

Part 61.1

Rules Governing Summary Conviction Appeals

860.1 In this Part,

- (a) “adjudication” includes
 - (i) in appeals under paragraph 813(a) of the *Criminal Code (Canada)*, a conviction or order made against or a sentence imposed on a defendant,
 - (ii) in appeals under paragraph 813(b) of the *Criminal Code (Canada)*, an order which stays proceedings on or dismisses an information or a sentence imposed on a defendant,
 - (iii) in appeals under subsection 830(1) of the *Criminal Code (Canada)*, a conviction, judgment or verdict of acquittal or other final order or determination of a summary conviction court, in proceedings under Part XXVII of the *Criminal Code (Canada)*,
 - (iv) any final order authorized to be made by a Provincial Court Judge or a Justice pursuant to any provision of the *Criminal Code (Canada)* as to which Part XXVII of the *Criminal Code (Canada)* is said to be applicable in whole or part.
- (b) “appeal” means an appeal from or against an adjudication in proceedings before a summary conviction court pursuant to Part XXVII of the *Criminal Code (Canada)*;
- (c) “appeal court” means the Court of Queen’s Bench of Alberta;
- (d) “clerk” means the clerk of the appeal court;
- (e) “defendant” means any person other than the prosecutor, whether or not the appellant is the accused, the respondent to a hearing, an owner of property or any other person;
- (f) “judge” means a judge of the appeal court;
- (g) “prosecutor” includes the barrister and solicitor, student-at-law, or other person who appeared on behalf of the prosecution in relation to the case which is the subject matter of the appeal.

860.2(1) Every notice of appeal shall be signed by the appellant or counsel therefor, and dated as of the date of signature, and shall be filed with the clerk

of the appeal court at the judicial centre in the judicial district where the summary conviction court was held. Where the appeal court sits in more than one location in a judicial district, the notice of appeal shall be filed with the clerk in the location in that judicial district closest to where the summary conviction court was held.

(2) The appeal and all applications relative to the appeal shall be made to and heard in the court location referred to in subrule (1), unless the appeal court otherwise orders or the parties otherwise consent.

(3) The notice of appeal shall be in writing in Form “A”, or to the like effect, and shall describe:

- (a) the summary conviction court that made the conviction or order appealed from or imposed the sentence appealed against,
- (b) with reasonable certainty, the conviction or order of dismissal appealed from or the sentence appealed against, including its date and place,
- (c) the grounds on which the appeal is taken,
- (d) the nature of the order or other relief that the appellant seeks,
- (e) where the appellant is the defendant, whether the appellant entered a plea of guilty or not guilty before the summary conviction court,
- (f) whether or not at the time of the appeal the defendant is imprisoned as a result of the conviction, order or sentence appealed from, and the place of incarceration, and
- (g) the address for service of the appellant.

(4) The clerk of the appeal court, on receipt of a notice of appeal, shall endorse on it a memorandum to the following effect:

This appeal is scheduled for hearing by the Court on the following date and time: _____. The Rules of this Court require an appellant to deliver to the Court a transcript of the proceedings before the summary conviction court, a list of authorities and a memorandum of argument at least 30 days prior to the above-mentioned date of the hearing.

860.3 (1) An appellant shall deliver a notice of appeal to the clerk of the

appeal court within 30 days after the conviction, judgment, acquittal or order was made or the sentence was imposed, whichever is the later date.

(2) Where the appellant is the prosecutor, the filed notice of appeal shall be served personally on the defendant or on such other person or in such manner as a judge may direct or authorize, within the period referred to in subsection (1).

(3) Where the appellant is a defendant, the clerk shall forward a filed copy of the notice of appeal to the prosecutor as soon as is practicable under the circumstances.

860.4 (1) On receipt of a notice of appeal which appears to comply with this Part, the clerk shall schedule the appeal for hearing on a date not less than 60 days nor more than 120 days from the date of filing of the notice of appeal and inscribe on the notice of appeal the required endorsement referred to in Rule 860.2(4).

(2) Upon setting a date for the hearing of an appeal under this Rule, the clerk shall immediately, in writing, notify all parties.

(3) The clerk shall obtain the relevant court file, including any exhibits, from the summary conviction court prior to the hearing by giving prompt notice of the fact of the appeal to the summary conviction court after the notice of appeal has been filed.

860.5(1) The appellant shall, at the time of filing the notice of appeal, request in writing from the applicable court reporters or court recorders a transcript of the proceedings before the summary conviction court in sufficient copies for the appeal court and all other interested parties.

(2) Where the appellant is not represented by counsel at the time the notice of appeal is filed, the appellant shall provide to the clerk of the appeal court a receipt evidencing the ordering of the transcript.

(3) The transcript referred to in subrule (1) shall, unless the court otherwise orders, or the parties agree, contain all of the evidence and proceedings before the summary conviction court, but no agreement of the parties is binding upon the court.

(4) Notwithstanding subrules (1) and (2), where the parties consent and the appeal concerns sentence only, the appellant may cause a transcript of the proceedings as to sentence only to be furnished to the appeal court and to the respondent.

860.6 (1) Where a date has been scheduled for the hearing of an appeal pursuant to this Part, the appellant shall, not less than 30 days before that date,

deliver to the clerk and serve on the respondent and all other interested parties, or their counsel a brief memorandum

- (a) setting out the argument and authorities on which the appellant intends to rely in support of the grounds set out in the notice of appeal,
- (b) setting out particular references to the evidence to be discussed in relation to the grounds, and
- (c) attaching a transcript of the proceedings being appealed from, subject to subrule 860.5(3).

(2) The respondent shall, not less than 15 days prior to the hearing date scheduled for the appeal, deliver to the clerk and serve on the appellant or their counsel a brief memorandum setting out:

- (a) the authorities on which the respondent intends to rely in reply to the argument of the appellant and
- (b) particular references to any evidence to be discussed in relation to those arguments.

860.7(1) Judicial Interim release pending appeal may be granted conditionally or unconditionally, or may be refused by the Court.

(2) Subject to subrule (3), the Rules and practice of the Court of Appeal of Alberta in relation to judicial interim release pending trial in indictable matters applies to applications for judicial interim release pending appeal under this Rule, with such modifications as the circumstances require.

(3) No application for judicial interim release pending appeal shall be refused by reason only of the lack of any transcript of any proceedings connected with the appeal.

860.8(1) A judge may, before or after the periods fixed by this Part,

- (a) by order extend or abridge the time within which filing or service or the transmitting of any documents may be effected, or
- (b) order that any filing or service or transmitting of any documents that has been effected be deemed to be valid and sufficient.

(2) The applicant for any order under this Part, including any order under subrule (1) shall give two clear days' notice in writing of the application to any other party to the appeal or proposed appeal, as the case may be, unless

all other interested parties consent to the order sought or a judge otherwise orders.

(3) For the purposes of this Part, any form of service that is required may be effected by delivery of the document to be served to the address for service of the counsel for the party to be served and the Rules of this Court as are applicable to civil matters also apply to service of documents under this part *mutatis mutandis*.

860.9 (1) Non-compliance with this Part does not render any proceedings void, but a judge may

- (a) amend any document, give directions or make any order necessary to validate the proceedings or documents,
- (b) reject the documents, quash the proceedings as irregular or invalid, or
- (c) otherwise deal with them as appears to him to be just.

(2) Nothing in this Part shall be construed as limiting the powers of the appeal court under the *Criminal Code (Canada)* and, for greater certainty, but not so as to restrict the generality of the foregoing, the appeal court may exercise all of the powers set out in section 822 of the *Criminal Code (Canada)*.

FORM A

NOTICE OF APPEAL

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF _____

BETWEEN:

HER MAJESTY THE QUEEN,

_____ Appellant/Respondent

- and -

_____ Respondent/Appellant

NOTICE OF APPEAL

1. TAKE NOTICE that the Appellant indicated above wishes to appeal and does hereby appeal to the Court of Queen's Bench of Alberta, sitting at _____, in the Province of Alberta, as against the decision of the Provincial Court of Alberta hereinafter set out.

2. The full name of the Appellant, if not her Majesty the Queen, is (Print): _____
Date of Birth: _____

3. The decision of the Provincial Court being appealed from is a CONVICTION ONLY: _____, CONVICTION AND SENTENCE: _____, SENTENCE ONLY: _____, DISMISSAL: _____, ORDER: _____ and the particulars of the decision are as follows:

- A. Date of Decision: _____
- B. Place of Decision: _____
- C. Name of Judge or Commissioner: _____
- D. Name of Prosecutor, If Known: _____
- E. Name of Defence Counsel, If Known: _____
- F. Plea at Trial (if applicable): Guilty _____ Not Guilty _____
- G. Nature of Offence (s) charged:

(Add further pages if more details)

H. Sentence or Order (if applicable):

I. If Driving Offence(s) Charged, Driver’s Licence Number of Appellant is: _____

J. If the Appellant (or Respondent if Applicable) is in Custody, Place of Custody: _____

4. The Grounds of Appeal of the Appellant are as follows:

GROUND OF APPEAL:

(Add further pages if more details)

5. The Appellant seeks the following relief or remedy:

RELIEF SOUGHT: _____

6. This Notice of Appeal is dated this _____ day of _____ 19____, by the undersigned Appellant, or Counsel for the Appellant:

Appellant/Appellant’s Counsel

ADDRESS OF THE APPELLANT OR APPELLANT’S COUNSEL:

Telephone Number: _____

Facsimile Number (If available) _____