

July 2003

MEMO TO THE PROFESSION FROM THE COURT OF APPEAL

The Court of Appeal has amended its Civil Rules, Man. Reg. 555/88 with Man. Reg. 94/2003 and Criminal Rules, s. 482 of the *Criminal Code* as Reg. SI/92-106 with Reg. SI/2003-136 which have come into force on July 1, 2003. Both the consolidated Civil Rules (Man. Reg. 555/88) and Criminal Rules (Reg. SI/2003-136) are available at www.manitobacourts.mb.ca. We are informed that the Civil Rules amendment will be published very soon in the Manitoba Gazette. A copy of this memo is available at the Court of Appeal Registry.

These revisions were undertaken in cooperation with the Civil and Criminal Litigation Bar which participated along with members of the court in the preparation of the new rules.

Some of the previous rules were retained with modest revisions and improvements in wording. There are a few new provisions. The following are some of the highlights of the revised rules. The new rules will subsume some of the previous practice guidelines which are now in effect. However, some practice guidelines will remain unchanged, and there are some new practice guidelines. For the convenience of the profession the continuing and the new **practice guidelines, forms (civil and criminal), tariff, and the Language Rule** are attached.

CIVIL:

Forms: The new civil rules incorporate **3 new forms (attached):**

- a) **Notice of appeal** - The new form now requires whether or not oral evidence was adduced in the trial or other proceeding. **[Rule 4] Schedule A Form 1**
- b) **Tariff of Party/Party Costs:** Schedule A.1 has been replaced with a new **Schedule A.1.[Rule 47(2)]**
- c) **Language Rule: Form 1 in Schedule C** has been changed allowing **21 days** notice (previously 14) to determine the language directions on appeal. **[Rule 112]**

There are new rules for:

Motion before a judge or the court	[Rule 43.1 to 43.1(4)]
Affidavit	[Rule 43.2]
Record of court appealed from	[Rule 43.3]
Intervention	[Rule 46.1(1) to (7)]
Rehearing	[Rule 46.2(1) to (12)]

Notice of Cross Appeal

The notice of cross appeal is to be filed **and served** within 15 days after being served with the appellant's notice of appeal. **[Rule 14(1)]**

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Transcript of evidence

Save in exceptional circumstances it must be established that the transcript of evidence has been ordered at the time the notice of appeal is filed. **[Rule 16(1)]**

Further Evidence

The old Rule 21(1) (**new evidence**) has been replaced with **further evidence rules**, which were previously contained in the practice guidelines. **[Rule 21(1) to (7)]**

Filing of appeal book

Where transcript is involved, the appeal book is to be filed 45 days after the **transcript of evidence** is filed instead of after the filing of the Notice of Appeal. **[Rule 22]**

Content of appeal book

The index must also **describe** individually all documents and exhibits. **[Rule 23(1)(a)]**

Appeal where no transcript required

Where no transcript is necessary for an appeal, such as an appeal from an order of a motions judge, the time for filing the appeal book and appellant's factum has been enlarged. Both are to be filed and served within **45** days after the filing of the notice of appeal instead of 30 days. The respondent's factum is to be filed and served within **30** days after the service of the appellant's factum instead of 20 days. **[Rule 28]**

Content of Factum

The factum must include an estimated amount of time required for argument following Part 4. This was subsumed in a previous practice guideline. **[Rule 29(1) Part 4(c)]**

Covers for material

Contents are moved into the practice guidelines.

Non-receipt of transcript

The registrar may now give notice after **6 months** have passed (previously one year) since the transcript became available that the appeal will be deemed abandoned unless the appeal is perfected within 30 days.

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Appeal from chambers order

An appeal from a chambers order by a judge of the Court of Appeal shall be filed and served within 15 days after the **pronouncement** instead of "making" of the order. **[Rule 46(2)]**

There is a new rule that there shall be no appeal from a motion for leave to appeal. **[Rule 46(3)]**

CRIMINAL:

Forms: The new criminal rules incorporate **3 new forms:**

- a) Notice of appeal/Notice of application for leave to appeal by accused **[Rule 3(1)] Form 1, attached**
- b) Notice of Appeal/Notice of application for leave to appeal from acquittal by crown **[Rule 3(1.1) Form 2],**
- c) Notice of Appeal/Notice of Application for leave to appeal from sentence by crown **[Rule 3(1.1) Form 3].**

The forms now require the age and the current mailing address of the accused and whether oral evidence was tendered at trial. Where the accused is the appellant, the initiating document must now be filed in **quadruplicate. [RULE 5(1)].**

NEW:

The registrar will undertake to serve one of the copies to the Attorney General. **[Rule 5(2)]**

Judicial Interim Release

A new practice will eliminate the requirement of counsel to prepare the judicial interim documentation unless requested to do so. **[Rules 33 to 35 - Forms 4 to 7]**

Notice of appeal may be included

If an application is made for leave to appeal from the summary conviction appeal court, a separate notice of appeal shall be filed within seven days after the order granting leave to appeal is made. **[Rule 4(2)]**

Ordering transcript

There is a new provision dealing with the power of the registrar to order an extension of time to order the transcript.

The appellant shall file with the registrar, **at the time the initiating document is filed,**

(a) confirmation from transcription services that the transcript has been ordered; or

NEW:

(b) **a letter to the registrar explaining why the transcript has not been ordered;**
[Rule 11(1)]

If the registrar accepts the letter of explanation, the registrar shall extend the time for the appellant to order the transcript and shall provide the appellant with written notice of the new deadline for ordering the transcript. [Rule 11(2)]

If the letter of explanation is not satisfactory to the registrar, the appellant may, no later than 10 days after being notified by the registrar, apply to a judge in chambers for an extension of time to order the transcript. [Rule 11(3)]

An appeal shall be deemed to be abandoned if

(a) The transcript is not ordered at the time of the initiating document is filed and the time for ordering the transcript is not extended by the registrar or a judge; or

(b) The registrar or a judge extends the time for ordering the transcript but the transcript is not ordered within that extended time period. [Rule 11(4)]

Attorney General to prepare appeal book

In cases involving an appeal as to **acquittal or conviction**, the Attorney General shall prepare and file an appeal book with the registrar

(a) within 30 day after the initiating document is filed, or as soon thereafter as practicable, if the Crown is the appellant; or

(b) within 30 days after the factum is filed by the appellant, or as soon thereafter as practicable, if the Crown is the respondent. [Rule 18(1)]

In cases involving an appeal of a **sentence only**, the Attorney General shall prepare and file the appeal book as soon as practicable after the initiating document is filed. [Rule 18(1.1)]

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Filing and service of factums

The time for filing factums has been enlarged on **sentence appeals**. The appellant's factum is to be filed within **30 days** after the transcript of the sentence hearing has been filed, or where a transcript is not required, the appeal book. The respondent's factum is to be filed within **20 days** after service on the respondent of the appellant's factum. These new time limits replace the previous 14 days. **[Rule 19]**

The filing and service of the appellant's factum on an appeal **regarding conviction, conviction and sentence or acquittal** is now 45 days (previously 30 days) after the transcript of evidence is filed, or where a transcript is not required, the appeal book. The respondent's factum is to be filed within 30 days after service on the respondent of the appellant's factum.

[Rule 20(1)]

Extension of time for filing of factum

The time for filing a factum may be extended, either before or after the expiry of the time limit, if the registrar receives an application in writing that contains an explanation for the delay that is satisfactory to the registrar.

[Rule 21]

Hearing dates

The registrar may now give notice after **three months** (previously six months) have passed since the filing of the transcript, or the appeal book (where a transcript is not required) that the appeal will be deemed abandoned within 30 days of the notice unless the appeal is perfected.

[Rule 25(4)]

Non-receipt of transcript

In cases where a transcript is necessary and has not been received, the registrar may now give notice within **four months** (previously one year) after the initiating document is filed that the appeal will be deemed abandoned within 30 days of the notice unless the appeal is perfected. **[Rule 26]**

Compliance with Rule 11 required

On an application for judicial interim release, where oral evidence was taken at trial, the appellant shall satisfy the judge that he or she has complied with the requirements of Rule 11 (ordering transcript). **[Rule 32]**
