

COURT OF QUEEN'S BENCH CRIMINAL RULES

Table of Contents

9.1.2 Rules Pursuant to Section 424 of the Criminal Code with Respect to Mandamus, Certiorari, Habeas Corpus and Prohibition

- 9.1.2 Civil rules apply, 825
- 9.1.2 Order issues in place of writ, 826
- 9.1.2 Service of notice of motion, 827
- 9.1.3 Appeal, 828
- 9.1.3 Power of a judge, 829

9.1.3 Certiorari

- 9.1.3 Motion within 6 months, 830
- 9.1.3 Endorsement, 831
- 9.1.4 Return by magistrate, 832
- 9.1.5 Application by Crown, 833

9.1.5 Mandamus

- 9.1.5 Affidavit, 834
- 9.1.5 Immunity, 835
- 9.1.5 Effect of order, 836

9.1.5 Habeas Corpus

- 9.1.5 Order for discharge of prisoner, 837
- 9.1.5 Coming into force, 838

9.1.7 Rules Pursuant to Section 745.64(1) of The Criminal Code of Canada

Part 60

Rules Pursuant to Section 424 of The Criminal Code with Respect to Mandamus, Certiorari, Habeas Corpus and Prohibition

Civil rules apply

825 For the purposes of this Part, the Rules in civil cases mutatis mutandis, apply in all matters not herein provided for.

AR 390/68 s825

Order issues in place of writ

826 An order in the nature of mandamus, prohibition, certiorari or habeas corpus may be granted upon application by notice of motion returnable before the court or before the Appellate Division.

(2) The writs of mandamus, prohibition, certiorari and habeas corpus shall not be issued, but all necessary provisions shall be made in the order.

AR 390/68 s826

Service of notice of motion

827(1) The notice of motion shall be served upon every person who appears to be interested or likely to be affected by the proceedings.

(2) The court may require the notice of motion to be served upon any person not previously served.

(3) Where it is sought to quash a conviction, order, warrant or inquisition, the notice of motion shall also be served at least seven days before the return date thereof

(a) upon the Attorney General, and

(b) upon the magistrate, justice or justices making the conviction or order or issuing the warrant or the coroner making the inquisition.

(4) Any person not served with the notice of motion may show that he is affected by the proceedings and thereupon may be permitted to take part in the proceedings as though served.

AR 390/68 s827

Appeal

828 An appeal lies from the order of the court to the Appellate Division.
AR 390/68 s828

Power of a judge

829 Any direction required to give effect to an order of the Appellate Division may be made by a judge of the Appellate Division.
AR 390/68 s829

Certiorari

Motion within 6 months

830 A notice of motion for an order in the nature of certiorari shall be filed and served within six months after the conviction, order, warrant or inquisition to which it relates.
AR 390/68 s830

Endorsement

831(1) Upon the notice of motion for an order in the nature of certiorari shall be endorsed a notice in the following form addressed to the magistrate, justice or justices, coroner, or officer or clerk, as the case may be.

“You are hereby required forthwith after service hereof to return to the clerk of the Supreme Court at _____ (as the case may be) the conviction (or _____ as the case may be) herein referred to together with the information, evidence and exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

“Date _____

“to A.B. magistrate at _____
(or as the case may be).

“Signed) C.D. _____
Solicitor for the Applicant.”

(2) All things required by this Rule to be returned to the clerk of the Supreme Court shall, for the purposes of the application for an order in the nature of certiorari, be deemed to be part of the record.

AR 390/68 s831

Return by magistrate

832(1) Upon receiving the notice so endorsed, the magistrate, justice or justices, coroner, officer or clerk, shall return forthwith to the office mentioned therein the conviction, order, warrant or inquisition together with the information, the evidence and exhibits filed, if any, and all things touching the matter and the notice served upon him with a certificate endorsed thereon in the following form:

“Pursuant to the accompanying notice I herewith return to this Honourable Court the following papers and documents, that is to say- -

- “(1) The conviction (or as the case may be);
- “(2) The information and the warrant issued thereon;
- “(3) The evidence taken at the hearing and all exhibits filed;
- “(4) All other papers or documents touching the matter.

“And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody and power relating to the matter set forth in the said notice of motion.”

- (2) The certificate has the same effect as a return to a writ of certiorari.
- (3) If the proceedings have been transmitted as required by law by the magistrate, justice or justices or coroner, to the proper officer he shall in lieu of the certificate above set out certify to the fact of the transmission together with the date thereof.
- (4) If the proceedings have not been received by the officer to whom or the clerk of the office to which they are by law required to be transmitted, that officer or clerk shall return a certificate of the fact.
- (5) The court may dispense with the return of the evidence or exhibits or part of them.
- (6) A copy of this Rule shall appear upon or be annexed to the notice of motion served upon the magistrate, justice or justices, coroner, clerk or officer from whom the return is required.

AR 390/68 s832

Application by Crown

833 Notwithstanding Rules 826 to 831, the court on ex parte application by the Crown may quash a conviction, order, warrant or inquisition.

AR 390/68 s833

Mandamus

Affidavit

834 No order in the nature of mandamus shall be granted unless at the time of application an affidavit is produced by which some person deposes upon oath that the application is made at his instance as prosecutor and the name of that person shall appear as the person at whose instance it is made.

AR 390/68 s834

Immunity

835 No action or proceedings shall be commenced or prosecuted against any person in respect of anything done in obedience to an order in the nature of mandamus issued by the court or any judge thereof.

AR 390/68 s835

Effect of order

836 The order or judgment may compel the performance of the duty forthwith or upon the expiration of a fixed time or subject to specified terms.

AR 390/68 s836

Habeas Corpus

Order for discharge of prisoner

837 On the argument of a motion for an order in the nature of habeas corpus the court may direct an order to be drawn up forthwith for the prisoner's discharge, which order is a sufficient warrant for any gaoler or constable or other person, for his discharge.

AR 390/68 s837

Coming into force

838 These rules shall come into force on the 1st day of September 1968 on which date the Rules of Practice with respect to mandamus, certiorari, habeas corpus and prohibition heretofore in force cease to be in force without prejudice to any proceedings under the said Rules which may have been taken prior to the 1st day of September 1968.

S. BRUCE SMITH
Chief Justice of Alberta

G.F. BUTTERWICK
Registrar at Calgary of
The Appellate Division.

These Rules with respect to mandamus, certiorari, habeas corpus and prohibition above set out and attested by the Chief Justice of the Province of Alberta and by the Registrar at Calgary of the Appellate Division of the Supreme Court of Alberta have been made by the Appellate Division of Alberta with the concurrence of the majority of the judges thereof present at a meeting called for the purpose held in Calgary on the 5th day of June, 1968 pursuant to section 424 of the Criminal Code.

S. BRUCE SMITH	C.J.A.
J.M. CAIRNS	J.A.
M.M. PORTER	J.A.
H.G. JOHNSON	J.A.
E.W.S. KANE	J.A.
N.D. McDERMID	J.A.
G.H. ALLEN	J.A.

These Rules with respect to mandamus, certiorari, habeas corpus and prohibition above set out and attested by the Chief Justice of the Province of Alberta and by the Registrar at Calgary of the Appellate Division of the Supreme Court of Alberta have been made by the Trial Division of the Supreme Court of Alberta with the concurrence of the majority of the judges thereof present at a meeting called for the purpose held in Calgary on the 6th day of June, 1968 pursuant to section 424 of the Criminal Code.

C.C. McLAURIN	C.J.T.D.
NEIL PRIMROSE	J.
PETER GRESCHUK	J.
H.W. RILEY	J.
J.V.H. MILVAIN	J.
M.E. MANNING	J.
W.J.C. KIRBY	J.
A.M. DECHENE	J.
M.B. O'BYRNE	J.
H.J. MacDONALD	J.

Can. Gaz., 13 July, 1968, Alb. Gaz., 15 July, 1968
AR 390/68

COURT OF QUEEN'S BENCH OF ALBERTA
RULES PURSUANT TO SECTION 745.64(1) OF THE
CRIMINAL CODE OF CANADA

Relating to applications for reduction in the number of years of imprisonment without eligibility for parole.

Pursuant to the authority of the Criminal Code section 745.64(1), I hereby establish the attached Rules in respect of applications, hearings and judicial screening under sections 745.6 to 745.63 of the Criminal Code.

These rules replace the previous Rules made pursuant to section 672 of the Criminal Code.

Dated at Calgary, Alberta this 31 day of March 1998.

The Honourable W. Kenneth Moore,
Chief Justice of the Court of Queen's Bench of Alberta

NOTE: These rules do not form part of the Alberta Rules of Court, but may be placed at the back of the binder for convenience.

ALBERTA RULES

Rules of practice made pursuant to subsection 745.64 of the Criminal Code to reflect the changes made to the Criminal Code regarding applications for reduction in the number of years of imprisonment without eligibility for parole.

RULE 1

An application under section 745.6 of the Criminal Code and any additional material as required by subsections 745.61(1)(b) and (c) of the Criminal Code shall be in writing and shall be filed in the office of the clerk of the Court of Queen's Bench for the judicial district in which the sentence to be reviewed was imposed.

RULE 2

The application shall include the following information:

- (a) the given names and surname of the applicant, any other names he or she may have used, and the applicant's date of birth;
- (b) the name and place of the institution where the applicant is detained;
- (c) the offence for which the applicant was convicted, the date of conviction, and the sentence that was imposed;
- (d) the length of time that the applicant has been incarcerated for that offence;
- (e) all grounds relied upon in support of the application;
- (f) a statement of the relief sought;
- (g) the address for service of the applicant;
- (h) an outline of any evidence that the applicant intends to tender in support of the application; and
- (i) an Agreed Statement of Facts and Disputed Facts.

RULE 3

- (a) After the application and additional material have been filed with the clerk, the applicant shall cause it to be served on the following persons:

- (i) the Solicitor General of Canada for notice only and not as a party;
- (ii) Minister of Justice for the Province of Alberta;
- (iii) the officer in charge of the institution in which the applicant is being detained for notice only and not as a party;
- (iv) any other person or institution as directed by the Chief Justice or a Justice of the Court of Queen's Bench designated by the Chief Justice, hereinafter referred to collectively as the "Justice".

RULE 4

- (1) Upon receipt of all materials referred to in the preceding rules, the clerk shall deliver the materials and proof of service to the Chief Justice.
- (2) If upon the application of the Minister of Justice or on the motion of the Justice it is determined that an applicant is not a person to whom section 745.6 applies, the Justice shall dismiss the application.
- (3) Upon receiving the materials and proof of service, the Chief Justice shall determine, or shall designate a Justice to determine, pursuant to section 745.61 of the Criminal Code, hereinafter referred to as judicial screening, whether there is a reasonable prospect that the application will succeed.
- (4) The determination under Sub-Rule (3) shall be made in accordance with the criteria set out in paragraphs 745.63(1)(a) to (e) of the Criminal Code.
- (5) If the Justice determines that the applicant has not shown there is a reasonable prospect that application will succeed, the Justice may make an order pursuant to section 745.61(3).
- (6) If the Justice determines that the applicant has shown there is a reasonable prospect that the application will succeed and there is no successful application or motion under Sub-Rule (2), the Chief Justice shall or shall designate a Justice to empanel a jury to hear the application pursuant to section 745.63 of the Criminal Code.
- (7) Not later than 30 days prior to the start of the hearing, the applicant and counsel for the Minister of Justice shall ensure that full disclosure of all documents has been made to the other party.
- (8) In addition to any other order which the Justice may make, the Justice may make the following orders:

- (a) an order requiring an outline by the applicant and counsel for the Minister of Justice of the evidence they intend to tender at the hearing;
- (b) an order permitting the proof of facts by affidavit but where such proof has been permitted, the Justice, on application, may require the attendance of a deponent at or prior to the hearing for the purpose of cross-examination on the affidavit;
- (c) an order requiring that the applicant shall be brought before the court for the hearing or for any other purpose contemplated by these Rules, and for the purposes of such order the provisions of section 527 of the Criminal Code apply mutatis mutandis.

RULE 5

Subject to these Rules, the jury referred to in subsection 745.61(5) shall be empanelled in accordance with Part XX of the Criminal Code with such modifications as the circumstances require.

RULE 6

No person other than counsel for the Minister of Justice and the applicant may adduce evidence at the hearing of the application or at the judicial screening.

RULE 7

The applicant shall present evidence first in support of the application and may, if the Justice so permits, present rebuttal evidence after counsel for the Minister of Justice has presented evidence.

RULE 8

A duly certified transcript of the proceedings at trial and sentence is admissible as evidence at the hearing and the judicial screening.

RULE 9

At the hearing of the application and the judicial screening, the Justice shall rule upon the admissibility of evidence.

RULE 10

Where, at any time before or after the commencement of the hearing the Justice determines, as a matter of law, that the applicant is not a person to whom section 745.6 of the Criminal Code applies, the Justice shall discharge the jury and reject the application.

RULE 11

After the evidence has been presented, the applicant or the applicant's counsel may address the jury and thereafter counsel for the Minister of Justice may address the jury.

RULE 12

After the applicant and counsel for the Minister of Justice have addressed the jury, the Justice shall address the jury.

RULE 13

All orders may be made and directions given by the Justice as may be necessary for the due hearing and disposition of an application, including without restriction, orders or directions with respect to:

- (a) the enlargement or abridgement of time;
- (b) the sufficiency of an application and any affidavit;
- (c) service and proof of service;
- (d) the date and place of hearing;
- (e) the summoning of additional witnesses and production of documents not produced by either party;
- (f) the adjournment of the hearing of an application;
- (g) any other matter not provided for in these Rules.