

SUPREME COURT OF YUKON  
**SUMMARY CONVICTION APPEAL RULES, 2009**

**Definitions**

1. In these Rules  
“Appeal” means an appeal from the Territorial Court of Yukon pursuant to the Summary Convictions Part of the *Criminal Code*;  
“Appeal Court” means the Supreme Court of Yukon;  
“Clerk” means a clerk of the Appeal Court;  
“first appearance date” means the date endorsed on the notice of appeal under Rule 2(3);  
“Supreme Court” means the Supreme Court of Yukon; and  
“Territorial Court” means the Territorial Court of Yukon.

**Notice of Appeal**

2. (1) Every notice of appeal shall be in Form 1, signed by the appellant, or their counsel or agent, and filed with the Clerk at Whitehorse.
- (2) The notice of appeal must include
  - (a) the name of the Territorial Court judge or justice of the peace that made the conviction, acquittal, sentence or order appealed from and the location of the Territorial Court on that occasion;
  - (b) particulars of the conviction, acquittal, sentence or order appealed from;
  - (c) the grounds upon which the appeal is taken;
  - (d) the nature of the order or other relief the appellant seeks;

- (e) a statement whether the appellant pled guilty or not guilty;
- (f) a statement whether or not the appellant or respondent, as the case may be, is in custody as a result of the conviction, sentence or order appealed from, and from what date; and
- (g) the appellant's address for service.

(3) Upon filing the notice of appeal, the Clerk shall endorse the date, time and place the parties are to make their first appearance in Supreme Court criminal chambers to fix the date for the hearing of the appeal. The first appearance date shall be within thirty (30) days from the date the notice of appeal is filed.

### **Filing and Service of Notice of Appeal**

3. (1) The appellant shall file the notice of appeal with the Clerk not later than thirty (30) days after the conviction, acquittal, sentence or order was made, whichever is the later date. This thirty (30) day period shall not include the date of the conviction, acquittal, sentence or order, as the case may be, nor the date of the filing of the notice of appeal.

- (2) Where the appeal is by the prosecutor
  - (a) the appellant shall also serve a filed copy of the notice of appeal, endorsed under Rule 2(3), upon the respondent personally within the thirty (30) day period in Rule 3(1);
  - (b) if the appellant is unable to personally serve the respondent, they may apply to the Appeal Court, without notice to the respondent, for directions on service;

- (c) the appellant shall file proof of service of the notice of appeal with the Clerk, in Form 2, not later than ten (10) days after the last day for service of the notice of appeal.
- (3) Where the appeal is by the defendant
    - (a) the Clerk shall forward a filed copy of the notice of appeal, endorsed under Rule 2(3), to the respondent prosecutor's office within ten (10) days of the filing of the notice of appeal;
    - (b) upon forwarding the notice of appeal to the prosecutor's office, the Clerk shall complete the Certificate of Service, in Form 3, which then constitutes proof of service upon the respondent.

#### **Filing and Service of Transcript**

4. (1) Within fifteen (15) days of being notified of the appeal by the Clerk of the Appeal Court, the clerk of the Territorial Court shall comply with the provisions of the *Criminal Code* requiring the transmission to the Appeal Court of the conviction, acquittal, sentence or order, and any other material relevant to the appeal.

(2) Subject to Rule 5(3), the appellant shall file a transcript of the evidence from the Territorial Court with the Appeal Court and serve the respondent with a copy of that transcript, within sixty (60) days of filing of the notice of appeal.

(3) Where an appeal is from sentence only, the appellant shall provide a transcript of the submissions of the parties and the reasons of the trial judge or justice of the peace.

(4) Where an appellant is unable to afford the cost of a transcript, they may apply to the Appeal Court under Rule 11(3) for indigent status.

(5) Within fifteen (15) days of the filing of the notice of appeal, the Clerk shall forward to the parties copies of all the relevant material from the Territorial Court, including but not limited to

- (a) the information or summary offence ticket;
- (b) any order made by the Territorial Court;
- (c) any documentary exhibits filed;
- (d) any pre-sentence report filed; and
- (e) any victim impact statement filed.

(6) If the respondent's address is unknown, the material in Rule 4(5) shall be provided to the respondent at the first appearance date.

### **New Trial**

5. (1) An appellant who wishes a new trial under s. 822(4) of the *Criminal Code* must apply to the Appeal Court within thirty (30) days of filing and serving the notice of appeal.

(2) An appellant making an application under Rule 5(1) must serve the opposite party with a notice of application in Form 4 and any supporting material, at least seven (7) days prior to the hearing of the application.

(3) Upon hearing an application under this Rule, the Appeal Court may dispense with the requirement to file a transcript.

### **Scheduling Hearing Date**

6. (1) At the first appearance date, or at such other Supreme Court criminal chambers date as may be necessary, the hearing date will be scheduled.

(2) Where no transcript has been filed within the time prescribed by these Rules, or by any order extending the time, or where the Clerk considers that the appellant has not diligently pursued the appeal, the matter may be referred to the Appeal Court, which may dismiss the appeal, or make such other order as the nature of the case requires. A referral to the Appeal Court under this subrule may be made without notice to a party, if in the opinion of the Clerk, providing notice would be impracticable.

(3) Where an appeal has been dismissed under Rule 6(2), the Clerk shall endeavour to notify the parties.

(4) Subject to these Rules, no appeal shall be scheduled for a hearing at a time that is less than thirty (30) days after the Clerk receives the documents and other material referred to in Rules 4(1) and (2).

(5) Subject to these Rules, where an appellant has been sentenced to jail and is in custody at the time they appeal either the conviction or sentence resulting in that imprisonment, the Clerk, on application by the appellant, shall set the matter for a hearing before the next available sitting of the Appeal Court, at which time the Appeal Court may

- (a) dispose of the appeal on the merits; or
- (b) make such other order as the nature of the case requires.

(6) Where the appeal is from a conviction and the appellant entered a guilty plea before the Territorial Court, the Clerk shall set the matter over for a hearing before the Appeal Court on the preliminary point of whether or not the appellant may withdraw the guilty plea.

**Filing and Service of Outline of Argument**

7. (1) The appellant and the respondent shall file with the Clerk, and serve upon the opposite party, a brief outline of argument including

- (a) the case law and other material upon which they intend to rely in support of the grounds of appeal; and
- (b) particular references to the relevant evidence to be discussed.

(2) The appellant's outline shall be filed and served not less than thirty (30) days before the hearing of the appeal.

(3) The respondent's outline shall be filed and served not less than fifteen (15) days before the hearing of the appeal.

(4) An outline is not required where

- (a) a party is not represented by counsel, or
- (b) a new trial has been ordered under Rule 5.

(5) No party will be allowed to refer to written materials not filed and served in compliance with these Rules, without leave of the Appeal Court.

**Abandonment of Appeal**

8. (1) An appellant may abandon an appeal by signing and filing a notice in Form 5, at which time the appeal will be deemed to be abandoned.

(2) Where, under Rule 10, an appellant has been released from jail pending the hearing of the appeal, or where a stay has been ordered, the sentence or order of the Territorial Court shall take effect immediately upon the appeal being abandoned.

**Time Requirements**

9. (1) On application or on its own motion, the Appeal Court may extend the time for doing anything required by the Rules, before or after the periods fixed by these Rules.

(2) Two (2) clear days' notice in writing of an application to extend or shorten time shall be given to the opposite party, unless such application is made on consent.

(3) When the time for doing anything under these Rules expires or falls on a holiday, the time is extended and the thing may be done on the next business day.

**Bail or Stay Pending Appeal**

10. (1) Until an appeal is heard and disposed of, an appellant who wishes to apply for release from jail, or for a stay of an order of the Territorial Court, must file with the Clerk

(a) a notice of application in Form 4; and

(b) an affidavit stating the facts the appellant relies upon in support of the application.

(2) The appellant may also file with the application any other relevant material.

(3) The appellant shall serve the application and accompanying material on the prosecutor.

(4) Where an appellant makes an application under this Rule, the Clerk shall

(a) forward a copy of the material to the prosecutor;

(b) obtain a date for the hearing of the application not later than three (3) days after notification from the appellant; and

(c) notify the appellant and respondent of the hearing date.

(5) On hearing an application under this Rule, the Appeal Court may make any order, including an order directing the appellant to enter into an undertaking or recognizance, or to deposit any money or valuable security with the Clerk.

### **Non-compliance with Rules**

11. (1) Non-compliance with these Rules will not automatically invalidate an appeal, but the Appeal Court may dismiss an appeal for reasons of irregularity, or may on application or on its own motion amend any document, give directions, and make any order it considers appropriate and just, including an order to validate the proceedings.

(2) The forms required by these Rules may be used with such variations as the circumstances of the proceeding require.

(3) In matters not provided for in these Rules, a party may apply to the Appeal Court for directions, on two (2) clear days' notice, by filing and serving a notice of application in Form 4. If providing notice would be impracticable, an application under this Rule may be made without notice, with leave of the Appeal Court.

### **Effective Date**

12. These Rules shall come into force on the 4<sup>th</sup> day of January 2010. Appeal proceedings commenced prior to that date shall continue under the previous *Rules Governing Summary Conviction Appeals, 1978*.

Dated 22<sup>nd</sup> day of October 2009.

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Mr. Justice R.S. Veale  
Senior Judge



FORM 1

SUPREME COURT OF YUKON

T.C. No. \_\_\_\_\_

S.C. No. \_\_\_\_\_

*Rex*

*Respondent*

v.

\_\_\_\_\_

*Appellant*

**NOTICE OF APPEAL**

PARTICULARS OF DECISION ON APPEAL

1. Name of Judge or Justice of the Peace at trial: \_\_\_\_\_
2. Place of conviction, acquittal, sentence or order: \_\_\_\_\_  
\_\_\_\_\_
3. Section(s) of *Criminal Code* or other Act, and the offence(s) which the appellant was convicted/acquitted of at trial \_\_\_\_\_  
(circle one)
4. Plea(s) at trial: \_\_\_\_\_
5. Length of trial: \_\_\_\_\_
6. Date of conviction/acquittal at trial: \_\_\_\_\_  
(circle one)
7. Date of sentence: \_\_\_\_\_
8. Sentence at trial: \_\_\_\_\_  
\_\_\_\_\_
9. Is appellant in custody? \_\_\_\_\_  
Since when? \_\_\_\_\_

TAKE NOTICE THAT the appellant appeals the conviction  acquittal  sentence  order  on the following grounds:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Use additional sheet if necessary)*

The relief sought is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The appellant's address for service is: \_\_\_\_\_  
\_\_\_\_\_

The appellant's phone number is: \_\_\_\_\_

The appellant's fax number is (if applicable): \_\_\_\_\_

The appellant's email address is (if applicable): \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Appellant (or Appellant's counsel or agent)

To: The Respondent

**NOTICE OF FIRST APPEARANCE**

This appeal will be spoken to in Supreme Court criminal chambers on \_\_\_\_\_,  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock in the  
A.M./P.M.

\_\_\_\_\_  
Clerk of the Appeal Court

FORM 2

SUPREME COURT OF YUKON

S.C. No. \_\_\_\_\_

*Rex*

*Respondent/Appellant*

v.

\_\_\_\_\_

*Appellant/Respondent*

**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_, \_\_\_\_\_, of the  
(name) (occupation)

\_\_\_\_\_, in the Yukon, make oath and say as follows:  
(city, town, or village)

1. That on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ AM/PM  
(day of the week) (date) (month) (time) (circle one)

I did personally serve the Notice of Appeal, a copy of which is attached as Exhibit "A",  
upon the Respondent by delivering it to \_\_\_\_\_,  
(name of person served)

at \_\_\_\_\_, Whitehorse, Yukon.  
(place of service)

SWORN BEFORE ME in the )  
of \_\_\_\_\_, in the Yukon )  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. )  
)  
)  
\_\_\_\_\_)  
A Notary Public in and )  
for the Yukon )

\_\_\_\_\_  
(signature of person who served  
the Notice of Appeal)

FORM 3

SUPREME COURT OF YUKON

S.C. No. \_\_\_\_\_

*Rex*

*Respondent*

v.

\_\_\_\_\_

*Appellant*

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_ certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
I forwarded a filed copy of the notice of appeal, endorsed under Rule 2(3), to the  
respondent's office at \_\_\_\_\_ .  
(address)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ . 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Appeal Court

FORM 4  
SUPREME COURT OF YUKON

S.C. No. \_\_\_\_\_

*Rex*

*Respondent*

v.

\_\_\_\_\_

*Appellant*

**NOTICE OF APPLICATION**

TAKE NOTICE that an application will be made by \_\_\_\_\_  
to the Appeal Court on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
at \_\_\_\_\_ o'clock in the A.M./P.M. (circle one) at the Courthouse at 2134, 2<sup>nd</sup> Avenue,  
Whitehorse, Yukon, Y1A 5H6, for an order granting

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(set out relief sought and use additional page if necessary)

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING  
EVIDENCE: (set out documents such as affidavits, transcripts, etc., upon which the applicant  
relies) \_\_\_\_\_

THIS APPLICATION IS BASED UPON: (specify the *Charter* section, statutory authority or other  
law upon which the application is based) \_\_\_\_\_

It is expected that \_\_\_\_\_ will be needed for the hearing of this application.  
(indicate duration)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Party (or Party's counsel or agent)

To: The opposite party

FORM 5

SUPREME COURT OF YUKON

S.C. No. \_\_\_\_\_

*Rex*

*Respondent*

v.

\_\_\_\_\_

*Appellant*

**NOTICE OF ABANDONMENT OF APPEAL**

I hereby give notice that I, \_\_\_\_\_, abandon this appeal from:

- conviction
- acquittal
- sentence
- order

Dated at \_\_\_\_\_, Yukon, this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Appellant (or Appellant's counsel or agent)

To: The Respondent