

Table of Contents

<i>Foreword</i>	iii
<i>Acknowledgments</i>	v
<i>Table of Cases</i>	xxxi

Introduction	1
--------------------	---

PART I YEAR IN REVIEW

Year in Review	5
----------------------	---

Chapter 1: Rule Making Authority

1. <i>Criminal Code</i> , ss. 482, 482.1	7
2. Related Provision: <i>Courts of Justice Act</i> , R.S.O. 1990, c. C.43, ss. 69, 70.....	10
Commentary.....	12
Case Law.....	12
Jurisdiction	12
Effect of Rules of Court	14
Appeals	15
Costs	15

Chapter 2: Court Reform

1. Introduction	31
2. Highlights of Impact on Court Proceedings	32
(a) Summary Conviction Appeals.....	32
(b) Extraordinary Remedies	32
Case Law.....	32
(c) Bail Reviews in District and Supreme Court and Bail Respecting Section 469 Offences (Murder Bail).....	33
(d) <i>Young Offenders Act</i> [now <i>Youth Criminal Justice Act</i>].....	33
(e) Court of Appeal	33
3. Highlights of Impact on Court Structure	33
(a) Ontario Court (General Division) [Superior Court of Justice]	33
(b) Ontario Court (Provincial Division) [Ontario Court of Justice]	34

TABLE OF CONTENTS

4. Judicial Regions	35
Regulation 186	37
5. Appointments	38
(a) Court of Appeal for Ontario.....	38
(b) Superior Court of Justice	39
(c) Ontario Court of Justice	45
6. Statutory Framework	51
(a) <i>Courts of Justice Act</i>	52
(b) <i>Courts of Justice Amendment Act</i>	52
(c) <i>Court Reform Statute Law Amendment Act, 1989</i>	55
(d) <i>Courts of Justice Amendment Act, 1989 (No. 3)</i>	55
(e) <i>Ontario Courts Amendment Act, 1989</i>	56
(f) <i>An Act to Amend The Judges Act and to Make Consequential Amendments to Other Acts</i>	59
(g) <i>Courts of Justice Statute Law Amendment Act, 1994</i>	61
(h) <i>The Courts Improvement Act, 1996</i>	61
7. Rights of Appearance for Lawyer Licencing Process Candidates	62
Case Law.....	67

PART II
CRIMINAL APPEAL RULES
COURT OF APPEAL

Chapter 3: Court of Appeal Criminal Practice Direction

1. Introduction	71
2. Practice Direction Concerning Criminal Appeals at the Court of Appeal for Ontario (March 2017) amended October 2021 and June 2021.....	72
3. Practice Direction Regarding Accessing Court Documents and Exhibits from Lower Courts for Purposes of Preparing Appeal Books in Criminal Appeals (November 2021)	109
4. Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario (March 2017)	112
5. Reference Guide for Citation at the Court of Appeal for Ontario (March 2017)	118
6. List of Frequently Cited Criminal Authorities (April 2021).....	123
7. Appeal Management Forms	128
8. Counsel Slip and Hearing Information Form (revised July 4, 2022)	131
9. Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic.....	135

TABLE OF CONTENTS

10. Protocol for In-Person Hearings During the COVID-19 Pandemic (March 2022)	136
Chapter 4: Ontario Court of Appeal Criminal Appeal Rules SI/93-169	
Case Law.....	138
Absence of Criminal Appeal Rules	138
Proper Forum for Appeal.....	138
Constitutionality of Notice to Attorney General	138
Crown Compliance	139
Index to Rules	139
Criminal Appeal Rules.....	146
Application and Interpretation.....	146
Related <i>Criminal Code</i> Provisions.....	147
Related <i>Youth Criminal Justice Act</i> Provisions	157
Commentary.....	161
Courts of Justice Act Ontario Regulation 721/94 – Rules of the Court of Appeal in Appeals Under the Provincial Offences Act	161
Form 1: Notice to Motion	186
Form 2: Notice of Motion for Inmate Appeals and Where Moving Party is Unrepresented.....	188
Form 3: Notice of Appeal for Inmate Appeals.....	193
Form 4: Notice of Appeal.....	196
Form 5: Undertaking.....	198
Form 6: Appellant’s Factum — Appeal from Sentence Only.....	199
Definitions	203
Commentary.....	205
Case Law.....	210
Appellant.....	210
Inmate Appeal.....	210
Notice of Appeal — General	210
Notice of Appeal by Convicted Person	210
Leave in Summary Conviction Proceedings	213
Attorney General’s Rights of Appeal	216
Interpretation	221
Documents	222
Access to Criminal Appeal Files	222
Other.....	223
Five Judge Courts.....	223
Appearance of Counsel on Appeal.....	223
Notice of Appeal — General	224

TABLE OF CONTENTS

Dismissal for Want of Prosecution.....	237
Frivolous or Vexatious Appeals.....	237
Forms	239
Practice Directions	239
Computation of Time.....	239
Related <i>Criminal Code</i> Provisions.....	240
Court Documents	240
Commentary.....	245
Manner of Serving and Filing	245
Related <i>Criminal Code</i> Provisions.....	252
Case Law.....	252
Service	252
Substitutional Service by the Crown	252
Time for Serving and Filing Notice of Appeal.....	253
Related <i>Criminal Code</i> Provisions.....	254
Case Law.....	256
Contents of Notice of Appeal	256
Separate Notices of Appeal.....	257
Notice of Appeal Not Always Necessary	258
Extension or Abridgment of Time	259
Related <i>Criminal Code</i> Provisions.....	259
Case Law.....	259
Forum	259
Test for Extension of Time	261
Applications by Accused.....	264
Waiver.....	268
Change to Substantive Law	269
Applications by Crown	270
Notice to the Other Party	272
Material.....	273
The Order.....	273
Transfer to Penitentiary	274
Extension of Time by Crown	274
Manner of Hearing.....	275
Certificate Respecting in Camera Proceedings, Sealing Orders and Publication Bans	277
Commentary.....	279
Original Papers and Exhibits	279
Change in Representation	281
Appeal Management	282
Commentary.....	284

TABLE OF CONTENTS

Status Court and Purge Court	284
Summary Determination of Appeals	284
Case Law.....	286
Abandonment and Reinstatement of Appeals.....	287
Case Law.....	288
Effect of Escape From Custody	300
Rescission of Abandonment.....	300
Reasons for Judgment and Final Orders.....	302
Related <i>Criminal Code</i> Provisions.....	307
Commentary.....	310
Case Law.....	310
Post-Sentence Report	320
Motions — General.....	321
Case Law.....	327
Applications for Release Pending Appeal.....	332
Related <i>Criminal Code</i> Provisions.....	337
Commentary.....	341
Introduction	341
When Bail Pending Appeal May be Obtained	341
Commentary.....	349
The Test	349
Notice to the Crown.....	366
Material.....	367
Place of Hearing.....	367
The Hearing	367
Type of Order or Disposition Available.....	367
Contents of the Order and Sunset Clauses	368
Reserved Judgments.....	368
Implementing the Order.....	368
Case Law.....	368
Applications to Seek a Review under Section 680 of the Code	369
Case Law.....	370
Cancellation of Bail Order	372
Case Law.....	375
Material.....	375
Presence of Represented Accused at Hearing	375
Contents of the Order and Sunset Clauses	376
Review and Variation	376
Forfeiture of Recognizance	386
Effect on Consecutive Sentences	386
Charter of Rights.....	386

TABLE OF CONTENTS

Duty of Counsel	387
Applications to Review a Decision Respecting Judicial Interim Release	
under Section 18(2) of the <i>Extradition Act</i>	387
Applications for Leave to Appeal a Decision of the Summary Conviction	
Appeal Court	388
Applications to Stay a Driving Prohibition Made in Summary Conviction	
Proceedings Pending Appeal	390
Motions for Leave to Introduce Fresh Evidence	392
Commentary.....	394
Case Law.....	395
Fresh Evidence	395
Procedure	395
Admissibility.....	397
Motions For Directions	415
Commentary.....	415
Motions to Expedite Production of Transcripts	415
Motions for Leave to Intervene in an Appeal	415
Commentary.....	416
Case Law.....	416
Test	416
Motions to Appoint Amicus Curiae	423
Motions to Remove Lawyer of Record	423
Commentary.....	425
Application of this Part	425
Notice of Appeal in Solicitor Appeals	425
Related Criminal Code Provisions	426
Commentary.....	427
Forms.....	427
File Number	428
Supplementary Notice of Appeal	428
Contents of Notice of Appeal	428
Change of Solicitor	428
Case Law.....	428
Contents of Notice of Appeal	428
Separate Notices of Appeal.....	430
Notice of Appeal Not Always Necessary	430
Amendment of Notice of Appeal	431
Transcripts — Ordering	432
Deficiencies Respecting Transcript Provided	435
Case Law.....	435
Form of Certificate.....	435

TABLE OF CONTENTS

Deficiencies Respecting Transcript Provided	436
Failure to File Transcript/Setting Aside Order Dismissing Appeal	437
Transcripts — Production.....	437
Transcripts — Prescribed Contents	439
Appeal Books	442
Case Law.....	444
Returning Exhibits to Registrar Prior to Appeal.....	444
Filing Requirements.....	444
Control of Own Process.....	444
Factums	446
Commentary.....	448
Cross Appeals.....	448
Case Law.....	448
Long Factums	448
Late Factums.....	449
Content of Factums.....	449
Charter Note	451
Sentence Appeals.....	454
Case Law.....	455
Books of Authorities.....	456
Case Law.....	457
Compendiums	457
Perfecting the Appeal	458
Case Law.....	460
Time for Perfection.....	460
Failure to Perfect the Appeal	463
Case Law.....	464
Five Judge Courts.....	466
Listing Appeals	467
Case Law.....	468
Appeals in Writing	469
Application of this Part	469
Application of the Rules Governing Solicitor Appeals.....	469
Application.....	470
Related <i>Criminal Code</i> Provisions.....	470
Related <i>Legal Aid Services Act, 1998</i> Provisions	471
Commentary	473
Overview	473
Inmate Notice of Appeal	474
Bail Pending an Inmate Appeal	474
Extension of Time in Inmate Appeals	475

TABLE OF CONTENTS

Post-Sentence Reports	475
Abandonment of Appeals	475
Trial Judge's Report	476
Appeals in Writing	476
The Inmate Appeal Hearing	476
Additional Transcript	477
Appointment of Counsel.....	477
Case Law.....	478
Inmate Notice of Appeal	478
Additional Transcript	478
Appointment of Counsel.....	478
Notification to Inmate of Appeal Date	489
Constitutionality of Inmate Appeal Procedure	489
Attendance of Inmate	490
Related <i>Criminal Code</i> Provisions.....	491
Definitions	494
Notice of Appeal	494
Original Papers and Exhibits	495
Related <i>Criminal Code</i> Provisions.....	496
Commentary.....	496
Overview	496
Inmate Appeals	497
Case Law.....	497
Obtaining Report.....	497
Supplementary Reasons	497
Conflict Between Report and Transcript	498
Inmate Appeals	499
Extension of Time	499
Applications for Leave to Appeal in Summary Conviction Appeals	500
Transcripts	500
Appeal Books	503
Presence of Appellant	504
Appeals in Writing	505
Appeal Conversion	507
Related <i>Criminal Code</i> Provisions.....	507
Case Law.....	513
Application	514
Definitions	515
Hearing to be Expedited	515
Notice of Appeal	515
Transcript	517

TABLE OF CONTENTS

Appeal Books	519
Factums	521
Preparing an Appeal to be Heard.....	521
Applications Respecting Disposition and Placement Decisions under Appeal..	523
Appendix of Forms	524
Form 1: General Heading	525
Form 2: Backsheet.....	526
Form 3: Affidavit	527
Form 4: Acknowledgment of Receipt Card	529
Form 5: Affidavit of Service	530
Form 6: Notice of Objection to Proposed Manner of Hearing	533
Form 7: Certificate Respecting in Camera Proceedings, Sealing Orders and Publication Bans	535
Form 8: Requisition.....	537
Form 9: Notice of Change in Representation.....	540
Form 10: Notice of Abandonment.....	542
Form 11: Notice of Motion	544
Form 12: Notice of Appeal or Combined Notice of Application for Leave to Appeal and Notice of Appeal.....	546
Form 13: Supplementary Notice of Appeal or Supplementary Combined Notice of Application for Leave to Appeal and Notice of Appeal.....	549
Form 14: Certificate of Transcript Order	551
Form 15: Undertaking Regarding Transcripts.....	553
Form 16a: Certificate of Transcript Completion.....	554
Form 16b: Notice of Failure to Submit Certificate of Transcript Completion.....	556
Form 17: Certificate of Completeness of Appeal Book.....	558
Form 18: Appellant's Factum Appeal From Sentence Only	559
Form 19: Certificate of Perfection.....	562
Form 20: Notice of Appeal for Inmate Appeal or Combined Notice of Application for Leave to Appeal and Notice of Appeal for Inmate Appeal.....	564
Form 21: Notice of Appeal for Appeal From Order Made Under Part XX.1 — Mental Disorder	567

TABLE OF CONTENTS

**PART III
CRIMINAL PROCEEDINGS RULES
SUPERIOR COURT OF JUSTICE**

Chapter 5: Introduction to Criminal Proceedings Rules

Table of Contents	575
Toronto Region: Notice to the Profession Regarding CaseLines in Criminal Matters (January 15, 2021).....	579

Chapter 6: General Matters

Rule 1 and Related Provisions

Rule 1 — Citation, Application and Interpretation	585
Related <i>Criminal Code</i> Provisions	589
Commentary.....	589
Forms.....	590
Case Law.....	590

Rule 2 and Related Provisions

Rule 2 — Non-Compliance with the Rules	594
Commentary.....	594
Case Law.....	594

Rule 3 and Related Provisions

Rule 3 — Time	597
Commentary.....	598
Case Law.....	598

Rule 4 and Related Provisions

Rule 4 — Court Documents	598
Commentary.....	603
Forms.....	603
Case Law.....	604

Rule 5 and Related Provisions

Rule 5 — Service of Documents	604
Related <i>Criminal Code</i> Provisions	610
Commentary.....	570
Service Upon Solicitor of Record.....	610
Personal Service.....	611
Alternatives to Personal Service	611
Substituted Service or Dispensing with Service.....	612
Other Matters.....	612
Case Law.....	612

TABLE OF CONTENTS

Personal Service on Corporations	612
Acceptance of Service by Solicitor	612
Substituted Service.....	613
Service on Solicitor of Record	613
Forms.....	573
Rule 6 and Related Provisions	
Rule 6 — Applications.....	613
Commentary.....	638
Case Law.....	638
Forms.....	621
Rule 7 and Related Provisions	
Rule 7 — Practice Directions	621
Related Rules of Civil Procedure Provisions	622
Commentary.....	622
Provincial Practice Direction Regarding Criminal Proceedings	631
Notice of Request for Publication Ban.....	638
Notice to the profession re criminal law applications	641
Self-Represented Accused Persons Before the Pre-Trial Conference.....	641
Notice to the Profession re Criminal Law Applications, in the Superior Court of Justice that Were not Addressed at a Pre-Trial Conference	644
Consolidated Practice Direction for Central South Region.....	644
Consolidated Practice DIRECTION for the Central West Region	649
Consolidated Practice Direction for the North East Region	652
Consolidated Practice Direction for the North West Region	652
Provincial Practice Advisory — 90 day Detention Reviews s. 525 <i>Criminal Code</i>	653
Central East Region Long Motions Pilot — Tips for Filing Materials in Criminal Cases	656

Chapter 7: Pre-trial Proceedings

Rule 20 and Related Provisions	
Rule 20 — Judicial Interim Release and Review Applications (<i>Code</i>, ss. 520(1), (8); 521(1), (9); 522(1); 523(2)(c)(ii), (3)).....	659
Related <i>Criminal Code</i> Provisions	662
Commentary.....	668
Case Law.....	670
Jurisdiction	670
Nature of Review	675
Vacating Previous Orders.....	679

TABLE OF CONTENTS

Forms.....	680
Checklist for Bringing Judicial Interim Release and Review	
Applications	680
Rule 21 and Related Provisions	
Rule 21 — Release of Exhibits for Scientific Testing (<i>Code</i>, s. 605(1))	680
Related <i>Criminal Code</i> Provisions	683
Commentary.....	683
Case Law.....	685
Cases Where Release of Exhibits for Scientific Testing Granted.....	685
Cases Where Release of Exhibits for Scientific Testing Refused	686
Other.....	686
Forms.....	686
Checklist for Bringing Application for Release of Exhibits for Scientific	
Testing	686
Rule 22 and Related Provisions	
Rule 22 — Applications to Change the Venue of Trial (<i>Code</i>, s. 599(1))	687
Related <i>Criminal Code</i> Provisions	689
Commentary.....	689
Case Law.....	690
Jurisdiction	690
General Principles.....	691
Cases Where Change of Venue Granted.....	694
Cases Where Change of Venue Refused	698
Forms.....	704
Suggested Draft Order for Change of Venue of Trial.....	704
Checklist for Bringing Applications to Change the Venue of Trial	704
Rule 23 and Related Provisions	
Rule 23 — Applications to Procure Attendance of Prisoners (<i>Code</i>,	
ss. 527(2), (7)	705
Related <i>Criminal Code</i> Provisions	707
Commentary.....	707
General.....	707
Applications for Attendance at Court Proceedings.....	708
Applications for Transfer from Custody	708
Filing of Notice	708
Materials	708
Checklist Under s. 527(1).....	708
Checklist Under s. 527(7).....	709
Forms.....	710

TABLE OF CONTENTS

Rule 24 and Related Provisions

Rule 24 — Applications to Take Evidence on Commission (<i>Code</i>, s. 709)	710
Related <i>Criminal Code</i> Provisions	716
Related Provisions from the <i>Mutual Legal Assistance in Criminal Matters Act</i> , R.S.C. 1985, c. 30 (4th Supp.)	716
Related Provisions from Canada-United States Treaty on Mutual Legal Assistance in Criminal Matters.....	718
Commentary.....	719
General.....	719
Overview	720
Case Law.....	720
Jurisprudence.....	720
Checklist for Commission Evidence	725
Forms.....	727

Rule 25 and Related Provisions

Rule 25 — Applications for Removal as Solicitor of Record	727
Related Provisions from Rules of Professional Conduct, Law Society of Upper Canada, Effective November 1, 2000	729
Commentary.....	754
General.....	754
Jurisprudence.....	755
Case Law.....	755
Checklist for Removal of Counsel of Record — Rule 25.01	768

Rule 26 and Related Provisions

Rule 26 — Applications for Adjournment	769
Related <i>Criminal Code</i> Provisions	771
Commentary.....	771
Case Law.....	772
General Principles.....	772
Cases Where Adjournment Granted.....	777
Cases Where Adjournment Refused	779
Forms.....	781
Suggested Draft Order for Adjournment of Trial.....	781
Checklist for Bringing Application for Adjournment of Trial.....	782
Rule 27 and Related Provisions	
Rule 27 — Constitutional Issues	782
Case Law.....	786
Related <i>Criminal Code</i> Provisions	786
Related <i>Charter</i> Provisions	786
Related <i>Courts of Justice Act</i> Provisions (R.S.O. 1990, c. C.43)	787
Commentary.....	787

TABLE OF CONTENTS

Case Law.....	787
<i>Courts of Justice Act</i>	789
Interventions.....	790
Forms.....	793
Notice of Constitutional Question.....	793
Rule 28 and Related Provisions	
Rule 28 — Pre-Hearing Conferences	795
Rule 29 — Case Supervision Judges and Conferences	801
Rule 29A — The Appointment of a Case Management Judge	804
Rule 29B — The Appointment of a Judge to Determine Issues that are to be Adjudicated in Related Trials	805
Related <i>Criminal Code</i> Provisions	807
Commentary.....	807
Case Law.....	807
General.....	807
Forms.....	815

Chapter 8: Trial Proceedings and Evidence

Rules 30 to 39 — Trial Proceedings and Evidence	
Rule 30 — Applications to Admit Evidence	817
Commentary.....	819
Rule 31 — Applications to Exclude Evidence	819
Case Law.....	822
Rule 32 — Books of Authorities	822
Commentary.....	823
Rule 33 — Factums	823
Rule 34 — Hearing of Pre-Trial and other Applications	826
Case Law.....	826, 828
Rule 35 — Dangerous and Long-Term Offender Applications	829
Related <i>Criminal Code</i> Provisions	831
Commentary.....	831

Chapter 9: Summary Conviction Appeals and Extraordinary Remedies

1. Introduction to Summary Conviction Appeals	833
(a) Section 830 Appeals Versus Section 813 Appeals	834
(b) Superior Court of Justice Rules	835
Rule 40.01 and Related Provisions	
Rule 40 — Summary Conviction Appeals (<i>Code</i>, ss. 813, 830(1))	835
Related <i>Criminal Code</i> Provisions	837

TABLE OF CONTENTS

Commentary.....	837
Overview	837
Section 813 Appeals.....	837
Section 830 Appeals.....	838
Powers of the Court	838
Inmate Appeals	839
Intervenors	839
Costs	839
Case Law.....	839
Section 813 Appeals.....	839
Jurisdiction	841
Questions on Appeal.....	846
Parties to the Appeal	847
Sentence Appeals	847
Powers of the Court — Section 830 Appeals.....	848
Questions on Appeal.....	851
Costs	852
Fresh Evidence	854
Forms.....	855
Certificate of Non-Payment of Costs on Appeal	855
Warrant of Committal in Default of Payment of Costs.....	855
Rule 40.02 and Related Provisions	
Application.....	856
Commentary.....	856
Rule 40.03 and Related Provisions	
Extension or Abridgment of Time, Applications for Directions, and Orders	
Without the Attendance of Counsel	856
Related <i>Criminal Code</i> Provisions	857
Commentary.....	857
Case Law.....	857
General Principles.....	857
Cases Where Extension of Time Granted.....	859
Cases Where Extension of Time Refused	862
Notice of Application to Extend Time	864
Forms.....	865
Rule 40.04 and Related Provisions	
Form of Notice of Appeal.....	865
Related <i>Criminal Code</i> Provisions	866
Rule 40.05 and Related Provisions	
Time for Service and Filing.....	866
Related <i>Criminal Code</i> Provisions	866

TABLE OF CONTENTS

Commentary.....	867
Case Law.....	867
General Interpretation	867
Dating and Signing of Notice of Appeal.....	868
Identification of Summary Conviction Court	869
Order Subject of Appeal	869
Appellant's Address for Service	871
Grounds of Appeal.....	871
Amendment of the Notice of Appeal	872
Grounds of Appeal Held to Comply with the Rule.....	873
Grounds of Appeal Held Not to Comply with the Rule.....	874
Giving Notice of Appeal Within 30 Days After Day on which Conviction, Sentence or Adjudication Imposed	875
Forms.....	875
Rule 40.06 and Related Provisions	
Manner of Service and Filing	876
Related <i>Criminal Code</i> Provisions	877
Commentary.....	877
Case Law.....	877
General Interpretation	877
Substituted Service.....	878
Proof of Service	879
Rule 40.07 and Related Provisions	
Processing Appeals	880
Related <i>Criminal Code</i> Provisions	881
Commentary.....	881
Case Law.....	881
Rule 40.08 and Related Provisions	
Transcripts and Agreements Respecting Evidence	881
Related <i>Criminal Code</i> Provisions	885
Commentary.....	885
Case Law.....	885
Transcription of the Evidence	885
Failure to File Transcript.....	886
Provisional Legal Aid Certificate	887
Failure to File Certificate of Court Reporter	887
Rule 40.09 and Related Provisions	
Amendment of Notice of Appeal	887
Related <i>Criminal Code</i> Provisions	888
Commentary.....	888
Case Law.....	889

TABLE OF CONTENTS

New Grounds of Appeal.....	889
Rule 40.10 and Related Provisions	
Appeal Books	889
Related <i>Criminal Code</i> Provisions	890
Commentary.....	890
Rule 40.11 and Related Provisions	
Facta	891
Commentary.....	893
Case Law.....	893
Rule 40.12 and Related Provisions	
Books of Authorities	894
Commentary.....	895
Rule 40.13 and Related Provisions	
Perfecting Appeals.....	895
Related <i>Criminal Code</i> Provisions	895
Commentary.....	895
Rule 40.14 and Related Provisions	
Fixing Date for Hearing	895
Related <i>Criminal Code</i> Provisions	896
Case Law.....	896
Failure to Give Notice of Hearing of Appeal	896
Adjournments.....	897
Failure to File Factum.....	897
Rule 40.15 and Related Provisions	
Appeals in Writing	897
Related <i>Criminal Code</i> Provisions	898
Rule 40.16 and Related Provisions	
Trials De Novo	898
Related <i>Criminal Code</i> Provisions	899
Commentary.....	900
Case Law.....	901
General Interpretation	901
Cases Where Trial De Novo Appeals Ordered	902
Cases Where Trial De Novo Refused.....	903
Rule 40.17 and Related Provisions	
Abandonment of Appeals	904
Related <i>Criminal Code</i> Provisions	904
Case Law.....	904
Notice of Abandonment	904
Forms.....	905

TABLE OF CONTENTS

Rule 40.18 and Related Provisions	
Supervision of Appeals and Dismissal for Non-Compliance	905
Related <i>Criminal Code</i> Provisions	906
Commentary.....	906
Rule 40.19 and Related Provisions	
Appeals Alleging Ineffective Assistance or Incompetence of Counsel	906
Commentary.....	907
Schedule 1 — Superior Court of Justice Protocol — Allegations of Incompetence.....	907
Rule 40.20 and Related Provisions	
Time Estimates for Appeal Hearing	908
Commentary.....	908
Rule 40.21 and Related Provisions	
Hearings of Appeals from Sentence Only	908
Commentary.....	908
Case Law.....	909
Forms.....	909
Rule 40.22 and Related Provisions	
Failure to Appear for the Hearing of the Appeal	909
Commentary.....	909
Case Law.....	909
Failure to Attend Hearing of the Appeal	909
Non-Appearance of Appellant at Trial De Novo	910
Dismissal for Want of Prosecution.....	911
Rule 40.23 and Related Provisions	
Reasons for Judgment	911
Rule 41 and Related Provisions	
Rule 41 — Stays and Suspensions Pending Appeal (<i>Code</i>, ss. 261 & 683(5))	912
Related <i>Criminal Code</i> Provisions	914
Commentary.....	914
Case Law.....	914
Stay of Prohibition Order — General Principles	914
Cases Where Application to Stay Prohibition Order Granted.....	916
Cases Where Application to Stay Prohibition Order Refused	916
Stay of Order to Pay Fine	917
Stay of Order for Probation.....	917
Stays — General.....	918
Forms.....	918
Suggested Draft Order for Stay of Order Pending Appeal.....	918

TABLE OF CONTENTS

Rule 42 and Related Provisions

Release from Custody Pending Appeal (Code, ss. 816-818, 832)	919
Related <i>Criminal Code</i> Provisions	922
Commentary	923
Case Law	924
Undertaking or Recognizance of the Appellant	924
Undertaking or Recognizance of the Prosecutor	926
Forms	927
Undertaking by Appellant (Defendant)	927
Undertaking by Appellant (Prosecutor)	927
Recognizance	927

Rule 43 and Related Provisions

Rule 43 — Extraordinary Remedies (Code, s. 774ff.)	930
Related <i>Criminal Code</i> Provisions	934
Case Law	935
Related <i>Habeas Corpus Act</i> Provisions (R.S.O. 1990, c. H.1)	935
Commentary	937
<i>Criminal Code</i> Provisions	937
Procedendo	938
Case Law	938
General	938
Habeas Corpus	940
Certiorari	952
Mandamus	974
Prohibition	978
Procedendo	981
Location of Application [r. 43.02]	982
Forms	982

Chapter 10: Ontario Review of Parole Ineligibility Rules (Rule 50)

Overview	983
Rule 50	985
Interpretation	985
Application	985
Filing	985
Service and Filing of Notice of Application	987
Judicial Screening Under Section 745.6 of the Code	987
Case Management Hearings	990
Parole Eligibility Report	991
Hearing of Applications	992

TABLE OF CONTENTS

Coming into Force	993
Schedule (Rule 50.02)	993
Form 20 / Application for Review of Parole Ineligibility.....	993
Form 21 / Affidavit in Support of Application for Review of Parole Ineligibility	995
Related <i>Criminal Code</i> Provisions	995
Case Law.....	1005
Fifteen Year Parole Ineligibility Requirement	1005
Right of Review.....	1005
Determination of Venue of Review Hearing.....	1006
<i>Charter</i> Considerations	1006
Venue	1007
Jury Selection	1007
Presentation of Evidence.....	1007
Order of Presentation of Evidence and Addresses to the Jury	1009
Determination by Jury.....	1010
Sample Questions for Jury's Determination	1010
General.....	1011

Chapter 11: Superior Court of Justice — Protocols and Forms

Schedule 1 Superior Court of Justice Protocol — Allegations of Incompetence.....	1013
1. Forms	1014
Form 17.1 and 18-A1: Combined Form 17 and Form 18-A1 (Toronto only).....	1016
Form 1: Notice of Application.....	1055
Form 2: Notice of Appeal.....	1056
Form 2A: Supplementary Notice of Appeal.....	1058
Form 2B: Notice of Intention to Present Appeal in Writing.....	1059
Form 2C: Court Reporter's Certificate Respecting Evidence	1060
Form 2D: Court Reporter's Completion Certificate	1061
Form 3: Back Sheet	1062
Form 4: Affidavit	1063
Form 5: Notice of Application and Constitutional Issue	1064
Form 6: Acknowledgement of Receipt Card	1066
Form 7: Affidavit of Service	1067
Form 8: Certificate of Service by Sheriff	1069
Form 9: Notice of Abandonment.....	1070
Form 10: Release Order.....	1071
Form 10A: Conditions of Release.....	1072

TABLE OF CONTENTS

Form 10B: Consent Bail Variation under s. 515.1 of the Criminal Code	1074
Form 11: Order Releasing Exhibit(s) for Scientific Testing	1076
Form 12: Order for Attendance of Prisoner at a Court Proceeding	1077
Form 13: Order for Transfer of Prisoner to Custody of Peace Officer	1079
Form 13A: Order for Attendance of Prisoner at Judicial Interim Release or Review Application Hearing	1080
Form 14: Commission	1081
Form 15: Letter of Request	1084
Form 16: Order for Commission and Letter of Request	1085
Form 17: Pre-trial Conference Report	1086
Form 18: Designation of Counsel	1110
Form 18-A1: Report to Trial Judge	1111
Form 18-A2: Report to Trial Judge (Multiple Accused Cases)	1133
Form 18-B: Report to Trial Coordinator	1159
Form 18-C1: Trial Readiness Report — Where Trial Readiness Court Held	1160
Form 18-C2: Trial Readiness Report — Where Trial Readiness Court not Held	1161
Form 19: Appellant's Factum — Appeal from Sentence Only	1162
Form 20: Application for Review of Parole Ineligibility	1165
Form 21: Affidavit in Support of Application for Review of Parole Ineligibility	1167
Form 22: Requisition	1168
Form 23: Pre-hearing Conference Report for Crown Applications (Dangerous and Long Term Offender Applications)	1169

PART IV
CRIMINAL RULES
ONTARIO COURT OF JUSTICE

Chapter 12: Introduction to the New Rules

Introduction to the New Rules	1185
Criminal Rules of the Ontario Court of Justice	1187
Practice Direction: Trial Dates	1189
Access Court Files, Documents and Exhibits	1190
Judicial Criminal Pre-trial Best Practices	1217
Can. Reg. SI/2012-30 Criminal Rules of the Ontario Court of Justice	1219
Case Law	1230

TABLE OF CONTENTS

Form 1 — Application	1232
Form 2 — Response.....	1234
Form 3 — Consent.....	1236
Case Law.....	1237
Designation of Judges Authorized to Appoint Case Management Judges...	1238
Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings	1239
Policy Regarding Access to Digital Audio Recordings	1241
Joint Courts' List of Designated Media for Access to Digital Court Recordings	1243
Undertaking to the Court for Access to Digital Court Recordings.....	1244
Request Form/Undertaking of Counsel/Licensed Paralegal of Record to the Court for Access to Digital Court Recordings.....	1244
Provincial Practice Direction Regarding Time Limits for Oral Arguments on s. 11(b) Charter Applications in Criminal Proceedings	1245
Section 11(b) Book of Authorities — Toronto Region	1246
Practice Direction Regarding the Integrated Domestic Violence Court at 311 Jarvis Street, Toronto.....	1247
Practice Directions — Ontario Court of Justice	1248
Requests for Special Bail Hearing Court.....	1249
Judicial Criminal Pre-Trial Best Practices.....	1251
Ontario Court of Justice, Criminal Rule 4.2.....	1253
Notice Regarding Application of Bill C-75 Amendments to ss. 535 and 536 of the <i>Criminal Code</i> (Preliminary Inquiries and Elections as to Mode of Trial)	1254
Direction for Scheduling Special Bail Hearing Courts	1256

PART V
ONTARIO REVIEW BOARD
Rules of Procedure

Ontario Review Board Rules of Procedure.....	1261
Ontario Review Board Notice to the Professions Concerning Restrictions on the Liberty of an Accused.....	1269
<i>Index</i>	1273