



Policy:

Appeals by Crown of Summary Conviction Matters

Policy Code:

APP 1.1

Effective Date:

March 1, 2018

Cross-references:

This policy outlines the minimum requirements that must be met before an appeal to the Supreme Court of British Columbia will be approved by a Regional Crown Counsel, Director, or their respective deputy, after a recommendation by Administrative Crown Counsel.

Not every unfavourable result can or should be appealed. The appeal process has resource implications for both the Crown and the accused/respondent, and it also delays the final administration of justice.

Appeal against Acquittal to the Supreme Court of British Columbia

An appeal against acquittal or judicial stay of proceedings will only be approved where the following conditions are met:

- it involves a question of law, mixed law and fact, or the decision is unreasonable and unsupported by the evidence
- a reasonable argument can be made that the verdict would not necessarily have been the same if the error had not been made
- 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

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] 4 SCR 227; *R v M (CA)*, [1996] 1 SCR 500). 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. Also, a judge can order a sentence outside the normal range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit (*R v Nasogaluak*, 2010 SCC 6 at para 44).

Further, an appeal against sentence will only be approved where the sentence imposed in the trial court is either illegal or unfit, and either of the following conditions apply:

- the proposed appeal raises an important question of general application concerning the principles of sentencing
- the proper administration of justice in the particular region or locale requires that the sentence be appealed

Application for an Extraordinary Remedy under Part XXVI of the Code to the Supreme Court of British Columbia

Where no appeal is available under either Part XXI (Indictable Appeals) or Part XXVII (Summary Convictions) following a ruling in Provincial Court, but the Crown is of the opinion that the Provincial Court Judge has either acted in excess of jurisdiction, or has failed to exercise a jurisdiction required in the case, an Extraordinary Remedy (remedies in the nature of mandamus, certiorari, or prohibition) may be appropriate to correct the jurisdictional error. Prior to commencing an application for an Extraordinary Remedy, approval from a Regional Crown Counsel, Director, or their respective deputy is required.

Appeal Procedure

All recommendations for sentence or acquittal appeals should be in the standard form (Appendix A or B). It is imperative that all information identified on the Fact Sheet be provided with the appeal request, including whether any victim requires notification, and if so, their name(s), address(es), and other contact information.

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 (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.

Appendix A

Crown Appeal against Acquittal or Judicial Stay of Proceedings

1. Name of accused.
2. Lower Court registry number.
3. Lower Court registry location.
4. Place of acquittal or stay of proceedings.
5. Name of judge.
6. Offence of which accused acquitted or on which stay of proceedings entered and section of *Criminal Code* of offence. A copy of the endorsed Information or Indictment to be attached.
7. Plea at trial.
8. Whether a jury trial.
9. Length of trial (give dates).
10. 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.
11. If trial by judge without a jury, attach a statement of the facts as found by the trial judge upon which acquittal or stay of proceedings based.
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. What error(s) of law alone would form the basis for this appeal?
16. Explain why the verdict in this case would have been different if the error(s) in law had not occurred.

17. What position did the Crown take at trial on the issues forming the basis for the appeal?
18. What cases were cited by the Crown and defence on the issues?
19. Provide any additional information which would assist in determining if this is a case requiring a Crown appeal.
20. Names of all Crown Counsel involved.
21. Names and telephone numbers of all Court Reporters (or Court Recording Service) involved in the trial.
22. Name, address, and phone numbers of defence counsel at trial.
23. Names, addresses, and telephone numbers of any victims who require notification.
24. Are there any relevant publication bans?

Appendix B

Crown Appeal against Sentence

1. Name of accused.
2. Lower Court registry number and location.
3. Place of sentencing.
4. Name of judge.
5. Of what was accused convicted and what sentence was imposed.
A copy of the endorsed Information or Indictment to be attached.
6. Plea at trial.
7. Whether a jury trial.
8. Length of trial, give dates.
9. Place and date of reasons for conviction.
10. Place and date of reasons for sentence. Transcript of Reasons for Sentence must be forwarded to Criminal Appeals office as soon as possible.
11. Attach a statement of the 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.
 - (b) If accused convicted upon guilty plea, give the date the facts were read in.
Did accused deny any of the facts read in by Crown? What facts denied?
Did Crown then prove those facts?
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.
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 on sentencing denied by the accused? What was denied?
21. Did the accused admit additional convictions to those on the record sheet or in the pre-sentence report? If so, what were those admissions?
22. 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.
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 Reporters (Court Recording Service) involved in the trial and sentencing.
26. Names, addresses and telephone numbers of any victims who require notification.
27. Are there any relevant publication bans?