

NORTHWEST TERRITORIES COURT OF APPEAL
PRACTICE DIRECTION - MOTIONS

August 1, 2006

This Practice Direction applies to motions returnable (i) before a full panel of the Court of Appeal and (ii) before a single judge of the Court of Appeal, in both civil and criminal appeals.

Motions Returnable Before a Panel of the Court

1. a) The Court of Appeal directs that all persons filing notices of motion returnable before a panel of the Court file an applicant's motion record, bound and in six copies. Except in urgent cases, it is to be filed 21 business days before the motion is heard, and a copy served on the respondent at the same time. If the respondent to the motion intends to oppose it, they are to file a respondent's motion record in six copies 14 business days before the motion is heard. If the respondent does not intend to oppose the motion, they are to file and serve a letter in six copies at least 14 business days before the motion is heard, indicating that they will not be filing a motion record. The Court will retain all six copies of each motion record and accordingly extra copies may be filed for counsel or the parties.

b) The requirement for six copies of the material referred to in paragraph (a) applies in both civil and criminal appeals notwithstanding Rule 33 of the Rules of the Court of Appeal respecting Civil Appeals.

Motions Returnable Before a Single Judge of the Court of Appeal

2. Paragraph 1 applies to motions returnable before a single judge of the Court of Appeal except that the number of copies to be filed shall be two for the Court and extra copies for counsel or the parties.

Contents of Motion Record and Notices of Motion

3. Subject to the requirements for applications for leave to appeal in summary conviction appeals set out in paragraph 10 below, the applicant's motion record is to contain:

a) a memorandum of not more than three typed pages setting out whatever counsel for the applicant considers useful to make the motion intelligible. Although the contents of the memorandum will vary from case to case, the Court suggests that counsel or the applicant should ordinarily include these things in this order:

i) the relief sought;

ii) a succinct statement of the facts relevant to that relief, including dates of any relevant steps in the proceedings, details of previous applications to the court, whether the appeal itself has been set down for hearing, and if so when;

iii) the precise statute sections and subsections, subrule numbers, or principles under which the application is made;

iv) if time extensions or delay might be relevant, or if facts are bulky or complex, a chronology, which need not be counted in the three-page limit; and

v) the grounds upon which the relief should be granted.

b) the notice of motion;

c) any filed affidavits to which counsel or the applicant intends to refer; and

d) case authorities other than those that are well-known.

4. The respondent's motion record is to contain a memorandum of not more than three typed pages setting out
 - a) the respondent's position on the relief sought;
 - b) a succinct statement of any facts relevant to the respondent's position which have not been referred to in the applicant's memorandum;
 - c) any statute sections and subsections, subrule numbers, or principles under which the application is opposed;
 - d) the grounds upon which the relief sought ought not be granted; and
 - e) copies of any affidavits to which the respondent intends to refer and that are not contained in the applicant's motion record and case authorities not contained in the applicant's motion record.
5. Every notice of motion and any document filed in reply to a notice of motion must contain, before the signature of counsel/party, an estimate of time required for argument.
6. Every notice of motion must contain, on the left-hand side of the backer, a Notice to the Respondent, which must state the following:

"Notice to the Respondent:

A respondent who fails to comply with the requirements of the Northwest Territories Court of Appeal Rules and Practice Directions, within the prescribed time, will not be allowed to present oral argument on the application, nor be entitled to costs of the application, unless otherwise ordered. Failure to appear may also lead to an order or judgment being made against the respondent in their absence."

Proceeding without oral argument

7. a) A single judge or a panel of the Court will entertain applications to hear and decide some motions by reading the notice of motion and supporting materials, without any oral argument.

b) To have a single judge or a panel consider this option, all parties to the motion or their counsel must sign and file letters agreeing to this procedure.

c) Any judge assigned to the motion will decide whether or not to accept the application and may call for oral or further written submissions.

d) The Court anticipates that purely written argument will likely be appropriate only in cases which are more straightforward.

Materials Filed Late

8. a) When materials are not filed within the time fixed by this Practice Direction, the party in default shall not be entitled to costs of the application, unless otherwise ordered.

b) When a respondent fails to file materials within the time fixed by this Practice Direction, the respondent will not be allowed to present oral argument on the application, unless otherwise ordered.

c) The late-filed materials will be marked accordingly by the Registrar.

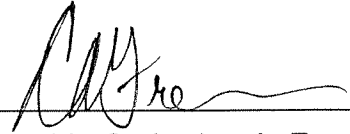
Applications for Leave to Appeal - Deemed Abandoned

9. Where an application for leave to appeal has not been heard within 6 months from the date the notice of motion is filed, the motion will be deemed abandoned, unless otherwise ordered before the expiration of this 6-month period.

Leave to Appeal in Summary Conviction Appeals:

10. a) One cannot appeal further to the Court of Appeal from the Supreme Court in a summary conviction matter except with leave on a question of law alone: Criminal Code s. 839. Such leave must be sought beforehand from one judge of the Court of Appeal in chambers on a regular Thursday Criminal Chambers date at 10:00 a.m. unless otherwise arranged with the Registrar.
- b) The applicant's memorandum on the application for leave to appeal must be no longer than ten pages, contain the information set out in paragraph 3 of this Practice Direction and must also:
 - i) specify the precise question or questions of law alone,
 - ii) show that the question may govern the case for which leave is sought, and
 - iii) attach the reasons of the Territorial Court judge and the judge of the Supreme Court,
- c) No such appeal will be put on the hearing list before leave to appeal is granted.
- d) There can be no:
 - i) restoration of an operator's permit (stay of licence suspension), or
 - ii) judicial interim release,before leave to appeal is granted.

e) Case law bars any appeal or prerogative relief from a denial of leave to appeal.

A handwritten signature in black ink, appearing to read 'C.A. Fraser', is written over a horizontal line.

The Honourable Catherine A. Fraser

Chief Justice

Northwest Territories Court of Appeal