

## **SUMMARY CONVICTION APPEALS**

When you are filing an appeal of a summary conviction (for example, a traffic ticket conviction)

- **YOU SHOULD COME PREPARED WITH A LIST OF DATES WHEN YOU WILL BE AVAILABLE TO ARGUE, AND A “TIME ESTIMATE” FOR THE HEARING.**
- **IF THE TOTAL LENGTH OF THE APPEAL WILL EXCEED A “20 MINUTE HEARING (that is your argument and the respondents argument)”, PLEASE ADVISE THE COURT AT YOUR FIRST APPEARANCE DATE AND ARRANGEMENTS WILL BE MADE FOR A “SPECIAL SITTING”.**

### **STEPS:**

#### **1) Order the Transcript of the Lower Court**

- If you are not represented by a lawyer, you must order the transcript. The fee for the transcript will vary.
- If you were not in court, either in person or by lawyer, when you were convicted, or if you are now represented by a lawyer, you do not need to order the transcript.
- Transcripts can be ordered through the appropriate Court Reporters office:
  - in Edmonton the transcript can be ordered from #1000 Sun Life Place, 10123-99 Street, Edmonton, AB, T5J 3H1, telephone (780) 427-6181.
  - for Appeals from outside Edmonton, the transcript can be ordered from the original Provincial Court where the appellant appeared.
- You must provide 3 copies of the transcript when filing the Notice of Appeal in step 2. When requesting transcripts you should advise the Transcript Management office that the transcript is for the purpose of an appeal, so they can prepare 3 “official copies” of the transcript for filing.

#### **2) File the Notice of Appeal**

- With the Queen’s Bench Criminal Clerk’s Office.
- Must be filed within 30 days of the conviction or sentence.

- If you were required to order a transcript in step 1, you must include the receipt.
- Personally deliver a filed copy of the Notice of Appeal to the Crown's Office.

### **3) Appeal Dates**

- The first date which you are scheduled for will be to set your hearing date which will be 60 - 120 days from the day you file the Notice of Appeal. This is **not** the appeal hearing date, it is only to determine if you are ready to proceed and have filed the required documents.
- On the scheduling day, if you are ready to proceed and all materials have been filed, a hearing date for your Appeal will be set. Failure to comply may result in the appeal being dismissed.

### **4) Memorandum of Law**

- You must file a Memorandum of Law at least 30 days before the hearing date.
- To file less than 30 days before the hearing date, prior to filing the Memorandum of Law, an appellant or his lawyer must:
  - obtain consent from the Crown's Office.
  - obtain permission from a Queen's Bench Justice (a fiat).
- The Memorandum of Law must include:
  - a brief statement of the facts.
  - the argument and case law that the appellant intends to rely on in support of the reasons set out in the Notice of Appeal.
  - particular reference to the evidence to be discussed in relation to the reasons.
- Make 2 copies of the Memorandum of Law (total of 3 with the original) and take them to the Queen's Bench Criminal Clerk's Office for filing, along with the 3 copies of the transcript (if you were required to order a transcript in step 1).

### **5) Serve the Crown's Office**

- Personally deliver a filed copy of the Memorandum of Law and the transcript to the Crown's Office.

## **6) Abandonment**

- Should an appellant wish to discontinue an appeal, a notice of abandonment must be filed with the Queen's Bench Criminal Clerk's Office prior to the hearing date.
- A sample of the notice of abandonment can be obtained from the Search and Information Wicket at the Queen's Bench Clerks Office.

### **Note:**

- **The Queen's Bench Criminal Office cannot provide legal advice or direction.**
- **The filing of a Notice of Appeal has no effect on the status of any fines outstanding in Provincial Court.**
- **In the case of overdue fines for traffic violations, if the fine is overdue motor vehicle licencing services will be restricted until the fine is satisfied.**
- **If this appeal is in relation to a driving offence where you have received a disqualification of your driving privilege, a copy of the FILED Notice of Appeal along with a copy of any Order staying the disqualification should be delivered to the Driver, Fitness and Monitoring, Main Floor, Twin Atria Building, 4999-98 Avenue, Edmonton, Alberta, T6B 2X3.**

Rev. June 2012

Pursuant to subsection 482(1) of the *Criminal Code*, the Court of Queen’s Bench of Alberta makes the annexed *Court of Queen’s Bench for Alberta Summary Conviction Appeal Rules*.

Calgary, Alberta, , 2012

The Honourable N.C. Wittmann  
Chief Justice Court of Queen’s Bench of Alberta

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• S.C. 2002, c. 13, s. 17

• R.S., c. C-46

## COURT OF QUEEN’S BENCH FOR ALBERTA SUMMARY CONVICTION APPEAL RULES

### INTERPRETATION

#### 1. In these Rules,

“adjudication” includes

(a) in appeals under paragraph 813(a) of the *Criminal Code*, a conviction or order made against or a sentence imposed on a defendant,

(b) in appeals under paragraph 813(b) of the *Criminal Code*, an order that stays proceedings on or dismisses an information or a sentence imposed on a defendant,

(c) in appeals under subsection 830(1) of the *Criminal 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 *Criminal Code*, and

(d) any final order authorized to be made by a Provincial Court Judge or a Justice under any provision of the *Criminal Code* as to which Part XXVII of the *Criminal Code* is said to be applicable in whole or part; (*décision*)

“appeal” means an appeal from or against an adjudication in proceedings before a summary conviction court under Part XXVII of the *Criminal Code*; (*appel*)

“appeal court” means the Court of Queen’s Bench of Alberta; (*tribunal d’appel*)

“clerk” means the clerk of the appeal court; (*greffier*)

“defendant” means any person other than the prosecutor, whether or not the appellant is the accused, the respondent to a hearing, an owner of property or any other person; (*défendeur*)

“judge” means a judge of the appeal court; (*juge*)

“prosecutor” includes the barrister and solicitor, student-at-law, or other person who appeared on behalf of the prosecution in relation to the case under appeal. (*poursuivant*)

## NOTICE OF APPEAL

2. (1) Every notice of appeal shall be signed by the appellant or the appellant's counsel, and dated as of the date of signature, and shall be filed with the clerk at the judicial centre in the judicial district where the summary conviction proceeding was held. If the appeal court sits in more than one location in a judicial district, the notice of appeal shall be filed with the clerk in the location in that judicial district closest to where the summary conviction proceeding was held.

(2) The appeal and all applications relative to the appeal shall be made to and heard in the court location referred to in subrule (1), unless the appeal court otherwise orders or the parties otherwise consent.

(3) The notice of appeal shall be in writing in Form "A", or to the like effect, and shall specify:

(a) the summary conviction court that made the conviction or order appealed from or imposed the sentence appealed against,

(b) with reasonable certainty, the conviction or order appealed from or the sentence appealed against, including its date and place,

(c) the grounds on which the appeal is taken,

(d) the nature of the order or other relief that the appellant seeks,

(e) if the appellant is the defendant, whether the appellant entered a plea of guilty or not guilty before the summary conviction court,

(f) whether or not at the time of the appeal the defendant is imprisoned as a result of the conviction, order or sentence appealed against, and the place of incarceration, and

(g) the address for service of the appellant.

(4) The clerk, on receipt of a notice of appeal, shall set out on the notice the time, date and place the appeal will be heard.

## SERVICE OF NOTICE OF APPEAL

3. (1) An appellant shall deliver a notice of appeal to the clerk within 30 days after the day on which the conviction, judgment, acquittal or order was made or the sentence was imposed, whichever is the later date.

(2) If the appellant is the prosecutor, the filed notice of appeal shall be served personally on the defendant or on any other person or in any other manner that a judge may direct or authorize, within the period referred to in subsection (1).

(3) If the appellant is the defendant, the clerk shall forward a copy of the filed notice of appeal to the prosecutor as soon as is practicable under the circumstances.

## SCHEDULING OF APPEAL

4. (1) On receipt of a notice of appeal which appears to comply with these Rules, the clerk shall schedule the appeal for hearing on a date not less than 60 days nor more than 120 days after the date of filing of the notice of appeal.

(2) On scheduling a date for the hearing of an appeal under this Rule, the clerk shall immediately, in writing, notify all parties.

(3) The clerk shall obtain the relevant court file, including any exhibits, from the summary conviction court before the hearing by giving prompt notice of the fact of the appeal to the summary conviction court after the notice of appeal has been filed.

#### ORDERING OF TRANSCRIPTS

**5.** (1) The appellant shall, at the time of filing the notice of appeal, request in writing from the applicable court reporters or court recorders a transcript of the proceedings before the summary conviction court in sufficient copies for the appeal court and all other interested parties.

(2) If the appellant is not represented by counsel at the time the notice of appeal is filed, the appellant shall provide to the clerk a receipt evidencing the ordering of the transcript.

(3) The transcript referred to in subrule (1) shall, unless the court otherwise orders or the parties otherwise consent, contain all of the evidence and proceedings before the summary conviction court, but no consent of the parties is binding upon the court.

(4) Despite subrules (1) and (2), if the parties consent and the appeal concerns sentence only, the appellant may cause a transcript of the proceedings as to sentence only to be furnished to the appeal court and to the respondent.

**6.** (1) If a date has been scheduled for the hearing of an appeal under these Rules, the appellant shall, at least 30 days before that date, deliver to the clerk and serve on the respondent and all other interested parties, or their counsel, a brief memorandum

(a) setting out the argument and authorities on which the appellant intends to rely in support of the grounds set out in the notice of appeal,

(b) setting out particular references to the evidence to be discussed in relation to the grounds, and

(c) containing a transcript of the proceedings being appealed from, subject to subrule 5(3).

(2) The respondent shall, not less than 15 days before the scheduled hearing date, deliver to the clerk and serve on the appellant or their counsel a brief memorandum setting out

(a) the authorities on which the respondent intends to rely in reply to the argument of the appellant, and

(b) particular references to any evidence to be discussed in relation to those arguments.

#### JUDICIAL INTERIM RELEASE

**7.** (1) Judicial interim release pending appeal may be granted conditionally or unconditionally, or may be refused, by the Court.

(2) Subject to subrule (3), the rules and practice of the Court of Appeal of Alberta in relation to judicial interim release pending appeal in indictable matters apply to applications for judicial interim release pending appeal under this Rule, with any modifications that the circumstances require.

(3) No application for judicial interim release pending appeal shall be refused by reason only of the lack of any transcript of any proceedings connected with the appeal.

#### TIME LIMITS

**8.** (1) A judge may, before or after the periods fixed by these Rules,

(a) order the extension or abridgment of the time within which any filing, service or transmission of any documents may be effected, or

(b) order that any filing, service or transmission of any documents that has been effected be deemed to be valid and sufficient.

(2) The applicant for any order under these Rules, including any order under subrule (1) shall give two clear days' notice in writing of the application to any other party to the appeal or proposed appeal, as the case may be, unless all other interested parties consent to the order sought or a judge otherwise orders.

(3) For the purposes of these Rules, any form of service that is required may be effected by delivery of the document to be served to the address for service of the counsel for the party to be served and the Rules of the appeal court as are applicable to civil matters also apply to service of documents under these Rules with any modifications that the circumstances require.

#### EFFECT OF RULES

**9.** (1) Non-compliance with these Rules does not render any proceedings void, but a judge may

(a) amend any document, give any directions or make any order necessary to validate the proceedings or documents,

(b) reject any documents or quash the proceedings as irregular or invalid, or

(c) otherwise deal with the documents or proceedings as appears to him or her to be just.

(2) Nothing in these Rules shall be construed as limiting the powers of the appeal court under the *Criminal Code* and, for greater certainty, but not so as to restrict the generality of the foregoing, the appeal court may exercise all of the powers set out in section 822 of the *Criminal Code*.

#### REPEAL AND COMING INTO FORCE

##### REPEAL

10. The *Rules of the District Court of Alberta Governing Summary Conviction Appeals* are repealed.

##### COMING INTO FORCE

11. These Rules come into force on July 1, 2012.

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· SI/77-47



Clerk's stamp:

COURT FILE NUMBER \_\_\_\_\_  
COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE \_\_\_\_\_  
RESPONDENT HER MAJESTY THE QUEEN  
APPELLANT \_\_\_\_\_

DOCUMENT

**Notice of Appeal**

ADDRESS FOR SERVICE AND \_\_\_\_\_  
CONTACT INFORMATION OF \_\_\_\_\_  
PARTY FILING THIS DOCUMENT \_\_\_\_\_  
(Address, postal code, telephone number, and, if available, fax number)

The Appeal will be heard before a Justice of the Court of Queen's Bench:

Date \_\_\_\_\_  
Time \_\_\_\_\_  
Where \_\_\_\_\_

The Rules of this Court require an appellant to deliver to the Court a transcript of the proceedings before the summary conviction court, a list of authorities and a memorandum of argument at least 30 days prior to the above-mentioned date of the hearing.

1. TAKE NOTICE that the Appellant wishes to appeal and does hereby appeal to the Court of Queen's Bench of Alberta, sitting at \_\_\_\_\_, in the Province of Alberta, the decision of the Provincial Court of Alberta set out below.

2. The full name of the Appellant, if not her Majesty the Queen, is: (Print name and date of birth)  
(Name): \_\_\_\_\_  
(Date of Birth): \_\_\_\_\_

3. The decision of the Provincial Court being appealed from is a:

- Conviction Only
- Sentence Only
- Conviction and Sentence
- Dismissal
- Order

and the particulars of the decision are as follows:

- (a) Date of Decision: \_\_\_\_\_
- (b) Place of Decision: \_\_\_\_\_
- (c) Name of Judge or Commissioner: \_\_\_\_\_
- (d) Name of Prosecutor, If Known: \_\_\_\_\_
- (e) Name of Defence Counsel, If Known: \_\_\_\_\_
- (f) Plea at Trial (if applicable): Guilty \_\_\_ Not Guilty \_\_\_  
If no Trial: Convicted in Absence \_\_\_ Voluntary Payment \_\_\_
- (g) Nature of Offence(s) charged: \_\_\_\_\_

