

JUDICATURE ACT
RULES OF THE SUPREME COURT, 1986
COURT OF APPEAL PRACTICE NOTE
CAPN No. 2014-02

DATE ISSUED: October 24, 2014

RULES AFFECTED: 57.01; 57.03; 57.06; 57.14

PREVIOUS PRACTICE NOTES AFFECTED: CAPN No.2006-01; CAPN No. 2011-01;
CAPN No. 2013-01

EFFECTIVE DATE: Upon publication

The following practice Note was filed with the Deputy Registrar of the Court of Appeal and is published pursuant to rule 57.31(4) of the *Rules of the Supreme Court, 1986*.

Amendments to Transcript Preparation Requirements

Background and Purpose

1. On January 23, 2013, practice note CAPN No. 2013-01 regarding the filing and use of transcripts was issued by the Court of Appeal. The purpose was to reduce associated costs and delays, and to streamline the process for both the parties and the Court. Panels hearing appeals have found that the full transcript is, in most cases, unnecessary for purposes of determining the issues under appeal. The practice note requires counsel to file a certificate with the Court stating that consideration has been given to limiting the portions of the transcript necessary to conduct the appeal, and that only the necessary portions are being provided.
2. The change sought by means of the practice note has not produced the hoped-for result. A full transcript is being filed in almost all cases. The Court of Appeal Rules Committee considered that at least part of the difficulty may relate to when the transcript is required to be filed, that is, as part of the Appeal Book. At that time, it may be more difficult for counsel to ascertain which parts of the transcript will be required.
3. To address this issue, the Court of Appeal Rules Committee determined that it would be more appropriate to file the transcript at the same time as the factum is filed, rather than as part of the Appeal Book. This would permit a more focused consideration regarding the portion of the transcript necessary for the appeal. This should result in a reduction of the portion of transcript required to be filed with the Court, even if a full transcript was earlier obtained by the appellant. When filing the factum, counsel will have already addressed the issues in detail and should be in a position to identify more precisely what parts of the transcript would be necessary for purposes of the appeal.

4. The Rules Committee also considered it advisable that the rules of court should provide that, at the same time as filing the factum and transcript, counsel should also be required to file a certificate comparable to the one now required under practice note CAPN No. 2013-01 stating that only the necessary portions of the transcript are being filed, or, if the entire transcript is being filed, the specific reasons for doing so.
5. It was also considered appropriate for the rules of court to address more particularly the use and filing of electronic versions of the transcript.
6. Rule 57 was accordingly amended to effect the foregoing purposes.
7. The purpose of this Practice Note is to draw these changes to the attention of litigants and the legal profession and to indicate that previous practice notes dealing with various aspects of transcript preparation and filing must now be read in accordance with these developments.

Practice Note

8. Under the new rule, the appellant is required to file only the portions of the transcript “necessary to enable the issues on appeal to be determined”. Should the respondent, or another appellant where there is more than one appellant, determine that additional portions of the transcript are required, those portions may be filed with that party’s factum. A certificate comparable to that required to be filed by the appellant applies with the necessary changes.
9. Where the transcript necessary for determination of the appeal is voluminous, a party may provide, or the Court may require, a book of excerpts for use at the hearing.
10. The appellant is also required to file one electronic version of the written transcript where a written transcript of the entire evidence has been prepared; or, where only part of the written transcript has been prepared, one electronic version of the written transcript together with one electronic version of the entire audio recording. “Electronic version” is defined as a version in a format acceptable to the Court. “Written transcript” is defined as a printed transcript of the evidence, which does not include submissions unless they are necessary for determination of the issues under appeal.
11. The parties may, by agreement, apply to the Court for an order and directions permitting the use of the electronic rather than a paper version of the written transcript, or, in appropriate circumstances, the audio recording. In exceptional cases, the Court may also, on its own motion, dispense with the preparation and filing of a written transcript and order that the appeal proceed using an audio recording of the proceedings in the court or tribunal from which the appeal is taken.
12. Rule 57.03 requiring counsel to file a letter undertaking to request a transcript has been repealed. Instead, the appellant is required to obtain a copy of the audio recording “forthwith”, i.e. without any unnecessary delay, from the court appealed from, and to deliver a copy to each party. Then, “without delay”, the appellant is required to arrange for preparation of a written transcript of the evidence that is necessary for preparation of

the factum. The appellant is required to advise the other parties “forthwith” what arrangement has been made and when the transcript is expected to be completed.

13. Counsel are encouraged to make use of an agreed statement of facts on the appeal where such is appropriate. For example, this may occur where the appeal engages issues of law without any dispute as to the facts. (Where the matter proceeded on an agreed statement of facts in the court below, the agreed statement of facts must in any event be filed in the Appeal Book.)
14. The new rule also stipulates the procedural requirements for preparing and filing the transcript.
15. The above requirements are set out in rules 57.06 and 57.06.1.
16. In addition to the foregoing changes, certain other consequential amendments have been made to the rules:
 - (a) Current rules 57.06, and 57.03(5), (6) and (7) are repealed;
 - (b) Rule 57.01 includes definitions of (e.1) “electronic version” and (n) “written transcript”; and
 - (c) Provisions in rule 57.14 requiring the transcript to be filed with the Appeal Book are repealed.
17. The amendments to the rules come into force upon publication in *The Newfoundland and Labrador Gazette* and will apply where the order under appeal was made after the amendments come into force.
18. To the extent to which Practice Notes CAPN No. 2006-01, CAPN No. 2011-01 and CAPN No. 2013-01 are inconsistent with this practice note, they shall be read as having been amended accordingly.

Authorized by:

J. Derek Green
Chief Justice of Newfoundland and Labrador

Deputy Registrar
Kathy Blake