

**Form 19**  
**APPELLANT'S FACTUM – APPEAL FROM SENTENCE ONLY**  
(*Criminal Proceedings Rules*, Rule 40)

ONTARIO  
SUPERIOR COURT OF JUSTICE

\_\_\_\_\_  
Court File No. (if known)

\_\_\_\_\_  
Region

BETWEEN:

**HER MAJESTY THE QUEEN**

**- and -**

(specify name of accused)

**PART I – PARTICULARS OF THE CASE**

1. Place of conviction: \_\_\_\_\_
2. Name of Judge: \_\_\_\_\_
3. Offence(s) of which accused convicted: \_\_\_\_\_
4. Section(s) of *Criminal Code* <sup>1</sup> under which accused convicted: \_\_\_\_\_
5. Plea at trial: \_\_\_\_\_
6. Length of trial: \_\_\_\_\_
7. Sentence imposed: \_\_\_\_\_
8. Date of conviction: \_\_\_\_\_
9. Date of sentence: \_\_\_\_\_
10. Present place of incarceration (if applicable): \_\_\_\_\_
11. If Appellant released on bail pending appeal, date of release: <sup>2</sup> \_\_\_\_\_
12. Period spent in pre-trial/pre-sentence incarceration? <sup>3</sup> \_\_\_\_\_
13. Parole eligibility data: <sup>4</sup> \_\_\_\_\_
14. Name(s) of co-accused and sentence(s) imposed for offence(s) upon which he/they was/were convicted: <sup>5</sup>  
\_\_\_\_\_  
\_\_\_\_\_
15. Does Appellant have a prior criminal record? <sup>6</sup> ☐ Yes ☐ No
16. Present employment: \_\_\_\_\_
17. Present marital status: \_\_\_\_\_
18. Appellant's present age and age at time of offence: \_\_\_\_\_
19. Was there a pre-sentence report prepared? <sup>7</sup> ☐ Yes ☐ No
20. Were there any medical, psychological, psychiatric or similar reports referred to or filed at the sentence proceedings? <sup>8</sup>  
☐ Yes ☐ No
21. Was there a joint submission and if so what was it? <sup>9</sup> ☐ Yes ☐ No  
\_\_\_\_\_  
\_\_\_\_\_
22. If no joint submission briefly set out the position of the Crown and defence counsel on the sentence proceedings: <sup>10</sup>  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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23. Was there a victim impact statement? <sup>11</sup> ☐ Yes ☐ No

24. Will there be an application to admit fresh evidence and if so does the Respondent consent to its admission? <sup>12</sup>

☐ Yes ☐ No

**PART II – SUMMARY OF THE FACTS**

Facts of the Offence <sup>13</sup>

Background of the Appellant

Fresh Evidence (Here briefly summarize the fresh evidence which on consent has been filed with the Court)

**PART III – GROUNDS OF APPEAL****PART IV – ORDER REQUESTED**

It is respectfully submitted that the appeal be allowed and the sentence reduced (or varied, etc.)

All of which is respectfully submitted:

(Signature of solicitor for the defence)

Solicitor for the Appellant

<sup>1</sup> Reference should be to the *Criminal Code* provision in force at the time of the commission of the offence.

<sup>2</sup> Note that subrule 40.10(3) requires that the release order be reproduced in the Appeal Book.

<sup>3</sup> Where the incarceration was due to circumstances other than detention on the charge(s) under appeal this should be made clear. Thus if for a period of the time the Appellant was serving sentence on another offence either this period should not be included or there should be a note to this effect.

<sup>4</sup> This date is available from the sentence administrator of the institution where the Appellant is incarcerated. Where the Appellant is serving sentence for offences other than the offence(s) under appeal this should be made clear in a note.

<sup>5</sup> Where the Appellant relies on disparity as a ground for varying the sentence additional details may be necessary and should be included in Part II of the Factum. These details would include the co-accused's criminal record, reference to the trial judge's reasons for the sentence imposed on the co-accused, the involvement of the co-accused, whether the co-accused was convicted of other offences so that the totality principle affected the sentence, and any other information providing context to the allegation of disparity.

<sup>6</sup> If the Appellant has a prior criminal record it should be set out in detail in Part II of the Factum.

<sup>7</sup> If there was a pre-sentence report prepared its contents should be briefly summarized in Part II of the Factum. In addition, the entire pre-sentence report must be included in the Appeal Book.

<sup>8</sup> Where relevant the contents of such reports should be briefly summarized in Part II of the Factum. In addition the complete report must be included in the Appeal Book, whether or not it was formally marked as an exhibit in the proceedings.

<sup>9</sup> A joint submission would include where the solicitors have agreed on a range of sentence to be submitted to the trial judge.

<sup>10</sup> The "position" of the solicitors may simply be that the sentence should take a particular form, i.e. incarceration, or may be more specific, i.e. a specified term of months or years. If the solicitors did not make any suggestions as to the type or length of sentence this should be indicated as well.

<sup>11</sup> If there was a victim impact statement its contents should be briefly summarized in Part II of the Factum. If there was no victim impact statement but evidence was led as to the effect on the victim this too should be briefly summarized in Part II of the Factum.

<sup>12</sup> Where the Respondent consents to the admission of fresh evidence on the appeal this evidence may be included in the Appeal Book or filed separately and reference may be made to the evidence in Part II of the Factum. No notice of application is required, provided that the material is clearly identified as fresh evidence and the Respondent has consented to its admission. Where the Respondent opposes the admission of fresh evidence then the solicitor for the Respondent must prepare a notice of application returnable on the date of the appeal. The evidence itself should be filed with the notice of motion but in a sealed envelope.

<sup>13</sup> Where the facts are complicated and somewhat lengthy, solicitors may wish to include a paragraph containing an overview of the facts. In most sentence appeals that paragraph should not be necessary.