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CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER: <b>56010-00</b>	EFFECTIVE DATE: <b>November 18, 2005</b>	POLICY CODE: <b>APP 1.1</b>
SUBJECT: <b>Appeals by Crown of Summary Conviction Matters</b>		CROSS-REFERENCE:

### **POLICY**

This policy outlines the minimum requirements that must be met before an appeal to the Supreme Court of British Columbia will be approved. The fact that the criteria are met does not necessarily mean that an appeal will be initiated. Cases meeting the requirements will be considered for approval by Regional or Deputy Regional Crown Counsel after a recommendation by Administrative Crown Counsel.

This policy recognizes that not every unfavourable result can or should be appealed and that the appeal process is onerous for both the Crown and the accused/respondent. This policy recognizes the value of finality in the administration of criminal justice and, to that end, generally discourages a second litigation of issues which a trial court has already decided.

#### **Appeal Against Acquittal to the Supreme Court of British Columbia**

No appeal against acquittal or judicial stay of proceedings will be approved unless:

1. it involves a question of law, a question of jurisdiction, or the decision is unreasonable and unsupported by the evidence;
2. a reasonable argument can be made that the verdict would not necessarily have been the same if the error had not been made; and
3. the public interest requires an appeal.

In deciding whether the public interest requires an appeal, some of the factors that may be considered include:

- whether public interest concerns, taking into account the nature of the offence and the circumstances of the offender, warrant a reconsideration of the case
- whether the issue raised by the case is one of general importance and no similar case is under appeal

- whether the proper administration of justice in the particular region or locale requires that an appeal be launched
- whether there are conflicting judgments on the question of law to be appealed
- whether the alleged error, although not of general application, is determinative of a case that is of some special or local importance
- whether it is likely that an appeal, if taken, would be successful
- whether there exists a proper record upon which to litigate a question of law

The application of and weight to be given to these and other factors will depend on the circumstances of each case.

### Appeal Against Sentence to the Supreme Court of British Columbia

No appeal against sentence will be approved unless:

1. the sentence imposed in the trial court is either illegal or unfit<sup>1</sup>; and
2. (a) the proposed appeal raises an important question of general application concerning the principles of sentencing; or  
(b) the proper administration of justice in the particular region or locale requires that the sentence be appealed.

### Appeal Procedure

All recommendations for sentence or acquittal appeals should be in the standard form (copies attached). These forms must be submitted well in advance of the expiration of the 30 day time limit for serving the accused. A trial prosecutor may wish to complete a draft Notice of Appeal (presently [Form 4, Summary Conviction Appeal Rules 1997](#)).

The 30 day limit for appeals from acquittal runs from the day of acquittal and the 30 day limit for sentence appeals from day of sentence.

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<sup>1</sup> Generally, a sentence will only be considered unfit if it is clearly below the acceptable range of sentence and not merely at the low end of the acceptable range (**R. v. Shropshire** (1995) 102 CCC (3d) 193 (S.C.C.); **R. v. C.A.M.** (1996) 105 CCC (3d) 32 (SCC)). Accordingly, a successful appeal should lead to a significant increase in the length of the sentence or a significant alteration to the manner in which the sentence is to be served.

**FACT SHEET – CROWN APPEAL AGAINST SENTENCE**

1. Name of accused.
2. Place of sentencing.
3. Court file number.
4. Name of judge.
5. Offence(s) of which accused convicted. **A copy of the Information to be attached.**
6. Plea at trial.
7. Length of trial (give dates).
8. Place and date of reasons for conviction.
9. Place and date of reasons for sentence.  
**Transcript of Reasons for Sentence must be forwarded to Deputy Regional Crown Counsel or designate as soon as possible.**
10. Sentence imposed.
11. Attach a statement of facts as found by the trial judge for the purpose of sentence.
  - (a) If accused convicted after trial where are the facts as stated by the Court? (e.g.) Judge's reasons for conviction; Judge's reasons for sentence.
12. If accused in custody, place of incarceration.
13. **Where can the accused be served with the Notice of Appeal?**  
Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody, give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. Outline basis of appeal against sentence.
16. What was the Crown's position on sentence?
17. What cases were cited by the Crown and defence on sentence? If feasible, provide copies or list of citations.
18. Were any witnesses called on sentence? Give names, by whom called, purpose.
19. List documents placed before judge on sentence: **(Copies to be attached)**
  - (a) criminal record (YES/NO)
  - (b) pre-sentence reports (YES/NO)
  - (c) character letter (YES/NO)
  - (d) psychiatric/psychologist reports (YES/NO)
  - (e) Victim Impact Statements (YES/NO)
  - (e) other. (YES/NO)
20. Was any portion of the facts contained in the documents listed above denied by the accused? What was denied?

21. Were there co-accused – whether tried with the accused or separately? Indicate any circumstances which would justify any disparity between the co-accused's sentence and this sentence.
22. Did the accused admit additional convictions to those on the record sheet or in the pre-sentence report? If so, what were those admissions?
23. How much time did accused spend in custody prior to sentence? Did any portion of this time result from other sentences?
24. Names of all Crown Counsel involved.
25. Names and telephone numbers of all Court Recording Services involved in the trial and sentencing.

**FACT SHEET – CROWN APPEAL AGAINST ACQUITTAL OR JUDICIAL STAY**

1. Name of accused.
2. Place of acquittal or stay of proceedings.
3. Court file number.
4. Name of judge.
5. Offence(s) of which accused acquitted and *Criminal Code* section number (or other statute section). A copy of the Information to be attached.
6. Plea at trial.
7. Length of trial, give dates.
8. Place and date of acquittal or stay of proceedings.  
**Transcript of Reasons for Acquittal or Stay of Proceedings to be forwarded to Criminal Appeals office as soon as possible.**
9. Attach a statement of the facts as found by the trial judge upon which acquittal or stay of proceedings based.
10. If accused in custody, place of incarceration.
11. Where can accused be served with the Notice of Appeal? Provide most recent known address and place of employment and known previous addresses.
12. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
13. What error(s) of law alone would form the basis for this appeal?
14. Explain why the verdict in this case would have been different if the error(s) in law had not occurred.
15. What position did the Crown take at trial on the issues forming the basis for the appeal.
16. What cases were cited by the Crown and defence on the issues. **Provide copies or citations, if possible.**
17. Provide any additional information which would assist in determining if this is a case requiring a Crown appeal.
18. Names of all Crown Counsel involved.
19. Names and telephone numbers of all Court Recording Services involved in the trial and sentencing.