



Guide to Criminal Appeals to the Court of Appeal of New Brunswick

FOR SELF-REPRESENTED APPELLANTS

JUNE 2023

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Introduction

This is a guide for self-represented appellants in criminal appeals to the [Court of Appeal of New Brunswick](#). It is not for use in legal submissions and does not bind the Court of Appeal.

This guide aims to describe the criminal appeal process in New Brunswick. It is intended to tell self-represented appellants what to expect when they appeal to the Court of Appeal. It covers the most common situations where an appeal or an application may be brought.

This guide is provided for information only. It is not legal advice. It does not replace the advice of a lawyer and is not meant to discourage you from talking to a lawyer. **For legal advice, contact a lawyer or the New Brunswick Legal Aid Services Commission.**

Nothing in this guide should be interpreted in a manner that is inconsistent with Part XXI and section 839 of the [Criminal Code](#) or with Rule [63](#) of the [Rules of Court](#), which apply to criminal appeals to the Court of Appeal.

This guide tries to use plain language wherever possible, but it also provides definitions of legal words and expressions in **section 1: Understanding legal terms**. Separate documents are included at the end of this guide for quick reference: instruction sheets on how to complete a Notice of Appeal in Form 63C or 63D (**Schedule A**); a criminal appeal flowchart (**Schedule B**); and basic instructions on how to start a prisoner appeal (**Schedule C**).

Hyperlinks have been added throughout this guide. Underlined text in blue links to an email address, or to reference material that is available online. To open a target email or document on a computer, press the “Ctrl” button on your keyboard while clicking the link.

For more information, you may contact the Registrar:

By mail:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 5H1
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

By prepaid registered mail or prepaid courier:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 1B6
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

Please note that registry staff does not give legal advice.

1. Understanding legal terms

The following definitions apply in this guide.

“Act” means a written law that has been passed by the Parliament of Canada or a provincial or territorial legislature; also called legislation or statute;

“affidavit” means a document that is signed by a person, called a deponent or an affiant, and contains statements of fact within the person’s personal knowledge and sworn or affirmed by the person to be true. If a rule allows it, the document may contain statements as to the person’s information and belief and specify the person’s source of information and the person’s belief. A lawyer, notary public, or commissioner for taking affidavits must witness the person’s signature and sign the affidavit next to that signature;

“appellant” means a party who is bringing an appeal; a party to an appeal who is opposed to the respondent to the appeal. In most criminal appeals, the appellant is a convicted person;

“applicant” means a party who is making an application to a court; the author of an application;

“application,” in a criminal appeal, means a request by an applicant or a moving party to ask a court to decide an issue that is relevant to a case and to order that something be done in favour of the applicant or the moving party;

“bail” means, in an appeal, an order of the Court of Appeal (known as a “Release Order”) releasing an appellant from custody while the appellant is awaiting a decision on the appeal, and requiring the appellant to obey certain conditions (rules) and to return to court on a specific date;

“criminal appeal” means an appeal brought to the Court of Appeal under Rule [63](#) of the New Brunswick [Rules of Court](#);

“intended appeal” means a proposed appeal for which leave of the Court of Appeal is sought;

“leave” means a court’s permission to proceed with certain types of applications, motions or appeals, or to proceed in a certain way;

“legislation” has the same meaning as “Act”;

“motion,” in a criminal appeal, has the same meaning as “application”;

“moving party” means a party who is bringing a motion before a court; the author of a motion;

“penal institution” includes a penitentiary as defined in the [Corrections and Conditional Release Act](#), S.C. 1992, c. 20, and a correctional institution as defined in the [Corrections Act](#), R.S.N.B. 2011, c. 132;

“perfected appeal,” in relation to a criminal appeal, means an appeal that complies with Rule [63.13](#) of the New Brunswick [Rules of Court](#) and may be scheduled for hearing;

“prisoner appeal” means an appeal by a person who, when the Notice of Appeal is given, is in custody and is not represented by counsel;

“proceeding” means, in general, an action or an application;

“Registrar” means the Registrar of the Court of Appeal and includes a deputy registrar of that court;

“respondent” means a party who is responding to an application, a motion or an appeal. In most criminal appeals, the respondent is the Attorney General, as represented by lawyers who work for the public prosecution service. These lawyers are responsible for presenting the Crown’s (or the state’s) case. Also known as prosecutors or “the Crown,” they represent the interests of the public;

“self-represented litigant” means a person who is a party to a court process, including a person who appears in court, without representation from a lawyer; and

“sentence” means the penalty or punishment pronounced by the court on the accused who has pleaded or has been found guilty of an offence;

“statute” has the same meaning as “Act”;

“trial decision” includes the conviction, judgment or verdict of acquittal, sentence or order against which an appeal may be taken; and

“trial judge” means the judge who presided at the trial in the trial court, including the sentencing judge.

2. Deciding to appeal

If you intend to take a criminal appeal to the Court of Appeal of New Brunswick, you should know the process involves many steps. It takes time and effort and may cost money. Before you get started, there are things you should consider.

A. Understanding the appeal process

In the [hierarchy of New Brunswick courts](#), the Court of Appeal is the highest court in the province. It hears criminal and civil appeals. In criminal cases, it hears appeals from decisions of the Provincial Court and the Court of King's Bench. It consists of the Chief Justice of New Brunswick and other judges, known as [Justices](#). It usually sits in Fredericton and it has a Registrar, whose office provides administrative services to the Court. See the Court of Appeal's website for more information: [Frequently Asked Questions](#).

In the [Canadian appeal process](#), the [Supreme Court of Canada](#) is the highest court in the country. In some cases, a decision of the Court of Appeal in a criminal appeal may be appealed to the Supreme Court if a member of the panel of judges of the Court of Appeal assigned to hear the appeal dissented (disagreed with other members of the panel) on a point of law. However, in many cases, a criminal appeal to the Court of Appeal is the last resort. For more information on the role of the Supreme Court in the Canadian judicial system, see the following sections of that court's website: [The Canadian Judicial System](#) and [Role of the Court](#).

B. Knowing an appeal is not a new trial

An appeal is not a "do-over" of a trial. There is usually no new evidence, including witness testimony, on appeal. The Court of Appeal accepts new evidence only if a party brings a motion, and certain legal criteria found in court decisions are met. The appellant often needs help from a lawyer to bring this motion.

Instead of rehearing the evidence that was admitted at trial, the Court of Appeal reviews the trial record and the decision appealed from, and it considers the arguments made on appeal. The Court then determines whether the trial court made an error that affected the outcome of the decision appealed from. Saying you disagree with your conviction and/or sentence is not enough. To be successful, you must show the trial court made an error of law or in principle, or an obvious and significant error in deciding the facts of the case.

When deciding an appeal, the Court of Appeal may:

- (1) allow the appeal, and
 - (a) reverse (overturn, change to the contrary) the decision appealed from,
 - (b) vary (change in part) the decision appealed from, or

- (c) set aside the decision appealed from and order that a new trial or hearing be held in the lower court (for a new decision to be made by that court); or
- (2) dismiss the appeal.

Appealing a conviction or sentence does not stay its execution pending the determination of the appeal. In other words, appealing does not put the sentence on hold until the appeal is decided. If you are in custody when you appeal, you may, by motion to the Court of Appeal, ask one of its judges to release you pending a decision on your appeal. Your request may be granted (accepted) or denied (refused). See **section 7: Applying for release from custody pending appeal** of this guide for details.

C. Complying with appeal procedures

In New Brunswick, the *Rules of Court* apply to the Court of King's Bench and the Court of Appeal. These rules are regulations that are made under the [Judicature Act](#), R.S.N.B. 1973, c. J-2. They "prescribe" (impose by regulation) the procedure and time limits to follow, along with the forms to use, in these courts. Rule [63](#) of the *Rules of Court* applies to criminal appeals to the Court of Appeal under the [Criminal Code](#). Rules [3](#) (Time), [4](#) (Court Documents), [59](#) (Costs) and [78](#) (Fees) also apply to these appeals. In some situations, other Rules, such as Rules [18](#) (Service of Process) and [37](#) (Procedure on Motions), may apply.

The *Rules of Court* may be found by clicking here: [Rules of Court](#). They include official "forms of court" that may be found by clicking here: [forms of court](#). These forms cannot be filled out directly on a computer. Unofficial "fillable" versions of some of these forms are also available on the Court of Appeal's website: [Forms of Court](#).

The parties to an appeal submit forms and other documents for "filing" with the Registrar, who reviews these documents before they may be accepted as "filed." The Registrar has the authority to reject a document, or a part of it, which does not comply with the *Rules of Court*. The Registrar also accepts payment of applicable filing fees prescribed by Rule 78.02. The Department of Justice and Public Safety of New Brunswick provides information on court fees on its website: [Court Fees – Court of Appeal](#). The Court of Appeal also provides information on its website: [Fees](#).

From time to time, the Registrar issues practice directives and protocols on procedural matters relating to appeals to the Court of Appeal. They may be found on the Court of Appeal's website: [Practice Directives](#) and [Protocols](#).

D. Representing yourself on appeal

Representing yourself in a criminal appeal comes with responsibility. Some online resources are available. You may find information for self-represented litigants on the Canadian Judicial Council's website: see [Representing yourself in court](#). You may also find general information on criminal appeals in the appeals section of the [Criminal Law Handbook for Self-Represented Accused](#) (see section 11: "Appeals"). The Canadian Judicial Council is a national organization, and most of its resources are not specific to our province.

In New Brunswick, an annotated version of the *Rules of Court* is available on the Court of Appeal's website: see the [Annotated Rules of Court](#). In addition, our courts provide information for self-represented litigants on their website: see the [Self-represented litigant](#) page.

If you appeal without the help of a lawyer, you must follow proper procedure throughout and ensure all your documents comply with the *Rules of Court*, which includes being filed on time. Otherwise, your documents may be rejected, and your appeal may even be dismissed. Ultimately, no matter which resources you use, your appeal is your responsibility.

Judges and registry staff have no obligation to assist a self-represented person who is disrespectful, frivolous, unreasonable, vexatious, abusive, who makes no reasonable effort to prepare his or her own case, or who otherwise abuses the court process.

In short

A criminal appeal to the Court of Appeal is not a new trial. It is a review of the trial record to determine whether the trial judge made a serious error. The criminal appeal process involves many steps. Rule [63](#) of the [Rules of Court](#) governs that process and imposes strict requirements, including time limits for taking steps.

Representing yourself on appeal may be demanding. Although some resources are available, you are responsible for managing your own case. You must submit the correct forms, take the necessary steps on time, and behave appropriately. Your failure to do so may affect your rights.

3. Starting your appeal on time

The [Rules of Court](#) impose a short time limit to start a criminal appeal. Your appeal may be dismissed if you do not act on time.

Under Rule [63.04\(2\)](#) of the *Rules of Court*, you may start your appeal within **30 days** of your conviction even if you have not yet been sentenced, or within **30 days** of sentencing at the latest. An appeal against sentence only must be started within **30 days** of sentencing. See **section 8: Issuing your Notice of Appeal** of this guide for details.

A. Calculating time limits

Time limits for proceedings in the Court of Appeal are calculated according to Rule [3.01](#).

When there is a time limit for doing something, such as filing an appeal, these rules apply:

- (1) The period starts on the day after the first day and ends on the last day;
- (2) Saturdays, Sundays and holidays
 - (a) are counted if the period is seven days or more, but
 - (b) are not counted if the period is under seven days; and
- (3) If it ends on a Saturday, a Sunday, or a holiday when the office of the Registrar is closed, the period expires on that office's next business day.

Holidays are defined in Rule [1.04](#) and section 38 of the [Interpretation Act](#), R.S.N.B. 1973, c. I-13. Holidays, as defined, include Saturdays, Sundays, and statutory holidays in New Brunswick.

For example, Rule 63.04(2) prescribes a **30-day limit** for appealing a decision or an order to the Court of Appeal. To calculate the 30 days, start counting the day after your conviction or sentence. To appeal a written decision of the Court of King's Bench in a summary conviction appeal, start counting the 30 days the day after the decision was filed with the clerk of the Court of King's Bench. The 30th day is the deadline to appeal. If the 30th day falls on a day when the office of the Registrar is closed, the deadline is the day that office reopens.

B. Asking for an extension of time

Under Rules 3.02 and 63.26, you may ask the Court of Appeal for an extension of the **30-day limit** to file your Notice of Appeal even if the limit has expired.

If you are using **Form 63C** to file your appeal, you may apply for an extension of time in **Form 63C** itself under Rule 63.26(2). However, if you are using **Form 63D**, your application must be made by Notice of Motion (**Form 37A**), with an affidavit in support, in compliance with Rule 63.26(1). In that case, the Notice of Motion must be issued as required by Rules [37](#) and 63.26(1).

A judge of the Court of Appeal may extend the prescribed time to appeal if it is in the interest of justice to do so. To reach this decision, the judge considers several factors, such as whether the applicant has shown a genuine intention to appeal within the time prescribed to appeal and can explain the delay, whether the extension of time would unfairly inconvenience the respondent, whether the proposed appeal has merit, and any other factor considered appropriate in the circumstances of the case.

Your appeal will be rejected if it is not started within the time prescribed by Rule 63.04(2) unless a judge of the Court of Appeal orders otherwise.

If you have questions about how to calculate time limits, you may contact the office of the Registrar by phone at (506) 453-2452, or by email at nbca-canb@gnb.ca.

In short

Under Rule [63.04\(2\)](#) of the [Rules of Court](#), you may start your appeal within **30 days** from the date of the trial decision, but you must start it within **30 days** from the date of sentencing at the latest. The time limit is calculated according to Rule [3.01](#). To ask a judge of the Court of Appeal for an extension of this time limit:

- you may apply for the extension within your Notice of Appeal under Rule 63.26(2) if your appeal is issued in **Form 63C**, or
- you must apply for the extension by Notice of Motion (**Form 37A**), with an affidavit in support, as required by Rule 63.26(1) if your appeal is issued in **Form 63D**.

If your appeal is late and the time for filing is not extended, it will be rejected.

4. Choosing a Notice of Appeal form

A criminal appeal to the Court of Appeal starts with a form called “Notice of Appeal.” This form serves to notify the Court and the respondent (the Attorney General) that there is an appeal. Specifically, it provides a description of the decision appealed from, and the contact information of the persons involved in the appeal. The Notice of Appeal also sets out the “grounds of appeal” and the “relief sought” to specify the reasons for the appeal and what the Court is being asked to do as a result.

There are different forms of Notices of Appeal. Rule [63.04\(1\)](#) of the [Rules of Court](#) prescribes which form to use depending on the circumstances. Convicted persons who are not represented by a lawyer must choose between:

- (a) **Form 63C** for appeals under Part XXI of the [Criminal Code](#) (appeals involving indictable offences), and
- (b) **Form 63D** for appeals that are not under Part XXI of the *Criminal Code* (such as an appeal from a decision of the Court of King’s Bench sitting as the summary conviction appeal court under Part XXVII of the *Criminal Code*).

When choosing between **Form 63C** and **Form 63D**, you must first determine whether the appeal you intend to bring involves an indictable offence or a summary conviction offence, or both. If the decision of the Provincial Court deals with a summary conviction offence only, you must first appeal it to the Court of King’s Bench. See **subsection 4b: Summary conviction offences**.

A. Indictable offences

Indictable offences are serious criminal offences. Common indictable offences are found in the *Criminal Code* and the [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19, which refers to the appeal provisions of Part XXI of the *Criminal Code*. Some indictable offences are also found in other federal laws. Appeals involving indictable offences by self-represented convicted persons are started by Notice of Appeal in **Form 63C**.

B. Summary conviction offences

Summary conviction offences are less serious than indictable offences. Common summary conviction offences are found in the *Criminal Code*, the *Controlled Drugs and Substances Act*, other federal laws, or provincial legislation such as the [Provincial Offences Procedure Act](#), S.N.B. 1987, c. P-22.1.

Under paragraph 813(a) of the *Criminal Code*, an appeal may be taken to the Court of King’s Bench from a conviction or an order, or against a sentence or verdict, entered in the Provincial Court in relation to a summary conviction offence. The Court of King’s Bench hears the appeal as the summary conviction appeal court. Under Rule [64](#), this appeal is started by Notice of Appeal in **Form 64A** either within the time prescribed by Rule 64.04 (within **30 days** after the date of the conviction, order, sentence or verdict appealed from), or within any extended time allowed by

the Court of King's Bench or a judge of that court. A judge of the Court of King's Bench decides this first appeal.

Under subsection 839(1) of the *Criminal Code*, the decision of the Court of King's Bench may then be appealed to the Court of Appeal, with leave of that court or one of its judges, on a question of law alone. Under Rule 63, that second appeal is started by Notice of Appeal in **Form 63D** either within the time prescribed by Rule 63.04(2) (within **30 days** from the date of the decision of the Court of King's Bench appealed from), or within any extended time allowed by a judge of the Court of Appeal under Rule 63.26.

In an appeal to the Court of Appeal (in **Form 63D**) under subsection 839(1) of the *Criminal Code* from a decision of the Court of King's Bench sitting as the summary conviction appeal court, there is no need for a transcript of the appeal proceedings in the Court of King's Bench if no new evidence was admitted in that court, since the appeal to the Court of Appeal must involve a question of law alone. The prior appeal, to the Court of King's Bench, is usually based on a transcript of the Provincial Court proceedings appealed from.

C. Indictable offences and summary conviction offences combined

The Provincial Court may try a person for a summary conviction offence together with an indictable offence. A person who was convicted, or sentenced, for an indictable offence and a summary conviction offence at the same time may appeal directly to the Court of Appeal, with leave of that court or one of its judges, under subsection 675(1.1) of the *Criminal Code* if the conditions set out in that subsection are met. For this type of appeal, you should use **Form 63C**.

In short

Rule [63.04\(1\)](#) of the [Rules of Court](#) tells you which form of Notice of Appeal to use depending on the situation. If you intend to appeal from your conviction and/or against your sentence as a self-represented convicted person, use the following form of Notice of Appeal:

- **Form 63C** to appeal to the Court of Appeal in respect of
 - an indictable offence under Part XXI of the [Criminal Code](#), or
 - a combination of an indictable offence and a summary conviction offence under subsection 675(1.1) of the *Criminal Code*; or
- **Form 63D** to appeal to the Court of Appeal from a decision of the Court of King's Bench sitting as the summary conviction appeal court under Part XXVII of the *Criminal Code*.

5. Completing the Notice of Appeal form

This section describes how to complete a Notice of Appeal. Instruction sheets for completing **Form 63C** or **Form 63D** are also provided in **Schedule A**. To determine which of these forms to use, see **section 4: Choosing a Notice of Appeal form** of this guide. Please read this information before you contact the Registrar's office for assistance.

Under section 17 of the [Official Languages Act](#), S.N.B. 2002, c. O-0.5, you may complete the Notice of Appeal, or any other pleading relating to your appeal, in English or in French.

A. Choosing a format

The official forms prescribed under the [Rules of Court](#) are in Portable Document Format (PDF) and cannot be filled out on a computer: [Forms of Court](#). Unofficial versions of some of these forms, which may be filled out on a computer, are also provided on the Court of Appeal's website: [Forms of Court](#).

The following instructions apply when you use court forms, whether you complete the official forms, or you create your own forms based on official forms.

If you complete a form on a computer, you will still need to print it for filing.

If you complete a form in Word format, do not make major formatting changes to the style and size of characters, or the width of margins.

When printing a form:

- use quality letter size printer paper (216 mm x 279 mm or 8.5" x 11"), and
- print only on one side of the paper.

If you complete a form by hand, make sure your handwriting is **easy to read**.

You must sign the completed form before providing it to the Registrar or the senior officer of your penal institution, whichever the case may be. See **section 8: Issuing your Notice of Appeal** of this guide for details.

B. Completing the form

For help with completing a Notice of Appeal in **Form 63C** or **Form 63D**, see the instruction sheets in **Schedule A**.

Rule [63.04\(3\)](#) of the *Rules of Court* prescribes what to include in a Notice of Appeal. You do not need to write a long argument in your Notice of Appeal, but you must include your grounds of appeal (i.e. the reasons for your appeal) and the relief sought (i.e. what you are asking the Court of Appeal to do as a result).

If you are not represented by a lawyer, you will have an opportunity to argue your appeal in writing and/or in person. Your Notice of Appeal must state how you intend to present your case and argument.

If you choose to argue your appeal in writing only, under Rule 63.11, you may either set out your points of argument in the Notice of Appeal, or file the Appellant's Submission described in Rule 63.12 within the time prescribed by Rule 63.13(1).

You may prefer to argue your appeal in person only. In that case, you will make your argument orally at the appeal hearing before a panel of judges of the Court of Appeal instead of putting it in writing in the Notice of Appeal or in an Appellant's Submission.

If you wish to make allegations against your trial lawyer as a ground of appeal, please refer to the Court of Appeal's [Protocol for Appeal Proceedings Involving Allegations of Ineffective Counsel in First Instance](#) on the Court's website.

See Rules 63.04 and 63.11 to 63.13 of the *Rules of Court* along with **section 12: Arguing your appeal in writing, in person, or both** and **Schedule A** of this guide for details.

In short

The official forms of court under the [Rules of Court](#) may be found here: [Forms of Court](#). Unofficial versions of some of these forms, which may be filled out on a computer, are also provided on the Court of Appeal's website: [Forms of Court](#).

When completing your Notice of Appeal in **Form 63C** or **Form 63D**, please refer to Rules [63.04\(3\)](#) and 63.11 to 63.13 of the *Rules of Court* and to **sections 10** and **12** and **Schedule A** of this guide.

6. Applying for leave to appeal

In criminal cases, not all decisions of the Provincial Court or the Court of King's Bench may be appealed as of right to the Court of Appeal. A criminal appeal to the Court of Appeal must rest on a "right of appeal" found in the [Criminal Code](#), the [Youth Criminal Justice Act](#), S.C. 2002, c. 1, the [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19, another federal law, or provincial legislation such as the [Provincial Offences Procedure Act](#), S.N.B. 1987, c. P-22.1. A right of appeal may be limited to a specific ground (such as a question of law alone), and/or subject to "leave."

When you have the right to appeal "with leave" only, you must apply to the Court of Appeal for leave to appeal. Before you appeal, you should determine whether you have the right, and whether you need leave, to do so.

A. When leave is needed

1) Indictable offences: s. 675(1) of the *Criminal Code*

If you were convicted of **an indictable offence**, you may appeal to the Court of Appeal against your conviction on a question of law alone under subsection 675(1) of the *Criminal Code*. This right of appeal is limited to questions of law.

Under subparagraph 675(1)(a)(ii), you may appeal with leave of the Court of Appeal or a judge of that court against your conviction on a ground that involves a question of fact or a question of mixed law and fact. These questions include:

- (a) a trial judge's assessment of the credibility of trial witnesses;
- (b) an attempt to withdraw a guilty plea; and
- (c) an allegation that the trial lawyer was ineffective (see, for this type of allegation, the Court of Appeal's [Protocol for appeal proceedings involving allegations of ineffective counsel in first instance](#)).

Under subparagraph 675(1)(a)(iii), you may appeal with leave of the Court of Appeal against your conviction on a ground that appears to the Court of Appeal to be sufficient, other than a question of law alone, a question of fact, or a question of mixed law and fact.

You need leave of the Court of Appeal or a judge of that court to appeal against a sentence. You may also need leave to appeal certain less common decisions or orders. However, you cannot appeal a sentence that is "fixed by law" (imposed by legislation).

In summary, under subsection 675(1), you need leave to appeal

- (a) against your conviction on a ground that does not involve a question of law alone, or
- (b) against your sentence if it is not fixed by law.

2) Summary conviction offences: s. 839(1) of the *Criminal Code*

If you were convicted of a **summary conviction offence**, you may first appeal to the Court of King's Bench from a trial decision of the Provincial Court. The decision of the judge of the Court of King's Bench on the summary conviction appeal may then be appealed to the Court of Appeal, with leave of that court or one of its judges, on a question of law alone under subsection 839(1) of the *Criminal Code*.

3) Indictable offence and summary conviction offence combined: s. 675(1.1) of the *Criminal Code*

If you are convicted or sentenced in respect of a **summary conviction offence together with an indictable offence**, you may appeal to the Court of Appeal, with leave of that court or a judge of that court, in respect of both offences if the three conditions set out in subsection 675(1.1) of the *Criminal Code* are met: (a) the matter has not been appealed to the summary conviction appeal court (the Court of King's Bench); (b) the summary conviction offence was tried together with an indictable offence; and (c) there is an appeal in respect of the indictable offence.

B. How to apply for leave

When you need leave to appeal, you must apply for it in your Notice of Appeal to comply with Rule [63.03](#) of the [Rules of Court](#). **Form 63C** includes an application for leave to appeal in case it is needed, but **Form 63D** does not. Since all appeals using **Form 63D** require leave to appeal, an application for leave is implied.

C. When the application for leave to appeal is heard

Applications for leave to appeal are generally heard by a panel of three judges of the Court of Appeal, who will hear the appeal at the same, as if leave were granted. Under Rule 63.19, when the merits (the substance) of an appeal are fully argued on the hearing of an application for leave to appeal, the appeal itself may be decided without further argument. One obvious benefit of this approach is that the parties do not need to attend another hearing if leave to appeal is granted.

This approach also applies to applications for leave to appeal against sentence only unless the appellant also applies to be released from custody pending appeal. Under paragraph 675(1)(b) of the *Criminal Code*, leave to appeal against sentence may be granted by either the Court of Appeal or a judge of that court. In the case of an intended appeal against sentence only, paragraph 679(1)(b) of the *Criminal Code* provides that a judge of the Court of Appeal may release the appellant from custody pending the determination of the appeal only if leave to appeal has been granted. Applications for release from custody are heard by a single judge of the Court of Appeal. When the intended appeal is against sentence only, the judge must first decide whether, or not, to grant leave to appeal.

If you intend to apply to the Court of Appeal both for leave to appeal and for your release from custody until your appeal is decided, you must make both applications at the same time and file:

- (a) the documents in support of your application for release (including the affidavit referred to in Rule 63.25(2), or the agreed Statement of Facts referred to in Rule 63.25(5)); and
- (b) the documents in support of your application for leave to appeal.

See also **section 7: Applying for release from custody pending appeal** of this guide for details.

In short

In some criminal cases, an appeal to the Court of Appeal may only be taken from a trial decision with leave of the Court of Appeal or a judge of that court. Leave to appeal must be requested in the Notice of Appeal. This is called “applying for leave to appeal.”

In general, you may appeal to the Court of Appeal under subsection 675(1) of the [Criminal Code](#):

- in respect of an **indictable offence**,
 - without leave, against your conviction on a question of law alone,
 - with leave,
 - against your conviction on any question other than a question of law alone, or
 - against your sentence if it is not one that is “fixed by law” (imposed by legislation);
- in respect of a **summary conviction offence**, with leave, against a decision of the Court of King’s Bench sitting as the summary conviction appeal court; and
- when a **summary conviction offence and an indictable offence were tried together**, with leave, against a conviction for the summary conviction offence, or against the sentence imposed for the summary conviction, if the conditions in subsection 675(1.1) of the *Criminal Code* are met.

If you need leave to appeal, you must apply for it in your Notice of Appeal to comply with Rule [63.03](#) of the [Rules of Court](#). **Form 63C** already includes an application for leave to appeal. With **Form 63D**, leave is always needed, so the application for leave to appeal is implied.

When you apply both for leave to appeal against sentence only and for release from custody pending appeal under subsection 679(1) of the *Criminal Code* and Rule 63.25(1), a single judge of the Court of Appeal hears both applications at the same time. If you did not apply for release, a panel of judges of the Court of Appeal will hear your application for leave to appeal the day of your appeal hearing and may decide your appeal without hearing further argument under Rule 63.19.

7. Applying for release from custody pending appeal

Under section 679 of the [Criminal Code](#), an appellant who is in custody may apply to a judge of the Court of Appeal to be released pending the determination of his or her appeal. This is done by Notice of Motion (**Form 37A**) and is commonly referred to as “applying for bail.”

The criteria for release are set out in subsection 679(3). To be successful on an application for release, you must show that:

- (a) your appeal or application for leave to appeal is not frivolous;
- (b) you will surrender yourself into custody under the terms of the order issued by the Court of Appeal; and
- (c) you do not need to be detained in the public interest.

When applying for release pending appeal, you must file, with your Notice of Motion, an affidavit that contains all the information required by Rule [63.25\(2\)](#) of the [Rules of Court](#) in support of your application for release. This information is the following:

- (a) the offence of which you were convicted;
- (b) any grounds of appeal not specified in your Notice of Appeal;
- (c) your age and marital status;
- (d) your places of residence in the three years before your conviction and where you propose to reside if released;
- (e) your employment before your conviction, and whether you expect to be employed, if released, and where you would be employed;
- (f) the details of your criminal record before your conviction;
- (g) if the appeal is against sentence only, what unnecessary hardship would be caused if you were detained pending your appeal; and
- (h) the particulars (details) of any undertaking or recognizance you propose as a condition of your release.

A draft affidavit is provided in **Schedule D** as an example. You may use it and adapt it to your particular case, or you may draft your own affidavit. Either way, your affidavit must address the items listed above. An affidavit is not needed if you agree with the prosecutor on a Statement of Facts, and a judge of the Court of Appeal relies on that statement under Rule 63.25(5). Under Rule 63.25(3), if the prosecutor opposes your release in the public interest, he or she must file an

affidavit setting out the facts relied on. You may cross-examine on your respective affidavits under Rule 63.25(4).

When you apply for leave to appeal against sentence only and for release from custody pending appeal, you must file your documents in support of both applications at the same time. To decide your application for release, a judge of the Court of Appeal must first decide your application for leave to appeal. See also **section 6: Applying for leave to appeal** of this guide for details.

In short

Applications for release from custody pending the determination of the appeal are governed by section 679 of the [Criminal Code](#) and are made by Notice of Motion (**Form 37A**). An appellant who applies for release must comply with Rule [63.25](#) of the [Rules of Court](#). Where the appeal is against sentence only, the appellant may be released only if leave to appeal is granted, so all documents in support of both the application for leave to appeal and the motion for release (known as a “bail application”) must be filed at the same time.

8. Issuing your Notice of Appeal

The Notice of Appeal must be issued in compliance with Rule [63.05](#) of the [Rules of Court](#).

If you are not represented by a lawyer while you are in custody, the Notice of Appeal is issued when you provide the original and four copies to the senior officer of the penitentiary or correctional institution in which you are confined. The officer will send the Notice of Appeal to the Registrar.

However, if you are not represented by a lawyer but you are not in custody, the Notice of Appeal is issued when the original and three copies are filed in the office of the Registrar or sent to the Registrar by prepaid registered mail or prepaid courier. Before attempting to file your documents in person in the Registrar's office, please check the Court of Appeal's website for any [Updated COVID-19 Directive](#).

The Notice of Appeal must be issued within **30 days** from the date of the trial decision or from the date of sentencing unless the Court of Appeal or a judge of that court orders otherwise.

Under Rule 63.05(5), your Notice of Appeal is served on the Attorney General when the Registrar sends a copy to the Attorney General.

Within **15 days** of being served with a Notice of Appeal, a respondent may issue and serve on the appellant a Notice of Cross-Appeal under Rule 63.06.

In short

To appeal against your conviction and/or sentence if you are not represented by a lawyer, you must file your Notice of Appeal in compliance with Rule [63.05](#) of the [Rules of Court](#):

- if you are in custody, by providing the original and 4 copies to the senior officer of your penal institution;
- or -
- if you are not in custody,
 - by taking the original and 3 copies to the office of the Registrar (check the Court of Appeal's [Updated COVID-19 Directive](#) first),
 - or -
 - by sending the original and 3 copies to the Registrar.

Under Rule 63.05(5), the Registrar will serve your Notice of Appeal on the Attorney General.

9. Ordering a transcript of evidence

Under the [Recording of Evidence Act](#), S.N.B. 2009, c. R-4.5, proceedings before the Provincial Court and the Court of King's Bench may be recorded. In criminal cases, the Department of Justice and Public Safety of New Brunswick records proceedings and, on request, prepares transcripts. A transcript is a written record of what was said at trial. The transcript is certified as accurate by the professional stenographer who prepared it. The Department of Justice and Public Safety (not the Court of Appeal) manages the preparation and release of these transcripts.

Rule [63.07](#) of the [Rules of Court](#) governs transcripts of evidence in criminal appeals. Under Rule 63.07(1), except in a prisoner appeal, the appellant must order a transcript of the trial and/or sentencing hearing once the Notice of Appeal has been issued. In prisoner appeals, the Attorney General is responsible for ordering a transcript and providing a free copy to the appellant.

In an appeal against sentence only, the transcript is limited to the evidence and arguments heard about sentence, and the trial judge's reasons for sentence, unless the Court of Appeal or a judge of that court orders differently.

In an appeal to the Court of Appeal (in **Form 63D**) under subsection 839(1) of the [Criminal Code](#) from a decision of the Court of King's Bench sitting as the summary conviction appeal court, there is no need for a transcript of the appeal proceedings in the Court of King's Bench if no new evidence was admitted in that court, since the appeal to the Court of Appeal must involve a question of law alone. The prior appeal, to the Court of King's Bench, is usually based on a transcript of the Provincial Court proceedings appealed from.

A. Making a request when you are not in custody

To order a transcript for your appeal when you are not in custody, you must make a request in writing to the Provincial Court or the Court of King's Bench, whichever the case may be, in the judicial district where the trial or hearing was held (for example, the Judicial District of Moncton). To make this request, you must use the form linked here: [Transcript Order Form](#). The completed form must be sent immediately after the Notice of Appeal is issued.

Under Rule 63.07(9), the transcribing fees prescribed by the [General Regulation – Recording of Evidence Act](#), N.B. Reg. 2009-143, are payable unless a person is exempt from paying them. You are exempt if you receive legal aid services, or your legal services are paid for by the Minister of Justice and Public Safety or the Attorney General of New Brunswick, in relation to your appeal.

Where transcribing fees apply, there is a fee of \$3.00 per page. Therefore, the total cost of the transcript depends on the length of the transcript, which itself depends on the length of the trial or hearing. After sending the Transcript Order Form, you will be asked for a deposit on the transcript. The Department of Justice and Public Safety asks for a 90% deposit to start transcribing. The transcript will not be released until it is paid for in full. If your deposit is higher than the cost of the transcript, the Department says it will refund the overpayment to you. See the Department's website for details by clicking here: [Court Fees – Transcripts](#). Questions about the preparation of transcripts must be addressed to the Department.

Once the transcript is completed and paid for in full, the court stenographer forwards the original to the Registrar and notifies the parties to the appeal and the trial court. Within **15 days** of receiving this notice, the trial court sends the original record to the Registrar unless a different order is made. A judge of the Court of Appeal or the Registrar may ask the trial court to send trial exhibits to the Court of Appeal. In that case, four months after the appeal has been decided, the Registrar returns these exhibits to the trial court or to the party that produced them at trial.

B. Changing or cancelling your request

Under Rule 63.07(6), you must change or cancel your request to the Department of Justice and Public Safety for preparation of a transcript if:

- (a) if the appeal is against sentence only, the Court of Appeal or a judge of that court orders that the transcript will not be limited to the evidence given and the arguments made on the issue of sentence, and the judge's reasons for sentence;
- (b) the parties to the appeal agree to a Statement of Facts instead of a transcript and the exhibits;
- (c) the parties to the appeal agree in writing that part of the transcript is not needed; or
- (d) on motion made by Notice of Motion (**Form 37A**), a judge of the Court of Appeal orders that part of the transcript is not needed.

In short

In criminal appeals, a transcript of the trial proceeding is needed under Rule [63.07](#) of the [Rules of Court](#). Except in a prisoner appeal, an appellant must order a transcript of the trial and/or sentencing hearing immediately after issuing a Notice of Appeal. The appellant sends a request for preparation of a transcript to the Department of Justice and Public Safety of New Brunswick using a specific form and pays the transcribing fees that apply. See the Department's website for details: [Court Fees – Transcripts](#). If any of the situations described in Rules 63.07(3), (4) and (5) occurs after a request for preparation of a transcript has been made, the request must be changed or cancelled as required by Rule 63.07(6).

10. Receiving an Appeal Book and preparing an Appellant's Submission

Under Rules [63.10](#) and 63.12 of the *Rules of Court*, an appellant is generally responsible for preparing an Appeal Book and an Appellant's Submission. Under Rule 63.13, the Appeal Book and the Appellant's Submission, if there is one, must be served and filed:

- (a) if a transcript is needed, within **30 days** of the transcript being prepared; or
- (b) if not, within **30 days** of the Notice of Appeal being issued.

See also **section 11: Perfecting the appeal** of this guide for details.

A. Appeal Book

If you are appealing as a self-represented convicted person, the Attorney General will prepare an Appeal Book for the Court of Appeal and provide you with a free copy.

B. Appellant's Submission

If you are a self-represented appellant, you must prepare an Appellant's Submission under Rule 63.12 if:

- (a) your Notice of Appeal states that you intend to argue your appeal in writing only, or both in writing and in person; and
- (b) your Notice of Appeal does not include your points of argument.

Rules 63.12 and 63.18 prescribe the content, outline and format needed for the Appellant's Submission. The Registrar has the authority to reject an Appellant's Submission if it does not comply with Rules 63.12 and 63.18, or it is hard to read.

Under Rule [78.02](#), you must pay the following fees to the Registrar if you are not in custody:

- (a) \$50.00 on filing the Appellant's Submission; and
- (b) \$10.00 if the Appellant's Submission is refiled after being rejected by the Registrar.

Payment of the applicable fee should be provided to the Registrar with the Appellant's Submission. Some exceptions apply: [Fees](#).

In short

A self-represented appellant does not have to file an Appeal Book but may have to file an Appellant's Submission.

Rule [63.12](#) of the [Rules of Court](#) describes the required content and outline of the Appellant's Submission. Rule 63.18 imposes a format for both the Appellant's Submission. The Registrar may reject an Appellant's Submission if it is non-compliant with the *Rules of Court*, or it is too hard to read.

Rule 63.13 prescribes the time for filing the Appellant's Submission. Subject to exceptions, under Rule [78.02](#), a self-represented appellant who is not in custody must pay \$50.00 to file the Appellant's Submission with the Registrar, and \$10.00 to refile it when it has been rejected.

11. Perfecting the appeal

Once a Notice of Appeal has been issued and, if necessary, a transcript has been prepared, the appeal must be “perfected” (completed) as required by Rule [63.13](#) of the [Rules of Court](#).

The appellant is generally responsible for perfecting an appeal. However, if you are a self-represented appellant, the Attorney General is responsible for perfecting your appeal:

- (a) if a transcript is needed, within **30 days** of being notified by the court stenographer that the transcript has been prepared; or
- (b) if not, within **30 days** of your Notice of Appeal being issued.

You must file 6 copies of the Appellant’s Submission, if any, with the Registrar in compliance with Rule 63.13(2)(b) either within the **30-day limit** prescribed by Rule 63.13(1), or within any extended time allowed by court order. The Attorney General is then required by Rule 63.13(2) to complete the steps to perfect your appeal. See Rules 63.12 and 63.18 of the *Rules of Court* and **section 10: Receiving an Appeal Book and preparing an Appellant’s Submission** of this guide for details.

The Registrar may direct you to resubmit documents if they do not comply with the *Rules of Court*, or they are hard to read.

Once your appeal is perfected, it may be set down (scheduled) for hearing by the Court of Appeal. An appeal is heard by a panel of three judges or, in exceptional cases, by a larger panel. Judges hear appeals during “sittings” of the Court. Regular sittings begin on the second Tuesday of each month (except July, August and December, when the Court does not hold regular sittings). Unless the Chief Justice orders differently, your perfected appeal will be scheduled for hearing in the second month following the month in which it is perfected (except in July, August or December). For example, if your appeal is perfected in September, it will be scheduled for hearing in November. However, if your appeal is perfected in May, it will be scheduled for hearing in September.

Under Rule 63.14, the Registrar prepares a [List of Cases](#) under the Chief Justice’s instructions. Unless the Chief Justice orders differently, the Registrar will place your perfected appeal on the List of Cases and will give you a copy of the list for the month in which the appeal is scheduled to be heard. This list will show the date and time of the appeal hearing and may also show the members of the panel assigned to hear the appeal, and the number of the courtroom where the hearing will take place.

You may ask for an early hearing of your appeal by bringing a motion by Notice of Motion (**Form 37A**), with an affidavit in support, under Rules [37](#) and 63.15. On motion for an early hearing, the Court of Appeal or a judge of that court may, with the Chief Justice’s approval, order an early hearing and give directions in special circumstances.

In short

As a self-represented appellant,

- you can rely on the Attorney General to perfect your appeal, but
- as required by Rule [63.13\(2\)\(b\)](#) of the [Rules of Court](#), you must file the Appellant's Submission described in Rules 63.12 and 63.18 unless
 - you have opted to argue your appeal in person only, or
 - your points of argument are already included in your Notice of Appeal.

Your appeal, once perfected, will be scheduled for hearing and placed on the [List of Cases](#) according to the timeline set out in Rule 63.14. In exceptional circumstances, you may bring a motion, with or without notice, under Rules [37](#) and 63.15 to ask for an early hearing of your appeal.

12. Arguing your appeal in writing, in person, or both

As the appellant, you may present your case and argument:

- (a) in writing and in person,
- (b) in writing only, or
- (c) in person only.

You must choose one of these three approaches and state your choice in your Notice of Appeal. Regardless of the choice you make, you must include your grounds of appeal (i.e. the reasons for your appeal) and the relief sought (i.e. what you are asking the Court of Appeal to do as a result) in your Notice of Appeal to comply with Rule [63.04\(3\)](#) of the *Rules of Court*.

The most common way to argue an appeal is both in writing and in person. If you choose this approach, first you will set out briefly (in point form) in your Notice of Appeal why you think the trial judge made an error, then you will present your argument in writing and in person to try to convince the Court of Appeal of your position. An appearance in person may be by videoconference, as arranged by the Registrar.

However, if you choose to argue your appeal in writing only without appearing in person (or through a lawyer), you must either include your points of argument in the “grounds of appeal” section of your Notice of Appeal form under Rule 63.11, or file 6 copies of an Appellant’s Submission under Rules 63.12 and 63.13(2)(b).

It is important for you to do as you said in the Notice of Appeal. Specifically, if you said in your Notice of Appeal you would argue your case in writing and in person, or in person only, but you do not appear at the hearing of your appeal, under Rule 63.23, the Court of Appeal may:

- (a) adjourn the hearing (suspend it to a later date),
- (b) dismiss the appeal without a hearing, or
- (c) hear the appeal in your absence, without the benefit of your oral arguments.

In short

You must state in your Notice of Appeal whether you intend to present your case and argument:

- in writing and in person;
- in writing only
 - in your Notice of Appeal under Rule [63.11](#) of the [Rules of Court](#), or
 - in an Appellant’s Submission under Rules 63.12 and 63.13(2)(b); or
- in person only.

Your Notice of Appeal must also state your grounds of appeal (i.e. the reasons for your appeal) and the relief sought (i.e. what you are asking the Court of Appeal to do as a result) as required by Rule 63.04(3).

If you state that you will appear in person, and you fail to appear, the Court of Appeal, under Rule 63.23, may decide to hear your appeal in your absence, to hear it another day, or to dismiss it without a hearing.

13. Abandoning your appeal

Under Rule [63.21](#) of the *Rules of Court*, you may abandon your appeal before it is heard. To do so, you must file a Notice of Abandonment (**Form 63E**) with the Registrar. Telling the Registrar you wish to abandon your appeal is not enough. You must file a Notice of Abandonment; otherwise, the Court of Appeal may hear and decide your appeal in your absence.

If you are not represented by a lawyer, you may sign your Notice of Abandonment yourself. Under Rule 63.21(2), your signature must be verified by affidavit, or witnessed either by a lawyer or, if you are in custody, by an officer of the penal institution in which you are confined.

If you are in custody, the Registrar will serve your Notice of Abandonment on the respondent (the Attorney General). If you are not in custody, you must serve it yourself on the respondent and provide the Registrar with proof of service.

Your abandoned appeal will be considered dismissed without the Court of Appeal issuing an order. However, under Rule 63.21(3), you may ask the Registrar for a formal order dismissing the appeal. At **any time** after abandoning your appeal, you may bring a motion by Notice of Motion (**Form 37A**) under Rules [37](#) and 63.21(4) for leave to withdraw your Notice of Abandonment. A judge hearing the motion may grant this permission if it is in the interest of justice to do so.

In short

An appeal may be abandoned – before it is heard – by Notice of Abandonment (**Form 63E**) under Rule [63.21](#) of the *Rules of Court*. If you are a self-represented appellant, your signature on this form must be

- verified by affidavit; or
- witnessed
 - by an officer of your penal institution if you are in custody, or
 - by a lawyer if you are not in custody.

Your abandoned appeal will be considered as dismissed whether, or not, you obtain a formal order dismissing the appeal under Rule 63.21(3). At any time, you may ask for permission to withdraw your Notice of Abandonment by Notice of Motion (**Form 37A**) under Rules [37](#) and 63.21(4).

14. Getting a decision

When members of a panel of the Court of Appeal hear an appeal, it may give its decision either orally at the hearing, or later in writing. When a written decision on an appeal is issued, it may be either in the form of a disposition with reasons to follow (the result of the appeal with the detailed justification to follow), or in the form of a full judgment with reasons.

Under Rule [63.24](#) of the [Rules of Court](#), the Registrar either notifies the parties in writing of the result of the appeal when the Court gave its decision orally, or sends copies of the written decision or order of the Court by mail or email to the parties or their lawyers, the trial judge, and any other person as authorized by the Chief Justice. It may take months before a decision under reserve is made and written by the panel, and the written decision is sent by the Registrar. Make sure the Registrar has your correct address even after the hearing, or you may not be informed of the result of your appeal.

Decisions of the Court of Appeal are available to the public in the interest of open justice and to provide guidance to lower courts on legal questions. The Court publishes its judgments and rulings on motions in English and in French on its website: see [decisions](#) and [rulings on motions](#). In general, the Court's decisions are also published by the Canadian Legal Information Institute (CanLII) on its website: [Court of Appeal of New Brunswick – CanLII](#). They may also be found through paid subscriptions to legal research databases.

Hearings before the Court of Appeal are public. Subject to any COVID restrictions, members of the public or the accredited news media may attend these hearings in person or, in consultation with the Registrar, by video or telephone conference. In some cases, the Court of Appeal prioritizes the privacy interests of participants in the justice system over the public interest in open justice, and it protects sensitive personal information from being disclosed in its decisions. This is the case when publication of certain information is restricted by legislation or court order. However, if you are a party to a criminal appeal, your name and your personal information related to the appeal will be made public unless you are a “young person,” as defined in the [Youth Criminal Justice Act](#), S.C. 2002, c. 1, or another publication ban applies.

If you wish to appeal a decision of the Court of Appeal to the Supreme Court of Canada, you must comply with the procedure and time limits set out in the [Supreme Court Act](#), R.S.C., 1985, c. S-26, the [Rules of the Supreme Court of Canada](#), SOR/2002-156, or any directive of the Supreme Court that may apply. Please visit the Supreme Court's website for more information: [Supreme Court of Canada](#).

In short

Decisions of the Court of Appeal are communicated by the Registrar under Rule [63.24](#) of the [Rules of Court](#) and published online. This may occur months after the appeal is heard. These decisions may contain personal information about the parties if it not banned from publication.

An appellant who wishes to appeal a decision of the Court of Appeal to the [Supreme Court of Canada](#) is responsible for complying with the procedure, time limits, or directives that apply to appeals to the Supreme Court.

Schedule A

This Schedule contains instruction sheets on how to complete a Notice of Appeal in **Form 63C** or **Form 63D**. Please refer to these instructions before contacting the office of the Registrar for assistance.

Instruction sheet: Form 63C

The official English version of the Notice of Appeal (by a convicted person not represented by counsel) (**Form 63C**), as prescribed by the [Rules of Court](#), may be found by clicking here: [Form 63C](#). An unofficial “fillable” version of this form is also available on the Court of Appeal’s website: [Forms of Court](#).

See also Rule [63.05](#) of the *Rules of Court* and **section 8: Issuing your Notice of Appeal** of this guide for information on how to issue your Notice of Appeal in **Form 63C**.

(Court; Court of Appeal File Number; Style of Proceeding)

The name of the court, court file number and style of proceeding (which sets out the names of the parties) identify a case within the court system. This top part of **Form 63C** should look like this:

Form 63C

APPENDIX OF FORMS FORM 63C

NOTICE OF APPEAL (by a convicted person not represented by counsel)

Court of Appeal File No. _____

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

(NAME OF APPELLANT),

APPELLANT,

- and -

HIS MAJESTY THE KING,

RESPONDENT.

NOTICE OF APPEAL (FORM 63C)

Court of Appeal File No.

Leave this space blank. Do not insert a number. Upon receipt of your Notice of Appeal, the Registrar will insert a file number there. Once a file number has been assigned, include that number on every court form you use in the Court of Appeal.

(NAME OF APPELLANT)

In an appeal by a convicted person, the appellant is that person. If you are the appellant, give your full name.

1. Name of appellant

In an appeal by a convicted person, the appellant is that person. If you are the appellant, give your full name.

2. Place of trial

Give the location of the trial where you were convicted or sentenced (for example, Moncton, New Brunswick).

3. Name of court

Give the name of the court from which you wish to appeal:

(a) the Provincial Court of New Brunswick, or

(b) the Court of King's Bench of New Brunswick.

See also note 1 on the form itself.

4. Name of judge

Give the name of the judge who issued the decision or order from which you wish to appeal. When giving the name of the judge who issued the decision or order, use the title "the Honourable Justice" for a Justice of the Court of King's Bench, or the title "Honour Judge" for a judge of the Provincial Court.

5. Offence(s) of which convicted

Give the details of the offence(s) of which you were convicted and the section(s) of the [Criminal Code](#) or other legislation under which you were convicted (for example, robbery [s. 344(1)(b)] of

the *Criminal Code*]). Write what the judge wrote or said. You can usually reproduce the charges of which you were convicted and include what the judge wrote or said in his or her decision.

See also note 2 on the form itself.

6. Plea at trial

Specify which of the two following pleas you entered at trial:

(a) guilty, or

(b) not guilty.

7. Sentence imposed

Write in the declaration or order made by the judge. The sentence may be a period of imprisonment or probation, a suspended sentence with or without a fine, a conditional discharge, etc. State specifically what the judge said or wrote.

8. Date of conviction

Give the date on which you were convicted.

9. Date of imposition of sentence

Give the date on which the judge imposed the sentence.

10. Name and address of place where appellant is in custody, or if not in custody, the appellant's address:

Give:

(a) if you are in custody, the name and mailing address of the penal institution where you are imprisoned; or

(b) if you are not in custody, your mailing address (the address at which the opposing party and the Registrar may send documents to you).

This is important. If you do not provide the Registrar with the correct contact information, or if you do not inform the Registrar and the respondent of changes to that information, you will not receive important information about your appeal.

11. Name of defence counsel (if applicable) at the trial

If you were represented by a lawyer at trial, give the name of that lawyer.

12. (If applicable) The appellant is a young person as defined in the *Youth Criminal Justice Act* (Canada), has applied for legal aid at (location of legal aid office) and has been refused a legal aid certificate (or as may be).

State whether, or not, this statement applies to you as the appellant. This statement applies to you if:

- (a) you are a “young person” within the meaning of that term in the [Youth Criminal Justice Act](#), S.C. 2002, c. 1;
- (b) you have applied for legal aid; and
- (c) you have been refused a legal aid certificate. Give the location of the legal aid office that denied your request for legal aid.

Form 63C

I, the above named appellant, hereby give you notice that I wish to appeal and if it is necessary for me to do so, apply for leave to appeal against my _____ (see note 3) on the grounds hereinafter set forth.

In the space provided on the form, specify which of the following three options you choose:

- (a) conviction,
- (b) sentence, or
- (c) conviction and sentence.

See also note 3 on the form itself.

I wish to present my case and argument (check one)

Put an X or a checkmark next to which of the following three options you choose:

- (a) in writing and in person,
- (b) in writing only, or

(c) in person.

See also note 4 on the form itself.

If entitled, I wish to have (or do not wish to have) trial by judge and jury.

If a new trial is ordered and you have a right to trial by judge and jury, do you wish to have trial by judge and jury? Answer “Yes” or “No.”

Grounds of appeal

Rule 63.04(3) of the *Rules of Court* requires that a Notice of Appeal state the grounds of appeal and the relief sought. This means you must state why you are appealing and what you would like the Court of Appeal to do. This includes giving the details of (a) any evidence you argue should not have been admitted or excluded, and (b) any error you claim the judge made.

The grounds of appeal are the reasons for your appeal. Where indicated, or on attached sheets, give the reasons why you want to have your conviction quashed (reversed) or your sentence reduced or otherwise changed. You should state clearly, in point form, why you think the decision or order appealed from is wrong. You will not be allowed to rely on a ground of appeal that is not raised in the Notice of Appeal or a Supplementary Notice of Appeal unless the Court of Appeal or one of its judges allows you to do so.

You will get to present your case and argument in the Appellant’s Submission described in Rule 63.12, and/or orally at the hearing of the appeal. If you do not wish to prepare an Appellant’s Submission, under Rule 63.12(1), you must include in your Notice of Appeal:

- (a) your points of argument, or
- (b) a statement of your intention to argue your appeal orally.

If you wish to make allegations against your trial lawyer as a ground of appeal, please refer to the Court of Appeal’s [Protocol for Appeal Proceedings Involving Allegations of Ineffective Counsel in First Instance](#) on the Court’s website.

Date and signature

Once the Notice of Appeal has been completed, print it. If you are not represented by a lawyer, you must sign and date the printed form yourself.

To the Registrar

If you are not in custody, you must issue your Notice of Appeal to the Registrar of the Court of Appeal:

By mail:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 5H1
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

By prepaid registered mail or prepaid courier:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 1B6
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

However, if you are in custody, you must issue your Notice of Appeal to the senior officer of your penal institution.

Instruction sheet: Form 63D

The official English version of the Notice of Appeal (general form) (**Form 63D**), as prescribed by the [Rules of Court](#), may be found by clicking here: [Form 63D](#). An unofficial “fillable” version of this form is also available on the Court of Appeal’s website: [Forms of Court](#).

See also Rule [63.05](#) of the *Rules of Court* and **section 8: Issuing your Notice of Appeal** of this guide for information on how to issue your Notice of Appeal in **Form 63C**.

(Court, Court of Appeal File Number, Style of Proceeding)

The name of the court, court file number and style of proceeding (which sets out the names of the parties) identify a case within the court system. This top part of **Form 63D** should look like this:

Form 63D

**APPENDIX OF FORMS
FORM 63D NOTICE OF APPEAL
(general form)**

Court of Appeal File No. _____

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

(NAME OF APPELLANT),

APPELLANT,

- and -

HIS MAJESTY THE KING,

RESPONDENT.

**NOTICE OF APPEAL
(FORM 63D)**

Court of Appeal File No.

Leave this space blank. Do not insert a number. Upon receipt of your Notice of Appeal, the Registrar will insert a file number here. Once a file number has been assigned, include that number on every court form you use in the Court of Appeal.

(NAME OF APPELLANT)

In an appeal by a convicted person, the appellant is that person. If you are the appellant, give your full name.

1. The appellant is (*here set out the identity of the appellant*).

If you are the appellant, give your full name.

2. The appellant appeals against (*here set out particulars of the conviction, order, dismissal or decision being appealed*) made by the Honourable Justice of the Court of King’s Bench (*or Honour Judge of the Provincial Court or as may be*) on 20 ..

Provide the details of the decision or order from which you wish to appeal. When giving the name of the judge who issued it, use the title “the Honourable Justice” for a Justice of the Court of King’s Bench, or the title “Honour Judge” for a judge of the Provincial Court. Write out the date.

3. The appellant appeals under (*set out the section of the Criminal Code authorizing the appeal*).

Give the section of the [Criminal Code](#) on which you rely to appeal to the Court of Appeal (for example, s. 675(1) of the *Criminal Code*).

4. Counsel at the trial (*or hearing*) were (*set out names of counsel and who they represented*).

Give the names of the lawyers who represented the parties at the trial or hearing and specify which parties they represented.

5. The grounds of appeal are (*set out grounds in detail and, if necessary, state whether they involve questions of law, fact or mixed law and fact*).

Rule [63.04\(3\)](#) of the *Rules of Court* requires that a Notice of Appeal state the grounds of appeal and the relief sought. This means you must state why you are appealing and what you would like the Court of Appeal to do. This includes giving the details of (a) any evidence you argue should not have been admitted or excluded, and (b) any error you claim the judge made.

For information on questions of law, questions of mixed fact and law and questions of fact, see the Court of Appeal’s [decisions](#) online or consult a lawyer.

The grounds of appeal are the reasons for your appeal. Where indicated, or on attached sheets, give the reasons why you wish to have your conviction quashed (reversed) or your sentence reduced or otherwise changed. You should state clearly, in point form, why you think the decision or order appealed from is wrong. You will not be allowed to rely on a ground of appeal that is not

raised in the Notice of Appeal or a Supplementary Notice of Appeal unless the Court of Appeal or one of its judges allows you to do so.

You will get to present your case and argument in the Appellant’s Submission described in Rule 63.12, and/or orally at the hearing of the appeal. If you do not wish to prepare an Appellant’s Submission, under Rule 63.12(1), you must include in your Notice of Appeal:

- (a) your points of argument, or
- (b) a statement of your intention to argue your appeal orally.

If you wish to make allegations against your trial lawyer as a ground of appeal, please refer to the Court of Appeal’s [Protocol for Appeal Proceedings Involving Allegations of Ineffective Counsel in First Instance](#) on the Court’s website.

6. The appellant will ask this court to allow the appeal and (set out particulars of order sought).

State what you are asking the Court of Appeal to do.

7. The appellant’s address for service is

Give your mailing address (i.e. the address at which the opposing party and the Registrar may send documents to you) or, if you are in custody, the name and mailing address of the penal institution where you are imprisoned.

This is important. If you do not provide the Registrar with the correct contact information, or if you do not inform the Registrar and the respondent of changes to that information, you will not receive important information about your appeal.

8. (If applicable) The appellant is a young person as defined in the Youth Criminal Justice Act (Canada), has applied for legal aid at (location of legal aid office) and has been refused a legal aid certificate (or as may be).

State whether, or not, this statement applies to you as the appellant. This statement applies to you if:

- (a) you are a “young person” within the meaning of that term in the [Youth Criminal Justice Act](#), S.C. 2002, c. 1;
- (b) you have applied for legal aid; and
- (c) you have been refused a legal aid certificate. Give the location of the legal aid office that denied your request for legal aid.

Date and signature

Once the Notice of Appeal has been completed, print it. If you are not represented by a lawyer, you must sign and date the printed form yourself.

TO: The Respondent

TO: The Registrar of the Court of Appeal

By mail:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 5H1
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

By prepaid registered mail or prepaid courier:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 1B6
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

Schedule B

Criminal Appeal Procedure Flowchart for Self-represented Appellants

Choose Notice of Appeal form [Rule 63.04(1)]:	
<p>Indictable offence appeal:</p> <ul style="list-style-type: none"> • use Form 63B if represented by counsel [Rule 63.04(1)(a)(ii)] • use Form 63C if unrepresented [Rule 63.04(1)(a)(iii)] 	<p>Appeal from Court of King's Bench summary conviction appeal court judge: use Form 63D [Rule 63.04(1)(b)]</p>
Within 30 days of conviction or sentence, issue Notice of Appeal [Rule 63.04(2)]:	
<p>When the appellant is in custody: give original Notice of Appeal and 4 copies to senior officer of penal institution [Rule 63.05(2)]</p>	<p>When the appellant is <u>not</u> in custody: file original Notice of Appeal and 3 copies with Registrar [Rule 63.05(1)]</p>
Once Notice of Appeal is issued:	
<p>When the appellant is in custody: respondent (Crown) to request transcript of evidence, if necessary [Rule 63.07(2)]</p>	<p>When the appellant is <u>not</u> in custody: appellant to request transcript of evidence, if necessary [Rule 63.07(1)]</p>
Within 30 days after transcript prepared or Notice of Appeal issued [Rules 63.12 and 63.13(2)]:	
<ul style="list-style-type: none"> • respondent (Crown) to file Appeal Book and transcript, if any, with Registrar and to provide a copy to appellant • appellant to file 6 copies of Appellant's Submission, if one is required, with Registrar • Registrar to forward Appellant's Submission, if any, to respondent (Crown) 	
Appeal perfected: Registrar to set hearing date and advise parties [Rules 63.13(3) and 63.14]	
By day 20 of month before month in which appeal qualifies for hearing, respondent (Crown) to file and serve Respondent's Submission [Rules 63.16 to 63.18]	
Attend hearing, if required [Rule 63.23, subject to Rule 63.11]	

Schedule C

Instructions for Appellants in Prisoner Appeals: Getting Started

1. If you wish to appeal to the Court of Appeal of New Brunswick, fill out a Notice of Appeal form with your own information. Use additional sheets of paper if necessary. Use **Form 63C** if your appeal deals with an indictable offence, or **Form 63D** if you are appealing a decision of a judge of the Court of King's Bench sitting as a summary conviction appeal court judge.
2. You have until **30 days** from the date of sentencing, at the latest, to file your Notice of Appeal by giving the original and 4 copies to the senior officer of the penal institution where you are imprisoned. The 30-day period starts on the day after the date of conviction or sentence and ends on the 30th day. The 30th day is the deadline to appeal. If that day falls on a day when the office of the Registrar is closed, the deadline is the day when that office reopens. In the case of a written decision of the Court of King's Bench in a summary conviction appeal, the 30-day period starts the day after the decision has been filed in the clerk's office.
3. Because you are filing a prisoner appeal, the Registrar will give a copy of your Notice of Appeal to the respondent (Crown). The respondent will be responsible for having the transcript of the trial and/or sentencing hearing prepared.
4. The Registrar will also send a copy of the Notice of Appeal to the judge whose judgment you wish to appeal.
5. Your Notice of Appeal must set out the grounds of appeal and the relief sought. You must state clearly and briefly why your conviction should be quashed, and/or why your sentence should be reduced.
6. You may need to apply for "leave to appeal" (i.e. permission of the Court of Appeal or one of its judges to appeal). You need leave to appeal against (a) your conviction on a ground that does not involve a question of law; (b) your sentence; and (c) a decision of a summary conviction appeal court judge. **Form 63C** (indictable offences) already contains an application for leave to appeal. With **Form 63D** (summary conviction offences), an application for leave to appeal is implied.

7. If you are applying to be released from custody pending a decision on your appeal, you must file a Notice of Motion (**Form 37A**) and an affidavit setting out: (a) the offence(s) of which you were convicted; (b) any grounds of appeal not specified in your Notice of Appeal; (c) your age and marital status; (d) your places of residence in the 3 years before your conviction and where you propose to live if released; (e) your employment before your conviction, and whether you expect to be employed, if released, and where you would be employed; (f) the details of your criminal record before your conviction; (g) if your appeal is against sentence only, what unnecessary hardship would be caused if you were detained until your appeal; and (h) the details of any undertaking or recognizance you propose as a condition of your release.
8. Once your appeal has been filed, you will receive a letter from the Registrar with more information.
9. For more information:

By mail:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 5H1
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

By prepaid registered mail or prepaid courier:

Registrar
Court of Appeal of New Brunswick
Justice Building
427 Queen Street, Room 201
P.O. Box 6000
Fredericton, New Brunswick E3B 1B6
Tel.: (506) 453-2452
Fax: (506) 453-7921
Email: nbca-canb@gnb.ca

AND

On the __ day of _____, 20__, I was convicted of _____ and
sentenced to _____.

(2) The grounds of appeal specified in my **Notice of Appeal (File # XX-XX-CA)** are as follows:

(Use additional space as required.)

(2a) The grounds of appeal specified in my **Notice of Appeal (File # XX-XX-CA)** are as follows:

(Use additional space as required.)

(3) Grounds not specified in my notice of appeal are as follows:

(Use additional space as required.)

(4) In my view, those grounds of appeal are serious for the following reasons:

(Use additional space as required.)

(5) I am _____ years of age and I am

single

married

in a common law relationship

(6) During the last three years, I have lived at these addresses:

a) _____

b) _____

c) _____

If released, I will reside at

(7) Before being convicted of this offence,

I was employed by _____

I was unemployed

(8) If released

I will be employed by _____

I do not expect to be employed.

(9) Prior to being convicted for this offence

I have previously been convicted of the following offences:

This is my first conviction.

(10) Remaining in custody will cause me hardship because:

(Complete only if the appeal is from sentence only.)

(11) I have attached to this affidavit any undertakings previously given to the trial court.

(12) I make this affidavit to request interim release until my appeal is heard.

SWORN BEFORE ME at the City of)

_____ and Province of)

New Brunswick this _____)

day of _____, 20__)

)

_____)

A Commissioner of Oaths)

being a solicitor)

)

)

Signature of Appellant