



**MANITOBA
COURT OF APPEAL**

**CONSOLIDATED
PRACTICE DIRECTION**

February 5, 2024

Consolidated Practice Direction

A. Introduction

This Consolidated Practice Direction combines and replaces all previously issued practice-related directions, notices and other documents, with the exception of the documents listed below which remain in force and continue to be posted on the Manitoba Courts' website:

1. Notice Re: Further Evidence Rule dated December 14, 2022;
2. Practice Direction Re: Allegation of Ineffective Assistance of Counsel dated December 14, 2022; and
3. Practice Direction Re: Remote Hearings—Changes to Court of Appeal Rules dated November 3, 2022.

The Court of Appeal will maintain on the Manitoba Courts' website one version of this Direction, incorporating any amendments made to it from time to time. Former versions will be taken down from the website.

This Direction takes effect on February 5, 2024 unless otherwise specified. Amendments to this Direction will take effect on the date that they are published on the Manitoba Courts' website unless otherwise specified.

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1. Civil and Criminal Rules

Both the consolidated Civil Rules (Man. Reg. 555/88) and Criminal Rules (Reg. SI/2003-136) are available at www.manitobacourts.mb.ca.

2. Practice Guidelines

The civil and criminal Court of Appeal Rules are supplemented by the following practice guidelines:

- a. A lawyer should not ordinarily appear as lead or associate counsel on an appeal in a proceeding in which they have sworn an affidavit containing evidence relevant to the issues on appeal. When the appeal is taken from an order dealing with a motion to dismiss an action for delay and the delay complained about might fairly be attributed to fault on the part of the plaintiff's lawyers, the Court is also of the view that independent counsel should be retained.
- b. Where an appellant or their lawyer attends to file a notice of appeal and it would appear on the face of the document that the time for filing has expired:
 - i. the registrar shall permit the notice of appeal to be filed where the time for filing is established by a statute, leaving it to the respondent to raise the issue of late filing as may be appropriate; and
 - ii. the registrar shall not accept the notice of appeal where the time for filing is governed by the Rules of Court, leaving it to the appellant to proceed, by motion, to extend the time.
- c. Preparation of Material for the Court on Appeals:
 - i. All material prepared for the Court in a factum and, where possible, in appeal books shall be typed in font size 14, on 8½" x 11" (21.6 cm x 27.9 cm) white paper, using the right-hand side of the page only, double-spaced, and with a maximum of 26 lines per page. If the material contains footnotes, the font shall be typed in size 10. Quotations from authorities shall be indented and single-spaced, and thus may increase the number of allowable lines per page. Margins shall be no less than 1" (2.54 cm), and paragraphs throughout shall be numbered sequentially.
 - ii. The pages of an appeal factum shall be numbered.

- iii. In the section of an appeal factum summarizing the facts, it is desirable that reference be made to the volume, page and line number of the transcript of evidence, or the specific reference to affidavit material or exhibits contained in the appeal book.
- iv. Where the factum refers to a legal authority, it should note the appropriate tab number in the book of authorities.
- v. The Court reserves the right to reject factums of excessive length. Any factum exceeding 30 pages is subject to review. If rejected, a more concise factum must be filed on a timely basis.
- vi. It is desirable to establish a colour-coding system in all cases as follows:
 - the appeal book should have grey covers;
 - the appellant's factum blue covers;
 - the respondent's factum beige covers;
 - the joint book of authorities green covers; and
 - any other materials white or off-white covers.
- vii. The respondent's book of authorities shall contain only those additional authorities or excerpts of authorities not contained in the appellant's book of authorities.
- viii. The intervener's book of authorities shall contain only those additional authorities or excerpts of authorities not contained in either the appellant's or the respondent's book of authorities.
- ix. Use of neutral citations:
 - When referring to decisions in factums and motions briefs, counsel shall use the neutral citation, if available. The neutral citation contains these three core elements: year, tribunal identification and ordinal number (e.g. 2006 MBCA 102).

- Where a neutral citation is unavailable, provide the Canadian Legal Information Institute (CanLII) citation.
 - If neither a neutral citation nor a CanLII citation are available, provide other sources comprised of online databases (e.g. Westlaw Canada), official reporters (e.g. Supreme Court Reports) and unofficial reporters (e.g. Canadian Criminal Cases). Where one of these sources is used, provide a parallel citation (e.g. *Borowski v Canada (AG)*, 1989 CarswellSask 241, [1989] 1 SCR 342 (SCC)).
 - For an unreported decision which has a neutral citation, the neutral citation shall be used (e.g. *R v Kapkey*, 2005 MBCA 154).
- x. Each book of authorities should include an index of the authorities reproduced therein and each case should be marked with a tab (either numbered or lettered). Pages of the book of authorities do not have to be numbered if the page or paragraph numbers of each authority are clearly shown.
 - xi. A casebook shall contain those passages of decided cases that are relevant to the issues on the appeal, together with the headnote and such other portions of the case that put the passages relied on in the proper context. The specific passages relied on should be highlighted or the passage marked along the margin of the text.
 - xii. The appellant and the respondent shall file their book of authorities no later than two weeks before the hearing of the appeal.
 - xiii. In a book of authorities, it is generally not necessary to include more than one case for any proposition in law. If it is sought to cite more than one authority in support of a given proposition, lawyers should state the reason for taking that course.
 - xiv. Condensed Book—On an appeal, motion or application, a party may file a condensed book of the essential references from the filed record, statutes, regulations and case law that

it will refer to in their oral argument. The condensed book shall contain a table of contents and each page of the condensed book must be numbered. A condensed book shall not exceed 200 pages per volume. Without leave of a judge or the Court, a condensed book shall not contain new materials or any written submissions to supplement a party's factum or memorandum.

Where the appeal, motion or application is in person, the condensed book may be filed with the court and provided to the other party on the day of the hearing. Where the appeal, motion or application is heard remotely by technological means, the condensed book shall be, subject to leave of a judge or the Court, filed with the Court and provided to the other party no later than the last working day before the date of the hearing.

Where the parties agree on the contents of a condensed book, a joint condensed book may be filed.

- d. Preparation of Materials for the Court on Motions/Applications:
 - i. An applicant shall include as part of the supporting material a memorandum in the form outlined in c(i) above and not to exceed 15 pages in length. The respondent's memorandum shall also be in the form outlined in c(i) above and not exceed 15 pages in length.
 - ii. On an application for leave to appeal, a party may seek to increase its page limit to 30 pages. This is subject to the discretion of a judge or the Court.
- e. Adjournments of motions will be accepted by phone one day prior to the hearing of the motion. An email can be sent to the Court of Appeal office at courtofappeal@gov.mb.ca indicating the consent of the opposing party.
- f. When a notice of motion for leave to appeal or a notice of appeal is filed in the Supreme Court of Canada, a copy of this document should be filed with the Court of Appeal for the Province of Manitoba.
- g. The Court will retain the original copy of all material filed from every appeal hearing for one year after the disposition of the appeal.

- h. A meeting pursuant to Rule 37.1 may be appropriate in the following circumstances:
 - i. where one or more parties to an appeal request a hearing extending more than one day; and
 - ii. where it appears to the registrar, after consultation with a judge, that it would be of benefit to convene such a meeting.
- i. A date for the hearing of an appeal will not ordinarily be fixed until the factum of the respondent has been filed in the Court of Appeal.

The exceptions to this practice will be sentence appeals and appeals by unrepresented accused. The registrar retains the discretion to set dates in other matters as well.

- j. Photocopying fees on all civil matters are allowed up to a maximum fee of \$100. However, the Court or a judge may vary that amount in appropriate cases.
- k. Sentence Appeals:
 - i. Sentence appeals will be set down not later than six weeks after the registrar is advised of the completion date of the transcript. Exceptions will be made at the discretion of the registrar, such as for urgent matters.
 - ii. In the case of an appeal against sentence only, a notice of application for leave to appeal must be included in, or accompany, a notice of application for release pending the determination of the appeal. The application should be supported by material which would normally include a transcript of the proceedings before the sentencing judge.
 - iii. Leave to appeal must be granted before an appellant may be released from custody pending the determination of their appeal against sentence only.

(*Criminal Code*, s. 679(1)(b))
 - iv. Judicial Interim Release will not ordinarily be ordered on a sentence appeal unless counsel undertakes that a request for a transcript will be filed forthwith with Transcription Services Unit.

I. Judicial Interim Release:

- i. The Court will require as terms of an order for Judicial Interim Release when it is granted:
 - the appellant's factum shall be filed by a specific date;
 - the sentence appeal shall be heard on a specific date; and
 - the appeal shall proceed in strict compliance with the Rules of the Court, failing which the Crown may apply to revoke the order.
- ii. In the event a variation of such an order is sought, or there has been non-compliance with its provisions, an application for relief must be made to a judge in chambers.
- iii. Material in support of Judicial Interim Release applications can be filed no later than 2:00 p.m. on the day prior to the hearing of the motion. The order under appeal and the reasons for decision should be provided with the material in a timely manner.

3. GST and PST

When costs are awarded in a decision of the Court of Appeal, GST and PST will be added to the tariff amount, in conformity to the general practice followed by the Court of King's Bench. Applicable taxes will also be added to taxable disbursements, except those disbursements on which no taxes are payable, such as court filing fees.

It will be the responsibility of counsel for the party entitled to costs to make the added claim for applicable taxes. If a consented bill of costs is presented without including applicable taxes, it will be accepted by the registrar without amendment. There can be no duplication of the applicable taxes.*

This practice direction has no application where the Court makes a lump sum order of costs as an alternative to an award of costs in accordance with the Court of Appeal tariff, in which case applicable taxes will be added to taxable disbursements only in the event that the order as to costs includes disbursements over and above the lump sum award. It will be the

responsibility of counsel to clarify whether taxable disbursements are additional to a lump sum award.

* Examples have been provided to Court of Appeal staff.

4. Criminal Judgments

With respect to the release of criminal reserved judgments:

- a. Where an accused is in custody, the reasons for judgment will be released in the ordinary manner; i.e., counsel will be advised that the reasons will be available to be picked up on a particular day.
- b. Where an accused is not in custody and where there is a possibility of incarceration, seven to ten days' notice will be given by the court to the accused and to Crown and defence counsel to report to Court of Appeal Chambers Courtroom 130 at 9:30 a.m., usually on a Thursday, for the release of the reasons for judgment.

5. Filing Timelines

To assist counsel, attached is a detailed summary of the timelines for the filing and serving of documents:

- a. Requirements for filing and serving documents—Civil Rules **(Attached as Appendix A)**; and
- b. Requirements for filing and serving documents—Criminal Rules **(Attached as Appendix B)**.

6. Court Attire

The following delineates the appropriate attire for counsel when appearing, either in person or by videoconference, before and conducting business with the Court:

- a. Formal courtroom attire including a gown, waistcoat, shirt and tabs is required for the hearing of all appeals before a panel of the Court of Appeal.
- b. Traditional business attire is required for all matters heard by a single judge in chambers including matters such as motions and applications.

- c. Traditional business attire is required for all conferences, such as case management conferences.
- d. Counsel may depart from strict attire requirements to the extent necessary by reason of maternity. Counsel may also depart from strict attire requirements by reason of disability. Modified formal courtroom attire should be dark in colour. Both modified formal courtroom and business attire should be in keeping with the spirit of this notice and court decorum. Counsel may, before the opening of court, advise the court clerk orally, or by note, that they are in modified attire.

7. Timelines for Filing of Material in Chambers Court

Motions in the Court of Appeal are typically heard every Thursday at 10:00 a.m. by an assigned judge of the Court. The Court of Appeal Rules govern the filing of materials. These rules must be read in conjunction with Rule 3 of the Court of King's Bench Rules dealing with computation of time.

Rule 43.1(2) states that an applicant shall, not later than four days before the hearing date of the motion, file and serve the motion and supporting material on all other parties. In practical terms, a motion and all supporting material must be filed and served no later than 10:00 a.m. on the Friday prior to the Thursday on which the motion is scheduled to be heard.

Rule 43.1(3) states that a respondent may, within two days after being served with the motion and supporting material, file and serve a concise memorandum setting out the submission in response to the motion. In practical terms, the responding material must be filed and served no later than 10:00 a.m. on the Tuesday prior to the Thursday on which the motion is scheduled to be heard.

When the applicant is unable to meet the above-mentioned Friday deadline, the matter will not be set for the following Thursday. The rules shall be strictly enforced, save in exceptional circumstances, which shall be determined at the discretion of the registrar.

This Direction also applies to motions before the court with such modifications as are necessary to give it effect.

This Direction does not apply to applications for Judicial Interim Release or motions to introduce further evidence pursuant to Rule 21.

8. Ordering Transcript of Recording of Proceeding

This Direction is in keeping with the open court principle and the transparency that flows from public access to the courts (see *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 1 SCC 2 at para 1).

Anyone can order a transcript of the recording of any Court of Appeal proceeding that is open to the public and that took place after June 21, 2018. Persons interested in obtaining a transcript may do so by submitting a Court Transcript Order Request to the Court of Appeal Registry Office and upon payment of the appropriate fee to the Transcription Services Unit.

9. Forms of Address and Pronouns

Forms of address and pronouns are two ways in which genders are expressed and how others perceive gender. The purpose of this Practice Direction is to better ensure that forms of address and pronouns align with a person's gender identity.

Before the judges enter the courtroom, the court clerk will ask the appellant(s) and the respondent(s) or their respective counsel for their names and the party they represent. At that time, they may also provide the court clerk with their manner of address (e.g. "Mr./Ms./Mx./Counsel Jones") for themselves and/or their client(s) and the pronouns that they wish to be associated with their respective names. The court clerk will then place that information on the dais, where the judges sit.

When addressing a judge at a hearing, counsel or self-represented parties may use either "Justice", "Mr. Justice", "Madam Justice", "My Lord", "My Lady", "Your Lordship", or "Your Ladyship", as the case may be.

10. Protocol on Articling Students Appearing in the Manitoba Court of Appeal

Given that this Court is the highest Court in the province and given that, in the vast majority of cases, a decision from this Court is the final decision for the parties, it is understood that this Court should always have the benefit of argument by qualified counsel.

As a result, articling students-at-law are not permitted to appear as counsel to argue a substantive appeal, including where their principals are present to supervise them. The decision to allow an articling student to sit at the counsel table and/or assist their principal is at the discretion of the panel hearing the appeal.

An articling student may appear as counsel in a chambers matter where the presiding chambers judge grants permission to do so either alone or under the supervision of their principal, provided that a request for the articling student to appear is given to the registry at the time the motion or application is filed.

11. Email Address for Requesting Transcripts

Please be advised that the email address for Royal Reporting, A Veritext Company, is transcription-mb@veritext.com.

Unit 120, 330 St. Mary Ave.
 Winnipeg, MB R3C 3Z5
 Phone: (204) 306-9149
 Fax: (204) 306-9154
 Email: transcription-mb@veritext.com

To request a paper or electronic court transcript or a transcript cost estimate, you must complete a transcript request form and submit it to Royal Reporting in person, by email or fax. You may also make a request by phone. The transcript request form can be obtained from your nearest court office, downloaded from Royal Reporting’s website, or in person at their office. For further information, please visit Royal Reporting’s website at <http://royalreportingmanitoba.com>.

Transcript fees are set under the *Law Fees and Probate Charge Regulation*, which can be found at <https://web2.gov.mb.ca/laws/regs/index.php?act=180>.

The prescribed fees per page are as follows:

HARDCOPY FORMAT (prices include binding and delivery)	Maximum Inclusive Cost per Page
Original Transcript, hardcopy REGULAR Service	\$ 7.25
Duplicate Transcript, hardcopy REGULAR Service	\$ 1.20
Original Transcript, hardcopy EXPEDITED Service	\$ 8.50
Duplicate Transcript, hardcopy EXPEDITED Service	\$ 2.65
Original Transcript, hardcopy PRIORITY Service	\$ 9.25
Duplicate Transcript, hardcopy PRIORITY Service	\$ 3.15

ELECTRONIC FORMAT	Maximum Inclusive Cost per Page
Original Transcript, electronic REGULAR Service	\$ 6.95
Duplicate Transcript, electronic REGULAR Service	\$ 0.95
Original Transcript, electronic EXPEDITED Service	\$ 8.25
Duplicate Transcript, electronic EXPEDITED Service	\$ 0.95
Original Transcript, electronic PRIORITY Service	\$ 9.00
Duplicate Transcript, electronic PRIORITY Service	\$ 0.95

Note: Public Users are subject to GST

Royal Reporting will discuss payment options with you at the time they receive your request.

12. Filing Electronic Copies of Documents at the Request of the Registrar

A party may provide to the registry and any other party to an appeal, application or motion, an electronic copy of any document filed on the appeal, application or motion at the request of the registrar.

“Marianne Rivoalen”
 Chief Justice
 Manitoba Court of Appeal

**Appendix A—Manitoba Court of Appeal
Requirements for filing and serving documents under the *Court of Appeal Rules (Civil)***

Item	Document	Filing Timeline	Extension of Time	Serving Timeline	Other
1	Appeal book (transcript required)	Rule 22(1) - 45 days after transcript filed with the court	Rule 22(2) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 25 – 5 days after appeal book filed	
2	Appellant's factum (transcript required)	Rule 26(1) - 45 days after transcript filed with the court	Rule 26(2.1) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 26(3) - 5 days after appellant's factum filed	Deemed abandonment if appellant's factum not filed within time limits. See Rule 33(4) to (6), 35 and 35.1
3	Respondent's factum (transcript required)	Rule 27(1) - 30 days after service of appellant's factum	Rule 27(2.1) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 27(3) - 5 days after respondent's factum filed	
4	Appeal book (<u>no</u> transcript required)	Rule 28(1)(a) - 45 days after filing notice of appeal	Rule 28(2)(a) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 28(1)(a) - time period same as for filing appeal book - 45 days after filing notice of appeal	
5	Appellant's factum (<u>no</u> transcript required)	Rule 28(1)(a) - same as for appeal book where <u>no</u> transcript required - 45 days after filing notice of appeal	Rule 28(2)(a) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 28(1)(a) - time period same as for filing appeal book (where <u>no</u> transcript is required) - 45 days after filing notice of appeal	
6	Respondent's factum (<u>no</u> transcript required)	Rule 28(1)(b) - 30 days after service of appellant's factum	Rule 28(2)(b) & 28.1 - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 28(1)(b) same time period as for filing respondent's factum (where <u>no</u> transcript is required) - 30 days after service of appellant's factum	
7	Case Book	Rule 31(1.1)(a) by appellant – 14 days after appellant files factum Rule 31(1.1)(b) by respondent - 14 days after respondent files factum. Rule 31(1.1)(c) if joint case book - 14 days after respondent files factum	Rule 42 (general provision) applies. Court or judge may extend or abridge time before or after expiry of time period.	Rules are silent re time for serving case book. Counsel should serve the case book as soon as possible after filing it.	

Item	Document	Filing Timeline	Extension of Time	Serving Timeline	Other
8	Condensed Book	<p>Where the appeal, motion or application is heard in person, filed on the day of the hearing.</p> <p>Where the appeal, motion or application is heard remotely, subject to leave, filed no later than the last working day before the date of the hearing.</p>		<p>Where the appeal, motion or application is heard in person, served on the day of the hearing.</p> <p>Where the appeal, motion or application is heard remotely, subject to leave, served no later than the last working day before the date of the hearing.</p>	

**Appendix B—Manitoba Court of Appeal
Requirements for filing and serving documents under the *Manitoba Criminal Appeal Rules***

Item	Document	Filing Timeline	Extension of Time	Serving Timeline	Other
1	Appeal Book (appeals as to acquittal or conviction where Crown is the appellant)	Rule 18(1)(a) - 30 days after initiating document is filed or as soon thereafter as practicable		Rule 18(3) – to be delivered immediately after being filed	
2	Appeal Book (appeals as to acquittal or conviction where the Crown is the respondent)	Rule 18(1)(b) - 30 days after the factum is filed by the appellant, or as soon thereafter as practicable		Rule 18(3) – to be delivered immediately after being filed	
3	Appeal Book (appeals as to sentence only)	Rule 18(1.1) – as soon as practicable after the initiating document is filed		Rule 18(3) – to be delivered immediately after being filed	
4	Appellant's Factum	Rule 19(a) & 20(1)(a) - 45 days after receipt by the registrar of the required transcript, or where a transcript is not required, the appeal book	Rule 21(a) & (b) - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 19(a) & 20(1)(a) - 45 days after receipt by the registrar of the required transcript, or where a transcript is not required, the appeal book	Judge or registrar may fix date for hearing or registrar may deem abandoned if appellant's factum not filed within time limits. See Rule 25(3) & (4)
5	Respondent's Factum	Rule 19(b) & 20(1)(b) – 30 days after service of appellant's factum	Rule 21(a) & (b) - <u>Registrar</u> can extend time if written request made before expiry of time period and other parties consent. Otherwise <u>Judge</u> , on motion, with affidavit and notice.	Rule 19(b) & 20(1)(b) – 30 days after service of appellant's factum	
6	Case Book	Rule 23(2)(a) by appellant – 14 days after appellant files factum Rule 23(2)(b) by respondent – 14 days after respondent files factum Rule 23(2)(c) if joint case book – 14 days after respondent files factum	Civil Rule 42 (general provision) applies. Court or judge may extend or abridge time before or after expiry of time period.	Rules are silent regarding time for serving case books. Counsel should serve the case book as soon as possible after filing it.	
7	Condensed Book	Where the appeal, motion or application is heard in person, filed on the day of the hearing. Where the appeal, motion or application is heard remotely, subject to leave, filed no later than		Where the appeal, motion or application is heard in person, served on the day of the hearing. Where the appeal, motion or application is heard remotely, subject to leave, served no	

Item	Document	Filing Timeline	Extension of Time	Serving Timeline	Other
		the last working day before the date of the hearing.		later than the last working day before the date of the hearing.	