

## RULE 82

### CRIMINAL APPEAL RULE

#### INTERPRETATION AND DEFINITIONS

- 82.01** (1) In this rule, unless the context requires otherwise:
- (a) "appeal" includes an application for leave to appeal and a cross-appeal; (*appel*)
  - (b) "appellant" means the person who is appealing from conviction or sentence, or both, and in an appeal by the Crown means Her Majesty the Queen represented by the Attorney General and includes an appellant by cross-appeal; (*appelant*)
  - (c) "Attorney General" means the Attorney General as defined in section 2 of the *Code* and includes counsel instructed by him or her for the purpose of appeal, and Her Majesty the Queen represented in an appeal by the Attorney General; (*procureur général*)
  - (d) "Chief Justice" means the Chief Justice of Prince Edward Island or in the absence of the Chief Justice of Prince Edward Island, the next senior judge of the Court; (*juge en chef*)
  - (e) "Code" means the *Criminal Code*, R.S.C. 1985, c. C-27; (*Code*)
  - (f) "Court" means the Prince Edward Island Court of Appeal; (*Cour*)
  - (g) "Chief Court Reporter" means a person designated as such under the *Court Reporters Act* R.S.P.E.I. 1988 Cap. S-10.1; (*sténographe judiciaire en chef*)
  - (h) "Court Reporter" means a person designated as such under the *Court Reporters Act* R.S.P.E.I. 1988 Cap. S-10.1 or a person designated to record proceedings in the Provincial Court or youth justice court; (*sténographe judiciaire*);
  - (i) "court transcriber" means a person designated as such under the *Court Reporters Act* R.S.P.E.I. 1988 Cap. S-10.1 or a person designated to transcribe proceedings in the Provincial Court or youth justice court; (*transcripteur judiciaire*)
  - (j) "judge" means a judge of the Court and includes a judge of the Supreme Court of Prince Edward Island, whenever any such judge is sitting *ex-officio*, as a judge of the Court; (*juge*)
  - (k) "judgment" means the formal disposition of an appeal by the Court and includes an order for judgment; (*jugement*)
  - (l) "notice of appeal" includes notice of application for leave to appeal and notice of cross-appeal; (*avis d'appel*)
  - (m) "Prisoner Appeal" means an appeal by a person who, when the notice of appeal is given, is in custody and is not represented by counsel; (*appel d'un détenu*)
  - (n) "Provincial Court" means the Provincial Court of Prince Edward Island; (*Cour provinciale*)

- (o) "Registrar" means the officer of the Court appointed as registrar or as a deputy registrar; (*registraire*)
  - (p) "respondent" means Her Majesty the Queen represented by the Attorney General in the case of a person who appeals against conviction or sentence, and where the appeal is by Her Majesty the Queen represented by the Attorney General, means the person whose acquittal or sentence is appealed, or in whose favour a court refused to exercise its jurisdiction or has issued an order to quash or stay an indictment; (*intimé*)
  - (q) "trial Court" means the court appealed from; (*tribunal de première instance*);
  - (r) "trial judge" means the judge who presided at the trial; (*juge de première instance*);
  - (s) "youth justice court" means a youth justice court referred to in section 13 of the *Youth Criminal Justice Act*. (*tribunal pour adolescents*)
- (2) The interpretation and definitions in sections 2 and 673 of the *Code* apply to this rule.

#### **APPLICATION OF RULES**

- 82.02** (1) These rules shall apply to appeals under Part XXI, Part XXVI and under section 839 of the *Code* and to any other appeal filed in the Court in relation to any cause or matter processed in accordance with criminal procedures, so far as this Rule is not inconsistent with any provision of the *Code* or any other statute or any uniform rules of court made by the Governor in Council under subsection 482(5) of the *Code*.
- (2) The provisions of these Rules relating to prisoner appeals, apply, with the necessary modifications, to an appeal by any person who, although not convicted, is detained in custody and appeals under section 672.72 of the *Code*.

#### **APPLICATION OF CIVIL RULES**

- 82.03** Any matter of procedure or practice not provided for by the *Code* or this rule shall be governed by the Rules of Civil Procedure in force from time to time.

#### **NOTICE OF APPEAL**

- 82.04** (1) An appeal shall be commenced by issuing a notice of appeal that sets out the grounds of appeal. In prisoner appeals the notice shall be in **Form 82B**. In all other appeals by a convicted person or by the Attorney General, the notice shall be in **Form 82A**.
- (2) The senior official of every penal institution shall supply to any prisoner in custody, on request, notice of appeal forms for the prisoner's use as well as a copy of this rule and all other forms as may be required for the prisoner's use.
- (3) Except where subsections (4), (5) and (6) apply, a notice of appeal
- (a) from conviction, or conviction and sentence, or sentence only, shall be filed not later than 30 days after the date of the sentence;

and

- (b) from acquittal shall be filed not later than 30 days after the date of the acquittal.
- (4) Where a person is acquitted of an offence but is convicted of an included offence, a notice of appeal from acquittal shall be filed not later than 30 days after the date of the sentence imposed in respect of the included offence.
- (5) Where an appeal is to be taken in respect of one or more counts in an indictment, a notice of appeal from conviction, acquittal or sentence shall be filed not later than 30 days after the acquittal or sentence, in respect of any count in the indictment.
- (6) Where an appeal is to be taken under section 784 or 839 of the *Code*, a notice of appeal shall be filed not later than 30 days after the date of pronouncement of the decision in the court appealed from or, if the decision is reserved, after the date of the filing of written reasons for the decision.

#### **FILING AND SERVICE OF NOTICE OF APPEAL**

- 82.05**
- (1) In a prisoner appeal, the filing of a notice of appeal shall be effected by delivering the notice of appeal to the senior official of the penal institution in which the appellant is imprisoned. The senior official shall endorse on the document the date of receipt and shall then return a copy so endorsed to the appellant and forthwith forward the original to the Registrar.
  - (2) In all cases where the Attorney General is not the appellant, other than in a prisoner appeal, the filing of a notice of appeal shall be effected by
    - (a) filing the original and four copies of a notice of appeal with the Registrar; or
    - (b) sending the documents to the Registrar by prepaid registered mail.
  - (3) The Registrar shall, on receipt of the notice of appeal under subrules (1) and (2), effect service by forwarding a copy to the Attorney General and to the court appealed from.
  - (4) In an appeal by the Attorney General, the notice of appeal shall be filed with the Registrar. Service by the Attorney General on the respondent and other parties shall be effected within 30 days after such filing by
    - (a) personal service on the respondent;
    - (b) service on the respondent's legal counsel if counsel accepts service on behalf of the respondent or if counsel already appears as counsel of record in the Court;
    - (c) service on the appropriate senior official of the penal institution if the respondent is in custody;
    - (d) verified facsimile transmission; or

- (e) any other manner as may be directed by the Court or a judge thereof.
- (5) Proof of service of the notice of appeal, in appeals under sub-rule (4), shall be filed with the Registrar forthwith.
- (6) A notice of cross-appeal shall be filed not later than 30 days after receipt by the cross-appellant of the notice of appeal and shall be served in accordance with this Rule.

#### **LEAVE TO APPEAL**

- 82.06** (1) Where leave to appeal is required, arguments respecting leave shall be presented at the hearing of the appeal unless
- (a) the appeal is from sentence only and the appellant has applied pursuant to section 679 of the *Code* for release from custody pending the appeal;
  - (b) the appellant or respondent applies, with appropriate supporting materials, for the issue of leave to be determined prior to the hearing of the appeal; or
  - (c) the Court of its own motion requires the parties to appear, with appropriate supporting materials, at a hearing to determine the issue of leave.
- (2) On the hearing of an application, the Court may grant leave, refuse leave or postpone the decision until the hearing of the appeal.

#### **REPORT OF A TRIAL JUDGE**

- 82.07** (1) Where the Court requests that the trial judge furnish a report on the case or on any matter relating to the case, notice shall be given to the parties who shall have the opportunity to make submissions to the Court concerning
- (a) whether the trial judge's report is to be furnished; and
  - (b) if the report is to be furnished, the scope of the report to be requested.
- (2) Where the Court directs that a report of the trial judge is to be furnished, the Registrar shall, on receipt of the report, mail copies to the parties to the appeal.

#### **APPEALS IN WRITING**

- 82.08** (1) Where an appellant desires to present their argument in writing without appearing in person or by counsel, they shall state their intention to do so in their notice of appeal and may
- (a) include their points of argument in their notice of appeal, or
  - (b) file and serve an appellant's factum within the time prescribed by subsection 82.14(1).
- (2) Where a respondent desires to present their argument in writing instead of appearing in person or by counsel they shall, within the time prescribed by subsection 82.14(3), file and serve a respondent's factum and a written

notice that they do not intend to appear in person or by counsel.

### **TRANSCRIPTS**

- 82.09** (1) Subject to subsections (2) to (15), the parties to an appeal shall file with the Court only those portions of the transcript of the proceedings in the court appealed from that are necessary to enable the issues raised on appeal to be determined.
- (2) Except in the following cases, an appellant shall file with the notice of appeal a copy of the request for transcript and certificate in **Form 82C** requesting the preparation of a transcript of the record in the proceeding and containing certificates stating that the request has been sent to the other parties and to the court reporter's office:
- (a) a prisoner appeal,
  - (b) an appeal from a summary conviction appeal court, or
  - (c) a judge otherwise orders.
- (3) The appellant shall, within 15 days after filing the notice of appeal, file with the Registrar a certificate of the Chief Court Reporter or a court reporter in **Form 82E** certifying receipt of the request for transcript.
- (4) In a prisoner appeal, the Attorney General shall, after receiving a notice of appeal
- (a) forthwith send to the Chief Court Reporter a request for transcript and certificate in **Form 82C** and a certificate of court reporter in **Form 82E**, with such modifications as may be necessary;
  - (b) file copies of the completed certificate with the Registrar; and
  - (c) forward copies to the prisoner.
- (5) The transcript shall not contain
- (a) proceedings on the challenge for cause of a juror,
  - (b) the opening address of the trial judge,
  - (c) the opening and closing addresses of counsel,
  - (d) proceedings in the absence of the jury except
    - (i) rulings on the admissibility of evidence following a *voir dire* or otherwise;
    - (ii) submissions as to the proposed content of the charge and the trial judge's ruling and reasons;
    - (iii) objections to the trial judge's charge and the trial judge's ruling and reasons;
    - (iv) submissions respecting questions from the jury and the trial judge's ruling and reasons;
  - (e) objections to the admissibility of evidence other than a statement

that an objection was made, however the trial judge's ruling and reasons in respect of the objection shall be set out in full in the transcript unless

- (i) the grounds of appeal relate to a matter referred to in the statement,
  - (ii) in respect of the items in paragraphs (a) to (e), the court or a judge orders that one or more of those parts of the proceeding be included, or
  - (iii) the appellant and respondent agree that one or more of the parts of the proceeding be included.
- (6) In an appeal from a summary conviction appeal court, the transcript shall, unless otherwise ordered by the Court, consist of
- (a) the transcript of proceedings in the trial court as it was submitted on appeal to the summary conviction appeal court, and
  - (b) only those portions of the transcript of proceedings in the summary conviction appeal court as may be necessary to enable the issues on appeal to be determined.
- (7) The appellant shall file with the notice of appeal a request for transcript and certificate in **Form 82C** and, within 15 days thereafter, a certificate of the Chief Court Reporter or a court reporter in **Form 82E**, with such modifications as may be necessary, in relation to any portions of the proceedings in the summary conviction appeal court that the appellant believes are necessary to enable the issues on appeal to be determined.
- (8) Unless the Court otherwise orders, where an appeal is against sentence only, the transcript shall include:
- (a) any evidence given on the issue of sentence,
  - (b) where there was a plea of guilty, the statement of facts,
  - (c) any submissions of counsel for the prosecution and the defence,
  - (d) any statement by the accused prior to the passing of sentence made under section 726 of the *Code*, and
  - (e) the trial judge's reasons for sentence.
- (9) Where a party to an appeal receives a copy of a request for transcript and certificate prepared by another party, the receiving party may, if the following conditions are met, deliver a request for further portions of transcript and certificate in **Form 82D** to the Chief Court Reporter or a court reporter and to the other parties to the appeal, file a copy of it with the Registrar, and within 15 days thereafter file with the Registrar a certificate of a court reporter in **Form 82E**, with such modifications as may be necessary, certifying receipt of the request for additional portions of the transcript:
- (a) where he or she believes that additional portions of the transcript of the proceedings are necessary to enable the issues on appeal to be determined, and

- (b) within 15 days after receipt, or within such longer time as the Court may allow.
- (10) A party to an appeal may at any time apply to the Court for an order
  - (a) excising portions of the transcript of the proceedings that have been requested or prepared and that are unnecessary or inappropriate for the determination of the issues on an appeal; and
  - (b) adding such further portions of the transcript of the proceedings as may be determined to be necessary for the determination of the issues on an appeal.
- (11) The Court may at any time of its own motion order that the transcript of the proceedings be abridged or amplified.
- (12) The parties to an appeal may agree, in writing to be filed in the Court:
  - (a) to substitute an agreed statement of facts in place of all or any portion of the transcript of the proceedings and the exhibits; and
  - (b) to submit a joint request for transcript in **Form 82C** and certificate of court reporter in **Form 82E**, with such modifications as may be required.
- (13) A judge may order that a party need not file a transcript or may omit anything from a transcript.
- (14) When the transcript of the proceedings has been prepared, the Chief Court Reporter, a court reporter or a court transcriber shall forthwith forward to the Registrar the original transcript and three copies, together with one copy in an electronic format satisfactory to the Registrar.
- (15) The Registrar shall, on receipt of the original transcript and copies, notify the parties that the transcript has been received by the Court and deliver copies to the parties or their counsel upon payment of any prescribed fees. In a prisoner appeal, the Attorney General shall be responsible for the payment and delivery of the transcript to the appellant.

**EXHIBITS**

- 82.10** (1) Subject to subsections (2) and (6), all documents, exhibits and things connected with a trial shall be retained by the trial judge or by the clerk of the trial court for ninety (90) days after sentence or acquittal, as the case may be.
- (2) At any time after a trial, the trial judge or a judge may make such order as

to the custody or conditional release of any document, exhibit or thing as the special circumstances of the case may require.

- (3) Upon the filing of written consents by the accused or his or her counsel, and by the Attorney General or his or her counsel, the trial judge or the clerk of the trial court shall deliver any document, exhibit or thing in accordance with such consents.
- (4) Upon receipt of a copy of a notice of appeal, the trial judge or the clerk of the trial court shall forward to the registrar all documents, exhibits and things connected with the proceedings at the trial, other than such as may already have been released pursuant to subsections (2) and (3).
- (5) Upon the expiry of the period referred to in subsection (1) and if no appeal is filed or, when an appeal is abandoned, the registrar shall return the exhibits to the clerk of the trial court.
- (6) Nothing in this rule affects the provisions of any Act relating to exhibits or things seized or forfeited.

#### **APPEAL BOOK**

- 82.11** (1) Subject to subsection (3), the appellant shall prepare an appeal book which shall contain, where applicable, in the following order:
- (a) an index;
  - (b) a copy of the notice of appeal and notice of cross-appeal;
  - (c) a copy of any order respecting conduct of the appeal;
  - (d) a copy of the information or indictment;
  - (e) a copy of any decision and order of the trial court that is the subject of the appeal or related to it and which is not included in the transcript;
  - (f) a copy of any agreed statement of facts entered at the trial or agreed to under this Rule;
  - (g) any agreement to limit the contents of the transcript or the appeal book;
  - (h) a list of all exhibits;
  - (i) a copy of each documentary exhibit or electronic information entered into evidence, indexed and numbered as at the trial, including affidavits and written admissions; and
  - (j) any other item that was before the trial court which the appellant deems necessary for the appeal.
- (2) In the case of an appeal against sentence, in addition to the items mentioned in subsection (1) there shall be filed
- (a) a copy of any pre-sentence report and victim impact statement;



- (b) a copy of any restitution, probation, or conditional sentence order or any other order that is the subject of the appeal;
  - (c) a copy of the offender's criminal record if one is entered at the trial;
  - (d) any medical or psychiatric reports filed at the time of sentence; and
  - (e) a copy of any exhibits entered at the sentencing and not at the trial.
- (3) Where the appeal is a prisoner appeal, the Attorney General shall, unless otherwise ordered by the Court, prepare the appeal book required under this section and shall forward a copy of it to the appellant free of charge.
  - (4) The respondent may file an appeal book.
  - (5) The parties to an appeal may agree in writing to omit from the appeal book anything the parties consider unnecessary to an appeal.
  - (6) A judge may order that a party may omit anything from an appeal book.
  - (7) The Registrar may refuse to accept an appeal book that does not comply with these Rules or that is not legible.

## **FACTUMS**

### **Appellant's Factum**

- 82.12** (1) An appellant shall prepare an appellant's factum unless
- (a) the appellant is not represented by counsel and has stated in the notice of appeal that he or she desires to present oral argument only; or
  - (b) the Court orders otherwise.
- (2) The appellant's factum shall be signed by the appellant, the appellant's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of
- (a) Part I, containing a concise summary of the facts relevant to the issues in the appeal, including identification of the trial court and the result in the trial court, with reference to the evidence by page and line of the transcription;

- (b) Part II, containing a concise statement setting out clearly and particularly the points in issue in the appeal;
- (c) Part III, containing a concise statement of the argument, law and authorities relied on;
- (d) Part IV, containing a statement of the order that the Court will be asked to make; and
- (e) Schedule A, containing a list of the authorities relied on; and
- (f) Schedule B, containing
  - (i) an index,
  - (ii) the headnote and the relevant portions of the text, or the complete text if most of the text is relevant to the issues in the appeal, of the authorities relied on, and
  - (iii) all relevant provisions of statutes, regulations and by-laws, with each authority.

**Respondent's Factum**

- 82.13** (1) The respondent shall prepare a respondent's factum unless
- (a) the respondent is not represented by counsel and has given notice that he or she desires to present oral argument only; or
  - (b) the Court orders otherwise.
- (2) The respondent's factum shall be signed by the respondent, the respondent's counsel, or on counsel's behalf by someone he or she has specifically authorized, and shall consist of,
- (a) Part I, containing a statement of the facts in the appellant's summary of relevant facts 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 evidence by page and line of the transcript as is necessary;
  - (b) Part II, containing the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise statement of the law and the authorities relating to that issue;

- (c) Part III, containing a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities relating to that issue;
- (d) Part IV, containing a statement of the order that the court will be asked to make;
- (e) Schedule A, containing a list of the authorities relied on; and
- (f) Schedule B, containing
  - (i) an index,
  - (ii) the headnote and the relevant portions of the text, or the complete text if most of the text is relevant to the issues in the appeal, of the authorities relied on, and
  - (iii) all relevant provisions of statutes, regulations and by-laws.

**PERFECTING APPEALS**

- 82.14** (1) Subject to subsection (2), within 30 days after being notified that the evidence has been transcribed or, if no evidence is to be transcribed, within 30 days after the issue of the notice of appeal, an appellant shall serve on each party a copy of the appeal book, and a copy of the appellant's factum, if one is required, and file with the Registrar
- (a) if the notice of appeal was served under subsection 82.05(4), the original notice of appeal with proof of service;
  - (b) four copies of the appeal book,
  - (c) four copies of the appellant's factum, if one is required, and
  - (d) a certificate that service has been made under paragraphs (a) and (b) where applicable.
- (2) Where the appeal is a prisoner appeal, within the time prescribed by subsection (1)
- (a) the Attorney General shall file with the Registrar four copies of the appeal book,
  - (b) the appellant shall file with the Registrar five copies of the appellant's factum, if one is required, and

- (c) the Registrar shall forward to the respondent a copy of the appellant's factum, if any.
- (3) Within 30 days after service of the appellant's factum, the respondent shall
  - (a) file with the registrar four copies of the respondent's factum, if one is required; and
  - (b) serve on each party a copy of the respondent's factum, if one is required.
- (4) When subsection (1) or (2) are complied with, the appeal is perfected and the Registrar, under the direction of the Chief Justice, may, as appeals are perfected, set times for the hearing thereof and in so doing shall have regard as much as possible to advice from the parties or their counsel as to the probable length of the hearing and convenient dates thereof.

#### **HEARING OF APPEALS**

- 82.15** (1) The Registrar shall give each party notice of the time set for the hearing of an appeal under subsection 82.14(4).
- (2) The Registrar shall file a certificate in **Form 82F** indicating that each of the parties has been notified as required by subsection (1) and such certificate shall be *prima facie* evidence that such notice has been received by the parties.
- (3) On the hearing of an appeal the appellant and the respondent shall be restricted in their argument to the grounds set out in their respective notices of appeal and factums unless leave of the court is obtained to argue matters not set out in their grounds of appeal or factums.
- (4) On application by any party to an appeal, the court or a judge, may, in special circumstances, order an early hearing of an appeal and may give any necessary directions.

#### **ABANDONMENT OF APPEALS**

- 82.16** (1) An appellant who wishes to abandon an appeal may, before the hearing of the appeal
- (a) serve on the respondent a notice of abandonment in **Form 82G**, and
  - (b) file with the Registrar the notice with proof of service.
- (2) A notice of abandonment may be signed by the appellant or his or her counsel but if it is signed by the appellant, his or her signature shall be

verified by affidavit or witnessed by a solicitor or by an officer of the penal institution in which the appellant is confined.

- (3) An abandoned appeal shall be deemed to be dismissed without any formal order being necessary but the respondent may apply, without notice, to the Court or a judge for a formal order dismissing the appeal.
- (4) Notwithstanding subsection 82.16(3), a judge may at any time, on notice of motion, grant leave to withdraw a notice of abandonment if it is in the interest of justice to do so.

#### **TIMING WITH RESPECT TO INTERLOCUTORY APPLICATIONS**

- 82.16.1** (1) Any party may seek from the Registrar a date and time for the hearing of an interlocutory application. When the date and time are set, the applicant shall serve copies of the documentation to be relied on, on all other parties at least four clear days before the hearing, unless the application is made by consent or the court orders otherwise.
- (2) Any written response to the application shall be filed with the Registrar and served on all other parties at least one clear day before the hearing.

#### **APPLICATIONS FOR DISCLOSURE, PRODUCTION OF THIRD PARTY RECORDS AND FRESH EVIDENCE**

- 82.17** (1) In seeking to obtain disclosure, the production of third party records and to adduce fresh evidence on appeal and pursuant to the applicable provisions of the *Code*, the applicant shall file and serve a notice of motion, which shall concisely set out the nature of the disclosure, the third party records being sought and/or the evidence sought to be adduced and the manner in which such evidence is said to bear on a decisive or potentially decisive issue at trial.
- (2) The notice of motion shall
- (a) be supported by affidavit(s) as to the facts raised and to be relied on in support of the application;
  - (b) set out the order sought; and
  - (c) be accompanied by a memorandum of the points of argument and a list of authorities relied on.
- (3) A party opposing the application shall file with the Registrar any affidavit or memorandum on which that party relies and serve a copy of it on the applicant and on any other parties. The memorandum shall contain the

points of argument and a list of authorities relied on.

- (4) Motions for disclosure and the production of third party records shall be made to the panel hearing the appeal, and they shall be scheduled at a time prior to the panel hearing argument on the merits of the appeal.
- (5) Unless otherwise ordered, a motion to adduce fresh evidence shall be made to the panel hearing the appeal and at the same time as the argument of the appeal on its merits.
- (6) Either prior to or after ruling on the admissibility of the proposed fresh evidence, the Court may, of its own motion or that of counsel, order that the evidence be taken by oral examination before the Court, by affidavit, by commission evidence, by deposition or in any other manner that the Court directs.

**APPLICATION FOR ASSIGNMENT OF COUNSEL UNDER SECTION 684 OF THE CRIMINAL CODE**

- 82.18** (1) An application by an appellant or a respondent for the assignment of counsel under section 684 of the *Code* shall be made by filing the original and two copies of a Notice of Motion for Assignment of Counsel in **Form 82H**, together with an affidavit of the appellant or respondent in **Form 82I**.
- (2) The Registrar shall provide a copy of the Notice of Motion and the affidavit to the Attorney General and the Office of Legal Aid.

**RELEASE FROM CUSTODY PENDING APPEAL**

- 82.19** (1) An application, under the provisions of section 679 of the *Code*, for release from custody pending appeal shall be made by notice of motion.
- (2) An application for release pending appeal shall not be heard unless the appellant has filed a notice of appeal as well as a request for transcript and certificate in **Form 82C**.
- (3) Where the appeal is from sentence only, a judge shall determine the application for leave to appeal the sentence before determining the application for release pending appeal.
- (4) The application shall be accompanied by an affidavit or affidavits, including where practicable an affidavit of the appellant, setting forth
- (a) the particulars respecting the conviction and sentence;
  - (b) any grounds of appeal not specified in the notice of appeal;
  - (c) the applicant's
    - (i) age, marital status, and dependents if any,
    - (ii) places of residence in the three years preceding conviction,

- (iii) proposed place of residence if released,
    - (iv) employment prior to conviction and expected employment and address of employment if released, and
    - (v) criminal record, if any; and
  - (d) where the appeal is from sentence only, any unnecessary hardship that would be caused if the appellant were detained in custody.
- (5) Where the Attorney General desires to assert that the detention of the applicant is necessary in the public interest and to rely on material other than that contained in the material filed by the applicant, the Attorney General shall file an affidavit setting out the facts on which the Attorney General relies.
- (6) The applicant and the Attorney General may, with leave of the Court, cross-examine on affidavits filed by the opposite party.
- (7) A judge may dispense with the filing of the affidavits referred to in this Rule and act on a statement of facts agreed on by the appellant and the Attorney General.
- (8) The applicant shall file a concise memorandum of fact and law and any portions of the transcript of the trial or hearing that may be required, in support of the requirements stipulated by section 679 of the *Code* for release pending the appeal and, if applicable, in support of the argument that the appeal or application for leave to appeal is not frivolous. The Attorney General shall file a memorandum in reply.
- (9) When granting an application for release, the judge may make a separate order requiring the applicant to file his or her factum within a specified time period after receipt of the transcript by the Registrar, or after release is granted, if the transcript has been filed. The factum shall not be filed after the time specified except with the leave of the Chief Justice or the Court.
- (10) Unless otherwise ordered by the judge hearing the application, all orders for release from custody pending appeal shall contain the following conditions:
  - (a) that the appellant will surrender into custody at the courthouse or at such other place as may be specified in the order, on the day of the hearing of the appeal or such other day as may be specified in the order;

- (b) that the appellant acknowledges that failure to surrender into custody in accordance with the terms of the order will be deemed to constitute an abandonment of the appeal;
  - (c) that the appeal will be pursued with all due diligence;
  - (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.
- (11) Where release pending appeal is granted, the appellant shall prepare and file with the Registrar the order for judicial interim release, any recognizance or undertaking, which may take the form provided in the *Code* or the *Youth Criminal Justice Act* and a notice to release from custody in **Form 82J**.
  - (12) Where release is granted in a prisoner appeal, the Attorney General shall prepare the documentation required under subsection (10).

**VARIATION OF AN ORDER FOR RELEASE FROM CUSTODY PENDING APPEAL**

- 82.20** (1) A judge may, on cause being shown, revoke an order previously made under section 679 of the *Code* and may make any order that could have been made under that section.
- (2) An order for a new recognizance or undertaking varying a condition may be made by a judge without the attendance of counsel, upon the filing of the written consent of counsel for the respondent.
- (3) Where the appellant seeks an order under subsection (1) which varies a condition contained in an order made under section 82.19, the material filed in support of the application shall contain a summary of the status of the appeal, an explanation for any failure to comply with these rules and, where applicable, a statement of the earliest feasible date on which the appeal may be heard.

**POST-SENTENCE REPORT**

- 82.21** (1) A party to the appeal may apply to the Court for an order that a post-sentence report be prepared.
- (2) A party to the appeal may, with consent of the other party or with leave of the Court, file post-sentence information.
- (3) Where the preparation of a post-sentence report is ordered by the Court and the subject of the report is in a penal institution, the report shall be prepared in writing by the appropriate official of the penal institution and filed with the Registrar within any time limits specified in the order, and the Registrar shall forward a copy of the report to counsel for each party to the appeal and to any party who is not represented by counsel.



- (4) Where a post-sentence report is ordered by the Court and the subject of the report is not in a penal institution, the report shall be prepared by a probation officer and filed with the Registrar within any time limits specified in the order, and the Registrar shall forward a copy of the report to counsel for each party to the appeal and to any party who is not represented by counsel.

#### **FORMAL ORDER**

- 82.22** (1) On a decision having been filed or deemed filed, an order shall be prepared by the appellant or may be prepared by any party stating the disposition of the appeal as directed by the Court and served on the opposite party. The order shall be approved by the judge who acted as chairperson of the appeal panel, or in the absence of that judge, the next senior judge on the panel, and shall be signed by and filed with the Registrar, who shall then notify all parties of the filing.
- (2) Any party to an appeal who wishes the order amended to better express the intent of the Court's decision may apply to the Court, which may correct or otherwise amend the formal order, and the amended order shall then without a change of date, be signed and entered by the Registrar as the formal order disposing of the appeal.

#### **EXTENSION OR ABRIDGEMENT OF TIME**

- 82.23** (1) Any time prescribed by this Rule, including the time prescribed for the filing of a notice of appeal, may be extended or abridged by the Court or a judge thereof, before or after the expiration of the period.
- (2) Notice of an application to extend or abridge the time shall be given to the opposite party, unless such application is made by consent or unless otherwise directed by the Court.
  - (3) An application to extend or abridge the time for filing a notice of appeal shall include an affidavit and any other relevant material indicating
    - (a) the potential merits of the appeal, including any questions of law that may be in issue on the appeal;
    - (b) an explanation for the failure to have filed the notice of appeal in accordance with the time limits prescribed by these Rules;
    - (c) whether the applicant had demonstrated an intention to appeal within the appeal period;
    - (d) the existence of any prejudice to the intended respondent and any third parties if the appeal were allowed to proceed;
    - (e) the existence of any special circumstances that might cause an

- (f) injustice to the applicant if the application were refused; and any other information or factors that might reasonably have a bearing on the application.
- (4) An appellant who is not represented by counsel may apply for an extension or abridgement of time by including with the proposed **Form 82B** notice of appeal an application for such extension. The Court may, on notice to the Attorney General and on giving the Attorney General an opportunity to be heard, consider the application and either grant or refuse the requested extension. The Registrar shall send to each party a copy of the Court's order.

**EFFECT OF NON-COMPLIANCE WITH RULES**

- 82.24**
- (1) Subject to subsection 82.23(3), non-compliance with these Rules does not render a proceeding void, but where non-compliance occurs, the Court may give any direction or make any order it considers appropriate to give effect to the intent of these Rules.
  - (2) Where a party to an appeal or their counsel fails to perfect the appeal within a period of six months after the filing of the transcript or, where no transcript is filed, within a period of six months after the filing of the notice of appeal, or a party or their counsel otherwise fails to comply with these Rules, the Court, on application of any other party to the appeal or of its own motion, on giving to the parties such notice, if any, as the Registrar is able to effect, or without notice if reasonable notice cannot be effected, may
    - (a) strike out the appeal;
    - (b) direct the appellant to perfect the appeal within a specified time;
    - (c) fix a date for hearing of the appeal; or
    - (d) make any other order as may be just.
  - (3) Where the notice of appeal was filed prior to the coming into effect of this Rule and six months have passed since the Rule came into effect with no order or step being made or taken under this Rule, the appeal shall be deemed to have been abandoned and the Registrar shall file a notice of deemed abandonment.
  - (4) On filing a notice of deemed abandonment of the appeal, the Registrar shall send a copy of the notice by ordinary mail or by facsimile transmission to counsel of record or to the parties at the last known addresses, if any, of such counsel or parties indicated in the documents filed in the appeal.
  - (5) Inability or failure of the Registrar to effect any notice required by this Rule shall not affect the deemed abandonment or striking out of an appeal.
  - (6) No proceedings shall thereafter be taken in any appeal deemed abandoned

or struck out under this Rule unless the appeal is reinstated by the Court, which the Court may do on application and on such terms as the Court deems just.

- (7) The Court may, on application by a party prior to the date on which the appeal would be deemed to be abandoned, on such terms as the Court deems just, order that the appeal not be deemed abandoned.

## **GENERAL**

### **Timing with Respect to Motions**

- 82.25** (1) Any party may seek from the Registrar a date and time for the hearing of a motion. When the date and time are set, the applicant shall serve copies of the documentation to be relied on, on all other parties at least four clear days before the hearing, unless the application is made by consent or the Court orders otherwise.
- (2) Any written response to the application shall be filed with the Registrar and served on all other parties at least one clear day before the hearing.

### **Manner of Service of Other Notices and Documents in Prisoner Appeals**

- 82.26** (1) In a prisoner appeal, service of all notices and other documents pertaining to the appeal, other than the notice of appeal, shall be effected by delivery to the senior official of the penal institution in which the appellant is imprisoned.
- (2) Where a notice or document is initiated by the appellant, the official shall endorse on it the date of receipt, return a copy so endorsed to the appellant and forthwith forward the original to the Registrar. The Registrar shall file the original and forward a copy to the Attorney General.
- (3) Where a notice or document is initiated by the Attorney General, the original shall be filed with the Registrar. Service shall be effected by delivery to the senior official of the penal institution in which the appellant is imprisoned who shall forthwith deliver the notice or document to the appellant. Delivery may be carried out by
- (a) delivery to the official;
  - (b) prepaid registered or certified mail or courier to the official;
  - (c) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages;  
or
  - (d) any other manner that may be directed by the Court.

### **Manner of Service of Other Notices and Documents in All Other Appeals**

- 82.27** (1) In all other appeals, where the Attorney General is not the appellant, or a party is not represented by counsel, or both, service of notices and documents, other than the notice of appeal,
- (a) when directed to the Attorney General shall be effected by
    - (i) service on legal counsel instructed by the Attorney General,
    - (ii) prepaid registered mail to the Attorney General or counsel directed by the Attorney General, or
    - (iii) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages; and
  - (b) when directed to another party, shall be effected by
    - (i) personal service,
    - (ii) prepaid registered or certified mail to the address of the party set out in the notice of appeal or as filed with the Registrar,
    - (iii) verified facsimile transmission, except in respect of transcripts, appeal books, factums and other documents exceeding 10 pages, or
    - (iv) any other manner that may be directed by the Court.
- (2) In all appeals referred to in this Rule, the original notice or document, and documents evidencing proof of service, if necessary, shall be filed with the Registrar.

*R. v. McInnis*, 2018 PECA 27

The Court of Appeal granted intervenor status to the Mi'kmaq Confederacy of P.E.I. a friend of the court rather than as an added party in a sentencing appeal. The Court determined the proposed intervenor demonstrated a sufficient interest in the subject matter of the appeal and that it would advance different and valuable insights and perspectives that could further the court's determination of the matter and promote effective adjudication by assuring all matters are presented on appeal. The intervention would not significantly lengthen the appeal proceeding.

*R. v. Doyle*, 2016 PECA 9

The motions judge dismissed the appellant's motion for stay pending appeal on the basis that the appeal and motion are premature. The recusal process to be followed is that the application for recusal based on bias should be put to the trial judge, which was done in this case. An appeal of the verdict can then be made to the Court of Appeal and reasonable apprehension of bias can be cited as a ground of appeal.