

RULE 79

PRINCE EDWARD ISLAND RULE OF PRACTISE RESPECTING APPLICATIONS AND HEARINGS CONCERNING A REDUCTION IN THE NUMBER OF YEARS OF IMPRISONMENT WITHOUT ELIGIBILITY FOR PAROLE

Short Title

79.01 This Rule may be cited as the *Prince Edward Island Criminal Rule of Practice Respecting Reduction in the Number of Years of Imprisonment Without Eligibility for Parole*.

Interpretation

79.02 In this Rule,

"applicant" means a person who makes an application and includes, according to the context, counsel acting for that person; (demandeur)

"application" means an application made pursuant to subsection 745(1) of the Criminal Code; (demande)

"Attorney General" means the Attorney General of Prince Edward Island and includes counsel acting for the Attorney General; (procureur general)

"Chief Justice" means the Chief Justice of the Supreme Court of Prince Edward Island; (juge en chef)

"judge" means the judge of the Supreme Court of Prince Edward Island designated by the Chief Justice to empanel a jury pursuant to subsection 745(2) of the *Criminal Code* in respect of an application; (juge)

"Registrar" means the Registrar of the Supreme Court of Prince Edward Island. (greffier)

APPLICATION

Contents of Application

79.03 An application shall be in writing in Form 79.03A and shall contain

- (a) the applicant's given names, surname and date of birth;
- (b) the name and place of each institution in which the applicant has been detained since the time of the applicant's arrest for the offence that is the subject of the application and the date of entry into each of those institutions;

- (c) the offence that is the subject of the application, the sentence imposed, the dates of conviction and sentencing and the place of the trial;
- (d) the applicant's number of years of imprisonment without eligibility for parole;
- (e) the applicant's criminal record;
- (f) the grounds to be relied on, stated precisely and concisely;
- (g) a statement of the relief sought; and
- (h) the applicant's address for service.

Affidavit

79.04 An application shall be supported by an affidavit of the applicant in Form 79.04A.

Filing of Application

79.05 An application, together with an affidavit referred to in Section 79.04, shall be filed with the Registrar.

Service

79.06 An applicant shall cause the application to be served on

- (a) the Solicitor General of Canada;
- (b) the Attorney General; and
- (c) the officer in charge of the institution in which the applicant is detained.

79.07 Service of an application may be effected by registered mail, in which case it shall be deemed to have been effected on the seventh day after the day on which it was mailed.

79.08 Proof of service of an application may be established by filing with the Registrar an affidavit of the person who effected the service or by any other means satisfactory to the Chief Justice.

Delivery of Application

79.09 An application shall be delivered by the Registrar to the Chief Justice on receipt by the Registrar of proof of service of the application in accordance with sections 79.06 to 79.08.

Determination

79.10 (1) On receipt of an application, the Chief Justice shall determine whether subsection 745(1) of the Criminal Code applies to the

applicant.

- (2) Where the Chief Justice determines that subsection 745(1) of the Criminal Code does not apply to an applicant, the Chief Justice shall dismiss the application and, where the Chief Justice determines that that subsection applies to an applicant, the Chief Justice shall send the application to the judge.

Notice

79.11 On receipt of an application, the judge shall

- (a) set the date and place for a preliminary hearing; and
- (b) send a written notice of the date and place of the preliminary hearing to the Attorney General.

79.12 On receipt of a notice referred to in paragraph 79.11(b), the Attorney General shall cause a written notice of the date and place of the preliminary hearing to be sent by registered mail to, or served on,

- (a) the applicant;
- (b) the Solicitor General of Canada; and
- (c) the officer in charge of the institution in which the applicant is detained.

79.13 A copy of each notice referred to in paragraph 79.11(b) or section 79.12 shall be filed with the registrar.

PRELIMINARY HEARING

Procedure

- 79.14** (1) At a preliminary hearing held in connection with an application, the judge may determine any matter that may promote a fair and expeditious hearing of the application and may make any orders and give any directions necessary for the hearing of the application.
- (2) At the preliminary hearing, the applicant and the Attorney General shall inform the judge of any evidence they intend to present and of the manner in which they intend to present it.
 - (3) Where, at a preliminary hearing the applicant or the Attorney General informs the judge that the applicant or the Attorney General proposes to present evidence by affidavit, the judge may require the attendance of the deponent for the purpose of cross-examination and may give directions regarding the use to be made of that evidence at the hearing of the application.

- (4) The judge may adjourn the preliminary hearing as the judge considers appropriate.

Parole Eligibility Report

- 79.15** (1) At the preliminary hearing, the judge may order that a parole eligibility report be prepared in respect of an applicant and having regard to the matters referred to in subsection 745(2) of the Criminal Code.
- (2) A parole eligibility report in respect of an applicant shall be prepared by a person designated by the Solicitor General of Canada and shall contain
 - (a) a summary of the applicant's social and family background;
 - (b) a summary of the applicant's classification and discipline evaluations;
 - (c) a summary of the regular reports on the applicant's conduct;
 - (d) a summary of any psychological and psychiatric assessments that have been made of the applicant; and
 - (e) any other information relevant to a complete description of the applicant's character and conduct.
 - (3) A parole eligibility report in respect of an applicant may contain any information relevant to the issue of the parole eligibility of the applicant.
 - (4) Where the judge at a preliminary hearing orders a parole eligibility report to be prepared, the judge shall adjourn the preliminary hearing to allow for the preparation of that report.
 - (5) A parole eligibility report shall be filed with the registrar.
 - (6) The registrar on receipt of a parole eligibility report in respect of an applicant shall deliver a copy of the report to the applicant and to the Attorney General.

Preliminary Hearing Resumed

- 79.16** (1) The judge, on being informed that a parole eligibility report has been filed, shall notify the applicant and the Attorney General that the preliminary hearing is being resumed.
- (2) In setting the date for the resumption of a preliminary hearing, the judge shall allow at least 30 days for the applicant and the Attorney General to study the parole eligibility report in respect

of the applicant.

Cross-Examination on Report

79.17 Where the applicant or the Attorney General disputes any part of the parole eligibility report in respect of the applicant, the applicant or the Attorney General may require the attendance of the author of that report at the preliminary hearing for the purpose of cross-examination.

Judge to Decide in Case of Dispute

79.18 In the case of a dispute at a preliminary hearing, the judge shall decide what parts of the parole eligibility report in respect of the applicant and what additional evidence, if any, are to be presented at the hearing of the application.

Conclusion of Preliminary Hearing

- 79.19** (1) At the end of the preliminary hearing, the judge shall
- (a) order that a jury be empanelled and determine the date and place for the hearing of the application; or
 - (b) where the judge considers that subsection 745(1) of the Criminal Code does not apply to the applicant, refer the application back to the Chief Justice.
- (2) Where an application is referred back to the Chief Justice pursuant to paragraph 1(b) and the Chief Justice determines that subsection 745(1) of the Criminal Code does not apply to the applicant, the Chief Justice shall dismiss the application.

HEARING OF APPLICATIONS

Jury

- 79.20** (1) A jury referred to in subsection 745(2) of the Criminal Code shall be empanelled in accordance with Part XX of that Act with the modification set out in subsection (2) and with such other modifications as the circumstances require.
- (2) For the purposes of subsection (1) the applicant and the Attorney General are entitled to the same number of peremptory challenges as they would be entitled to if the applicant were being tried for the offence that is the subject of the application.

Powers of Judge

- 79.21** (1) At the hearing of an application, the judge may

- (a) hold a voir dire on the admissibility of the parole eligibility report referred to in subrule 79.15(1) in respect of the applicant;
 - (b) subject to the rules of evidence applicable in respect of a sentencing hearing, admit any evidence that the judge considers credible and trustworthy; and
 - (c) order any investigations that the judge considers necessary.
- (2) The judge at the hearing of an application may adjourn the hearing as the judge considers appropriate.

Standing

79.22 No person other than the applicant and the Attorney General may present evidence at the hearing of an application.

Order of Presentation of Evidence

79.23 At the hearing of an application, the applicant shall present evidence first and may, if the judge so permits, present rebuttal evidence after the evidence of the Attorney General is presented.

Determination by Chief Justice

- 79.24** (1) Where, after the evidence is presented at the hearing of an application, the judge considers that subsection 745(1) of the Criminal Code does not apply to the applicant, the judge shall refer the application back to the Chief Justice and adjourn the hearing pending a determination by the Chief Justice.
- (2) Where an application is referred back to the Chief Justice pursuant to subsection (1) and the Chief Justice determines that subsection 745(1) of the Criminal Code does not apply to the applicant, the Chief Justice shall dismiss the application and the judge shall discharge the jury.

Address to the Jury

79.25 Where, after the evidence is presented at the hearing of an application, the judge considers that subsection 745(1) of the Criminal Code applies to the applicant, the applicant, followed by the Attorney General, shall address the jury.

Address by Judge

79.26 After the applicant and the Attorney General have addressed the jury pursuant to section 79.25, the judge shall address the jury on the applicable law and evidence.

Decision of Jury

79.27 The jury at the hearing of an application shall base its decision exclusively on the evidence presented to it at the hearing.

GENERAL PROVISIONS

General Powers of Judge

- 79.28** (1) The judge may at any time make
- (a) an order setting time limits;
 - (b) an order requiring that an applicant be brought before the court; and
 - (c) any further orders in relation to an application that the judge considers necessary in the interest of justice.
- (2) Where the judge is of the opinion that it is necessary to do so in the interest of public morals, the maintenance of order or the proper administration of justice, the judge may, at any time, order that any proceeding in relation to an application be held in camera or may order a total or partial ban on the publication of any evidence presented at any such proceeding.
- (3) Where a judge makes an order pursuant to paragraph (1)(b), section 527 of the Criminal Code applies with such modifications as the circumstances require.

Transcript

79.29 A transcript of all proceedings in connection with an application shall be prepared and filed with the registrar.

Effective Date

79.30 This rule shall come into force on the 1st day of September, 1992. This rule is made pursuant to Section 745 of the *Criminal Code of Canada* on the 15th day of June, 1992, by The Honourable Kenneth R. MacDonald, Chief Justice of the Prince Edward Island Supreme Court - Trial Division, and becomes effective on the 1st day of September, 1992, upon proclamation in the Canada Gazette and the Royal Gazette of Prince Edward Island.

Kenneth R. MacDonald
Chief Justice of the Supreme Court
of Prince Edward Island
- Trial Division.

79.31 This rule was amended as necessitated by the proclamation of the *Judicature Act* by the Judges of the Supreme Court of Prince Edward Island on the 25th of June, 2009, to become effective on the 1st day of September, 2009.

Jacqueline R. Matheson

Chief Justice of the Supreme Court of Prince Edward Island