

THE COURT OF APPEAL CRIMINAL APPEAL RULES (SASKATCHEWAN)

PART I

Title and Interpretation

Title

1 These rules may be cited as *The Court of Appeal Criminal Appeal Rules (Saskatchewan)*.

Interpretation

2(1) In these rules:

“**appellant**” means the person who brings an appeal; («*appelant*»)

“**chief justice**” means the chief justice as defined in *The Court of Appeal Act, 2000*; («*juge en chef*»)

“**Code**” means the *Criminal Code (Canada)*; («*Code*»)

“**court**” means the Court of Appeal for Saskatchewan; («*Cour*»)

“**file**” means to file with the registrar; («*déposer*»)

“**judge**” means a judge as defined in *The Court of Appeal Act, 2000*; («*juge*»)

“**Notice of Appeal**” means the document that commences an appeal; («*avis d’appel*»)

“**offender**” means a person convicted of an offence; («*contrevenant*»)

“**registrar**” means the registrar as defined in *The Court of Appeal Act, 2000*; («*registraire*»)

“**represented**” means represented by counsel; («*version anglaise seulement*»)

“**respondent**” means the person against whom the appeal has been brought. («*intimé*»)

(2) The definitions in sections 2 and 673 of the Code apply to these rules.

PART II

Preliminary Matters

Purpose

3 The purpose of these rules is to provide for the orderly and expeditious administration of justice in the court.

Application and scope

4 These rules apply to:

- (a) any prosecution, proceeding, action or appeal, as the case may be, within the jurisdiction of the court and instituted in relation to any matter of a criminal nature or arising from or incidental to any such prosecution, proceeding, action or appeal, in accordance with subsection 482(1) and section 482.1 of the Code; and
- (b) any appeal from conviction, acquittal, sentence or other order made pursuant to summary conviction proceedings, within the jurisdiction of the court, taken pursuant to *The Summary Offences Procedure Act, 1990*.

Application of civil rules

5 Except where otherwise provided in the Code, a statute or these rules, *The Court of Appeal Rules* pertaining to the practice and procedure for civil matters, as amended from time to time, apply, where appropriate and with any necessary modification.

Practice directives

6 The court may issue practice directives on any matter to which these rules apply.

Relief against strict compliance

- 7(1) Where it is in the interests of the proper administration of justice to do so, the court or a judge may waive compliance or relieve against non-compliance with these rules and direct the procedure to be followed.
- (2) The court or a judge may enlarge or abridge the time periods fixed by these rules or by order on such terms as the case may require, and the order enlarging or abridging the time may be made before or after the fixed period has expired.

PART III

Commencing an Appeal and Counsel of Record

Commencing an appeal

- 8(1) An offender who wishes to appeal shall commence the appeal by filing a Notice of Appeal within 30 days after the date of the imposition of sentence.
- (2) If the Attorney General wishes to appeal, the Attorney General shall commence the appeal by filing a Notice of Appeal within 30 days after the date of acquittal or the date of the imposition of sentence.
- (3) For greater certainty, if an offender appeals from conviction, or conviction and sentence, including an appeal from a decision made pursuant to Part XXIV (Dangerous Offenders and Long-term Offenders) of the Code:

- (a) the period within which the offender must commence the appeal begins to run from the date on which the sentence is imposed; and
- (b) the offender shall file one Notice of Appeal only.

Form A: Where offender is appellant

- 9(1) The Notice of Appeal in Form A is for all appeals commenced by or on behalf of an offender, whether represented or self-represented and whether in custody or not.
- (2) The senior official of every penal institution shall, on request, supply to any inmate in that penal institution a copy of the Notice of Appeal in Form A for the inmate's use.
- (3) If an offender is self-represented when he or she submits a Notice of Appeal and subsequently retains counsel, the counsel may amend the Notice of Appeal or file a new Notice of Appeal at any time before the offender's factum is filed by filing the amended Notice of Appeal or the new Notice of Appeal.

Form B: Where Attorney General is appellant

- 10 The Notice of Appeal in Form B is for all appeals commenced by the Attorney General.

Counsel of record

- 11(1) A counsel who signs a Notice of Appeal on behalf of an offender is deemed to be the counsel of record.
- (2) Until an appeal is set down for hearing, a counsel may withdraw by filing a notice in Form C, with proof of service in any manner permitted by Part Three of *The Queen's Bench Rules*, of his or her intention to cease acting for the offender.
- (3) After an appeal is set down for hearing, a counsel who wishes to withdraw shall apply to the court on three days' notice for an order permitting the counsel to withdraw.
- (4) On and after the expiry of 10 days from the date of filing of the notice in Form C or from the date of any court order obtained pursuant to subrule (3), no documents respecting the appeal are to be served on the counsel who has withdrawn pursuant to the notice, and service on that counsel is no longer deemed to be service on the offender.

PART IV
Requisitioning Court File and Ordering Transcripts

Obligation to order transcript

- 12 On the filing of a Notice of Appeal, the registrar shall:

(a) requisition the court file pertaining to the appeal from the court that heard the matter; and

(b) if, in the opinion of the registrar, based on the nature of the proceedings, a transcript is necessary, order a transcript of the proceedings or a part thereof.

PART V

Factums: Requirement, Periods for Filing and Content

When factum required and number of copies

13(1) Subject to Rules 14 and 15, every appellant and respondent shall file a factum in accordance with these rules.

(2) If an appellant or respondent files a factum, he or she shall file four copies (being the original, which is unbound and un-perforated, and three copies), or more as the registrar may require.

No factum required from self-represented person

14 No factum is required from a self-represented person, but that person may, at any time before the hearing of the appeal, file a written argument setting out the reasons why the decision appealed from should be set aside.

No factum required from Attorney General

15 No factum is required from the Attorney General if the appellant is self-represented and appeals from a sentence alone, other than with respect to an appeal from a decision made pursuant to Part XXIV (Dangerous Offenders and Long-term Offenders) of the Code.

Factum length

16 Unless otherwise ordered by a judge, a factum shall not exceed 40 pages, excluding the table of contents, index and appendices required by these rules.

Periods for filing factums for sentence appeals

17 If the appeal is from a sentence alone, other than an appeal from a decision made pursuant to Part XXIV (Dangerous Offenders and Long-term Offenders) of the Code:

(a) the appellant shall file the appellant's factum within 20 days after receipt of the transcript; and

(b) the respondent shall file the respondent's factum within 10 days after receipt of the appellant's factum.

Periods for filing factums in summary conviction matters

18 If the appeal is filed pursuant to section 839 of the Code (summary conviction matters):

- (a) the appellant shall file the appellant's factum within 30 days after the filing of the Notice of Appeal; and
- (b) the respondent shall file the respondent's factum within 30 days after receipt of the appellant's factum.

Periods for filing factums for all other appeals

19 For all other appeals, including appeals from conviction pursuant to section 675 of the Code, from acquittal pursuant to section 676 of the Code and from decisions made pursuant to Part XXIV (Dangerous Offenders and Long-term Offenders) of the Code and for appeals that involve both a summary conviction and an indictable matter:

- (a) the appellant shall file the appellant's factum within 60 days after receipt of the transcript; and
- (b) the respondent shall file the respondent's factum within 30 days after receipt of the appellant's factum.

Basic content for all factums

20(1) Except where otherwise ordered by a judge, a factum shall consist of the following seven parts:

Part I. Introduction: The appellant and respondent shall each briefly summarize the context for the appeal.

Part II. Jurisdiction and Standard of Review: The appellant shall state the source of the right of appeal, the basis for the jurisdiction of the court to determine the appeal and the applicable standard of appellate review. The respondent shall state its position with respect to the same matters.

Part III. Summary of Facts: The appellant shall concisely state the facts. The respondent shall state its position taken with respect to the appellant's statement of facts and any facts it considers relevant.

Part IV. Points in Issue: The appellant shall concisely state the points in issue in the appeal. The respondent shall state its position in regard to the appellant's points that the respondent wishes to put in issue. If a respondent intends to contend that the judgment should be upheld, whether in whole or in part, for reasons not found in the judgment and not raised in the appellant's factum, it shall state that intention.

Part V. Argument: This part shall contain a statement of the argument, setting out concisely the points of law or fact to be argued and the basis for the argument, with a particular reference to the page and line of the transcript and the authorities relied on in support of each point.

Part VI. Relief: This part shall state the precise order the appellant or respondent desires the court to make.

Part VII. Authorities: This part shall contain a table of authorities that the appellant or respondent has referred to, arranged alphabetically and citing the Supreme Court Reports where possible. Appellants or respondents citing decisions from electronic databases in factums must also provide the citation from traditional print sources.

(2) Each paragraph in Parts I to VI inclusive shall be numbered consecutively.

Appendices required for appellant's factum

21(1) Subject to subrule (2), in all appeals other than appeals brought pursuant to section 839 of the Code, the appellant's factum shall contain copies of the following as appendices:

- (a) the Notice of Appeal;
- (b) the information or indictment and certificate of conviction or youth sentence order, as the case may be;
- (c) the written reasons of the judge appealed from, if not contained in the transcript;
- (d) any paper exhibits on which counsel intends to rely.

(2) If the appellant is self-represented:

- (a) subrule (1) does not apply; and
- (b) the respondent's factum shall contain as appendices copies of the documents referred to in subrule (1).

Appendices to appellant's factum for appeals from summary conviction matters only

22(1) Subject to subrule (2), in appeals brought pursuant to section 839 of the Code, the appellant's factum shall contain copies of the following as appendices:

- (a) the Notice of Appeal filed in the Court of Queen's Bench pursuant to section 813 or 830 of the Code;
- (b) the transcript of the proceedings in the Provincial Court of Saskatchewan, if a ground of appeal is that the verdict is unreasonable or not supported by the evidence;

- (c) if clause (b) does not apply, the parts of the transcript that are considered relevant to the appeal;
 - (d) the written reasons of the provincial court judge appealed from if not contained in the transcript;
 - (e) the information and certificate of conviction or youth sentence order, as the case may be;
 - (f) the Notice of Appeal;
 - (g) the written reasons of the Court of Queen's Bench judge appealed from, or a transcript of the proceedings in the Court of Queen's Bench, if there are no written reasons;
 - (h) any paper exhibits on which counsel intends to rely.
- (2) If the appellant is self-represented:
- (a) subrule (1) does not apply; and
 - (b) the respondent's factum shall contain as appendices copies of the documents referred to in subrule (1).

Form of factum

- 23(1)** The colour of the cover of the appellant's factum shall be buff and the respondent's green.
- (2) A factum shall set out on its cover the court number, the style of cause and whether it is the factum of the appellant or respondent, and if there is more than one appellant or respondent, the name of the appellant or respondent shall also be given.
- (3) A factum shall be printed:
- (a) subject to subrule (4), on one side of the paper only with the printed pages facing up on the left;
 - (b) in 12-point type;
 - (c) with at least one and one-half line spacing, except for quotations from authorities, which shall be indented and single-spaced; and
 - (d) with margins of no less than 3.0 centimetres or one and one-half inches.
- (4) All appendices to a factum shall be printed on both sides of the paper.

(5) The factum shall include a table of contents after which all pages shall be numbered consecutively and shall be bound in the sequence outlined in Rule 20 (Basic content for all factums).

(6) The counsel responsible for the preparation of a factum shall sign the factum.

PART VI Service of All Documents

Proof of service required from Attorney General

24 The Attorney General shall file proof of service of any document filed.

Service by the Attorney General

25 The Attorney General shall serve an appellant or respondent personally unless:

- (a) the appellant or respondent is represented, in which case service may be effected in any manner permitted by Part Three of *The Queen's Bench Rules*; or
- (b) an order is obtained from the court or a judge pursuant to section 678.1 of the Code.

Proof of service

26 The Attorney General may prove service by filing a Certificate of Service in Form D.

Deemed service on the Attorney General by filing with the registrar

27 On receipt of a document for filing from an appellant or respondent, other than the Attorney General acting as an appellant or respondent:

- (a) the registrar shall immediately forward the document to the Attorney General by electronic or other means; and
- (b) no further service on the Attorney General or proof of service is required.

PART VII Scheduling Appeals

Registrar's authority to fix hearing dates

28 Subject to the direction of the chief justice or a judge, the registrar may fix the date and time for hearing of an appeal:

- (a) on receipt of the transcript by the registrar, if:

- (i) the appeal is from sentence alone; or
- (ii) the offender is self-represented; or

(b) on receipt of the appellant's factum for all other appeals, including appeals from conviction pursuant to section 675 of the Code, from acquittal pursuant to section 676 of the Code and from decisions made pursuant to Part XXIV (Dangerous Offenders and Long-term Offenders) of the Code and for appeals that involve both a summary conviction and an indictable matter.

Notice of date to be provided

29(1) In the case of an appeal commenced by the Attorney General against a self-represented respondent, the Attorney General shall:

(a) serve the respondent in accordance with Rule 25 with notice of the date fixed pursuant to Rule 28; and

(b) file proof of service of the notice on the respondent in accordance with Rule 26 at least 10 days before the date fixed pursuant to Rule 28.

(2) If subrule (1) is not complied with, the court or a judge may make an order adjourning the appeal on any terms and conditions that the court or the judge considers appropriate.

Appeal may be heard based on written argument only

30 If the appellant and respondent agree, an appeal entered for hearing may be determined on the basis of written argument only.

Attendance of appellant if in custody

31 If an appellant who is in custody is entitled and desires to be present at the hearing of his or her appeal, the registrar shall issue a production order to the proper officer or officers to enable the provisions of section 688 of the Code to be carried into effect.

PART VIII

Appeal Management, Chambers Sittings and Adjournments

Appeal management

32(1) If the registrar is of the opinion that the appellant has failed to pursue an appeal diligently or has failed to comply with these rules or that the appeal merits a managed approach, the registrar may refer the matter to a judge in chambers.

(2) The registrar shall make the referral mentioned in subrule (1) by sending to the appellant and respondent, by mail, fax or electronic transmission, a notice in Form E.

(3) The judge may make any order, take any measure or issue any directive that, in the opinion of the judge, will assist the court in effective and efficient management of the appeal.

(4) Without limiting the authority of a judge pursuant to subrule (3), he or she may:

- (a) set timelines to complete all steps leading to the hearing of the appeal;
- (b) schedule motions to be heard before the hearing of the appeal;
- (c) make any other order to accelerate the appeal process; and
- (d) refer the appeal to the court to be dismissed as abandoned or to make any order that the court considers just.

Chambers sittings

33(1) Regular chambers sittings are to be held in Regina on the second and fourth Wednesdays of each month.

(2) If a judge or the registrar is satisfied that the matter is urgent, the judge or registrar may arrange a special chambers sitting.

(3) Where the appellant and respondent agree or the registrar directs, an application in chambers may be made by telephone conference, by video conference or by any other method acceptable to the registrar.

Adjournments

34(1) All requests to adjourn the hearing of an appeal shall be made to the registrar immediately after being advised of the date fixed for appeal and on notice to the other party by filing Form F.

(2) The registrar:

- (a) may adjourn or decline to adjourn the hearing, subject to consulting with the court when appropriate in the opinion of the registrar, and, if adjourned, set a new date for the hearing; or
- (b) may refer the request to a judge in chambers.

(3) The decision of the registrar is final.

PART IX
Show Cause and Abandonment

Show cause

35 If an appellant has failed to comply with an order or direction made pursuant to Rule 32, the registrar may, on notice to the appellant and respondent in Form G, refer the appeal to the court to be dismissed as abandoned unless, on the date fixed by the registrar in Form G or on any other date fixed by the court, the appellant can show cause why the appeal should not be dismissed as abandoned.

Notice of abandonment

36(1) If an appellant desires to abandon an appeal, the appellant shall file a Notice of Abandonment in Form H signed by the appellant or by the appellant's counsel.

(2) A notice of abandonment has the same effect as an order dismissing an appeal unless a judge, who is satisfied that it is in the interests of justice to do so, permits the appellant to withdraw the abandonment of the appeal.

PART X
Appointment of Counsel

Application pursuant to section 684 of the Code

37(1) An offender who wishes to obtain court-appointed counsel pursuant to section 684 of the Code shall apply by filing:

- (a) an application in Form I;
- (b) an affidavit in Form J;
- (c) a certificate in Form K from the Saskatchewan Legal Aid Commission indicating that the appeal to it from the decision of the local office has been denied; and
- (d) any other material that the offender considers relevant to the application.

(2) On receipt of the material mentioned in subrule (1), the registrar shall forward the material to the government ministry or agency responsible for the court-appointed counsel program and to the Attorney General.

PART XI
Release from Custody Pending Determination of Appeal

Application

38 An offender who wishes to apply for release from custody pending determination of the appeal pursuant to section 679 of the Code shall apply by filing:

- (a) an application in Form L;
- (b) an affidavit in Form M; and
- (c) any other material that the offender considers relevant to the application.

Conditions of release

39(1) If a judge determines that the offender should be granted release from custody pending determination of the appeal on entering into a recognizance or undertaking, or both, the judge shall:

- (a) in the case of recognizance, specify, in an order in Form 32 of the Code, the amounts in which the offender and his or her surety or sureties, if any, shall be bound on recognizance; and
- (b) specify those conditions that may be appropriate.

(2) An undertaking pursuant to this Rule may be in Form 12 of the Code.

(3) Unless otherwise ordered by the judge hearing the application, all orders for release from custody pending determination of the appeal shall contain the following conditions:

- (a) if the appellant is represented, that the appellant will file his or her factum within the periods provided by these rules or as otherwise fixed by the judge granting release and that if the factum is not filed within the periods provided by these rules or as otherwise fixed by the judge, the order for release will be automatically revoked;
- (b) that the appellant shall personally attend at the court on the date and at the time set for the appeal hearing or on any other day that is specified in the order;
- (c) that the appellant acknowledges that failure to attend personally at the court on the date and at the time set for the appeal hearing or on any other day that is specified in the order will be deemed to constitute an abandonment of the appeal;
- (d) that the appellant will keep the peace and be of good behaviour;
- (e) that the appellant will advise the registrar of his or her place of residence; and
- (f) any other condition that the judge considers necessary.

(4) The appellant shall file or deposit the release order, recognizance, undertaking and any money or valuable security deposited under the recognizance with the registrar.

Variation of order

40 A judge may, on cause being shown, revoke or amend an order previously made pursuant to section 679 of the Code.

**PART XII
Fresh Evidence**

Fresh evidence

41(1) An appellant or respondent desiring to adduce fresh evidence on appeal shall apply to the court for leave to do so by notice of motion returnable on the date fixed for hearing the appeal.

(2) The notice of motion shall be filed not later than 10 days before the date fixed for hearing the appeal.

**PART XIII
General**

Where no procedure provided

42 Unless otherwise provided, an application to the court or a judge shall be by notice of motion in Form N together with the affidavit in Form O.

Address for service

43 On every document filed, the person filing the document shall provide the following address information:

- (a) if the person is represented, the name, address, telephone and fax numbers and email address, if any, of the lawyer in charge of the file; or
- (b) if the person is self-represented, the full name, occupation, business or residential address, telephone and fax numbers and email address, if any, of the person.

Sending of documents and notices by registrar

44(1) The registrar shall send all documents and notices by ordinary mail, by fax or by other electronic means.

(2) Where the registrar sends a transcript or any other document or notice by ordinary mail, the transcript, notice or other document is deemed to have been received five days after the date it was mailed.

Receipt by fax

45(1) The registrar may accept a copy of a document transmitted by facsimile, provided that the person transmitting the document shall file the original document immediately thereafter.

(2) If the original document is filed, the date of filing is deemed to have been the date the facsimile was received by the registrar.

Electronic filing

46 Any person may file a document electronically in the manner approved by the court.

Computing time

47 Sections 26 to 28 of the *Interpretation Act*, R.S.C. 1985, c.I-21, apply to the computation of time under these rules.

Recording devices

48 Except as otherwise provided by law, no person shall record by any device, machine, or system the proceedings in the court or in chambers without leave of the court or a judge, as the case may be.

PART XIV

Repeal, Transitional and Coming into Effect

Repeal

49(1) The rules of the Court of Appeal respecting Criminal Appeals, being “Criminal Proceedings – Court of Appeal for Saskatchewan, Appeals to the Court of Appeal” in effect on the day preceding the day on which these rules come into effect are repealed.

(2) Criminal Practice Directives Nos. 1, 2, 3 and 4 are repealed.

Transitional

50(1) Proceedings commenced before the coming into effect of these rules and continued after their coming into effect shall be governed by these rules without prejudice to anything lawfully done before the coming into effect of these rules.

(2) Notwithstanding subrule (1), the court or a judge may give directions respecting the application of these rules or an amendment to these rules to proceedings mentioned in subrule (1).

Coming into effect

51 These rules come into effect on December 15, 2010.