

RULE 83

MANDAMUS, CERTIORARI, PROHIBITION AND HABEAS CORPUS IN CRIMINAL MATTERS

PRACTICE AND PROCEDURE

83.01 Where no other express provision is made in this rule, the provisions of Rule 68, Proceedings for Judicial Review, where not inconsistent with,

- (a) any provision of the *Criminal Code*, R.S.C. 1985, c. C-46 or any other Act of Parliament, or
- (b) any uniform rules of court made by the government in council under subsection 482(5) of the *Criminal Code*,

apply with respect to proceedings under this Rule.

83.02 In an urgent case, a proceeding under this rule may be heard and determined before the notice of application has been issued on the applicant's undertaking to have the notice of application issued forthwith.

83.03 Proceedings in criminal matters by way of certiorari, mandamus or prohibition shall be brought by application to a judge of the Supreme Court of Prince Edward Island and, where appropriate, may include an application to quash a conviction, order, warrant or inquisition, and an application for discharge of a person in custody.

83.04 Notice of an application that includes an application to quash shall be served within thirty days of the conviction, order, warrant or inquisition sought to be quashed, shall be returnable within ten days of service of the application and shall be served at least seven days before the return date thereof upon the provincial court judge, justice or justices making the conviction or order or issuing the warrant, or the coroner making the inquisition, and upon the informant (if he is not a peace officer), and upon the Attorney General (if he is not the applicant). The notice shall specify the objections intended to be raised, and no other objection may be raised save by leave of the judge hearing the application.

83.05 Upon a notice of application under Rule 83.04 shall be endorsed a notice in the following form, addressed to the provincial court judge, justice or justices or coroner as the case may be:

By virtue of Rule 83 of the Rules Respecting Criminal Proceedings of the Supreme Court of Prince Edward Island, you are, upon receiving this notice to return forthwith to the Registrar's Office at _____ true copies of the conviction (or as the case may be) herein referred to, together with true copies of the indictment, information, exhibits and other papers or documents touching the matter, as fully and as entirely as they remain in your custody, together with this notice and the certificate prescribed in the said rule.

DATED this _____ day of _____ 19 ____.

C.D.
Solicitor for the Applicant

TO: A. B.
Provincial Court Judge at _____
(or as the case may be).

83.06 Upon receiving the notice so endorsed the provincial court judge, justice or justices, or coroner, shall forthwith return to the Registrar's Office at the place where the application is returnable true copies of the conviction, order, warrant or inquisition, together with true copies of the indictment, information, exhibits and any other papers or documents touching the matter and the notice served upon him with a certificate attached thereto in the following form:

Pursuant to the accompanying notice I herewith return to this Honourable Court the following:

True copies of:

1. the indictment or information;
2. the conviction (or as the case may be);
3. the exhibits; and
4. any other papers or documents touching the matter.

AND I HEREBY CERTIFY to this Honourable Court that I have above truly set forth all exhibits, papers and documents in my custody or power relating to the matter set forth in the said notice of application.

DATE _____

83.07 (1) Subject to Rule 83.08(1), the documents listed in the certificate, together with the transcript of the proceedings (if any be

supplied by the applicant) shall have the same effect as a return to a writ of certiorari.

- (2) The judge hearing the application may direct a further or amended return.

83.08 (1) Subject to subrule (2), service of a notice of application under Rule 83.04 upon the provincial court judge, justice or justices or coroner, suspends the proceedings which are the subject of the application.

- (2) A judge may, at any time, make an order permitting the proceedings to continue.

- (3) Service of a notice of motion for an order under subrule (2) may be made in such manner as the judge directs or may be dispensed with if the judge so directs.

83.09 A judge hearing the application shall have all the powers of the court in like matters and may order the production of all such papers and documents as the judge may deem necessary.

HABEAS CORPUS

83.10 An application for a writ of habeas corpus shall be brought by application to a judge and may be joined with one or more of the applications referred to in Rule 83.03. The notice of application shall be served upon the person having custody of the person in respect of whom the application is brought and upon the Attorney General.

83.11 A writ of habeas corpus shall be in Form 83A with such variations, not being matters of substance, as the nature of the case may require.

83.12 Upon the hearing of the application the issue of the writ of habeas corpus and the return thereto and the presence before the judge of the person in respect of whom the application is made may be dispensed with on consent, in which event the judge may proceed to dispose of the matter forthwith as the justice of the case may require.

This rule was made pursuant to section 482 of the *Criminal Code* by the Judges of the Supreme Court of Prince Edward Island with the concurrence of the majority of the judges thereof, at a meeting held on the 27th day of May, 1992, to become effective on the 1st day of September, 1992.

Rule 83.03 was amended pursuant to section 482 of the *Criminal Code* by the Judges of the Supreme Court of Prince Edward Island on the 25th day of June, 2009, and as necessitated by the proclamation of the *Judicature Act*, to become effective on the 1st day of September, 2009.

Island Meat Packers (1996) Ltd. et al. v. MacKinnon, J.P., et al. (1997), 155 Nfld. & P.E.I.R. 352 (P.E.I.S.C.T.D.)

The principles for consideration on an application to extend the time for filing an application for judicial review should apply, *mutatis mutandis*, to an application for *certiorari* under this Rule. See: cases noted under Rule 68.