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RULE 81

SUMMARY CONVICTION APPEAL RULE

This rule is made pursuant to the provisions of section 482 of the *Criminal Code*, R.S.C. 1985, c. C-46 and amendments by the Judges of the Supreme Court of Prince Edward Island.

APPLICATION AND INTERPRETATION

81.01 In these rules,

- (a) "Code" means the *Criminal Code* R.S.C. 1985, c. C-46 and amendments;
- (b) the interpretation and definition sections of the Code apply;
- (c) "Appeal" means an appeal from a summary conviction court pursuant to Part XXVII of the Code;
- (d) "Appeal Court" means a judge of the Supreme Court - Trial Division;
- (e) "Judge" means a Judge of the Supreme Court - Trial Division; and
- (f) "Registrar" means the registrar of the Supreme Court.

Notice of Appeal

- 81.02** (1) Every notice of appeal under or by virtue of section 815 of the Code shall be dated and signed by the appellant or his counsel, directed to the registrar and in conformity with Form 81A or 81B, as the case may be.
- (2) The notice of appeal shall set forth
- (a) the summary conviction court that made the conviction or order appealed from or imposed the sentence appealed against;
 - (b) the conviction or order appealed from or the sentence appealed against, including dates;
 - (c) the appellant's address for service, including telephone number;

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- (d) the grounds upon which the appeal is based;
 - (e) the nature of the order which the appellant intends to ask the court to make;
 - (f) whether or not the appellant desires to be present in person or by counsel on the hearing of the appeal; and
 - (g) whether the appellant desires to present his case in writing, by oral presentation or both.
- (3) Where the appellant is the defendant the notice of appeal shall be in conformity with Form 81A and where the appellant is the prosecutor or informant the notice of appeal shall be in conformity with Form 81B.

Service and Filing

- 81.03** (1) The appellant shall within 30 days after the conviction or order appealed from or sentence appealed against, whichever is the later,
- (a) file the notice of appeal with the registrar and serve a copy on the summary conviction court from which the appeal is taken; and
 - (b) if the respondent is Her Majesty the Queen in right of Prince Edward Island, serve the notice of appeal upon the respondent by sending a true copy thereof by prepaid registered mail to the Crown attorney's office in Charlottetown or by personal service upon the Crown attorney or a member of his staff; or
 - (c) if the respondent is Her Majesty the Queen in the right of Canada, serve the notice of appeal by sending a true copy thereof by prepaid registered mail to the counsel or agent who represented Her Majesty the Queen in right of Canada at the trial or by personal service upon the said counsel or agent or a member of his staff; and
 - (d) in other cases, cause the notice of appeal to be served on the respondent personally or on such other person or in such manner as a judge may direct.
- (2) The appellant shall, except where there has been personal service under subrule (1)(b) or (c), supra, and service has been admitted on

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the notice of appeal, file with the registrar proof of service of the notice of appeal, in affidavit form, not later than 10 days after the last day for service of the notice of appeal.

Transmission of Materials

- 81.04** (1) The registrar shall, forthwith after the filing of the notice of appeal, deliver to or send by prepaid registered mail to the summary conviction court a copy of such notice of appeal;
- (2) The summary conviction court shall, within 10 days after receipt of the notice of appeal, transmit to the registrar the material referred to in section 821(1) of the Code.

Transcripts

- 81.05** (1) The appellant shall, unless a judge otherwise orders, file with the notice of appeal a certificate in Form 81C signed by a court reporter, stating the number of copies of the transcript of evidence taken in the summary conviction court, including any reasons for judgment or sentence, that have been ordered by the appellant and that will be provided by the reporter;
- (2) The appellant shall order one copy for the Appeal Court and one copy for each of the respondents;
- (3) Upon signing the certificate, the reporter shall proceed with reasonable diligence to prepare and certify the transcript and upon completion shall notify the appellant;
- (4) The appellant shall obtain the transcript from the reporter and shall deposit the required copies with the registrar within five days of being informed by the reporter that the transcript was ready and shall cause a copy thereof to be delivered or sent by prepaid registered mail to the respondent at the address for service on file with the Appeal Court or in such other manner as a judge shall direct;
- (5) The court may dispense with a transcript of evidence if the parties agree on a statement of facts, and upon such an agreement, a signed copy of the agreed statement of facts shall be filed with the registrar within thirty days after the notice of appeal has been filed;
- (6) An agreed statement of facts may be signed by counsel for the

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parties or personally by the parties or either of them if not represented by counsel;

- (7) The parties to an appeal may agree in writing or a judge may, on motion, order that part of the transcript be omitted; and
- (8) Where an agreement or order is made under subrule (5) or (7) the appellant or Attorney General shall modify or withdraw his request for preparation of a transcript.

Entry for Hearing

- 81.06** (1) An appeal is ready to be set for hearing as soon as:
- (a) the material referred to in section 821(1) of the Code has been received by the registrar;
 - (b) the required copies of the transcript of evidence taken before the summary conviction court have been received by the registrar or a judge has dispensed with or made some other order with respect to the transcript;
 - (c) any application brought under section 822(4) of the Code has been disposed of; and
 - (d) the appellant's memorandum (Rule 81.09(1)) has been filed with the registrar.
- (2) As soon as an appeal has been made ready for hearing, the registrar shall, subject to the directions of the Appeal Court,
- (a) cause the appeal to be set down for hearing and cause at least fourteen days notice of such hearing to be given to the appellant and the respondent; or
 - (b) arrange a special date for the hearing of the appeal, where so ordered by a judge as a result of an application brought by the appellant or respondent, with such hearing date to be at least 14 days after the judge's order unless all parties otherwise consent.
- (3) Unless a judge otherwise orders, service of a notice under clause 2(a) above, and service of a notice of application under clause 2(b) above, shall be by prepaid registered mail to the party or parties, as

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the case may be, at their address for service on file with the Appeal Court or by personal service.

- (4) The registrar shall file a certificate that each of the parties has been notified as required by Rule 81.06(2)(a) and such certificate shall be prima facie evidence that such notice has been received by the parties.

Trial de novo

- 81.07** (1) An application under section 822(4) of the Code for a trial de novo shall be made by application before a date for the hearing of the appeal has been fixed.
- (2) At least seven days' notice of any such application shall be given to the opposite party in the manner provided by Rule 81.03.

Written Appeal

- 81.08** If a party does not wish to be present on the hearing of the appeal, he shall file a document to that effect with the court prior to the date fixed for the hearing, including in such document his argument on appeal.

Memorandum on Appeal

- 81.09** (1) Unless otherwise ordered by a judge, the appellant shall within 20 days of the filing of the transcript of the evidence or agreed statement of facts, file with the registrar and serve upon the respondent a memorandum which shall contain the following:
- (a) the grounds of appeal with each ground of appeal followed by a statement of the argument, law and authorities relied upon together with references to the evidence to be discussed, if any, in relation to the ground of appeal;
 - (b) the relief sought;
 - (c) Schedule A containing a list of the authorities referred to; and
 - (d) Schedule B containing the text of all relevant authorities referred to,
- in paragraphs numbered consecutively throughout the memorandum.
- (2) Unless otherwise ordered by a judge, the respondent shall within 20

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days of service upon him of the appellant's memorandum, file with the registrar and serve upon the appellant a memorandum which shall contain the following:

- (a) the grounds of appeal with each ground of appeal followed by a statement of the argument, law and authorities relied upon together with references to the evidence to be discussed, if any, in relation to the ground of appeal;
- (b) the relief sought;
- (c) Schedule A containing a list of the authorities referred to; and
- (d) Schedule B containing the text of all relevant authorities referred to,

in paragraphs numbered consecutively throughout the memorandum.

- (3) On the hearing of the appeal, the appellant and the respondent shall be restricted in their argument to the grounds set out in the notice of appeal unless leave of the court is obtained to argue other matters.

Failure of Appearance

81.10 (1) If an appellant both

- (a) fails to appear personally or through counsel on the day fixed for the hearing, and
- (b) fails to file a written argument on appeal, the Appeal Court may dismiss the appeal.

(2) If a respondent both

- (a) fails to appear personally or through counsel on the day fixed for the hearing, and
- (b) fails to file a written argument on appeal, the Appeal Court may proceed with the appeal in the absence of the respondent.

Abandoned Appeals

81.11 (1) When an appellant wishes to abandon his appeal he shall forthwith file with the court and serve on the respondent a notice of abandonment signed personally, or signed by his counsel and the registrar shall, upon receipt of such notice, forthwith cause a copy of

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such notice to be delivered to or served upon the respondent by prepaid registered mail at the address for service of such party on file with the Appeal Court, or in such other manner as a judge may order.

- (2) The Appeal Court may thereupon dismiss the appeal as an abandoned appeal, without the attendance of the parties or their counsel, if any.
- (3) An appellant who abandons his appeal after the appeal is ready for hearing may have costs awarded against him.

Order after Appeal

- 81.12** (1) The successful party shall take out an order immediately after the disposition of the appeal and shall file a copy of the order with the registrar and serve a copy on the other party.
- (2) The registrar shall cause a copy of the order, including any written reasons or endorsements made by the judge, to be delivered to or be sent by registered prepaid mail to the summary conviction court.

Extension or Abridgment of Time, and Non-compliance

- 81.13** (1) Any time limited by these rules may be extended or abridged by a judge, before or after the expiration of the time prescribed, provided however that the time prescribed under Rule 81.16(1) for the bringing of an application under section 822(4) of the Code shall not be extended;
- (2) Notice of an application to extend or abridge time shall, unless made on consent or unless otherwise ordered by a judge, be given to the opposite party; and
- (3) Non-compliance with these rules shall not render any proceedings void, but a judge may amend any document, give directions, and make any order necessary to validate the proceedings or may set them aside as irregular or otherwise deal with them as may be just.

Application for Release from Custody

- 81.14** An application under section 816(1) of the *Criminal Code* may be made verbally but one clear day's written notice of its presentation must be given to the prosecutor and deposited with the registrar of the Appeal Court.

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Exhibits

- 81.15** (1) Subject to the provisions of section 821 of the *Criminal Code* and of these rules, the summary conviction court shall retain all exhibits received at a trial until 90 days after the expiry of the time limited for giving notice of appeal or any extension thereof.
- (2) Where the exhibits are forwarded to the appeal court under section 821 of the *Criminal Code*, the registrar shall retain custody or control of them until
- (a) the appeal is abandoned;
 - (b) he is served with a notice of appeal to the Appeal Division; or
 - (c) the expiry of 30 days after the time for taking an appeal to the appeal division.
- (3) When an appeal is abandoned, upon the expiry of 30 days after the time for taking an appeal to the Appeal Division, or when the exhibits are returned from the Appeal Division, the registrar shall return the exhibits to the summary conviction court.
- (4) A summary conviction court shall
- (a) upon the expiry of the time limited in subrule (1), if no appeal is taken, or
 - (b) when the exhibits are returned to it under subrule (3),
- return the exhibits to the parties who put them in evidence at the trial.
- (5) Nothing in this rule affects the provisions of any Act relating to exhibits or things seized or forfeiture thereof.

Application for Trial de Novo

- 81.16** (1) An application for a trial de novo as provided by section 822, subsection (4) of the *Criminal Code* shall be made by way of notice of application, with an affidavit in support filed with the registrar of the Appeal Court within seven (7) days of the time for the filing of the notice of appeal, and shall be returnable for hearing not later than fourteen (14) days thereafter;

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- (2) Service of a copy of the notice of application and affidavit shall be made on the opposite party not later than seven (7) days prior to the said return, and proof of service shall be filed at least two (2) days prior to the return date;
- (3) If the application for a trial de novo is granted, the registrar shall set the appeal for hearing in the manner provided by these rules; and
- (4) If a trial de novo is ordered, a judge shall give directions as to the documentation required on the trial.

Failure to Comply with Rule

- 81.17** (1) Where a party to an appeal or his counsel is at fault in failing to comply with this rule, the court on motion of any other party to the appeal or on the motion of the registrar, may
- (a) if the party failing to comply is the appellant
 - (i) dismiss the appeal, or
 - (ii) direct the appellant to comply with the rule within a specified time
 - (b) fix a date for hearing of the appeal, or
 - (c) make such other order as may be just
- (2) If an appeal is not ready to be set for hearing within four months of the date of the trial decision, the registrar may give to the parties a notice of motion returnable before the court or a judge for an order dismissing the appeal for non-compliance with the Rules.

Operative Date

- 81.18** This rule was made pursuant to section 482 of the *Criminal Code* by the Judges of the Supreme Court of Prince Edward Island, with the concurrence of a majority of the judges thereof, at a meeting held on December 21, 1989, to become effective on the coming into force of the new Rules of Civil Procedure with respect to summary conviction appeals commenced on or after that date, and all summary conviction appeals commenced prior to that date shall continue under the rules as existed prior to that date, as if this rule had not been enacted.

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This rule was amended by the Judges of the Supreme Court of Prince Edward Island by adding Rule 81.17 and renumbering old Rule 81.17 as 81.18, at a meeting held on February 28, 1996, to become effective on the 1st day of September 1996.