holiday.

(3) A document that is served by telephone transmission shall include a cover page indicating,

- (a) the sender's name, address and telephone number;
- (b) the name of the solicitor 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.

SERVICE BY MAIL

Manner of Service

5.06 (1) Where a document is to be served by mail under these rules, a copy of the document shall be sent by prepaid first class mail or by registered or certified mail.

Effective Date

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

WHERE 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, 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.

VALIDATING SERVICE

5.08 Where 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 where the court is satisfied that,

- (a) the document came to the notice of the person to be served; or
- (b) the document 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.

PROOF OF SERVICE

Affidavit of Service

5.09 (1) Service of a document may be proved by an affidavit of the person who served it in Form 7.

Sheriff's Certificate

(2) Personal service or service under subrule 5.03(4) (service at place of residence) of a document by a sheriff or sheriff's officer may be proved by a certificate of service in Form 8.

Solicitor's of Record Admission or Acceptance

(3) A solicitor of record's written admission or acceptance of service is sufficient proof of service and need not be verified by affidavit.

Document Exchange

(4) Service of a document under clause 5.05(1)(c) (document exchange) may be proved by the date stamp on the document or a copy of it.

RULE 6 APPLICATIONS

APPLICATION OF THE RULE

6.01 (1) Where the *Criminal Code* or other federal enactment to which the procedural provisions of the *Criminal Code* apply, authorizes, permits or requires that an application or motion be made to or an order or determination made by a judge of or presiding in the superior court of criminal jurisdiction, or a judge as defined in s.552 of the *Criminal Code*, other than a judge presiding at trial upon an indictment, the application shall be commenced by a notice of application in Form 1. [Effective October 16, 2006]

(2) Rules 6.01 to 6.11 apply to all proceedings commenced by a notice of application, except where these rules expressly provide otherwise, or a judge of this court orders otherwise. [Effective October 16, 2006]

APPLICATIONS -- TO WHOM TO BE MADE

6.02 Applications shall be made to a judge of the court in the county, district or region where the criminal proceedings to which the application relates are being or are to be heard. [Effective October 16, 2006]

CONTENT OF NOTICE

6.03 Every notice of application in Form 1 shall state

(a) the place and date of hearing in accordance with Rule 6.02 and any other applicable rule;

(b) the precise relief sought;

(c) the grounds to be argued, including a reference to any statutory provision or rule to be relied upon;

(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. [Effective October 16, 2006]

SERVICE OF NOTICE

General Rule re Service

6.04 (1) The notice of application shall be served on all parties in accordance with Rule 5 and, where there is uncertainty whether anyone else should be served, the applicant may make a motion without notice to a judge for an order for directions. *[Effective October 16, 2006]*

Filing Proof of Service

(2) The notice of application in Form 1 and any other supporting materials required by the *Criminal Code*, other statute or these Rules, or ordered by a judge of the court, together with proof of service, shall be filed in the office of the clerk of the court in the place where the application is to be heard, not later than thirty (30) days before the date of the hearing of the application, unless otherwise ordered by a judge of the court, or unless Rule 20.04(1) applies. *[Effective October 16, 2006]*

MATERIAL FOR USE ON APPLICATIONS

Application Record

6.05 (1) Unless otherwise ordered by a judge of the court or otherwise provided by these Rules, an applicant shall serve on every other party and file an application record in accordance with Rule 6.05(2), not later than thirty (30) days before the date of the hearing of the application. *[Effective October 16, 2006]*

(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 indictment 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. *[Effective October 16, 2006]*

Respondent's Application Record

(3) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall serve on every other party and file a respondent's application record in accordance with Rule 6.05(4), not later than ten (10) days before the date of the hearing of the application. *[Effective October 16, 2006]*

(4) The respondent'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; and
- (b) a copy of any material to be used by the respondent on the application and not included in the application record,

and the respondent's application record shall be filed, with proof of service, in the court office where the application is to be heard, not later than ten (10) days before the date of the hearing of the application. *[Effective October 16, 2006]*

Documents May be Filed as Part of Record

(5) Any documents served by a party for use on an application may be filed, together 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. *[Effective October 16, 2006]*

Transcript of Evidence

(6) 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. *[Effective October 16, 2006]*

Books of Authorities

(7) Unless otherwise ordered by a judge of the court, books of authorities in accordance with Rule 32 are required and shall be served and filed in accordance with the time limits described in Rules 6.05(1) and (3). *[Effective October 16, 2006]*

Factums

(8) Unless otherwise ordered by a judge of the court, or required by these rules, factums are not required for applications made under this rule. *[Effective October 16, 2006]*

(9) Where a judge orders or these rules require that factums be served and filed on an application, the factums shall comply with Rule 33 and be served and filed within the time limits described in Rules 6.05(1) and (3), unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

THE HEARING OF APPLICATIONS

Place of Hearing

6.06 (1) Unless otherwise ordered by a judge of the court, an application to which this rule applies shall be heard and determined by a judge of the court in the county or district in which the trial or other proceedings to which the application relates are being or are to be held. *[Effective October 16, 2006]*

Date of Hearing

(2) Unless otherwise ordered by a judge of the court, applications shall be heard on a date and at a time fixed by the Registrar on notice to all parties or their solicitors of record. *[Effective October 16, 2006]*

EVIDENCE ON APPLICATIONS

General Rule: Evidence by Affidavit

6.07 (1) Evidence on an application may be given by affidavit in Form 4 and in accordance with Rule 4.06, unless the *Criminal Code* or other applicable statute provides, or a judge of the court orders otherwise in accordance with Rule 2.01. *[Effective October 16, 2006]*

Service and Filing of Affidavit

(2) Where 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 with proof of

service in the court office in the place where the motion or application is to be heard in accordance with Rule 6.05(1). *[Effective October 16, 2006]*

(3) All affidavits to be used at the hearing in opposition to an application or in reply shall be served and filed with proof of service in the court office in the place where the application is to be heard in accordance with Rule 6.05(3). *[Effective October 16, 2006]*

Cross-Examination on Affidavit

(4) Subject to the *Criminal Code* or any other applicable statute or rule of law, an affiant may be cross-examined on his or her affidavit at the office of a special examiner in sufficient time in advance of the return date of the application to permit a transcript of the cross-examination to be served on all parties and filed within the time limits described in Rules 6.05(1) and (3), unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

EVIDENCE BY EXAMINATION OF WITNESSES

6.08 Subject to the *Criminal Code* or any other applicable statute or rule of law, a witness may be examined or cross-examined upon 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. *[Effective October 16, 2006]*

USE OF AGREED STATEMENTS OF FACT

6.09 A judge, before or upon the hearing of the application, may dispense with the filing of any transcript(s) or affidavit(s) required in these rules and act upon a statement of facts agreed upon by the prosecutor and the accused person or his solicitor of record. *[Effective October 16, 2006]*

ABANDONMENT OF APPLICATIONS

Notice of Abandonment

6.10 (1) Where an applicant desires to abandon his or her application, he or she shall serve, in any manner provided by rule 5, a notice of abandonment in Form 9, signed by the solicitor of record in the application, or by the applicant (in which case the signature shall be verified by affidavit, solemn declaration or witnessed by a solicitor or an officer of the institution in which the applicant is confined). *[Effective October 16, 2006]*

Dismissal as Abandoned

(2) A judge of the court in chambers may thereupon dismiss the application as an abandoned application, without the attendance of the solicitor of record or the applicant. *[Effective October 16, 2006]*

Dismissal for Failure to Appear

(3) 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 2.01. *[Effective October 16, 2006]*

DISMISSAL ON REFERENCE OR APPLICATION

Notice by the Registrar

6.11 (1) Where it appears to the Registrar that a notice of application does not show a substantial ground for the order sought, the Registrar may refer the matter to a judge of the court for summary determination, and, where a matter is referred under this rule, a judge may, if he or she considers that the application is frivolous or vexatious and can be determined without a full hearing, dismiss the application summarily, without calling upon any person to appear for the respondent. [Effective October 16, 2006]

Application by Respondent

(2) Upon application by the respondent that a notice of application does not show a substantial ground for the order sought, a judge of the court may, if he or she considers that the matter is frivolous or vexatious and can be determined without a full hearing, dismiss the application summarily and cause the applicant to be advised accordingly. [Effective October 16, 2006]

RULE 7 PRACTICE DIRECTIONS

POWER TO ISSUE PRACTICE DIRECTIONS

7.01 The Chief Justice of the **Superior Court of Justice** may from time to time issue practice directions not inconsistent with these rules, in relation to the supervision and direction of the sittings and the assignment of judicial duties and if issued, such directions may be made applicable to any or all regions.

PART II:

PRE-TRIAL PROCEEDINGS [Rules 20-29]

RULE 20 JUDICIAL INTERIM RELEASE AND REVIEW APPLICATIONS [Code, ss. 520(1), (8); 521(1), (9); 522(1); 523(2)(c)(ii), (3)]

APPLICATION OF RULE

20.01 This rule applies to applications

- (a) by an accused under subsections 520(1) and (8) and 522(1) of the *Code*;
- (b) by the prosecutor under subsections 521(1) and (9) of the *Code*; and,
- (c) by an accused or the prosecutor at any time prior to the trial, under subparagraph 523(2)(c)(ii) or subsection 523(3) of the *Code*.

TO WHOM MADE

20.02 Applications under rule 20.01 shall be made to a judge of the court in the county, district or region in which the accused is to be tried on the indictment to which the application relates.

CONTENTS OF NOTICE

20.03 (1) The notice of application in Form 1 shall also state whether the accused is to be present at the hearing of the application.

(2) Where the notice of application in Form 1 states that the accused is to be present at the hearing of the application, the application shall be accompanied by an affidavit which shall contain

(a) a statement as to the place of confinement at which the accused is presently incarcerated;
(b) particulars of the date upon which the hearing of the application is anticipated to take place, together with a statement of whether the anticipated hearing date conflicts with any other proceedings in relation to the accused person;
(c) a statement of the accused's intention to be present at the hearing of the application; and,
(d) a statement as to the name of the police force or police officer into whose custody it is proposed that the accused be transferred for the purpose of effecting the accused's attendance at the hearing of the application,
together with a draft order in Form 13A, and a judge may grant an order requiring that the accused be present at the hearing of the application *ex parte* and without the attendance of a solicitor of record.

SERVICE OF NOTICE

General Rule

20.04 (1) The notice of application under rule 20.03 and supporting materials under rule 20.05 shall be served on the accused or prosecutor, as the case may be, in accordance with rule 5, at least 2 clear days prior to the date fixed for the hearing of the application, unless under s. 520(2) of the *Code*, the prosecutor otherwise consents.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with rule 5.

Filing with Proof of Service

(3) The notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 1 day before the date fixed for the hearing of the application.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

20.05 (1) The notice of application in Form 1 under rule 20.03 shall be accompanied by
(a) where the applicant is the accused, the affidavit of the applicant, in accordance with rule 4.06, containing the matters required under subrule (2);
(b) where the applicant is the accused and it is practicable to do so, the affidavit of the current or prospective employer by whom it is proposed that the accused be employed upon released;
(c) where the applicant is the accused and it is practicable to do so, the affidavit of any person whom it is proposed shall serve as a surety for the accused, if released, disclosing his or her willingness to serve as a surety and the amount for which each is to be liable;
(d) where the applicant seeks to review an order earlier made, a transcript of the proceedings on the judicial interim release hearing under section 515 or 522 of the *Code*, as the case may be, and of previous review proceedings, if any, taken before a justice or judge; and,
(e) a legible copy of any exhibits, capable of reproduction, which were filed on the judicial interim release hearing and in any previous review proceedings.

Affidavit of the Applicant

(2) The affidavit of the applicant required by subrule (1)(a) shall disclose

- (a) the particulars of the charge on which release is sought and any other charge outstanding against the applicant, together with the date or dates scheduled for trial or preliminary inquiry in respect of such charges;
- (b) the applicant's places of abode in the 3 years preceding the date of the offence charged and in respect of which release is sought, together with the place where the applicant proposes to reside if released;
- (c) the applicant's employment in the 3 years preceding the date of the offence charged in respect of which release is sought, together with whether and where the applicant expects to be employed upon release;
- (d) the form of order upon which the applicant proposes that release be granted;
- (e) where the applicant proposes that release be by giving an undertaking with conditions or upon entering into a recognizance with sureties, deposit or conditions, where practicable, the terms and conditions of the order sought, including the amount of any recognizance or deposit, as well as the names of any proposed surety and the amount for which each proposed surety is to be liable.

(3) Where the applicant is the prosecutor or where, as respondent, the prosecutor desires to assert that the detention of the accused is necessary in the public interest, and to rely on material other than required to be filed under subrule (1), the prosecutor may file an affidavit in accordance with rule 4.06 setting out the facts upon which reliance is placed, including the matters referred to in paragraph 518(1)(c) of the *Code*.

Factum Not Required

- (4) No factum is required in for the purposes of applications under this rule.

ORDER DIRECTING RELEASE

Form of Order

20.06 (1) An order directing the terms upon which an accused is to be released from custody upon application under this rule may be in Form 10.

Sufficiency of Order

(2) An order in Form 10 shall be sufficient authority for a justice to prepare the necessary undertaking or recognizance when satisfied that any condition precedent thereto has been met.

Consent in Writing

(3) The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 10A, and a judge may grant such order without the attendance of solicitors.

RULE 21 RELEASE OF EXHIBITS FOR SCIENTIFIC TESTING [*Code* s. 605(1)]

Application of the Rule

21.01 This rule applies to applications 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 under s. 605(1) of the *Code*.

TO WHOM APPLICATION MADE

21.02 Applications under rule 21.01 shall be made to a judge of the court in the county, district or region in which the accused is to be or is being tried on the indictment to which the application relates.

SERVICE OF NOTICE

General Rule

21.03 (1) Service of the notice of application under this rule and the supporting materials required by rule 21.04 shall be made on the prosecutor or accused, as the case may be, in accordance with rule 5, at least 2 clear days prior to the date fixed for the hearing of the application.

Filing with Proof of Service

(2) The notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 1 day before the date fixed for the hearing of the application.

MATERIAL FOR USE ON APPLICATION

Materials to be Filed

21.04 (1) The notice of application in Form 1 under this rule shall be accompanied by
(a) an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2); and
(b) an affidavit of the person or an authorized representative of the agency whom it is proposed shall conduct the test or examination deposing to the matters described in subrule (3).

Affidavit of or on Behalf of the Applicant

(2) The affidavit of or on behalf of the applicant required by subrule (1)(a) shall contain
(a) the particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to or did commence;
(b) particulars of the exhibit which it is sought to have ordered released for the purpose of a scientific or other test or examination;
(c) a description of the relevance of the exhibit, and the proposed examination or testing, to the issues raised at trial;
(d) a statement of the manner in which and steps by which the applicant will endeavour to ensure the safeguarding of the exhibit and its preservation for use at trial;
(e) where the application has not been brought until at or after the commencement of the trial proceedings, a statement of the reasons why it was not earlier brought and whether, if granted, the testing or examination procedure will disrupt or delay the trial proceedings; and,
(f) whether any issue is being or will be taken by the applicant to the continuity of the exhibits being tested or examined, and whether prior or subsequent to such examination or testing as is proposed.

Affidavit of or on Behalf of Examiner

(3) The affidavit of the person or an authorized representative of the agency whom it is proposed shall conduct the test or examination, required under subrule (1)(b), shall contain
(a) a statement of the capacity in which the deponent makes the affidavit, whether as examiner or authorized representative of the examining agency;
(b) where the affiant is an authorized representative of the examining agency, a statement of the scope of his authority and the basis and extent of his knowledge of the testing or examination techniques to be employed in the proposed examination;
(c) a detailed description of the nature, purpose, extent and duration of the testing or examination proposed including, where practicable, the scientific techniques, procedures and equipment to be used;

- (d) a description of the location or facility in which the testing or examination is to be conducted;
- (e) a reasonable estimate of the length of time required to complete the test or examination proposed;
- (f) a statement of whether the examiner, testing agency or applicant will permit attendance by duly qualified representatives of the respondent at or during the examination or testing or furnish the results thereof to such persons;
- (g) a statement whether, within a reasonable time after the completion of such testing or examination, the applicant shall advise the respondent whether it is proposed to adduce the results thereof at trial;
- (h) where the examiner or testing agency is not amenable to the process of the court, a statement whether such person who will examine or test the exhibit will attend to give evidence at trial or upon commission, if ordered; and
- (i) a description of the steps and procedures to be taken to ensure the safeguarding of the exhibit and its preservation, in an unaltered state, for use at the trial.

Factum May Be Required

(4) A judge may require that factums complying with rules 6.06, 6.07 and 6.08 be filed on applications under this rule.

CONSENT IN WRITING

21.05 The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 11, and a judge may grant such order without the attendance of solicitors.

ORDER DIRECTING RELEASE OF EXHIBITS

Form of Order

21.06 (1) An order directing the release of exhibits for the purpose of a scientific test or other examination under s. 605(1) of the *Code* and this rule shall be in Form 11.

Sufficiency of Order

(2) An order in Form 11 shall be sufficient authority for the person with custody of the exhibit to be tested or examined to release the exhibit for such purpose and thereafter to regain custody thereof in accordance with its terms.

RULE 22 APPLICATIONS TO CHANGE THE VENUE OF TRIAL [*Code* s. 599(1)]

APPLICATION OF THE RULE

22.01 This rule applies to applications on behalf of an accused or the prosecutor to change the venue of trial under subsection 599(1) of the *Code*.

TO WHOM APPLICATION MADE

22.02 Applications under rule 22.01 shall be made to a judge of the court in the county, district or region in which the trial is scheduled to be held upon the indictment, either before or as soon as is reasonably practicable after the accused has been ordered to stand trial.

CONTENTS OF NOTICE

22.03 The notice of application in Form 1 shall include a statement of the territorial division in which it is proposed that the trial proceedings be held.

SERVICE OF NOTICE

General Rule

22.04 (1) Service of the notice of application under rule 22.03 and the supporting materials required by rule 22.05 shall be made upon the prosecutor or accused, as the case may be, in accordance with rule 5, at least 15 days before the date fixed for the hearing of the application, which shall not be less than 10 days prior to the date fixed for trial in the territorial division where the trial is scheduled to be held.

Filing with Proof of Service

(2) Notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 10 days before the date fixed for the hearing of the application.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

- 22.05** (1) The notice of application in Form 1 under rule 22.03 shall be accompanied by
- (a) an affidavit by or on behalf of the applicant, deposing to the matters described in subrule (2);
 - (b) where the application is made under s. 599(1)(b) of the *Code*, an affidavit by or on behalf of the competent authority who has directed that no jury be summoned at the time and place appointed for trial, deposing to the matters described in subrule (3); and,
 - (c) a draft order in which is proposed an alternative place and, where applicable, time of trial.

Affidavit of or on Behalf of the Applicant

- (2) The affidavit of or on behalf of the applicant required by subrule (1)(a) shall contain
- (a) particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to commence;
 - (b) where the basis of the application under s. 599(1)(a) of the *Code* is prejudicial news media reporting of the matter to be tried, a full statement respecting the time, place, date and name of the relevant account or report, together with a description of the extent of its circulation or coverage in the county or district from which prospective jurors would ordinarily be drawn;
 - (c) as exhibits, legible copies or transcripts of the media accounts which constitute the basis of the application; and,
 - (d) a statement of the reasons why the trial should be held in the territorial division proposed, rather than in some other territorial division different than that in which the offence would otherwise be tried.

Affidavit of Competent Authority

- (3) The affidavit by or on behalf of the competent authority described in rule (1)(b) shall contain
- (a) a statement of the reasons why no jury is to be summoned at the time appointed for the accused's trial in the territorial division where the trial is scheduled to be held;
 - (b) a statement of the date upon which the next jury is to be summoned in the territorial division where the trial is scheduled to be held; and
 - (c) a statement of the dates upon which jurors are to be summoned at the time appointed for trial and prior to the date described in clause (b) in other territorial divisions within the same region as described in O. Reg. 705/89.

Factums Required

(4) Facts complying with rules 6.06, 6.07 and 6.08 are required in applications under this rule.

CONSENT IN WRITING

22.06 The respondent may consent in writing to the order sought upon terms included in the draft order filed under clause 22.05(1)(c) and a judge, where satisfied that the requirements of subsection 599(1) of the *Code* have been met, may grant the order on such terms without the attendance of solicitors.

RULE 23 APPLICATIONS TO PROCURE ATTENDANCE OF PRISONERS [*Code*, ss. 527(2), (7)]

APPLICATION OF THE RULE

23.01 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 and under subsection 527(7) of the *Code* to transfer a prisoner to the custody of a peace officer to assist a peace officer acting in the execution of his duties.

TO WHOM APPLICATION MADE

Applications for Attendance at Court Proceedings

23.02 (1) Applications under subsection 527(1) of the *Code* and rule 23.01 shall be made to a judge of the court in the county, district or region 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 such purpose.

Applications for Transfer from Custody

(2) Applications under subsection 527(7) of the *Code* and rule 23.01 shall be made to a judge of the court in the county, district or region to which the prisoner is to be transferred or in which the prisoner is incarcerated.

FILING OF NOTICE

23.03 The notice of application and supporting materials shall be filed in the office of the clerk of the court in the place where the application is to be determined, as soon as is reasonably practicable, before the date on which the application is to be determined.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

- 23.04** (1) The notice of application in Form 1 under this rule shall also be accompanied by
- (a) a copy of the warrant under which the prisoner is held, where it is reasonably practicable to do so;
 - (b) where the application is made under s. 527(1) of the *Code*, a copy of the indictment to which the application relates;
 - (c) where the application is made under s. 527(1) of the *Code*, an affidavit by or on behalf of the applicant deposing to the matters described in subrule (2);
 - (d) where the application is made under s. 527(7) of the *Code*, an affidavit by or on behalf of the prosecutor setting out the matters described in subrule (3);

- (e) where the application is made under s. 527(7) of the *Code*, the written consent of the prisoner to the order proposed;
- (f) a draft order in Form 12 or 13, as the case may be; and,
- (g) a copy of any other material in the court file that is necessary for the determination of the application.

Affidavit of or on Behalf of the Applicant

- (2) The affidavit of or on behalf of the applicant required by subrule (1)(c) for applications 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 upon 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 upon or period within which, as well as the locations at which, the attendance of the prisoner will or may be required; and,
 - (c) a statement of the reasons why the prisoner's attendance is required.
- (3) The affidavit of or on behalf of the applicant required by subrule (1)(d) for applications 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;
 - (b) a statement or description of the purpose for which the transfer of the prisoner is sought;
 - (c) a statement or description of the nature of the assistance which it is reasonably anticipated the prisoner will provide, if transferred;
 - (d) a statement whether the assistance reasonably anticipated from the prisoner is available from other sources;
 - (e) a statement whether notice of the application has been given to the solicitor of record of the prisoner;
 - (f) as an exhibit, the written consent of the prisoner to the proposed transfer;
 - (g) a description of the procedures to be followed to ensure the custody and security of the prisoner;
 - (h) a statement of particulars of the period for which the transfer is required; and,
 - (i) a general description of the locations at which the attendance of the prisoner will be required.

Application Record and Factum

- (4) Unless otherwise ordered, in accordance with rule 2.02, by the judge before whom an application under this rule and s. 527(1) or (7) of the *Code* is returnable, no application record or factum shall be required.

Attendance Not Required

- (5) Unless otherwise ordered, in accordance with rule 2.02, by the judge before whom an application under this rule and s. 527(1) or (7) of the *Code* is returnable, the order sought may be given *ex parte* and without the attendance of the solicitor of record for the applicant.

RULE 24 APPLICATIONS TO TAKE EVIDENCE ON COMMISSION [*Code*, s. 709]

APPLICATION OF THE RULE

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

TO WHOM APPLICATION MADE

24.02 Applications made under rule 24.01 shall be made to a judge of the court in the county, district or region in which the trial is being or is scheduled to be held, either before or as soon as is reasonably practicable after the trial date has been fixed.

CONTENTS OF NOTICE

24.03 A notice of application in Form 1 under rule 24.01 shall include a statement whether the presence of the accused is required upon the taking of the evidence and whether the proceedings on commission are to be videotaped.

SERVICE OF NOTICE

General Rule

24.04 (1) Service of the notice of application under rule 24.03 and the supporting materials required by rule 24.05 shall be made upon the prosecutor or accused, as the case may be, at least 30 days before the date fixed for the hearing of the application and not less than 60 days before the date fixed for trial upon the indictment.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

- 24.05** (1) The notice of application in Form 1 under rule 24.03 shall be accompanied by
- (a) an affidavit by or on behalf of the applicant and deposing to the matters described in subrule (2);
 - (b) where the application is made under subparagraph 709(a)(i) of the *Code*, the affidavit of a duly qualified medical practitioner describing the nature and extent of the illness and the disability arising therefrom or, where the prosecutor and accused consent, the report in writing of such practitioner; and,
 - (c) a draft order which, in cases where the person is to be examined outside Ontario, shall provide for the issuing of a commission in Form 14 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 such process as is necessary to compel the witness to attend and be examined before the named commissioner.

Affidavit by or on Behalf of the Applicant

- (2) The affidavit by or on behalf of the applicant required by subrule (1)(a) shall contain
- (a) particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to commence and of their anticipated length;
 - (b) a statement of all material facts relied upon to justify the belief that an order should be given including a statement
 - (i) whether the requested jurisdiction will or is likely to respond favourably to a request for judicial assistance,
 - (ii) whether the manner of response, if favourable, is compatible with the manner in which evidence is taken in criminal proceedings in Canada,
 - (iii) whether the circumstances of the witness' residence out of Canada render return to Canada for trial likely or unlikely, thereby affecting the necessity for the taking of evidence on commission,
 - (iv) whether the witness has relevant and material evidence to give, receivable in accordance with the rules of evidence applicable in the Canadian proceedings,
 - (v) whether 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) whether there will be unfair prejudice to the party opposite by the order of a commissioner,
 - (vii) whether there will be any serious disruption of the trial proceedings by the taking of such evidence; and,
 - (viii) whether 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 witness;
- (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 whether the presence of the accused is sought, permitted or required and, where applicable, what arrangements, if any, are proposed in respect of his or her attendance or detention in custody.

Factum Required

(3) Factums complying with rules 6.06, 6.07 and 6.08 are required on applications under this rule.

CONSENT IN WRITING

24.06 The respondent may consent in writing to the order sought upon terms included in a draft order in Form 14 filed and a judge, satisfied that the relief sought by the applicant should be granted, may grant the order on such terms without the attendance of solicitors.

ORDER FOR EXAMINATION

Contents of Order

24.07 (1) Where 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 solicitor of record upon such commission and payment of those expenses of the commission which are to be borne by the applicant.

Commission and Letter of Request

(2) Where the witness is to be examined outside Ontario, the order under subrule (1) shall, upon the request of the applicant, provide for the issuing of,

- (a) a commission in Form 14 authorizing the taking of evidence before a named commissioner; and,
- (b) a letter of request in Form 15 directed to the judicial authorities of the jurisdiction in which the proposed witness is to be found, requesting the issuing of such process as is necessary to compel the witness to attend and be examined before the commissioner,

and the order shall be in Form 16.

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

Duties of Commissioner

(4) 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 rules, 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 law of the place where the examination is conducted.

- (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, where 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.

Applicant to Serve Transcript

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

WITNESS TO BE EXAMINED UNDER OATH OR UPON AFFIRMATION

Examination in Ontario

24.08 (1) Before being examined, the witness shall take an oath or make an affirmation or, where the conditions of s. 16(3) of the *Canada Evidence Act* have been met, make a promise to tell the truth, and, where the examination is conducted in Ontario, the oath or affirmation shall be administered by the commissioner or by another person authorized to administer oaths in Ontario, or where the conditions of s. 16(3) of the *Canada Evidence Act* have been met, the promise to tell the truth shall be made to that person.

Examination Outside Ontario

(2) Where the examination is conducted outside Ontario, 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 Ontario or a person authorized to take affidavits or administer oaths or affirmations in the jurisdiction where the examination is conducted.

INTERPRETER

General Rule

24.09 (1) Where 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.

Supply of Interpreter

(2) Where 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.

PRODUCTION OF DOCUMENTS

General Requirement

24.10 (1) 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.

Process May Require Documents and Things

(2) The process which 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) such documents or things described in clause (a) as are specified in the process compelling attendance,

unless the commissioner orders otherwise in the interests of justice.

Duty to Produce Other Documents

(3) Where a witness, on examination upon 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, and if not, within two days thereafter, unless the commissioner orders otherwise in the interests of justice.

THE COURSE OF EXAMINATION

Examination-In-Chief

24.11 (1) The solicitor of record for the applicant shall examine the witnesses whose evidence is to be taken upon commission, in-chief, in accordance with the rules of evidence which would apply at trial.

Cross-Examination

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

Re-Examination

(3) After cross-examination has been completed, the solicitor of record of the applicant may re-examine the witness in accordance with the rules of evidence which would apply at trial.

OBJECTIONS AND RULINGS

Objections

24.12 (1) Where 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.

Rulings on Answers Under Objection

(2) A question to which objection is taken may be answered with the objector's consent, and where the question is answered, a ruling shall be obtained from the trial judge before the evidence is used at trial.

Rulings on Answers Not Given

(3) A ruling on the propriety of a question to which objection is made and an answer not given may be obtained from the trial judge.

RULINGS BY COMMISSIONER

24.13 A commissioner who is not the 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 trial judge is subject to review by the trial judge.

EVIDENCE TAKEN TO BE RECORDED

24.14 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.

TYPEWRITTEN TRANSCRIPT

Preparation of Transcript

24.15 (1) Where a party so requests, the person who recorded evidence taken upon commission shall have a typewritten transcript of the evidence prepared and completed within four weeks after receipt of the request.

Certification

(2) 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.

Delivery to Other Parties and Court

(3) 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 for it, shall provide an additional copy for the use of the court.

USE OF EVIDENCE AT TRIAL

24.16 The judge presiding at the trial at which the evidence taken upon 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.

VIDEOTAPING OR OTHER RECORDING OF EVIDENCE ON COMMISSION

General Rule

24.17 (1) 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.

Application of Rule 24.16

(2) Rule 24.16 applies, with necessary modifications, to a tape or other recording made under subrule (1).

RULE 25 APPLICATIONS FOR REMOVAL AS SOLICITOR OF RECORD

APPLICATION OF THE RULE

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

TO WHOM APPLICATION MADE

25.02 Applications under rule 25.01 shall be made to a judge of the court in the county or district 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 trial to ensure that no adjournment of the proceedings will be required for such purpose, or, where the matter arises at trial, to the trial judge.

SERVICE OF NOTICE

General Rule

25.03 (1) Service of the notice of application under rule 25.03 and the supporting materials required by rule 25.05 shall be made upon the prosecutor and accused, at least 15 days before the date fixed for the hearing of the application, which shall not be less than 10 days prior to the date fixed for trial of the indictment to which the application relates.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with rule 5 and where the application is made by the solicitor of record for the accused, upon the accused by mailing a copy to his or her last known address.

Filing with Proof of Service

(3) Notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 10 days before the date fixed for the hearing of the application.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

25.04 (1) The notice of application in Form 1 under this rule shall be accompanied by an affidavit by or on behalf of the applicant, deposing to the matters described in subrule (2).

Affidavit by or on Behalf of the Applicant

- (2) The affidavit by or on behalf of the applicant required by subrule (1) shall contain
- (a) particulars of the charge in respect of which the application is made, including a statement of the date upon which trial proceedings are scheduled to commence and their anticipated length;
 - (b) particulars of any prior applications, whether on behalf of the accused or the prosecutor, to have the solicitor of record for the accused removed as solicitor of record, including, where available, transcripts of proceedings taken upon such applications;

- (c) where the application is made by the solicitor of record for an accused or on behalf of an accused, a full statement of all facts material to a determination of the application, including without disclosing any solicitor client communication in respect of which solicitor client privilege has not been waived, a statement of the reasons why the order sought should be given;
- (d) where the application is made by or on behalf of the prosecutor, a full statement of all facts material to a determination of the application, including a statement of the reasons why the order sought should be given;
- (e) a statement whether an adjournment of trial proceedings is likely or will be required to enable the accused to retain and instruct a new solicitor of record to proceed to trial and, if so, when it is proposed that trial proceedings shall commence; and
- (f) where applicable, a statement of the identity of the new solicitor of record and his or her undertaking to proceed to trial or other disposition on the date specified under clause (e).

Factum May Be Required

(3) A judge may require that factums complying with rules 6.06, 6.07 and 6.08 be filed on applications under this rule.

CONSENT IN WRITING

25.05 The respondent or accused may consent in writing to the order sought upon 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 such terms without the attendance of solicitors.

RULE 26: APPLICATIONS FOR ADJOURNMENT

APPLICATION OF THE RULE

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

TO WHOM APPLICATION MADE

26.02 Applications under rule 26.01 shall be made to a judge of the court in the county or district in which the trial is scheduled to be held upon the indictment, after the matters giving rise thereto have arisen, whether before or after the trial date has been fixed.

SERVICE OF NOTICE

General Rule

26.03 (1) Service of the notice of application under this rule and the supporting materials required by rule 26.05 shall be made upon the prosecutor or accused, as the case may be, in accordance with rule 5, at least 15 days before the date fixed for the hearing of the application, which shall not be less than 10 days prior to the date fixed for trial.

Filing with Proof of Service

(2) Notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 10 days before the date fixed for the hearing of the application.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

26.04 (1) The notice of application in Form 1 under this rule shall be accompanied by an affidavit by or on behalf of the applicant, deposing to the matters described in subrule (2).

Affidavit by or on Behalf of the Applicant

- (2) The affidavit by or on behalf of the applicant required by subrule shall contain
- (a) particulars of the indictment in which is contained the charge upon which the order adjourning the date upon which trial proceedings are scheduled to commence is sought;
 - (b) particulars of any prior applications, whether on behalf of the accused or the prosecutor, to have the trial of the indictment adjourned from a date fixed for trial to a subsequent date, including, where available, transcripts of proceedings taken upon such applications;
 - (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; and
 - (d) a statement of the date or dates to which it is proposed to adjourn the matter for trial.

Application Record and Factum Not Required

- (3) No application record or factum is required on applications under this rule.

CONSENT IN WRITING

26.05 The respondent may consent in writing to the order sought upon 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 such terms without the attendance of solicitors.

RULE 27: CONSTITUTIONAL ISSUES

APPLICATION OF THE RULE

27.01 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 *Criminal Code* or otherwise; and
- (c) to stay proceedings upon an indictment against an accused, in whole or in part, or for any other remedy under subsection 24(1) of the *Charter*, and/or subsection 52(1) of the *Constitution Act, 1867* on account of an infringement or denial of any right or freedom guaranteed under the *Charter* or otherwise. *[Effective October 16, 2006]*

TO WHOM MADE

27.02 (1) Applications under this rule shall be made to a judge of the court in the county, district or region where the criminal proceedings to which the application relates are being or are to be heard. *[Effective October 16, 2006]*

(2) Where an application made under Rule 27.01(a) or (b) relates to an application under Part III of these Rules, the application under this rule shall be heard and determined by the judge who hears the applications under Part III of these Rules. *[Effective October 16, 2006]*

CONTENTS OF NOTICE

27.03 The notice of application and constitutional issue in Form 5 shall state

- (a) the place and date of hearing in accordance with Rules 27.02 and 27.04;
- (b) the precise relief sought upon the application;
- (c) the grounds to be argued, including a concise statement of the constitutional issue to be raised, a statement of the constitutional principles to be argued and a reference to any statutory provision or rule upon which reliance will be placed;
- (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 Rule 6.05. *[Effective October 16, 2006]*

FILING AND SERVICE OF NOTICE

General Rule

27.04 (1) An applicant shall give notice of application and constitutional issue in Form 5 and in accordance with Rule 27.03, not later than thirty (30) days before the date on which the application is scheduled to be heard. *[Effective October 16, 2006]*
Manner of Service

(2) For applications under Rule 27.01 for a declaration or remedy otherwise than at trial before the trial judge, service of the notice of application and constitutional issue in Form 5 and other materials required by these rules, the *Criminal Code* or federal statute shall be made upon

- (a) the Constitutional Law Division of the Ministry of the Attorney General of Ontario;
- (b) the regional office of the Attorney General of Canada at Toronto or the office of the Attorney General of Canada at Ottawa;
- (c) all other parties to the proceedings; and
- (d) the office of the prosecutor having carriage of the proceedings. *[Effective October 16, 2006]*

(3) Where applications under Rule 27.01 for a declaration or other remedy are to be made at trial before the trial judge, service of the notice of application and constitutional issue in Form 5 and other materials required by these rules, the *Criminal Code* or other federal statute shall be made upon

- (a) the Constitutional Law Division of the Ministry of the Attorney General of Ontario;
- (b) the regional office of the Attorney General of Canada at Toronto or the office of the Attorney General of Canada at Ottawa;
- (c) all other parties to the proceedings; and
- (d) the office of the prosecutor having carriage of the proceedings;
- (e) upon such other persons and upon such terms as the trial judge may direct. *[Effective October 16, 2006]*

Filing with Proof of Service

(4) Notice of application and constitutional issue in Form 5 and supporting material, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least thirty (30) days before the date fixed for the hearing of the application. *[Effective October 16, 2006]*

MATERIALS FOR USE ON APPLICATION

Application Record

27.05 (1) Unless otherwise ordered by a judge of the court, an applicant shall serve on every other party and file an application record in accordance with Rule 6.05(2) in the office of the clerk of the court in the place where the application is to be heard, not later than thirty (30) days before the date on which the application is scheduled to be heard. *[Effective October 16, 2006]*

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall serve on every other party and file a respondent's application record in accordance with Rule 6.05(4), not later than ten (10) days before the date of the hearing of the application, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

Intervenor's Application Record

(3) Where an intervenor seeks to rely on material other than that filed by the applicant, respondent or any other person granted leave to intervene, the intervenor shall serve on every party and other intervenor and file an intervenor's application record in accordance with Rule 27.05(4), not later than five (5) days before the date of the hearing of the application, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

(4) An intervenor'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; and
- (b) a copy of any material to be used by the intervenor on the application and not included in any other application record filed on the application. *[Effective October 16, 2006]*

Documents May be Filed as Part of Record

(5) Any documents served by a party for use on an application may be filed, together 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. *[Effective October 16, 2006]*

Transcript of Evidence

(6) 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. *[Effective October 16, 2006]*

Books of Authorities

(7) Unless otherwise ordered by a judge of the court, books of authorities in accordance with Rule 32 are required and shall be served and filed in accordance with the time limits described in Rules 6.05(1) and (3). *[Effective October 16, 2006]*

Factums

(8) Unless otherwise ordered by a judge of the court, factums are required for applications made under this rule. *[Effective October 16, 2006]*

(9) Factums shall comply with Rule 33 and be served and filed within the time limits described in Rules 6.05(1) and (3), unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

THE HEARING OF APPLICATIONS

Place of Hearing

27.06 The hearing of applications under this Rule is governed by Rule 6.06. *[Effective October 16, 2006]*

EVIDENCE ON APPLICATIONS

27.07 Evidence on applications under this Rule is governed by Rules 6.07 to 6.09. *[Effective October 16, 2006]*

ABANDONMENT OF APPLICATIONS

27.08 Abandonment of applications is governed by Rule 6.10. *[Effective October 16, 2006]*

DISMISSAL ON REFERENCE OR APPLICATION.

27.09 Dismissal of applications for lack of substantial ground is governed by Rule 6.11. *[Effective October 16, 2006]*

RULE 28 PRE-HEARING CONFERENCES

APPLICATION OF RULE

28.01 This rule applies to pre-hearing conferences conducted under Section 625.1 of the *Criminal Code*. *[Effective October 16, 2006]*

WHERE AVAILABLE

28.02 A pre-trial conference shall be held in the country, district or region in which the indictment has been filed, as a judge of the court may direct in accordance with this rule, and at such further dates, times and places as the pre-trial conference judge or another judge of the court may direct. *[Effective October 16, 2006]*

WHEN REQUIRED

GENERAL RULE

28.03 (1) A pre-trial conference shall be held in accordance with these Rules within sixty (60) days of the order to stand trial on which it is based, or, where an indictment has been preferred under Section 577 of the *Criminal Code*, within sixty (60) days of the Attorney General's consent or judge's order, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

Further Pre-Trial Conferences

(2) The pre-trial conference judge or another judge of the court may direct that further pre-trial conferences be held in accordance with this Rule, where and when the pre-trial

conference or other judge directs, to consider any matters that would promote a fair and expeditious trial or other disposition of the case. *[Effective October 16, 2006]*

(3) Nothing in these Rules shall be construed or interpreted to preclude the pre-trial conference or other judge of the court from conducting, with the consent of the prosecutor and counsel of record for the accused, any other informal pre-trial conferences, in addition to the conference for which s.625.1 provides, upon such terms as the judge considers appropriate. *[Effective October 16, 2006]*

THE PRE-TRIAL CONFERENCE REPORT

Form of Report

28.04 (1) The pre-trial conference report shall be in Form 17. *[Effective October 16, 2006]*

Completion of Report

(2) Counsel of record for each accused and the prosecutor assigned to conduct the prosecution, or a prosecutor with authority to bind the prosecutor assigned to conduct the prosecution, shall complete and sign a pre-trial conference report in Form 17, and serve and file the report in accordance with this Rule, unless otherwise ordered by a judge of the court, or unless the accused will be pleading guilty and has complied with Rule 28.04(4). *[Effective October 16, 2006]*

(3) Where an accused is self-represented, she or he shall complete, sign, serve and file a pre-trial conference report in Form 17, in accordance with this Rule unless the accused will be pleading guilty and has complied with Rule 28.04(4). *[Effective October 16, 2006]*

(4) Where counsel of record for an accused or a self-represented accused knows that the accused will be pleading guilty on the indictment, counsel or the self-represented accused shall advise the prosecutor and, where required, obtain the prosecutor's consent to the entry of the plea, at least ten (10) days before the date scheduled for the pre-trial conference, or as soon as counsel has received appropriate instructions about the plea of guilty, as the case may be. *[Effective October 16, 2006]*

(5) All counsel must complete their positions on each issue in Form 17, and not indicate "will advise", "not as yet", or words of similar effect. *[Effective October 16, 2006]*

(6) The prosecutor's copy of Form 17 shall also include the following information based on the information available to the prosecutor at the time of completion of the pre-trial conference report:

(a) a brief synopsis of the allegations, including how the prosecutor intends to prove them;

(b) a statement of the prosecutor's position on sentence if there were to be a plea of guilty prior to trial, including any requirement of a joint submission and plea on certain counts of the indictment; and

a statement of the prosecutor's position on sentence upon conviction after trial, including whether dangerous or long-term offender proceedings may be taken in the event of conviction. *[Effective October 16, 2006]*

Serving and Filing of Report

(7) Unless otherwise ordered by a judge of the court or where the accused will be pleading guilty, the prosecutor must serve counsel of record for each accused, or where

the accused is self-represented, the accused, not later than ten (10) days before the date scheduled for the pre-trial conference. *[Effective October 16, 2006]*

(8) Unless otherwise ordered by a judge of the court or where the accused will be pleading guilty, counsel of record for each accused, or the accused if self-represented shall serve the prosecutor, counsel for each co-accused and any other self-represented accused not later than five (5) days before the date scheduled for the pre-trial conference, even if the prosecutor has failed to serve and file Form 17, or otherwise failed to comply with this Rule. *[Effective October 16, 2006]*

(9) Where the accused will be pleading guilty, the prosecutor shall file a synopsis of the allegations upon which the guilty plea will be based three (3) days prior to the date scheduled for the pre-trial conference. *[Effective October 16, 2006]*

(10) Where all counsel will be filing a joint pre-trial conference report, it shall be filed five (5) days before the date scheduled for the pre-trial conference. *[Effective October 16, 2006]*

Changes of Position

(11) If either party changes any position taken and recorded on the pre-trial conference report, the party must provide written notice of the change to the other parties and the Superior Court trial coordinator and arrange for a further pre-trial conference as soon as practicable, and serve and file any notices, records, facts, books of authorities or other materials required by these Rules. *[Effective October 16, 2006]*

(12) Failure to comply with Rule 28.04(11) may result in any application resulting from a change in position not being heard by the trial judge. *[Effective October 16, 2006]*

Changes Of or To Counsel

(13) Where new counsel has been retained, an accused who was self-represented has retained counsel or an accused who was represented by counsel is no longer represented by counsel after the pre-trial conference and pre-trial conference reports have been completed, counsel or the self-represented accused shall review the pre-trial conference report filed earlier and notify all parties of any changes in position in accordance with Rule 28.04(11). *[Effective October 16, 2006]*

Custody and Distribution of Pre-Trial Conference Reports and Materials

(14) The pre-trial conference reports and any other materials filed for use at the pre-trial conference shall be kept in the custody of the court and not disclosed except in accordance with these Rules. *[Effective October 16, 2006]*

(15) The pre-trial conference reports and any other materials filed for use at the pre-trial conference or prepared as a result of the pre-trial conference shall be provided to the trial judge, except that all references to the sentencing positions advanced by Crown counsel, the criminal record of the accused and any application relating to evidentiary use of the accused's criminal record shall be deleted from the materials provided to the trial judge, kept in the custody of the court and only disclosed by order of a judge of the court. *[Effective October 16, 2006]*

Completion of Report to Trial Judge

(16) The pre-trial conference judge shall complete a Report to Trial Judge in Form 18-A, which shall be forwarded to the trial judge not later than ten (10) days prior to the date on which pre-trial applications or the trial is scheduled to commence, as the case may be. *[Effective October 16, 2006]*

Completion of Report to Trial Coordinator

(17) The pre-trial conference judge shall complete a Report to Trial Coordinator in Form 18-B at the conclusion of the pre-trial conference and forward this form to the trial coordinator on completion. *[Effective October 16, 2006]*

Confirmation of Trial Readiness

(18)(a) In jurisdictions where Trial Readiness Court are held, the pre-trial conference or case management judge or another judge of the court shall direct that counsel or self-represented accused conducting a case shall appear in a trial readiness court unless all counsel and self-represented accused have not changed their position from the position described in the most recent pre-trial conference report, have complied with all filing requirements, and have completed and filed a Trial Readiness Report in Form 18-C-1, not later than three (3) business days prior to the Trial Readiness Court unless otherwise directed by the Trial Coordinator. *[Effective October 16, 2006]*

(b) In jurisdictions where trial readiness courts are not held, the pre-trial conference or case management judge or another judge of the court shall direct that counsel and self-represented accused conducting a case shall complete and file a Trial Readiness Report in Form 18-C-2 not later than ten (10) business days prior to the date on which pre-trial applications, the trial or the sittings at which the case is scheduled to be heard. If any counsel or self-represented accused has changed his or her position from the position described in the most recent pre-trial conference report, failed to comply with all filing requirements or failed to file a Trial Readiness Report, a judge of the court may direct that a further pre-trial conference or court attendance be required prior to the scheduled date. *[Effective October 16, 2006]*

THE HEARING

General Nature of Pre-Trial Conference

28.05 (1) Unless otherwise ordered by the pre-trial conference judge under Rule 2.01, a pre-trial conference in a case where all parties are represented by counsel, shall be conducted in a pre-trial conference room, judges' chambers or other suitable room in the courthouse where a full and frank discussion of the issues raised in the proceedings may take place. *[Effective October 16, 2006]*

(2) Where any party is not represented by counsel, the pre-trial conference shall be held in a courtroom closed to the public. *[Effective October 16, 2006]*

(3) A pre-trial conference held under sub-rule (2) shall be recorded and the proceedings not published, broadcast or transmitted in any other way, except by order of the pre-trial conference judge. *[Effective October 16, 2006]*

(4) No transcript of any pre-trial conference held under sub-rule (2) shall be ordered by anyone without notice to all parties and the written approval of the pre-trial conference judge or another judge of the court. *[Effective October 16, 2006]*

(5) Where a transcript has been ordered under sub-rule (4), no information contained in it shall be published in any document or broadcast or transmitted in any way without the approval of the pre-trial conference judge, on notice to all parties. *[Effective October 16, 2006]*

Attendance at Pre-Trial Conference

(6) Unless otherwise ordered by the pre-trial conference judge or a judge of the court, counsel of record for each accused, or if the accused is self-represented, the accused, and the prosecutor assigned to conduct the prosecution, or a prosecutor with authority to bind the prosecutor assigned to conduct the prosecution, shall attend the pre-trial conference and be in a position to make commitments on behalf of the party whom each represents on issues reasonably anticipated to arise from the contents of the pre-trial conference reports. *[Effective October 16, 2006]*

(7) Unless otherwise ordered by the pre-trial conference judge or a judge of the court an accused who is represented by counsel who has completed a Designation of Counsel in Form 18 is not required to attend the pre-trial conference. *[Effective October 16, 2006]*

(8) The pre-trial conference judge or another judge of the court may require that an accused represented by counsel and an investigating officer attend or be available for consultation at the pre-trial conference. *[Effective October 16, 2006]*

Specific Inquiries to be Made

(9) The pre-trial conference judge shall inquire about and discuss any matter that may promote a fair and expeditious hearing of the charges contained in the indictment. *[Effective October 16, 2006]*

(10) Without restricting the generality of sub-rule (9) or any other rule, the pre-trial conference judge may inquire about and discuss:

- (a) the contents of the pre-trial conference reports submitted by counsel or self-represented accused;
- (b) any issues that arise from the contents of the pre-trial conference reports;
- (c) the issues in dispute between the parties;
- (d) the possibility of making admissions of fact or other agreements about uncontested issues or the evidence of witnesses;
- (e) the simplification of any issues that remain in controversy at trial;
- (f) the resolution of any outstanding disclosure issues;
- (g) the nature and particulars of any pre-trial application under these rules including but not only:
 - (i) the necessity to make orders about the notices of application to be filed;
 - (ii) the setting of schedules for serving and filing notices of application, application records and other materials in support of pre-trial applications;
 - (iii) whether factums, other memoranda or written submissions should be required for pre-trial applications and the schedule set for their filing and service;
 - (iv) whether time limits should be imposed for oral arguments of pre-trial applications; and
 - (v) whether evidence on pre-trial applications may be provided by Agreed Statements of Facts, excerpts of transcripts of the preliminary inquiry, affidavits, “will states” or otherwise than by the testimony of witnesses.
- (h) the possibility that the parties will consent to a judge other than the trial judge hearing and deciding the pre-trial applications and incorporating any rulings made into the trial record to permit appellate review;

- (i) the possibility that the prosecutor may reduce the number of counts in the indictment to facilitate jury comprehension and promote a fair, just and expeditious trial;
- (j) the manner in which evidence may be presented at trial to facilitate jury comprehension;
- (k) the necessity of the assistance of interpreters for any accused or witness in the proceedings;
- (l) the necessity of any technological equipment to facilitate the introduction of evidence at trial or jury comprehension of the evidence;
- (m) the estimated length of pre-trial applications and trial proceedings; and the advisability of fixing a date for commencement of pre-trial applications and trial proceedings. *[Effective October 16, 2006]*

Resolution Issues

- (11) The pre-trial conference judge shall inquire about and discuss:
- (a) the prosecutor's position on sentence before trial and after trial in the event of conviction, including the counts upon which pleas of guilty would be sought, the credit to be given for pre-sentence custody or release on stringent terms, any corollary orders sought upon conviction, and whether further proceedings would be taken upon conviction of any "serious personal injury offence" as defined in s.752 of the *Criminal Code*; and
 - (b) the position of counsel for each accused on sentence, both before and after trial, on the basis that the accused were to instruct counsel that she or he wished to plead guilty, and where guilt was proven after trial. *[Effective October 16, 2006]*

(12) The pre-trial conference judge may express his or her opinion about the appropriateness of any proposed sentencing disposition based upon the circumstances disclosed at the pre-trial conference. *[Effective October 16, 2006]*

Recommendations of Pre-Trial Conference Judge

- (13) The pre-trial conference judge may make recommendations about:
- (a) admissions of fact or other agreements about uncontested issues or the evidence of witnesses;
 - (b) the resolution of outstanding disclosure issues;
 - (c) the manner in which evidence should be introduced on pre-trial applications and the order in which the applications should be heard;
 - (d) requiring the prosecutor to provide a list of names who will or may be called as witnesses for the prosecution;
 - (e) the filing of notices of applications, application records, factums, other memoranda or written materials for pre-trial applications;
 - (f) the time limits to be imposed on oral argument of pre-trial applications;
 - (g) the appointment of a judge other than the trial judge to hear and determine pre-trial applications;
 - (h) arrangements for persons requiring the assistance of interpreters to meet with proposed interpreters in advance of the commencement of pre-trial applications or trial proceedings to ensure that the interpretation will be satisfactory;
 - (i) any arrangements required to ensure that any technological equipment necessary is available for use as required; and
 - (j) the appointment of a case management judge under Rule 29.02; and
 - (k) a trial management conference before the trial judge prior to the date scheduled for pre-trial applications or trial, as the case may be. *[Effective October 16, 2006]*

RULE 29 CASE MANAGEMENT JUDGES AND CONFERENCES

Authority for Rule

29.01 This Rule is made under the authority of s.482.1(1) of the *Criminal Code*.
[Effective October 16, 2006]

DESIGNATION OF CASE MANAGEMENT JUDGE

General

29.02 (1) The Regional Senior Judge, or a judge designated by him or her, on the recommendation of the pre-trial conference judge or otherwise, may assign a case management judge to any case to be tried or otherwise determined in the Region.
[Effective October 16, 2006]

Criteria for Designation of Case Management Judge

(2) In considering whether to assign a case management judge to any proceeding, the Regional Senior or designated judge shall take into account all the relevant circumstances, including, but not limited to:

- (a) the recommendation of the pre-trial conference judge;
- (b) the purpose of case management;
- (c) the complexity of the proceeding, including issues of fact and law involved in any pre-trial applications;
- (d) the importance to the parties and the administration of justice of the issues of fact and law raised in the proceedings;
- (e) the number of parties involved in the proceedings and whether all parties are represented by counsel;
- (f) the number of proceedings involving the same or related parties;
- (g) the nature and extent of intervention by the case management judge that the proceedings are likely to require;
- (h) the time reasonably required for any pre-trial applications in the proceedings;
- (i) the time reasonably required for completion of the proceeding;
- (j) the number of witnesses likely to testify in the proceeding; and
- (k) any other factors that the judge considers relevant. [Effective October 16, 2006]

ASSISTANCE WITH ADMINISTRATIVE MATTERS

29.03 The case management judge may designate personnel of the court to deal with administrative matters relating to proceedings out of court, provided any accused affected by those matters is represented by counsel. [Effective October 16, 2006]

CASE MANAGEMENT CONFERENCES

29.04 The case management judge may schedule and convene a case management conference from time to time, on his or her own initiative or at the request of a party, to ensure efficient case management and the orderly and expeditious conduct of the proceedings. [Effective October 16, 2006]

ATTENDANCE AT CASE MANAGEMENT CONFERENCE

General Rule

29.05 (1) Unless otherwise ordered by the case management judge, counsel of record for each accused, or if the accused is self-represented, the accused, and the prosecutor

assigned to conduct the proceedings shall attend the case management conference, be fully acquainted with the factual and legal issues likely to arise at the conference and be in a position to make decisions that bind the party during the proceedings. *[Effective October 16, 2006]*

Accused Represented by Counsel

(2) Unless otherwise ordered by the case management judge, an accused who is represented by counsel who has completed a Designation of Counsel in Form 18 is not required to attend a case management conference. *[Effective October 16, 2006]*

Requirement of Presence

(3) The case management judge may require that an accused represented by counsel and an investigating officer be present or available for consultation at the case management conference. *[Effective October 16, 2006]*

THE CASE MANAGEMENT CONFERENCE

General Nature of the Case Management Conference

General Rule

29.06 (1) Unless otherwise ordered by the case management judge, a case management conference in proceedings where all parties are represented by counsel, shall be conducted in the case management or pre-trial conference room, judges' chambers or other suitable rooms in the courthouse. *[Effective October 16, 2006]*

Self-Represented Accused

(2) Where any party to a proceeding in which a case conference is held is not represented by counsel, the case management conference shall be held in accordance with Rule 28.04(2)-(5). *[Effective October 16, 2006]*

Specific Authority of the Case Management Judge

(3) The case management judge may:

(a) establish or revise any schedule for pre-trial applications, trial or other proceedings;

(b) secure the parties' agreement or give directions about the order in which pre-trial applications or other preliminary applications shall be heard;

(c) secure the parties' agreement or give directions about the manner in which evidence will be presented on pre-trial or other preliminary applications;

(d) secure the parties' agreement to or give directions about a judge other than the trial judge hearing and determining pre-trial or other preliminary applications;

(e) secure the parties' agreement or give directions about the manner in which decisions made by a judge other than the trial judge on pre-trial or other preliminary applications are to be incorporated into the record or other proceedings;

(f) secure the parties agreement or give directions about the materials to be filed in support of and in response to any pre-trial or other preliminary applications;

(g) establish a schedule for the service and filing of any materials required for any pre-trial or other preliminary applications;

(h) secure the parties' agreement to or give directions about admissions of fact or other agreements about issues of fact and the attendances of witnesses on issues not in dispute;

- (i) require the prosecutor to provide a list of the names of the persons who will or may be called as witnesses for the prosecution;
 - (j) secure the parties' agreement or give directions about any interpreters or technological equipment required in the proceedings and make arrangements through court personnel to ensure such requirements are met;
 - (k) secure the parties' agreement to or give directions about the manner in which evidence may be presented at trial to assist its comprehension by jurors; and
 - (l) identify contested issues of fact and law and explore methods to resolve them.
- [Effective October 16, 2006]*

Role of Trial Judge

(4) Any directions given by the case management judge are subject to revision by the judge presiding in the proceedings according to the best interests of the administration of justice. *[Effective October 16, 2006]*

PART III: TRIAL PROCEEDINGS AND EVIDENCE [Rules 30-39]

RULE 30 APPLICATIONS TO ADMIT EVIDENCE

30.01 This Rule applies where a party to a proceeding seeks to have evidence admitted that a common law rule or other rule of admissibility renders presumptively inadmissible, including but not only:

- (a) evidence of disreputable conduct by an accused, other than the conduct charged in the indictment;
- (b) evidence of similar acts, whether included as other counts or not;
- (c) evidence of a witness whose competence is governed by Section 4 of the *Canada Evidence Act*; and
- (d) evidence of a witness whose testimony, in whole or in part, is subject to a privilege. *[Effective October 16, 2006]*

TO WHOM MADE

General Rule

30.02 (1) An application to admit evidence that a common law or other rule of admissibility renders presumptively inadmissible shall be made to the judge who is scheduled to preside or is presiding in the proceedings in which the evidence is tendered for admission. *[Effective October 16, 2006]*

Exception

(2) Despite Rule 30.02(1), where the parties expressly agree that applications under this Rule to admit evidence may be heard and determined by a judge other than the trial judge, and that rulings made on these applications will be incorporated into the record of the proceedings in which the evidence is tendered for admission, the pre-trial conference or case management judge may make an order to give effect to the parties' agreement and the applications may be heard and determined by a judge other than the designated trial judge. *[Effective October 16, 2006]*

REQUIREMENT OF NOTICE

Form of Notice

30.03 (1) Applications to admit evidence under this Rule shall be commenced by a notice of application in Form 1. *[Effective October 16, 2006]*

Contents of Notice

- (2) The notice of application in Form 1 shall state:**
- (a) the place and date of hearing as determined in accordance with these Rules;**
 - (b) a detailed description of the presumptively inadmissible evidence the applicant seeks to introduce in the proceedings;**
 - (c) a precise, case-specific statement of the basis and grounds upon which the evidence is said to be admissible;**
 - (d) a detailed summary of the evidence or other material upon which the party seeking admission relies, and a statement of the manner in which the applicant proposes to introduce the evidence;**
 - (e) an estimate of the time required to introduce the evidence and other material to be relied upon in support of the application; and**
 - (f) whether any order is required abridging or extending any times established by the pre-trial conference or case management judge or required for service and filing by this Rule. *[Effective October 16, 2006]***

FILING AND SERVICE OF NOTICE

General Rule

30.04 (1) Any party who seeks to have evidence admitted under this Rule shall give the notice required by Rule 30.03 not less than thirty (30) days before the day first scheduled for the hearing of the pre-trial motions or trial, as the case may be, unless otherwise ordered by a judge under these Rules. *[Effective October 16, 2006]*

Manner of Service

(2) Where the applicant is the prosecutor, service of the notice of application in Form 1 and any other supporting materials required by these Rules or ordered by a judge shall be made in accordance with Rule 5. Where the applicant is an accused, whether self-represented or represented by a solicitor of record, the notice and supporting materials shall be served on the office of the prosecutor having carriage of the proceedings. *[Effective October 16, 2006]*

Filing of Proof of Service

(3) The notice of application in Form 1 and any other supporting materials required by these Rules or ordered by a judge, together with proof of service, shall be filed in the office of the clerk of the court in the place where the application is to be heard, not later than thirty (30) days before the day first scheduled for the hearing of the pre-trial motions or trial, as the case may be unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

MATERIALS FOR USE ON APPLICATION

Application Record

30.05 (1) In addition to any other materials that may be required by these Rules or by order of a judge of the court, an applicant under this Rule shall include in an application record:

- (a) the notice of application in Form 1;
- (b) a copy of the indictment to which the application relates;
- (c) legible copies of any reproducible materials relied upon in support of the application where it is proposed to argue the case for admissibility in whole or in part on a basis other than the testimony of witnesses;
- (d) where it is proposed to argue the case for admissibility in whole or in part on the basis of testimony of witnesses, legible copies of prior statements or statements of anticipated evidence in sufficient detail to show the essential features of the evidence proposed for admission; and
- (e) any other materials that may reasonably assist the judge in identifying and determining the admissibility issues raised. *[Effective October 16, 2006]*

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall file a respondent's application record and any other materials on which the respondent proposes to rely. *[Effective October 16, 2006]*

Books of Authorities

(3) Books of authorities shall be served and filed in accordance with Rule 32, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

Factums

(4) Factums are not required for applications made under this Rule, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

(5) Where a judge orders that factums be served and filed on an application under this Rule, the factums shall comply with Rule 33, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

RULE 31 APPLICATIONS TO EXCLUDE EVIDENCE

31.01 This Rule applies where a party seeks to exclude evidence that is presumptively admissible at common law for all issues that it is reasonably foreseeable another party will seek to introduce in the proceedings, including but not only:

- (a) evidence of prior criminal convictions of an accused;
- (b) evidence of after-the-fact or post-offence conduct; and
- (c) evidence alleged to have been obtained by constitutional infringement exclusion of which is sought under Section 24(2) of the *Charter*. *[Effective October 16, 2006]*

TO WHOM MADE

General Rule

31.02(1) An application to exclude evidence that is presumptively admissible shall be made to the judge who is scheduled to preside or is presiding in the proceedings in which the evidence is tendered for admission. *[Effective October 16, 2006]*

Exception

(2) Despite Rule 31.02(1), where the parties expressly agree that applications under this Rule to exclude evidence may be heard and determined by a judge other than the trial judge and that rulings made on these applications will be incorporated into the record of the proceedings in which the evidence is tendered for admission, the pre-trial conference or case management judge may make an order to give effect to the parties' agreement and the applications may be heard and determined by a judge other than the designated trial judge. *[Effective October 16, 2006]*

REQUIREMENT OF NOTICE

Form of Notice

31.03 (1) Applications to exclude evidence under this Rule shall be commenced by a notice of application in Form 1. *[Effective October 16, 2006]*

CONTENTS OF NOTICE:

- (2) The notice of application in Form 1 shall state:
- (a) the place and date of hearing as determined in accordance with these Rules;
 - (b) a detailed description of the presumptively admissible evidence the applicant seeks to exclude in the proceedings;
 - (c) a precise, case-specific statement of the basis and grounds upon which the evidence is said to be inadmissible;
 - (d) a detailed summary of the evidence or other material upon which the party seeking exclusion relies and a statement of the manner in which the applicant proposes to introduce the evidence;
 - (e) an estimate of the time required to introduce the evidence and other material to be relied upon in support of the application; and
 - (f) whether any order is required abridging or extending any times established by the pre-trial conference or case management judge or required for service and filing by this Rule. *[Effective October 16, 2006]*

FILING AND SERVICE OF NOTICE

General Rule

31.04 (1) Any party who seeks to have evidence excluded under this Rule shall give the notice required by Rule 31.03 not less than thirty (30) days before the day first scheduled for the hearing of the pre-trial motions or trial, as the case may be, unless otherwise ordered by a judge under these Rules. *[Effective October 16, 2006]*

Manner of Service

(2) Service of the notice of application in Form 1 and any other supporting materials required by these Rules or ordered by a judge shall be made in accordance with Rule 5. *[Effective October 16, 2006]*

Filing of Proof of Service

(3) The notice of application in Form 1 and any other supporting materials required by these Rules or ordered by a judge, together with proof of service, shall be filed in the office of the clerk of the court in the place where the application is to be heard, not later than thirty (30) days before the day first scheduled for the hearing of the pre-trial motions or trial, as the case may be unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

MATERIALS FOR USE ON APPLICATION

Application Records

31.05 (1) In addition to any other materials that may be required by these Rules or by order of a judge of the court, an applicant under this Rule shall include in an application record:

- (a) the notice of application in Form 1;
- (b) a copy of the indictment to which the application relates;
- (c) legible copies of any reproducible materials relied upon in support of the application where it is proposed to argue the case for exclusion in whole or in part on a basis other than the testimony of witnesses;
- (d) where it is proposed to argue the case for exclusion in whole or in part on the basis of testimony of witnesses, legible copies of prior statements or statements of anticipated evidence in sufficient detail to show the essential features of the evidence proposed for admission;
- (e) any other materials that may reasonably assist the judge in identifying and determining the admissibility issues raised. *[Effective October 16, 2006]*

Respondent's Application Record

(2) Where the respondent seeks to rely on material other than that filed by the applicant, the respondent shall file a respondent's application record and any other materials on which the respondent proposes to rely. *[Effective October 16, 2006]*

Books of Authorities

(3) Books of authorities shall be served and filed in accordance with Rule 32, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

Factums

(4) Factums are not required for applications made under this Rule, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

(5) Where a judge orders that factums be served and filed on an application under this Rule, the factums shall comply with Rule 33, unless otherwise ordered by a judge of the court. *[Effective October 16, 2006]*

RULE 32 – BOOKS OF AUTHORITIES

32.01 (1) Books of authorities shall be served and filed by the applicant not later than thirty (30) days before the day first scheduled for the hearing of pre-trial applications or trial, as the case may be, unless otherwise ordered by a judge of the court under these Rules. *[Effective October 16, 2006]*

Respondent's Authorities

(2) Where factums are required, books of authorities shall be served and filed by the respondent not later than ten (10) days before the first day scheduled for the hearing of pre-trial applications or trial, as the case may be, and where factums are not required, not later than five (5) days before the same date, unless otherwise ordered by a judge of the court under these Rules. *[Effective October 16, 2006]*

Authorities Included

(3) The books of authorities shall contain only those authorities that the parties intend to refer to in oral argument. *[Effective October 16, 2006]*

Marking of Authorities

(4) The portions of the authorities to which reference may be made in oral argument shall be highlighted or sidebarred. *[Effective October 16, 2006]*

Legibility of Authorities

(5) The copies of the authorities shall be legible and may be printed on both sides of each page. *[Effective October 16, 2006]*

Duplication of Authorities

(6) A party shall not duplicate authorities filed by any other party. *[Effective October 16, 2006]*

Colour of Cover

(7) The book of authorities shall be bound front and back in coloured stock of the same colour as the party's factum, or as the factum would be if filed. *[Effective October 16, 2006]*

RULE 33 – FACTUMS

33.01 (1) Where a judge orders or these Rules require that factums be filed, each party shall serve and file a factum, to be entitled and described on its cover as "Applicant's Factum", "Respondent's Factum", or as the case may be. *[Effective October 16, 2006]*

Factum to be Signed and Dated

(2) A factum shall be signed by counsel of record or on counsel's behalf by someone specifically authorized to do so, or by the applicant or respondent if self-represented and the signature shall be followed by the typed name of counsel, if any, and the date. *[Effective October 16, 2006]*

Contents of Applicant's Factum

(3) The applicant's factum shall consist of the following parts:

(a) Part I, with the caption, "Statement of the Case", containing a brief but specific summary of the evidence to which the application relates, together with a statement, with reasonable particularity, of the grounds upon which admission or exclusion is made;

(b) Part II, with the caption, "Summary of the Facts", containing a concise summary of the facts relevant to the issues in the application;

(c) Part III, with the caption, "Issues and Law", containing a statement of each issue raised, immediately followed by a concise statement of the law and the authorities relating to that issue;

(d) Part IV, with the caption, "Order Requested", containing a statement of the order that the court will be asked to make;

- (e) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities referred to in the factum, together with citations, in the order in which they appear in Part III or in alphabetical order; and
- (f) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes except any provisions of the *Constitution Act, Criminal Code* and *Youth Criminal Justice Act*

in paragraphs consecutively numbered throughout the factum. [Effective October 16, 2006]

Contents of Respondent’s Factum

- (4) The respondent’s factum shall consist of the following parts:
 - (a) Part I, with the caption, “Respondent’s Statement of the Facts”, containing a statement of the facts in Part II of the applicant’s factum that the respondent accepts as correct or substantially correct, and those facts with which the respondent disagrees, along with a concise summary of any additional facts upon which the respondent relies;
 - (b) Part II, with the caption, “Response to Applicant’s Issues”, containing the respondent’s position on 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, with the caption, “Additional Issues”, and containing 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, with the caption, “Order Requested”, containing a statement of the order that the respondent will ask the court to make;
 - (e) Schedule A, with the caption, “Authorities to be Cited”, containing a list of the authorities referred to in the factum, together with citations in the order in which they appear in Part II and Part III, or in alphabetical order; and
 - (f) Schedule B, with the caption, “Relevant Legislative Provisions”, containing the text of all relevant statutes, except any provisions of the *Constitution Act, Criminal Code* and *Youth Criminal Justice Act*.

in paragraphs consecutively numbered throughout the factum. [Effective October 16, 2006]

Contents of Intervenor’s Factum

- (5) Every intervenor shall prepare and file an “Intervenor’s Factum” that shall consist of:
 - (a) Part I entitled “Intervenor’s Statement as to Facts”, which shall contain a statement of the facts in Part II 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 such reference to the transcripts of evidence by page and line or paragraph, as the case may be, as 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 "Authorities to be Cited", which shall contain a list of the authorities (with citations) referred to in the order in which they appear in Parts II and III, or in alphabetical order

in paragraphs numbered consecutively throughout the factum. *[Effective October 16, 2006]*

Length of Factum

(6) Unless ordered otherwise by a judge, Parts I through IV of the factum, inclusive, shall not exceed twenty (20) pages in length. *[Effective October 16, 2006]*

Form of Factum

(7) The applicant's factum shall be bound front and back in blue cover stock, the respondent's factum shall be bound front and back in green cover stock and the intervenor's factum shall be bound front and back in grey cover stock. *[Effective October 16, 2006]*

(8) The factum shall be printed on good quality white paper 216 millimeters by 279 millimeters in size and the text shall be printed, typewritten, written or reproduced legibly on one side only with double spaces between the lines, except for quotations which may be single spaced, and margins of approximately forty millimeters on the left-hand side. *[Effective October 16, 2006]*

(9) The characters used shall be at least 12 point or 10 pitch size. *[Effective October 16, 2006]*

(10) Back sheets and covers shall be of 176g/m² cover stock. *[Effective October 16, 2006]*

(11) The Registrar may refuse to accept a factum which does not comply with these Rules, and in that case, the factum shall not be filed without a direction from a judge. *[Effective October 16, 2006]*

Service and Filing of Factums

(12) Unless otherwise ordered by a judge, the applicant's factum shall be served and filed in accordance with Rule 5 not later than thirty (30) days before the day first scheduled for the hearing of the pre-trial applications or the trial as the case may be. *[Effective October 16, 2006]*

(13) Unless otherwise ordered by a judge, the respondent's factum shall be served and filed in accordance with Rule 5 not later than ten (10) days before the day first scheduled for the hearing of the pre-trial applications or the trial as the case may be. *[Effective October 16, 2006]*

(14) Unless otherwise ordered by a judge, an intervenor's factum shall be served and filed in accordance with Rule 5 not later than five (5) days before the day scheduled for the hearing of the application to which it relates. *[Effective October 16, 2006]*

RULE 34 – HEARING OF PRE-TRIAL AND OTHER APPLICATIONS

ORDER AND MANNER OF APPLICATIONS

34.01 The presiding judge shall determine the order in which pre-trial and other applications shall be heard and the manner in which the evidence in support of any application shall be presented. *[Effective October 16, 2006]*

PRELIMINARY ASSESSMENT OF APPLICATION

34.02 The presiding judge may conduct a preliminary assessment of the merits of any pre-trial or other application on the basis of the materials filed, and, if satisfied that there is no reasonable prospect that the application could succeed, may dismiss the application without further hearing or inquiry. *[Effective October 16, 2006]*

DISMISSAL FOR NON-COMPLIANCE WITH RULES

34.03 Where an applicant has failed to comply with the Rules governing an application, the application shall not be heard unless the presiding judge grants leave, after taking into account all the circumstances of the case, including but not limited to:

- (a) the nature of the applicant's non-compliance with these Rules;
- (b) the right of the applicant to raise issues, including issues relating to the admissibility of evidence and to have those issues determined on their merits;
- (c) the right of other parties to have a reasonable opportunity to respond to any issues raised by an applicant;
- (d) the need for an expeditious determination of pre-trial applications and the orderly conduct of trial proceedings;
- (e) the history of the pre-trial applications and the proceedings;
- (f) any notice given to other parties about the issues raised in the pre-trial applications;
- (g) the apparent merits of the application as reflected in any materials filed and any submissions made in the proceeding;
- (h) any prejudice to any other party in the proceeding;
- (i) the nature of the issues raised and the extent of their impact on the course of the trial or other proceeding;
- (j) any explanation advanced for failure to comply with these rules; and
- (k) any other factors the judge considers relevant to his or her determination. *[Effective October 16, 2006]*

LIMITATIONS ON ORAL ARGUMENT

34.04 The presiding judge may impose reasonable limits on oral submissions on any pre-trial or other application. *[Effective October 16, 2006]*

WRITTEN ARGUMENT

34.05 Where the presiding judge is satisfied that the interests of justice require it, she or he may order that the parties deliver written argument about any issue to be heard and determined as a pre-trial application. *[Effective October 16, 2006]*

PART IV:

SUMMARY CONVICTION APPEALS AND EXTRAORDINARY REMEDIES

[Rules 40-49]

RULE 40 SUMMARY CONVICTION APPEALS [Code, ss. 813, 830(1)]

DEFINITIONS

40.01 In this rule, unless the context requires otherwise, "adjudication" includes

- (i) in appeals under paragraph 813(a) of the *Code*, a conviction or order made against or a sentence imposed on a defendant,
- (ii) in appeals under paragraph 813(b) of the *Code*, an order which stays proceedings on or dismisses an information or a sentence imposed on a defendant,
- (iii) in appeals under subsection 830(1) of the *Code*, a conviction, judgment or verdict of acquittal or other final order or determination of a summary conviction court, in proceedings under Part XXVII of the *Code*; (*décision*)

"appeal" means an appeal from or against an adjudication in proceedings before a summary conviction court pursuant to Part XXVII of the *Code*; (*appel*)

"appeal court" means the **Superior Court of Justice**, and in the case of appeals under section 813 of the *Code*, means the **Superior Court of Justice** in the region, county or district where the adjudication under appeal was made; (*cour d'appel*)

"appellant" includes

- (i) in appeals under paragraph 813(a) of the *Code*, the defendant,
- (ii) in appeals under paragraph 813(b) of the *Code*, the informant, the Attorney General or his or her agent,
- (iii) in appeals under subsection 830(1) of the *Code*, a party in proceedings before a summary conviction court under Part XXVII of the *Code*; (*appelant*)

"clerk" means the local registrar of the appeal court in the region, county or district where the adjudication under appeal was made; (*greffier*)

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

"Court Services Manager" means a person employed by the Ministry of the Attorney General of Ontario as a court services manager, or that person's designee; (*chef des services judiciaires*)

"file" means file with the clerk; (*déposer*)

"judge" means a judge of the **Superior Court of Justice** in the region, county or district where the adjudication under appeal was made; (*judge*)

"summary conviction court" means a person who has jurisdiction in the region, county or district where the proceedings under Part XXVII of the *Code* have arisen and who

- (i) is given jurisdiction over the proceedings by the enactment under which the proceedings are taken,
- (ii) is a justice or a provincial court judge, where the enactment under which the proceedings are taken does not expressly give jurisdiction to any person or class of persons, or
- (iii) is a provincial court judge, where the enactment under which the proceedings are taken gives jurisdiction in respect thereof to two or more justices; (*cour des poursuites sommaires*)

"trial court" means the summary conviction court from or against whose adjudication an appeal is being taken. (*tribunal de première instance*)

APPLICATION

40.02 Except as otherwise provided by the *Code*, any other Act of the Parliament of Canada or enactment made thereunder, this rule applies to appeals as defined in rule 40.01.

NOTICE OF APPEAL

Time for Appeal

- 40.03** (1) An appellant shall give notice of appeal,
- (a) where the appeal is from a conviction or sentence or both, within 30 days after the day on which the sentence was imposed; or,
 - (b) in any other case, within 30 days after the day on which the adjudication under appeal was made.

Form of Notice of Appeal

- (2) A notice of appeal shall be
- (a) dated and signed by the appellant, or the solicitor of record of the appellant;
 - (b) directed to the clerk; and,
 - (c) in Form 2.

FILING AND SERVICE OF NOTICE OF APPEAL

General Rule

- 40.04** (1) Notice of appeal shall be given,
- (a) by filing, or sending to the clerk by prepaid registered mail, two copies of the notice of appeal; and,
 - (b) where the appellant is Her Majesty the Queen in Right of Ontario or Canada, as represented by the Attorney General, his or her agent or was the informant or any party other than the defendant in proceedings before the trial court, by personal service on each person in respect of whom an appeal is brought against an acquittal, order of dismissal of or staying proceedings on an information, sentence or other final order or other determination, or as ordered by a judge under rule 5.04.

Method of Service

- (2) Except as provided by clause 40.04(1)(b) or ordered by a judge in accordance with rule 2.02, service of a document pursuant to this rule may be made by
- (a) personal service on or prepaid registered mail to the party, or where the party is represented by a solicitor of record, on the solicitor of record of the party, at the address for service of the party or solicitor on file with the appeal court; or
 - (b) leaving a copy of the document with the solicitor of record of the party or an employee in the office of the solicitor, or where the party is not represented by a solicitor, with the party.

Service on Solicitor of Record

- (3) Where service may be made on the solicitor of record of a party, it may be made by telephone, transmission of a facsimile of the document in accordance with subrule (4).

Service by Telephone Transmission

- (4) A document that is served by telephone transmission shall include a cover page indicating
- (a) the title and, if available, appeal court file number of the appeal;
 - (b) the sender's name, address and telephone number;
 - (c) the name of the solicitor of record to be served;
 - (d) the date and time of transmission;
 - (e) the total number of pages transmitted, including the cover page;
 - (f) the telephone number from which the document is transmitted; and,
 - (g) the name and telephone number of a person to contact in the event of transmission problems.

Proof of Service

(5) Except as ordered by a judge, or as provided by subrule (6), a party serving a document shall, within 10 days after the last day for service of it, file proof of service, by affidavit of the person who served it, or by a solicitor of record's written and dated admission or acceptance of service.

(6) Where notice of appeal is given in accordance with clause (1)(b), proof of service shall accompany the notice of appeal when filed, unless otherwise ordered by a judge.

PROCESSING APPEALS

Transmission of Notice of Appeal

40.05 (1) Upon receipt of a notice of appeal, the clerk shall forthwith,
(a) where the respondent is Her Majesty the Queen in Right of Canada, transmit a copy of it to the appropriate senior officer of the Department of Justice of Canada who is responsible for criminal prosecutions in the region, district or county where the office of the clerk is located, as set out in the schedule; or,
(b) where the respondent is Her Majesty the Queen in Right of Ontario, transmit a copy of it to the Crown Attorney of the region, district, county or group of counties where the office of the clerk is located; and,
(c) in every case, shall transmit a copy of it to the clerk of the trial court in the district, county or group of counties in which adjudication was made.

Transmission of Exhibits and Documents

(2) Upon receipt of a notice of appeal, the clerk of the trial court, unless it is otherwise ordered by a judge, shall transmit forthwith to the clerk of the appeal court all documents and exhibits which were before the trial court.

(3) Notwithstanding subrule (2), currency, valuable securities, jewellery, narcotics and exhibits which are inherently dangerous (as for example, explosives) shall not be transmitted to the clerk unless material to the issues raised on appeal and a judge so orders.

Transmission of Copy

(4) It shall be sufficient under subrule (2) for the clerk of the trial court to transmit to the clerk of the appeal court a certified copy of the information upon which trial proceedings took place, unless otherwise ordered by a judge.

TRANSCRIPTS AND AGREEMENTS RESPECTING EVIDENCE

Certificate Respecting Evidence

40.06 (1) Except in the case of appeals to which subrules (2) and (3) apply, and except where otherwise directed by the clerk, the appellant shall, at the time notice of appeal is filed with the clerk, furnish a certificate in Form 2C of each court reporter who took the evidence, stating that copies of the transcript as required by these rules have been ordered.

Where Provisional Certificate Granted

(2) Where an appellant has been granted a provisional certificate under the Ontario Legal Aid Plan limited to the filing of a notice of appeal or to the filing of a notice of appeal and the making of an application for release from custody pending appeal, the solicitor of record acting under such certificate may file the notice of appeal without ordering the transcript, but when a legal aid certificate authorizing the carrying on of the appeal is granted, the solicitor shall furnish a

certificate of the reporter as provided by subrule (1) within 15 days from the granting of such legal aid certificate.

Where No Provisional Certificate Granted

(3) Where an appellant has applied for a certificate under the Ontario Legal Aid Plan, but no provisional certificate has been granted, he or she shall file with the clerk, at the time of filing the notice of appeal, proof of such application, and may lodge the notice of appeal without ordering the transcript or filing a certificate of the court reporter in Form 2C, but when a legal aid certificate authorizing the carrying on of the appeal is granted, the solicitor shall furnish a certificate of the court reporter in Form 2C within 15 days from the granting of such legal aid certificate.

(4) Within 15 days of receipt of the decision of the area committee refusing the issuance of a legal aid certificate, the appellant shall furnish a certificate of the court reporter in Form 2C that copies of the transcript as required by these rules have been ordered.

Contents of Transcripts

(5) Unless otherwise ordered by a judge in accordance with rule 2.02, there shall be omitted from all transcripts of evidence

(a) all opening remarks by the prosecutor;

(b) all argument on pre-trial motions or applications made at trial, excepting a notation that an application or motion was made (the ruling of the summary conviction court shall be transcribed);

(c) all objections to the admissibility of evidence, excepting a notation that the objection was made (the ruling of the summary conviction court shall be transcribed); and,

(d) the closing argument of the parties, their agents or solicitors of record.

Additional Portions of Transcript

(6) An order for the inclusion in the transcript of any portion of the proceedings referred to in subrule (5) may be made without the attendance of solicitors of record, upon filing the written consent of solicitors of record for all parties.

(7) Any order for the inclusion in the transcript of any portion of the proceedings referred to in sub-rule (5) shall be sent to the court reporter within 5 days of the order having been granted, and a copy of the order shall be provided to the respondent, together with confirmation that the order has been sent to the court reporter.

Application for Directions

(8) Upon application, a judge may give special directions as to the omission of part of the transcript or material that would otherwise be included in the appeal book.

Agreed Statements of Fact

(9) In appeals where the facts are not in dispute, an agreed statement of facts filed within 30 days of the filing of the notice of appeal may take the place of the transcript of evidence and the appellant need only file and serve a transcript of the reasons for judgment and sentence.

Appeals Against Sentence Only

(10) With respect to appeals as to sentence only,

(a) where there was a plea of guilty at the opening of trial before any evidence was taken, the transcript shall include the entire proceedings before the court, including the statement of the prosecutor for the Crown, any evidence as to the facts, any submissions of the prosecutor for

the Crown or the solicitor for defence, and the reasons of the summary conviction court as to sentence;

(b) where the original plea was one of not guilty, and was followed by the adducing of evidence, then within 30 days of receipt of the transcript, the prosecutor for the Crown and solicitor the defence shall make every effort to agree on a statement of facts which will be included in the appeal book. Everything that occurred following a finding of guilt shall be transcribed for use on the hearing of the appeal. In the event of difficulty in settling the statement of facts, solicitor for either party may, on notice, attend upon a judge in chambers for assistance. In the event of failure to agree as to the facts, the provisions of subrules (1) and (5) to (8) apply.

Completion of Transcripts

(11) Upon signing a certificate, each reporter shall proceed with reasonable diligence to prepare and certify the transcript and shall, upon completion, forthwith notify each party and the clerk, in writing, that the transcript has been completed.

(12) Unless an appeal has been wholly abandoned, after a transcript has been ordered, the completion of the transcript shall not be suspended nor the order countermanded except pursuant to an order of a judge made in accordance with rule 2.02.

Costs Sanction for Unnecessary Evidence

(13) In considering whether to award costs on an appeal under section 826 or subsection 834(1) of the *Code*, a judge may consider whether evidence has been transcribed or exhibits reproduced unnecessarily.

AMENDMENT OF NOTICE OF APPEAL

Supplementary Notice to be Served and Filed

40.07 (1) A notice of appeal may be amended without leave, before the appellant's factum has been filed, by serving on the parties on whom the notice was served a supplementary notice of appeal in Form 2A and filing it with proof of service.

Argument Limited to Grounds Stated

(2) No grounds other than those stated in the notice of appeal or supplementary notice of appeal may be relied on at the hearing of the appeal, except with leave of the judge hearing the appeal.

Relief Limited

(3) No relief other than that sought in the notice of appeal or supplementary notice of appeal may be sought at the hearing, except with the leave of the judge hearing the appeal.

APPEAL BOOKS

Filing and Service

40.08 (1) The appellant, within 15 days after receiving notice that the transcript of evidence is ready, or where a transcript of evidence is not required on appeal, within 15 days after filing the agreed statement of facts, shall serve on the respondent and any person entitled by order of a judge to be heard on the appeal, one copy of an appeal book and, at such time, shall file with the clerk of the appeal court proof of service of the appeal book and a legible copy of the appeal book.

Contents of Appeal Book

(2) The appeal book shall contain, in consecutively numbered pages arranged in the following order, a copy of:

- (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) the notice of appeal and any supplementary notice of appeal;
- (c) any direction or order made with reference to the appeal;
- (d) the information, including all endorsements thereon or as adjuncts thereto;
- (e) the formal order or decision appealed from, as signed and entered, if any;
- (f) the reasons for judgment, if not included in the transcript of proceedings;
- (g) any order for release from custody pending appeal;
- (h) all documentary exhibits filed at the trial that the parties have not agreed to omit, arranged in order by date or, where there are documents having common characteristics, arranged in separate groups in order by date;
- (i) all maps, plans, photographs, drawings and charges that were before the summary conviction court and are capable of reproduction that the parties have not agreed to omit;
- (j) the agreed statement of facts, if any;
- (k) where there is an appeal as to sentence, the presentence report, the criminal record of the appellant, and any exhibits filed on the sentencing proceedings;
- (l) the certificates respecting evidence referred to in subrules 40.06(1) and (2).

Non-Compliance with Rules

(3) The clerk may refuse to accept an appeal book which does not comply with these rules or is not legible and the appeal book shall not be filed except by leave of a judge of the appeal court.

Relief from Compliance

(4) Where compliance with the rules governing appeal books would cause undue expense or delay, a judge of the appeal court may give special directions.

PERFECTING APPEALS

When Appeal Perfected

40.09 (1) An appeal is perfected when

- (a) the material described in subsection 821(1) of the *Code* and in subrule 40.05(2) has been received by the clerk;
- (b) a copy of the transcript, agreed statement of facts, if any, and appeal book have been received by the clerk, or a judge has made an order dispensing with the filing thereof; and,
- (c) any application made under subsection 822(4) of the *Code* and rule 40.12 has been dismissed.

Consequences of Perfecting Appeal

(2) When an appeal is perfected, it is ready for hearing and may be entered on a list for hearing.

LISTING OF APPEALS FOR HEARING

Entry for Hearing

40.10 (1) When an appeal is ready for hearing, the clerk shall enter the appeal for hearing on a date fixed by a judge or, where hearing dates are not so fixed, enter the appeal on a list of appeals to be heard at a regular or special sittings of the appeal court.

Notice of Hearing

(2) Upon an appeal being entered for hearing under subrule (1), the clerk shall mail a notice of hearing to each party indicating the date by which the appellant's factum must be filed and served, the date upon which the appeal shall be heard and the time and place at which the solicitor of record for the appellant must appear, under subrule (3), to show cause why the appeal should not be dismissed as abandoned for failure to file the appellant's factum.

Failure to File Appellant's Factum

(3) If the appellant's factum is not filed by the date specified under subrule (2), then unless the clerk otherwise directs, the solicitor of record for the appellant, or an agent on his or her behalf fully prepared to deal with the matter, must appear before a judge of the appeal court, at the time and place described in the notice of hearing under subrule (2), without further notice from the clerk, to show cause why the appeal should not be dismissed as abandoned.

Supervision of Outstanding Appeals

(4) The clerk may place before a judge of the appeal court, at a time and place specified, the files in which it appears to the clerk that there has been undue delay in the obtaining of the transcript, the filing of appeal books, or otherwise, and shall notify the solicitors of record for the parties that he or she will be doing so and the judge, after hearing the solicitors of record or their fully instructed agents, may make such order concerning the appeal as he or she deems appropriate.

"Counsel" Includes Party

(5) Where a party to an appeal has no solicitor, "solicitor" in this rule includes that party.

APPEALS IN WRITING

Notice of Intention

40.11 (1) Where an appellant in an appeal desires to present his or her case on appeal and argument in writing, the appellant shall give notice of such intention in Form 2B within the time and in the manner prescribed in subrule 40.08(1) respecting appeal books.

Materials to be Filed

(2) On an appeal in writing, the appellant shall file transcripts of evidence (if any), appeal books and all other material, except factums, within such time and within such manner as would be required if the appeal were to be heard with oral argument and shall further file his or her written argument within 30 days of the appeal being perfected.

Consideration of Materials Filed

(3) The material on the appeal in writing shall be considered by a judge of the appeal court in chambers who may give directions as to whether the Attorney General should be requested to file written argument as respondent to the appeal and prescribe the times for doing so as well as for the filing of any reply in writing by the appellant.

(4) Where the judge of the appeal court in chambers considers that no written argument from the Attorney General is required, he or she shall prepare written reasons for dismissing the appeal.

(5) Where the judge of the appeal court in chambers directs that the Attorney General provide written argument and the appellant written argument in reply, the appeal shall be considered by

the judge of the appeal court in chambers who required argument, or any other judge of the appeal court, who shall give written reasons for his or her decision.

(6) The reasons described in subrules (4) and (5) shall be dealt with as if they were a reserved judgment.

TRIALS DE NOVO

Application

40.12 (1) An application under subsection 822(4) of the *Code* for a trial *de novo* shall be made before a date has been fixed for hearing the appeal under subrule 40.10 (1).

Notice of Application

(2) At least 7 days notice of an application for a trial *de novo* shall be served on each other party, except that, if the notice is filed with the notice of appeal, it shall be transmitted or served with the notice of appeal in accordance with subrules 40.04 (1) and 40.05 (1).

Date for Hearing of Application

(3) Upon receipt of an application under subrule (1), the clerk shall enter the application for hearing on a date fixed by a judge or, where hearing dates are not so fixed, enter the application on a list of applications to be heard at a regular or special sitting of the appeal court.

Notice

(4) Unless a judge otherwise orders, the clerk shall serve each party with a notice of the date on which the application is to be heard.

FACTUMS

Application of the Rule

40.13 (1) This rule shall govern the preparation and filing of factums in appeals from adjudications made in proceedings under Part XXVII of the *Code*.

General Requirement

(2) Except in appeals in writing under rule 40.11 or except where a judge has made an order under subrule (9), all parties to the appeal and persons who have been granted the right to be heard shall deliver a factum to be entitled and described on its cover as "Appellant's Factum", "Respondent's Factum" or "Intervenor's Factum" or as the case may be.

Signatures on Factums

(3) All factums shall be signed by a solicitor or on a solicitor's behalf by someone specifically authorized to do so or, where a party is unrepresented, by the appellant or respondent, as the case may be, and the signature shall be followed, where applicable, by the typed name of the solicitor.

Appellant's Factum

(4) An appellant shall prepare an "Appellant's Factum" not exceeding 10 pages in length, excluding the schedule, and shall file with the clerk, on or before the date specified in the notice of hearing given under rule 40.10(2), one copy, together with proof of service thereof on all other parties and persons who have been granted the right to be heard on the appeal.

- (5) Except in appeals from sentence only, the appellant's factum shall consist of:
- (a) Part I, entitled "Statement of the Case", which shall contain a statement identifying the appellant, the court in which the proceedings arose, the nature of the charge or charges, the result in that court and the nature of each order to which the application relates;
 - (b) Part II, 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 evidence by page and line, or paragraph, as the case may be, as may be necessary;
 - (c) Part III, 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;
 - (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 "Authorities to be Cited", which shall contain a list of the authorities (with citations) to which reference was made in Part III and in the order in which they there appear

in paragraphs numbered consecutively throughout the factum.

Respondent's Factum

(6) A respondent shall prepare a "Respondent's Factum" not exceeding 10 pages in length, excluding the schedule, and shall file with the clerk, not later than 15 days after receipt of the appellant's factum, and not later than 7 days before the date fixed for the hearing of the appeal under subrule 40.10(1), one copy, together with proof of service thereof on all other parties and persons who have been granted the right to be heard on the appeal.

- (7) Except in appeals from sentence only, the respondent's factum shall consist of:
- (a) Part I, entitled "Respondent's Statement as to Facts", which shall contain a statement of the facts in Part II of the applicant's factum that the respondent accepts as correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with such reference to the transcript evidence by page and line or paragraph, as the case may be, as 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 "Authorities to be Cited", 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.

Non-Compliance with Rules

(8) The clerk may refuse to accept a factum which does not comply with these rules as to timing, form or content or is not legible and the factum shall not be filed except by leave of a judge of the appeal court.

Relief from Compliance

(9) Where compliance with the rules governing factums would cause undue expense or delay, a judge of the appeal court may give special directions.

APPEALS FROM SENTENCE ONLY

Factums in Appeals from Sentence Only

40.14 (1) For an appeal from sentence only the factum submitted by the appellant (other than the Attorney General) shall be in Form 19.

(2) Where the Attorney General is the appellant, such changes shall be made in the form of the factum as may be required.

Hearings of Appeals from Sentence Only

(3) On the appeal from sentence only, the appellant shall be limited to 15 minutes for oral argument, solicitor for the respondent to 10 minutes, and the appellant to 5 minutes in reply, except that in cases of unusual difficulty, the judge hearing the appeal may enlarge these time limits as required.

ABANDONMENT OF APPEALS

Notice

40.15 (1) Where an appellant desires to abandon his or her appeal, in whole or in part, he or she shall serve on the respondent, in the manner provided in subrules 40.04(2) to (5), a notice of abandonment in Form 9, signed by the solicitor of record in the appeal, or by the appellant (in which case the signature shall be verified by affidavit, solemn declaration or witnessed by a solicitor or an officer of the institution in which the appellant is confined).

Dismissal as Abandoned

(2) A judge in chambers may thereupon dismiss the appeal as an abandoned appeal, without the attendance of the solicitor of record or the appellant.

DISMISSAL FOR NON-COMPLIANCE

Failure of Prosecution

40.16 (1) Where an appellant
(a) fails to comply with rule 40.06 respecting transcripts or agreed statements of fact,
(b) fails to comply with rule 40.08 concerning the preparation and filing of appeal books, or
(c) fails to comply with rule 40.14 concerning the preparation and filing of factums
the appeal court may, on application upon notice to all other parties by the respondent, or on notice given by the clerk to each party, and upon proof that notice of hearing of the appeal has been given under subrule 40.10(2), dismiss the appeal for want of prosecution or make any order that appears just, so that the appeal may be heard expeditiously and determined on its merits.

Failure to Appear

(2) Where an appellant fails to
(a) appear personally, or by a solicitor of record on the date and at the time fixed for the hearing; or
(b) file a notice of written appeal in accordance with subrule 40.12(1) and the materials required by subrule 40.12(2)
a judge of the appeal court may, on proof that notice of hearing of the appeal has been given, dismiss the appeal for want of prosecution.

(3) Where a respondent fails
(a) to appear personally, or by a solicitor on the date and at the time fixed for the hearing of the appeal; or,
(b) to file written argument as directed by a judge under subrule 40.11(3)

a judge of the appeal court may, upon being satisfied that the appellant has not him or herself defaulted under subrule (2), determine the appeal in the absence of the respondent or argument from the respondent, as the case may be.

REASONS FOR JUDGMENT

Where Reasons in or Reduced to Writing

40.17 (1) In every appeal where reasons are given in writing or given orally and later reduced to writing, the clerk shall send a copy of the reasons:

- (a) where an appellant or respondent has appeared in person, to the appellant or respondent, as the case may be;
- (b) where the appellant has appeared by a solicitor of record, to the solicitor of record for the appellant;
- (c) to the summary conviction appeal court from which the appeal was taken;
- (d) where the respondent is the Attorney General, to the solicitor for the respondent in accordance with subrule 40.05 (1); and
- (e) to the Regional Senior Judge of the **Ontario Court of Justice** in the region in which the proceedings arose.

Where Reasons in Writing Not Given

(2) Where reasons in writing are not given, the clerk shall notify the summary conviction court of the result of the appeal.

EXTENSION OR ABRIDGEMENT OF TIME

General Rule

40.18 (1) Any time limited by this rule may be extended or abridged by a judge, before or after the expiration of the time prescribed, in accordance with rule 3.02, except that the time limited by subrule 40.12 (1) for making an application under s. 822(4) of the *Code* shall not be extended.

Notice

(2) Notice of an application to extend or abridge a time limit unless made on consent or otherwise ordered by a judge, shall be served on each other party.

RULE 41: STAYS PENDING APPEAL [*Code* s. 261 & 683(5)]

APPLICATION OF THE RULE

41.01 This rule applies to applications for an order

- (a) under section 261 of the *Code*, directing that any order under subsection 259(1) or (2) arising out of a conviction or discharge in respect of an offence under any of sections 220, 221, 236, 249, 250, 251, 252, 253, 254, 255 or 259 of the *Code* be stayed pending the final disposition of an appeal or until otherwise ordered by the court; and,
- (b) under subsection 683(5) of the *Code*, directing that any order there described be suspended until an appeal under s. 813 has been determined.

TO WHOM MADE

41.02 Applications under rule 41.01 shall be made to a judge of the appeal court in the region, county or district in which the appeal to which the application relates is to be heard.

SERVICE OF NOTICE

General Rule

41.03 (1) Service of the notice of application under rule 41.03 and the supporting materials required by rule 41.05 shall be made upon the prosecutor, in accordance with subrules 40.04(2) to (4), at least 2 clear days before the date fixed for the hearing of the application.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with subrules 40.04(2) to (4).

Filing with Proof of Service

(3) Notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 2 clear days before the date fixed for the hearing of the application.

Abridgment and Extension of Time

(4) A judge of the appeal court, either before or upon the hearing of the application, may, by order, extend or abridge any time prescribed by this rule, on such terms as appear just.

Consent to Abridgment or Extension of Time

(5) Any time prescribed by this rule for serving or filing the notice of application or supporting materials may be abridged or extended by consent in writing endorsed on the relevant document by the party served or in any other such form as a judge of the appeal court may direct.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

41.04 (1) The notice of application in Form 1 under this rule shall be accompanied by

- (a) a copy of the information in which is contained the charge upon which the applicant was convicted or discharged of the offence to which the application relates;
- (b) a copy of the notice of appeal and any supplementary notice of appeal;
- (c) an affidavit 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 application.

Affidavit of the Applicant

(2) The affidavit of the applicant required by subrule (1)(c) shall contain

- (a) particulars of the offence of which the applicant was convicted or discharged, including reference to the results of any analyses of the applicant's bodily substances to determine the presence of alcohol or drugs, and whether the offence involved property damage, bodily harm or death;
- (b) particulars of the applicant's driving record, if any;
- (c) a statement of the applicant's places of abode in the three years' preceding his conviction or discharge and where the applicant proposes to reside pending the determination of the appeal;
- (d) particulars of the applicant's employment prior to conviction or discharge, and whether such employment is reasonably expected to continue pending the determination of the appeal;
- (e) particulars of the applicant's criminal record, if any;

(f) a statement whether the applicant is addicted to the use of alcohol or other drugs and, if so, what steps, if any, the applicant has undertaken or proposes to undertake for the treatment of such addiction pending the determination of the appeal; and,
(g) particulars of what unnecessary hardship would be caused to the applicant if the stay were not entered.

Cross-Examination on Affidavit

(3) Where an affidavit has been filed under this rule, the party opposite may cross-examine on such affidavit in accordance with rule 6.11.

Use of Agreed Statement of Facts

(4) A judge, before or upon the hearing of the application, may act upon a statement of facts in accordance with rule 6.13.

Applicant's Application Record and Factum

(5) Unless the judge presiding on the hearing of the application otherwise orders, the applicant shall prepare, serve and file an application record in accordance with subrule 6.05(1) and (2) but no factum shall be required.

Respondent's Application Record and Factum

(6) The respondent may prepare, serve and file a respondent's application record in accordance with subrule 6.05(3) but no factum shall be required.

CONSENT IN WRITING

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

RULE 42: RELEASE FROM CUSTODY PENDING APPEAL [*Code*, s. 816, 832(1)]

APPLICATION OF THE RULE

42.01 This rule applies to applications by a person who was the defendant in summary conviction proceedings and by whom an appeal has been taken under section 813 or 830 of the *Code* for release from custody pending the hearing or determination of the appeal.

TO WHOM APPLICATION MADE

42.02 An application under rule 42.01 shall be made to a judge of the appeal court in the region, county or district in which the appeal to which the application relates is to be heard.

CONTENTS OF NOTICE

42.03 The notice of application under this rule shall be in Form 1 and comply with rule 6.03.

SERVICE OF NOTICE

General Rule

42.04 (1) Service of the notice of application under rule 42.03 and the supporting materials required by rule 42.05 shall be made upon the prosecutor, in accordance with subrules 40.04(2) to (4), at least 2 clear days prior to the date fixed for the hearing of the application.

Manner of Service

(2) Service of the notice of application and supporting materials shall be made in accordance with subrules 40.04(2) to (4).

Filing with Proof of Service

(3) Notice of application and supporting materials, together with proof of service thereof, shall be filed in the office of the clerk of the court in the place where the application is to be heard, at least 2 clear days before the date fixed for the hearing of the application.

Abridgment and Extension of Time

(4) A judge of the appeal court, either before or upon the hearing of the application, may, by order, extend or abridge any time prescribed by this rule, on such terms as appear just.

Consent to Abridgment or Extension of Time

(5) Any time prescribed by this rule for serving or filing the notice of application or supporting materials may be abridged or extended by consent in writing endorsed on the relevant document by the party served.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

- 42.05** (1) The notice of application in Form 1 under rule 42.03 shall be accompanied by
- (a) a copy of the information in which is contained the charge in respect of which the appeal is taken;
 - (b) a copy of the notice of appeal and any supplementary notice of appeal;
 - (c) an affidavit 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 application.

Affidavit of the Applicant

- (2) The affidavit of the applicant required by subrule (1)(c) shall state
- (a) the particulars of the conviction and, where applicable, sentence imposed at trial;
 - (b) any grounds of appeal not specified in the notice of appeal or supplementary notice of appeal;
 - (c) the places of abode of the appellant in the three years' preceding the conviction, and where the appellant proposes to reside if released;
 - (d) the employment of the appellant prior to conviction, whether the appellant expects to be employed if released and, if so, where;
 - (e) the criminal record of the appellant, if any;
 - (f) what hardship would be caused if the appellant were to be detained in custody pending the determination of the appeal; and
 - (g) where the appellant proposes to enter into a recognizance with sureties, the amount of money or value of other security that the appellant proposes should be deposited and, where practicable, the names of the sureties and the amount for which each is to be liable.

Affidavit on Behalf of the Prosecutor

(3) Where the prosecutor desires to assert that the detention of the applicant is necessary in the public interest, and to rely on material other than required to be filed under subrule (1) or (2), the prosecutor shall file an affidavit setting out the facts upon which reliance is placed.

Cross-Examination on Affidavits

(4) Where an affidavit has been filed under this rule, the party opposite may cross-examine on such affidavit in accordance with rule 6.11.

Use of Agreed Statement of Facts

(5) A judge of the appeal court, before or upon the hearing of the application, may act upon a statement of facts in accordance with rule 6.13.

Applicant's Application Record and Factum

(6) The applicant shall prepare an application record which 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 all material required to be filed under subrule (1), including a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and,

(d) a copy of any other material in the court file that is necessary for the hearing of the application

but, unless a judge of the appeal court otherwise orders, no factum is required.

Respondent's Application Record and Factum

(7) Where the respondent is of the opinion that the application record is incomplete, the respondent shall, as soon as practicable after being served with the application record, prepare, serve on the applicant and file with the clerk, the respondent's application record containing

(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 the material to be used by the respondent on the application and not included in the application record

but, except where otherwise ordered by a judge of the appeal court, no factum shall be required.

Material May be Filed as Part of Record

(8) Any material served by a party for use on an application may be filed, together 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.

Relief from Compliance

(9) Where it appears necessary in the interests of justice, a judge of the appeal court may dispense with compliance with this rule, in whole or in part, or give special directions with respect thereto.

ORDER DIRECTING RELEASE

Form of Order

42.06 (1) An order directing the terms upon which an accused is to be released from custody upon application under this rule may be in Form 10.

Sufficiency of Order

(2) An order in Form 10 shall be sufficient authority for a justice of the peace to prepare the necessary undertaking or recognizance when satisfied that any condition precedent thereto has been met.

Consent in Writing

(3) The respondent may consent in writing to the order sought, upon terms included in a draft order in Form 10A, and a judge may grant such order without the attendance of solicitors.

RULE 43 EXTRAORDINARY REMEDIES [*Code*, s. 774 ff.]

APPLICATION OF THE RULE

43.01 This rule applies to applications in criminal matters by way of *certiorari*, *habeas corpus*, *mandamus*, *procedendo* and prohibition, including applications to quash a *subpoena*, warrant, conviction, inquisition or other order or determination and applications for discharge of a person in custody.

TO WHOM APPLICATION MADE

43.02 Applications made under rule 43.01 shall be made to a judge of the court in the region, county or district in which the proceedings to which the application relates have been, are being or are to be taken.

CONTENTS OF NOTICE

General Rule

43.03 (1) A notice of application under this rule shall be in Form 1 and comply with rule 6.03 and shall also state the *subpoena*, warrant or other order or determination to which the application relates.

Applications to Quash

(2) Where an applicant seeks to quash a warrant, conviction, order or determination, other than a *subpoena* or warrant to compel the attendance of a witness, there shall be endorsed upon the notice of application a notice in the following form addressed to the Court Services Manager or coroner or as the case may be:

By virtue of Rule 43.03(3) of the *Criminal Proceedings Rules* of the **Superior Court of Justice**, you are, upon receiving this notice, to return forthwith to the Clerk's Office at.....true copies of the conviction (or as the case may be) herein referred to, together with true copies of the indictment, information, exhibits and papers or other documents touching the matter, as fully and as entirely as they remain in your custody, together with this notice and the certificate prescribed in the said rule.

Dated this.....day of, 19....C.D.
Solicitor for the Applicant

To: A.B.
Court Services Manager at.....
(or coroner, or as the case may be)

Return to Clerk

(3) Upon receipt of the notice of application endorsed under subrule (2), the Court Services Manager or coroner, as the case may be, shall forthwith return to the Clerk's Office at the place

where the application is returnable true copies of the conviction, order, or warrant, together with true copies of the indictment, information, exhibits and any other proceedings or documents touching the matter, and the notice served upon him or her with a certificate attached thereto in the following form:

Pursuant to the accompanying notice I herewith return to this Honourable Court the following:

True copies of:

1. the information;
2. the conviction (*or as the case may be*);
3. the exhibits, if capable of reproduction and relevant to the matters in question;
4. *any other papers or documents touching the matter*, if capable of reproduction and relevant to the matters in question.

And I hereby certify to this Honourable Court that I have above truly set forth all exhibits, papers and documents in my custody or power relating to the matter set forth in the said notice of application.

Date

Court Services Manager (or
coroner, as the case may be)

Effect of Return

(4) Subject to subrules (5) and (6), the documents listed in the certificate under subrule (3), together with any transcript of the proceedings filed by the applicant, shall have the same effect in law as a return to a writ of *certiorari*.

(5) Subject to subrule (6), service of a notice of application to quash under subrule (2) upon a provincial court judge, justice or justices, coroner, or as the case may be, suspends the proceedings which are the subject of the application.

(6) A judge may, upon service of a notice of application therefor in such manner, if at all, as the judge may direct, order that the proceedings which are the subject of the application to quash shall continue upon such terms as appear just.

Further or Amended Return

(7) The judge hearing an application to quash may direct a further or amended return.

FILING AND SERVICE OF NOTICE OF APPLICATION

Time for Giving Notice of Application

43.04 (1) An applicant shall give notice of application in Form 1 and in accordance with rule 43.03 within 30 days after the day on which the order which is the subject of the application was made or given.

General Rule

(2) Notice of application shall be given

(a) where the application includes an application for prohibition, by personal service upon the provincial court judge, justice or justices, coroner or other person whose order is the subject of the application; and,
(b) where the applicant is Her Majesty the Queen in Right of Ontario or Canada, as represented by the Attorney General, and the respondent is an accused not represented by a solicitor, by personal service on the respondent, or, where the respondent is an accused represented by a solicitor, on the solicitor of record; or
(c) where the respondent is Her Majesty the Queen in Right of Ontario or Canada, as represented by the Attorney General, by service upon the prosecutor in accordance with rule 5; and,
(d) by filing, or sending by prepaid registered mail to the office of the clerk of the court in the place where the application is to be heard, two copies of the notice of application, together with proof of service thereof

and the application shall be returnable within 30 days of service.

Extension of Time

(3) A judge, either before or upon the hearing of the application may, by order, extend any time prescribed by this rule, on such terms as appear just.

Consent to Extension of Time

(4) Any time prescribed by this rule for serving or filing the notice of application or supporting materials may be extended by consent in writing endorsed on the relevant document by the party served or in such other form as a judge of the court may direct.

MATERIALS FOR USE ON APPLICATION

Materials to be Filed

43.05 (1) The notice of application in Form 1 shall be accompanied by
(a) a copy of the *subpoena*, warrant, conviction or other order or determination which is the subject of the application;
(b) a copy of the indictment (information) containing the charge to which the application relates;
(c) where there is no or an incomplete record of the proceedings giving rise to the issuance of the *subpoena*, warrant or other order or determination which is the subject of the application, an affidavit of or on behalf of the applicant deposing to the matters described in subrule (2);
(d) a transcript of the proceedings giving rise to the issuance of the *subpoena*, warrant or other order or determination which is the subject of the application; and,
(e) a copy of any other material in the court file that is necessary for the hearing and determination of the application.

Affidavit of or on Behalf of the Applicant

(2) The affidavit of 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, together with a date or dates scheduled for trial or preliminary inquiry in respect of such charge;
(c) a statement of all facts material to a just determination of the application which are not disclosed in any other materials filed in support of the application;
(d) where the applicant seeks *habeas corpus* to obtain release from custody, the consent of the applicant to dispense with the issue of the writ of *habeas corpus*, the return thereto, and the presence of the applicant before the judge determining the application; and,

(e) where the applicant seeks *habeas corpus* to obtain release from custody, a statement that the applicant is not required to be detained in custody in respect of any other matter.

Cross-Examination on Affidavits

(3) Where an affidavit has been filed under this rule, the party opposite may cross-examine on such affidavit in accordance with rule 6.11.

Use of Agreed Statement of Facts

(4) A judge, before or upon the hearing of the application, may act upon a statement of facts in accordance with rule 6.13.

Applicant's Application Record and Factum

(5) The applicant shall prepare, serve and file an Application Record and Factum in accordance with subrules 6.05(1) and (2) and rules 6.06 and 6.07.

Respondent's Application Record and Factum

(6) The respondent shall prepare, serve and file an Application Record and Factum in accordance with subrule 6.05(3) and rules 6.06 and 6.08.

CONSENT IN WRITING

43.06 The respondent may consent in writing to the order sought upon terms included in a draft order filed and a judge, satisfied that the relief sought by the applicant should be granted in the circumstances, may grant the order on such terms as are contained in the draft order filed without the attendance of solicitors.

PART V: REVIEW OF PAROLE INELIGIBILITY

Rules 50.01 to 50.09: Repealed. [Effective October 16, 2006]