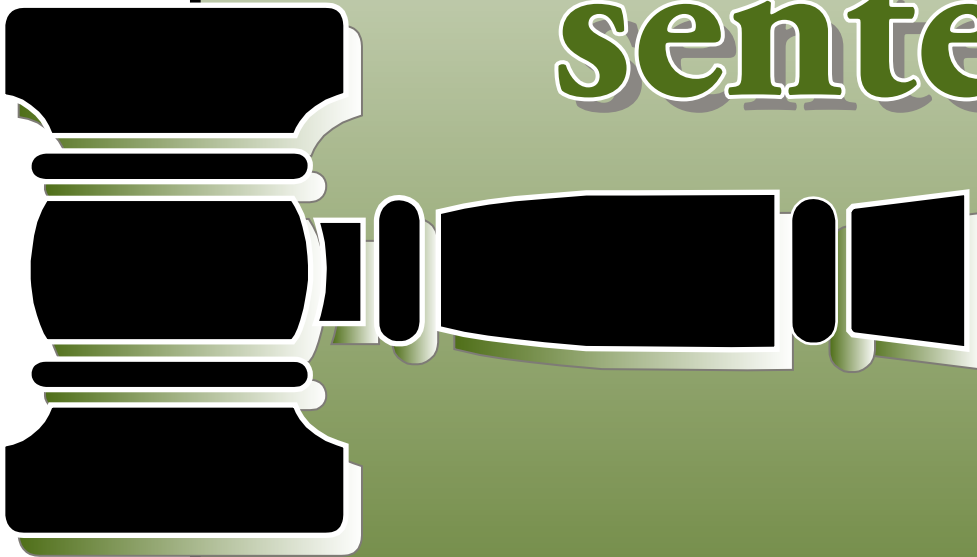


How to appeal your sentence



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

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This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. This publication was up to date as of January 2009.

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Updated Letter of Authority (Exhibit A): November 2010

This Letter of Authority insert replaces the letter found in the Forms section of this booklet.

Note: LSS *does not* send the court all the materials it has on your case (as stated in the Write a letter of authority section of this booklet). LSS now sends *only* its letter, which includes the information and materials listed below.

Letter of Authority (Exhibit A) (Court of Appeal OR Supreme Court of British Columbia)

Court of Appeal

Supreme Court of BC

(Indicate the court handling your appeal)

Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8

Attention: Appeals

I intend to apply under section 684 of the Criminal Code for assignment of counsel in my appeal

(Describe the conviction and/or sentence you are appealing)

Please send your letter with the following information to:

(Name the registry where you filed your notice of appeal)

1. Whether you have refused me legal aid for my appeal.
2. Whether the refusal was for financial reasons.
3. The grounds of appeal you considered.
4. The materials from the trial record that you reviewed (enclosing a copy of those materials).

This is my authority for you to release this information in your letter to the court.

(Print your name)

(Your signature)

Dated at _____
(Place)

on _____
(day, month, year)

Mail this Letter of Authority to:

Appeals
Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8

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* Indicates forms that may be used for either the BC Court of Appeal or the BC Supreme Court.

Introduction

This booklet explains how to appeal a sentence when you've been convicted of a summary offence or an indictable offence. It tells you how to prepare a sentence appeal on your own. Another booklet, *How to Appeal Your Conviction*, may also help if you're appealing your conviction as well as your sentence.

Before you go ahead with your appeal, it's a good idea to find out whether you can get legal aid through the Legal Services Society (LSS).

If you are in custody, you can call the Appeals Section collect at (604) 601-6085. You can also write to:

Appeals Section

Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: (604) 682-0956

If you are not in custody, go to the legal aid office nearest you. It's a good idea to call before you go. Look for the number in the white pages of your phone book under "Legal Aid — Legal Services Society" or in the yellow pages under "Lawyers — Legal Aid — Legal Services Society." You can also call the LSS Call Centre at (604) 408-2172 (in Greater Vancouver) or 1-866-577-2525 (no charge, in the rest of BC), or go to the LSS website at www.legalaid.bc.ca.

If you've been refused legal aid and want to find a private lawyer to take your case, try the Lawyer Referral Service. It will give you the name of a lawyer who you can call for a half-hour appointment for \$25 plus taxes. If you decide you want to hire him or her, remember to ask how much you can expect to pay. Contact the service at:

Greater Vancouver: (604) 687-3221
Elsewhere in BC: 1-800-663-1919
(call no charge)

Reasons for appealing your sentence

If you think your sentence is too harsh, you must convince the appeal court that the sentence is "unfit" (unreasonable). The argument and documents you give to the court (your submissions) should show one or more of the following:

- the sentence is **excessive**, given your background and the circumstances of the offence;
- the sentence is **illegal**; or
- an **error in a principle of sentencing** resulted in an unreasonable sentence.

Your appeal won't succeed unless you can show that one of these conditions applies to your sentence. This is called the grounds (basis) of your appeal.

Excessive sentence

If you're arguing that your sentence is excessive, provide the court with decisions of the Court of Appeal for BC or the Supreme Court of BC to show that your sentence is too high compared to the length of sentences generally given for your offence.

The cases most useful to your appeal are those in which the circumstances of the offence are similar to yours, the background of the accused is similar, and the appeal court reduced the sentence.

You can find court decisions ("judgments") on sentencing in law reports and case digests, which are available through the libraries of the law schools at the University of British Columbia and the University of Victoria, and through the various branches of the BC Courthouse Library Society. To find the nearest

branch of the BC Courthouse Library, call (604) 660-2841 in Greater Vancouver or 1-800-665-2570 (no charge) in the rest of BC. You can also go to www.courthouselibrary.ca.

Useful resources available at the libraries include the law reports *Canadian Criminal Cases* and *Criminal Reports*, as well as the summaries published in *BC Decisions*. Ask a librarian how best to find the information you need on the courthouse library's computer.

You can also search the judgments of the Court of Appeal and Supreme Court of BC at www.courts.gov.bc.ca, a website of the BC government. As well, you can look up Canadian legislation and legal cases at www.canlii.org, the website of the Canadian Legal Information Institute.

Illegal sentence

The Criminal Code of Canada sets out the penalties that can be imposed for every criminal offence. Any sentence that isn't authorized by the code is illegal.

To argue an appeal on the grounds that it was an illegal sentence, you must be able to compare the exact sentence you received with the legislation that applies to your situation (usually the specific Criminal Code section), and show how your sentence doesn't comply with the law, as in the following examples:

- If a judge orders a sentence or a combination of sentences of more than two years' imprisonment to be followed by a probation period, the sentence is illegal. It's contrary to section 731(l)(b) of the Criminal Code. A probation order may only accompany a prison sentence of two years or less.
- If a probation order is for longer than three years, it's an illegal sentence because it's contrary to section 732.2(2)(b) of the Criminal Code.

Error in principle

The principles of sentencing that every judge must consider when imposing a sentence are:

- **denunciation** (public criticism) of the unlawful conduct,
- **deterrence** to the offender and to others of a similar mind,
- **protection** of the public,
- **rehabilitation** of the offender, and
- **reparation** (make amends) for harm done to victims or to the community while promoting a sense of responsibility in offenders.

If a judge ignores or puts too much emphasis on one of these principles, the appeal court may consider changing the sentence. However, the fact that a trial judge has made an error in applying one of the principles of sentencing doesn't guarantee that the appeal court will change the sentence. *You must also convince the court that the sentence is unfit.*

Examples of a judge not properly applying the principles of sentencing would include the following:

- If an offender's addiction to drugs has no connection to the act of committing the offence, but the judge increases the sentence to make sure the offender has enough time to complete a drug treatment program in jail.
- If the judge says he or she isn't concerned about the rehabilitation of a 21-year-old offender and imposes a sentence of two years for automobile theft when a community-based sentence may be more appropriate.

You can find other examples of errors in how judges have applied the principles of sentencing in *Martin's Annual Criminal Code*

under section 687, which describes the appeal court's powers on a sentence appeal, and under sections 718, 718.1 and 718.2, which describes the principles of sentencing. You can also find examples in the law reports *Canadian Criminal Cases* and *Criminal Reports*, and in *BC Decisions*.

A useful textbook is *Sentencing* by Clayton C. Ruby et al. (6th ed., 2004), available in some public libraries. It contains information about sentence lengths in Canada. You can also find legal information at www.canlii.org, the website of the Canadian Legal Information Institute. The decisions of the Supreme Court of Canada can help you understand the principles of sentencing. Find them at www.scc-csc.gc.ca (click the "Judgments" button at the side of the screen).

What to do once you have decided to appeal

If you've been refused legal aid and decide to appeal on your own, follow these steps.

Gather the forms you'll need

The forms you need are at the back of this booklet. Before you fill in the blanks and tear out the forms, it's a good idea to photocopy them in case you make a mistake and need extra copies. You can also get originals of these forms from a Court of Appeal for BC registry (for indictable offences) or from a Supreme Court of BC registry (for summary offences).

File documents and serve documents on the Crown

You file forms by sending them to the appropriate court registry. (To find the court registry you need, see "Where to file your Notice of Appeal" on page 4.)

You need to file the completed original forms along with the required number of photocopies at the registry.

When you file your documents, staff at the registry will stamp each copy. They'll keep the original plus some of the copies and return the rest of them to you.

- One copy is for you to keep to use at your appeal.
- The other copy is for you to give to ("serve on") Crown counsel. Sometimes the registry will do this for you. Be sure to ask if it will.

For more information about how to file your documents or how to serve documents on the Crown, call or write to the appropriate court registry. (Contact information is on page 4 and 5.)

File a Notice of Appeal

To let the court know you want to appeal, you must first file a Notice of Appeal. You need to fill out different forms for this depending on whether your sentence is for an indictable offence or a summary offence. (In general, an indictable offence is more serious and carries a heavier sentence than for a summary offence.)

If you're not sure whether you were sentenced for an indictable offence or a summary offence, check with the lawyer who represented you in court, or with the registry at the courthouse where you were sentenced.

For an indictable offence

Your appeal for an indictable offence is to the Court of Appeal for BC. You file the form called Notice of Appeal or Application for Leave to Appeal (see page 13).

The same form is used for a conviction appeal. If you're appealing both your conviction and sentence, you need to fill out only one form.

You must file the **original** plus **five** photocopies.

For a summary offence

Your appeal for a summary conviction is to the Supreme Court of BC. You file the Notice of Appeal — Defence Appeals Against Conviction, Sentence or Other Order form (see page 15).

You must file the **original** plus **five** photocopies.

When to file

You must file your Notice of Appeal **within 30 days** of the date that your sentence was imposed. If you want to file a Notice of Appeal after the 30-day limit, you must ask the court to extend the time allowed for you to file your notice. (See "Filing a late Notice of Appeal" on page 5.)

If you wish to apply for release on bail until your sentence appeal, see "How to apply for release on bail pending appeal" on page 8.

Note:

When you refer to the judge on your forms, a Provincial Court judge is "The Honourable Judge _____," and a Supreme Court of BC judge is "The Honourable Mr./Madam Justice _____."

Write your grounds of appeal

On the Notice of Appeal form, write your grounds of appeal in the space provided. State your particular complaint about the sentence that relates to any or all of the three categories of excessive sentence, illegal sentence, or error in principle.

If you have difficulty wording your grounds of appeal, use both of the following grounds, which are broad enough to cover any sentence appeal:

1. "The sentence is unduly harsh and excessive given my background and the circumstances of the offence."
2. "Such further grounds as I may advise and this Honourable Court may permit."

Where to file your Notice of Appeal

For an indictable offence

If you've been sentenced for an indictable offence, file your Notice of Appeal in the Court of Appeal registry in Victoria, Kamloops, or Vancouver, depending on where you were sentenced. If you were sentenced on Vancouver Island, file in the Victoria registry. If you were sentenced in the interior of British Columbia, file in the Kamloops registry. If you were sentenced anywhere else in the province, file in the Vancouver registry.

Court of Appeal Registry

850 Burdett Avenue
Victoria, BC V8W 1B4
Telephone: (250) 356-1465
Fax: (250) 356-6669

Court of Appeal Registry
223 – 455 Columbia Street
Kamloops, BC V2C 6K4
Telephone: (250) 828-4344
Fax: (250) 828-4332

Court of Appeal Registry
800 Smithe Street
Vancouver, BC V6Z 2E1
Telephone: (604) 660-2468
Fax: (604) 660-1951

For a summary offence

If your sentence is for a summary offence, file your Notice of Appeal with the appropriate Supreme Court registry.

In British Columbia, Supreme Court registries are located in the following cities: Campbell River, Chilliwack, Courtenay, Cranbrook, Dawson Creek, Duncan, Fort Nelson (filing registry only), Fort St. John, Golden, Kamloops, Kelowna, Nanaimo, Nelson, New Westminster, Penticton, Port Alberni, Port Hardy (filing registry only), Powell River, Prince George, Prince Rupert, Quesnel, Rossland, Salmon Arm, Smithers, Terrace, Vancouver, Vernon, Victoria, and Williams Lake.

You'll find the address and phone number of the nearest Supreme Court of BC registry in the blue pages of your telephone book under "Court Services" in the "Government - Provincial" section, or at www.courts.gov.bc.ca.

If you're not sure where to file your Notice of Appeal, write or telephone the registry of the Provincial Court where you were sentenced and ask which Supreme Court of BC registry you should use.

Filing a late Notice of Appeal

Maybe you didn't know you had a right to appeal and only learned of that right after the appeal period. Or maybe you planned to appeal but the Legal Services Society caused a delay. In either case, file your Notice of Appeal together with a Notice of Application for Extension of Time to Appeal.

On the application for extension of time to appeal, indicate that you had a genuine intention to appeal within the 30-day period, *if you did*, and give the reasons why you were unable to file the Notice of Appeal in that time period.

For the Court of Appeal

The Notice of Application for Extension of Time to Appeal is on page 17. The form called Notice of Appeal or Application for Leave to Appeal is on page 13. Fill out both forms.

You must file the forms with the registry at the Court of Appeal.

- For the Notice of Appeal, file the **original plus five** photocopies.
- For the Notice of Application for Extension of Time to Appeal, file the **original plus three** photocopies.

For the Supreme Court

The Notice of Application for Extension of Time to Appeal is on page 17. The Notice of Appeal — Defence Appeals Against Conviction, Sentence or Other Order is on page 15. Fill out both forms.

You must file the forms with the registry at the Supreme Court of BC.

- For the Notice of Appeal, file the **original plus five** photocopies.

- For the Notice of Application for Extension of Time to Appeal, file the **original** plus **three** photocopies.

If the Legal Services Society caused the delay

Maybe you had difficulty getting a response from the Legal Services Society within the appeal period. If the Legal Services Society caused a delay in your application for appeal, you can request an affidavit from the society that explains the delay. An affidavit is a written statement that someone swears on oath to be true. To obtain this affidavit, contact the Appeals Section of the society at the address on page 1.

File the **original** of the affidavit plus **three** photocopies along with your Notice of Application for Extension of Time to Appeal, and your Notice to Appeal.

How to prepare for your appeal

Get transcripts of your sentence proceedings and file them

When you go to an appeal hearing, the court must have the court transcripts of the sentencing proceedings. Transcripts are the typed records of everything that was said at these proceedings. They contain the basic information you must use for your argument on appeal.

In the Court of Appeal

If you're appealing your sentence in the Court of Appeal, the Court of Appeal registry orders the transcripts of the sentencing proceedings,

pays for them, and sends you a copy before the hearing date.

If you're appealing both your conviction and your sentence in the Court of Appeal, you must order and pay for **six** copies of the transcripts of the trial proceedings and for **six** copies of the sentencing proceedings. Ask how to order transcripts at the registry of the court where you were sentenced. See the *How to Appeal Your Conviction* booklet for more information about appealing your conviction.

In the Supreme Court

If you're appealing your sentence in the Supreme Court of BC, you must order and pay for the **original** plus **three** copies of the transcripts of the sentencing proceedings. Contact the Provincial Court where you were sentenced and ask where you can get the transcripts.

You need to give the Supreme Court of BC registry proof that you have ordered the transcripts **within 14 days** of filing your Notice of Appeal. This proof can be a copy of the transcription company's receipt of your order.

You need to file the transcripts with the court registry **within 30 days** of filing your Notice of Appeal.

File other documents

The appeal court may also have a copy of your criminal record, pre-sentence report, and any letters of reference or other materials filed as exhibits in the court that sentenced you. If you wish to be certain that the appeal court has these documents, obtain photocopies yourself and file them with the court registry well before the hearing date set for the appeal.

You can contact the registry of the court where you were sentenced to get these documents.

In the Court of Appeal

File six photocopies of these other documents.

In the Supreme Court

File **four** photocopies of these other documents.

Prepare your arguments and documents

In a sentence appeal, your arguments and documents (submissions) must stick to the facts that were presented to the sentencing judge. The appeal court may not allow you to bring in new information about committing the offence.

The appeal court will sometimes consider new letters of reference and any other reports about your character or background that might help the court know more about you. It may help to get letters from prison staff or others who think you're doing the best you can to rehabilitate yourself.

If you intend to rely on any new material of this kind, you must file it with the appropriate court registry well before the date of the appeal hearing. Ask the court registry how to make sure Crown counsel gets a copy.

It's a good idea to put your arguments to the court in point form. This will help you to explain them clearly in court.

When you are preparing your argument, remember that when you were sentenced, the most important question the sentencing judge considered was: "What sentence should this

offender receive for this offence, given the circumstances under which it was committed?"

Be prepared to provide the following information so that the appeal court can assess whether the sentencing judge imposed an unfit sentence:

- The reason for the sentence appeal:
 - the sentence is excessive,
 - the sentence is illegal, and/or
 - there was an error in principle.

(For how to argue each of these reasons, see "Reasons for appealing your sentence" on page 1.)

- The particulars of the sentence:
 - the offence and sentence dates;
 - length of sentence;
 - offence for which it was imposed;
 - whether it was concurrent (to be served at the same time as another sentence) or consecutive (to be served after another sentence); and
 - whether a co-accused was involved and, if so, what sentence he or she received.
- The circumstances of the offence:
 - whether it was premeditated or happened on the spur of the moment,
 - whether violence was involved or a weapon was used, and
 - what your participation was in the offence.
- Your attitude towards this offence:
 - why you pleaded guilty, if you did; and
 - whether you are remorseful.

- Your personal history:
 - age,
 - education,
 - family situation,
 - Aboriginal background (if applicable),
 - employment history, and
 - criminal record.
- The recommendation of the pre-sentence report:
 - whether the probation officer said anything in the pre-sentence report that might persuade the court to reduce your sentence
- Your plans upon release:
 - residence,
 - work,
 - education,
 - counselling, and/or
 - drug treatment program.

Much of this information should be contained in the court transcripts of the sentence proceedings. Be prepared to point to various parts of the transcripts to support the facts as you relate them to the court.

Prepare a written summary of your arguments

It's a good idea to prepare a written summary of your arguments for a reduction of sentence. The law doesn't require such a summary, but it's important because it will help the court understand your position.

This summary is called the "appellant's statement." There is no standard form or format, but it should set out the following:

- The precise grounds of appeal you'll raise at the hearing.
- The length and type of sentence you think is appropriate for the offence and you, the offender.
- The positions that defence and Crown counsel recommended to the judge at the sentencing hearing.

File your appellant's statement

In the Court of Appeal

File the **original** plus **five** photocopies of your appellant's statement in the registry at least two weeks before the hearing.

In the Supreme Court

File the **original** plus **three** photocopies of your appellant's statement in the registry at least two weeks before the hearing.

How to apply for release on bail pending appeal

File notices

If you are in custody and wish to be released until your sentence appeal hearing, in addition to filing your Notice of Appeal you must file a Notice of Application for Release from Custody Pending Determination of Appeal in the appropriate registry. The forms for each court are slightly different, so make sure you fill out the right one.

In the Court of Appeal

The Notice of Application for Release from Custody Pending Determination of Appeal for the Court of Appeal is on page 19.

File the **original** plus **three** photocopies of the following:

- the Notice of Application for Release from Custody Pending Determination of Appeal and Order for Release form;
- your written argument explaining why you should be released (see “Write your argument for release on bail” on this page); and
- your sworn affidavit (statement of facts). See “File your affidavit” on page 10.

Include **four** copies of any information or materials that support your case, such as any legal cases you intend to rely on.

Note:

To apply for bail pending an appeal in the Court of Appeal, you first have to get permission (“leave”) to appeal your sentence. The Court of Appeal will approve your application only if your appeal has merit (a reasonable chance of succeeding).

When you apply for bail pending appeal, you must be fully prepared to present your argument outlining why your sentence should be reduced. If you don’t convince the judge at the bail hearing that your appeal has merit (a reasonable chance of succeeding), you won’t be granted bail and you won’t be allowed to proceed with your appeal.

In the Court of Appeal, applications for bail pending appeal must be sent in writing, unless you get permission from the court to appear in person. Ask the registry how to do this.

In the Supreme Court

The Notice of Application for Release from Custody Pending Determination of Appeal or Stay of Probation Order or Driving Prohibition for the Supreme Court of BC is on page 21. Applications for bail pending appeal to the Supreme Court may be made in writing or in person.

You need to file the **original** plus **two** photocopies of the following:

- the Notice of Application for Release from Custody Pending Determination of Appeal or Stay of Probation Order or Driving Prohibition form;
- your written argument explaining why you should be released (see “Write your argument for release on bail” below); and
- your sworn affidavit (statement of facts). See “File your affidavit” on page 10.

Include **three** photocopies of any information or materials that support your case, such as legal cases you intend to rely on.

Write your argument for release on bail

When you’re writing your argument for release on bail, it’s very important to be as persuasive as possible. There is no required form or format, but your written argument for release must persuade the court of the following:

- the appeal is not frivolous (meaning that it has a chance of succeeding);
- you’ll surrender yourself into custody on the date set for the hearing of your appeal; and
- keeping you in custody isn’t in the public interest.

File your affidavit

You must also file an affidavit in the appropriate court registry to show the truth of the facts that you're relying on to support your application. See page 23 for a sample affidavit form. You must sign the affidavit in front of a "commissioner for taking affidavits for BC," who can be a lawyer or a notary public. If you're in custody, a commissioner for taking affidavits will be available to you. If you're out of custody, you can look for a notary in the yellow pages of the phone book under "Notaries Public." To find a private lawyer, look in the yellow pages under "Lawyers."

Your affidavit must include the following information:

- a statement listing all the places you've lived during at least the three-year period before the date that you were sentenced;
- where you intend to live if you're released;
- the name of your employer and the place of your employment before you were placed in custody;
- your employment prospects if released;
- the names and addresses of any relatives or friends who are willing to serve as "surety" (someone who will pledge money or assets to make sure you obey the conditions of your bail, if it's granted);
- a statement of any criminal convictions received during the five years before the sentence you're appealing. List the offences and sentences imposed. You may include anything to show that the offences aren't as bad as they sound, as long as it's true; and

- any special individual circumstances relating to your physical and/or mental health, or harm to you or your family if you aren't released.

What happens at the appeal hearing

Address the court

You are the appellant, the person making the appeal. Usually you are the first to address the court and provide it with basic information. If you're representing yourself, however, the court will often ask Crown counsel to provide an outline of the appeal.

In the Court of Appeal, three judges are present at your hearing. In the Supreme Court of BC, one judge is present.

At the beginning of the hearing, you're asked to give the reasons why you think the appeal should be allowed. State the points clearly and politely. If the judge(s) ask questions about the facts, take your time answering and try to be as persuasive as you can. Getting angry will only lower your chances of success.

At this time do the following:

- state the grounds of appeal that you're using to make your arguments,
- point out briefly the parts of the transcripts that support your arguments, and
- refer to any reported court decisions that support your position.

After your argument, the Crown lawyer will make his or her arguments. You then have the right to briefly reply to any arguments the

Crown lawyer raises. The court will then decide whether to allow or dismiss the appeal.

Using your research

If you did research to find out the length of sentences in other cases to argue that your sentence is excessive, present this information when you are addressing the court.

In the Court of Appeal

Bring **five** photocopies of each of the cases you are using: one for each of the three judges, one for the Crown, and one for you.

You can file these photocopies before the hearing if you want, or you can just bring them with you to the hearing.

In the Supreme Court

Bring **three** photocopies of each of the cases you are using: one for the judge, one for the Crown, and one for you.

You can file these photocopies before the hearing if you want, or you can just bring them with you to the hearing.

Possible results of an appeal

For a sentence appeal, the appeal court will usually give you an answer the day you make your appeal. But sometimes the court will reserve its decision (make it later) and you'll have to wait. The appeal court can:

- “vary the sentence within the limits prescribed by law” (increase or decrease the sentence that the sentencing judge gave you), or
- dismiss the appeal.

If the Crown wants a higher sentence, which is unlikely, you'll be informed of this in writing before the hearing date.

Rather than risk an increased sentence, you can always abandon your appeal (see “Abandoning your appeal” on page 12). If you are considering this option, contact the Appeals Section of the Legal Services Society and ask for advice (see page 1).

How to get a court-appointed lawyer (Section 684 application)

In some cases, you can get a court-appointed lawyer under section 684 of the Criminal Code. You can apply if:

- you have no money to hire a lawyer for your appeal, and
- you applied to the Legal Services Society for legal aid and were refused.

You can apply in the Supreme Court of BC or in the Court of Appeal, but only after you've filed your Notice of Appeal.

To get a court-appointed lawyer, you need to show the court that you can't afford a lawyer and can't effectively represent yourself.

You must tell the court about:

- your financial situation,
- your inability to get legal aid,
- your education and knowledge of the court process,
- the complexity of your case,
- your grounds of appeal (the main points you will argue),

- the reasons why you believe that you need a lawyer to organize and present your case,
- how likely it is that your appeal will succeed, and
- any special individual circumstances relating to your physical and/or mental health, or harm to you or your family if you aren't released.

Write a letter of authority

To show that you were refused legal aid, you need to authorize the Legal Services Society to send the court all the materials it has on your case:

- Fill out the Letter of Authority (Exhibit A) on page 25.
- Make **two** photocopies.
- Mail the **original** to the Legal Services Society at the address shown on the form. Note the date that you send the letter because you'll need this information for the Affidavit for Appointment of Counsel. See "What to file with the registry" below.
- Attach **one** photocopy of the Letter of Authority to the **original** of the affidavit.
- Keep **one** photocopy for yourself.

What to file with the registry

You need to file the following **two** forms with the appropriate court registry:

- The Notice of Motion for Appointment of Counsel on page 27. For the court file number, use the registry number on your Notice of Appeal. File the **original** plus **three** photocopies with the registry.
- The Affidavit for Appointment of Counsel on page 29. The affidavit

outlines the reasons why you think the court should appoint a lawyer for your appeal. Again, use the same registry number as on your Notice of Appeal. Fill out the affidavit by following the instructions on the left side of the page. File the **original** plus **three** photocopies with the registry. Remember to attach the photocopy of the Letter of Authority to the original.

You fill out the same Notice of Motion for Appointment of Counsel and Affidavit for Appointment of Counsel forms whether you're applying to the Court of Appeal or to the Supreme Court of BC.

You must sign the affidavit in front of a "commissioner for taking affidavits for BC," who can be a lawyer or a notary public. (See page 10 for how to find one.)

When the application is heard, you'll be brought in person before a Chambers judge of the Court of Appeal or a judge of the Supreme Court of BC.

Abandoning your appeal

If you've filed an appeal, but decide you don't want to go ahead with it, you have to file a Notice of Abandonment of Appeal (page 31).

Fill in the form and send it back to the court registry. *Make sure another person witnesses your signature.*

It is extremely difficult to re-open an appeal case once it has been abandoned.

**NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL —
(Court of Appeal)**

(Where appellant not represented by a solicitor)

Lower Court Registry Number: _____

Lower Court Registry Location: _____

COURT OF APPEAL

To the Registrar:

Name of appellant _____

Place of trial _____

Name of court¹ _____

Name of judge _____

Was this a jury trial _____

Offences(s) of which convicted² _____

Plea at trial _____

Sentence imposed _____

Date of conviction _____

Date of imposition of sentence _____

Name and address of place at which appellant is in custody _____

or if not in custody, appellant's address _____

If in custody, address other than institution _____

I, the above named appellant, hereby give you notice that I desire to appeal to the

Court of Appeal against my³ _____ on the grounds set out on the back of

this notice.

(OVER)

¹ Provincial Court, Supreme Court

² e.g., theft, forgery (*State here if appeal is under the Youth Criminal Justice Act.*)

³ If the appellant wishes to appeal against conviction, he or she must write the word "conviction." If the appellant wishes to appeal against sentence, he or she must write the word "sentence." If the appellant wishes to appeal against both conviction and sentence, he or she must write the words "conviction and sentence." If an appellant convicted of more than one offence wishes to appeal against only some of the convictions or sentences, he or she must state clearly the convictions or sentences against which he or she wishes to appeal.

I desire to present my case and argument whether it be for leave to appeal⁴ or by way of appeal where leave is not necessary⁵,

- (a) in writing⁶
- (b) in person.

If a new trial is ordered and you have a right to trial by jury, do you wish trial by jury? _____

Dated this _____ day of _____, 20_____.

(Signed⁷) _____
Appellant

NOTES

1. (a) If your appeal against conviction involves a question of law alone, you have a right of appeal.
(b) If your appeal against conviction is upon any other ground than a question of law, then you have no right of appeal unless leave to appeal is first granted. Your Notice of Appeal includes an application for leave to appeal where leave is necessary.
(c) You have no right to appeal against sentence unless leave to appeal is first granted by the Court of Appeal or a justice. Your Notice of Appeal includes an application for leave to appeal.
2. Further take notice that if you appeal from sentence the Court of Appeal may increase your sentence.
3. (a) If your appeal is against conviction or sentence alone, or against both conviction and sentence, this notice must be filed within 30 days of the date of imposition of the sentence.
(b) If this notice is filed beyond this time, then you must apply for an extension of time by completing Form 7 [Notice of Application for Extension of Time to Appeal].

GROUND OF APPEAL

These must be filled in before notice is sent to the Registrar. The appellant must here set out the grounds or reasons he alleges why his conviction should be quashed or his sentence reduced. If one of the grounds set out is "misdirection" by the judge, particulars of the alleged misdirection must be set out in this notice.

(Use additional separate sheet if necessary)

⁴ See Note 1 above.

⁵ Stroke out (a) or (b).

⁶ If you desire to submit your case and argument in writing you may serve your written argument within 14 days after receipt by you of the report of the trial judge.

⁷ This notice must be signed by the appellant. If he or she cannot write, he or she must affix his or her mark in the presence of witnesses. The name and address of each attesting witness must be given.

**NOTICE OF APPEAL –
DEFENCE APPEALS AGAINST CONVICTION, SENTENCE
OR OTHER ORDER – (Supreme Court of British Columbia)**

SUPREME COURT OF BRITISH COLUMBIA

REGINA

RESPONDENT

v.

APPELLANT

PARTICULARS OF CONVICTION, SENTENCE OR OTHER ORDER

1. Place of conviction, sentencing or other order and court file number

2. Name of Judge

3. Offence(s) of which appellant convicted _____

4. Section of *Criminal Code* or other *Act* under which defendant was convicted

(State here if appeal is under the Young Criminal Justice Act)

5. Plea at trial _____

6. Length of trial _____

7. Sentence imposed _____

8. Date of conviction _____

9. Date of sentence _____

10. If defendant in custody, place of incarceration _____

(OVER)

**NOTICE OF APPLICATION FOR EXTENSION OF TIME TO APPEAL —
(Court of Appeal OR Supreme Court of British Columbia)**

(Indicate the court handling your appeal)

Court of Appeal

Supreme Court of BC

REGINA

RESPONDENT

v.

APPELLANT

IN THE MATTER OF _____
(Name)

convicted at _____ before _____ of _____
(Place where convicted) (Judge) (Offence)

on the _____ day of _____, 20____

and sentenced to _____ on the _____ day
(Length/description of sentence)

of _____, 20_____.

TAKE NOTICE that an application will be made on behalf of the above named to this Court, or a Judge thereof, at such time and place as the Registrar may direct, for an extension of time within which (“an appeal may be brought” or “an application for leave to appeal may be made”), upon the following grounds:

(Use additional sheet if necessary)

Dated at _____ this _____ day of _____, 20_____.

(Signature of appellant or solicitor)

(Print name of appellant or solicitor)

*(Name and address for service of solicitor,
or, if no solicitor, an address, not being a
prison, where documents may be served on
the appellant if he or she is not in custody)*

To the Registrar of the Court at _____.

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**NOTICE OF APPLICATION FOR RELEASE FROM CUSTODY PENDING
DETERMINATION OF APPEAL —
(Court of Appeal)**

COURT OF APPEAL

REGINA

RESPONDENT

v.

APPELLANT

TAKE NOTICE that an application will be made on _____ (day) at _____ to a Justice of the Court for an order that the appellant be released from custody pending the determination of his appeal against his conviction at _____ by _____
*(Location)**(Judge)*

of _____ on the
(Offence)

_____ day of _____, 20_____.

Or

against the sentence of _____ imposed on him or her at _____
*(Sentence)**(Location)*

by _____ on the _____ day of _____ after conviction of the
(Judge)

appellant of _____ .
(Offence)

Dated at _____ this _____ day of _____, 20_____.

(Signature of appellant or solicitor)

(Print name of appellant or solicitor)

*(Name and address for service of solicitor,
or, if no solicitor, an address, not being a
prison, where documents may be served on
the appellant if he or she is not in custody)*

To the Registrar of the Court at _____.

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**NOTICE OF APPLICATION FOR RELEASE FROM CUSTODY PENDING
DETERMINATION OF APPEAL OR STAY OF PROBATION ORDER OR
DRIVING PROHIBITION – (Supreme Court of British Columbia)**

SUPREME COURT OF BRITISH COLUMBIA

REGINA

RESPONDENT

v.

APPELLANT

TAKE NOTICE that an application will be made on the ____ day of _____, 20____
at _____ to the court for an order that:

(Time)

- a. the appellant be released from custody
- b. the probation order in this matter be stayed
- c. the driving prohibition in this matter be stayed
(strike out anything that does not apply)

pending the determination of the appeal against the appellant's conviction at

_____ by _____
(Location) *(Judge)*

of _____ on the day of _____, 20____.
(Location)

OR

pending the determination of the appeal against the appellant's sentence of ____

imposed at _____ by _____
(Location) *(Judge)*

on the _____ day of _____, 20____

after conviction of the appellant of _____ .
(Offence)

(OVER)

Dated at _____ this _____ day of _____, 20_____.

(Signature of appellant or counsel)

(Print name of appellant or counsel)

(Name and address for service of counsel or, if no counsel, an address other than a prison where documents may be served on the appellant if he or she is not in custody)

To the Registrar of the Court at _____

(Indicate whether you will be making the application in person or in writing)

- THE APPELLANT acts on his or her own behalf and wishes to make this application in person.
- THE APPELLANT acts on his or her own behalf and wishes to make this application in writing.

AFFIDAVIT

(Court of Appeal OR Supreme Court of British Columbia)

(Indicate the court handling your appeal)

- Court of Appeal
 Supreme Court of BC

Court File No. _____
_____ Registry

REGINA

RESPONDENT

v.

APPELLANT

I, _____, MAKE OATH (OR SOLEMNLY
[name, address, and occupation of appellant]

AFFIRM) AND SAY THAT:

1. ...
2. ...
3. ...

SWORN (OR AFFIRMED) BEFORE _____)

ME in the _____ of _____)
[city/town, etc.]

in the Province of British Columbia _____)

on this ____ day of _____)
[month], [year]

A commissioner for taking affidavits
for British Columbia

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**LETTER OF AUTHORITY (Exhibit A) —
(Court of Appeal OR Supreme Court of British Columbia)**

(Indicate the court handling your appeal)

- Court of Appeal*
- Supreme Court of BC*

Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8

Attention: Appeals Section

I intend to apply under section 684 of the Criminal Code for assignment of counsel in my appeal

(Describe the conviction and/or sentence you are appealing)

Please send all the materials you have on my case to:

(Name the registry where you filed your notice of appeal)

This is my authority for you to release the materials.

(Print your name)

(Your signature)

Dated at _____ on _____
(Place) (day, month, year)

Mail this Letter of Authority to:

Appeals Section
Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8

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**NOTICE OF MOTION FOR APPOINTMENT OF COUNSEL –
(Court of Appeal OR Supreme Court of British Columbia)**

(Indicate the court handling your appeal)

- Court of Appeal*
 Supreme Court of BC

Court File No. _____
_____ Registry

REGINA

RESPONDENT

v.

_____ APPELLANT

TAKE NOTICE that an application will be made by _____, the appellant, to the Presiding Judge in Chambers at the Courthouse at _____ in the city of _____, in the province of British Columbia, at 9:30 in the morning on a date to be set by the Registrar for an Order that counsel be assigned on behalf of the appellant, pursuant to section 684 of the Criminal Code.

AND TAKE NOTICE that in support of the application will be read the affidavit of _____, the appellant, sworn the _____ day of _____ in the province of British Columbia.

Date

Appellant

TO: The Registrar

(fill in the name of the court and its address)

AND TO: Crown counsel

(fill in the address of Crown counsel — ask the registry for the address)

This NOTICE OF MOTION is filed by _____, appellant, whose address for service is _____.

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AFFIDAVIT FOR APPOINTMENT OF COUNSEL — (Court of Appeal OR Supreme Court of British Columbia)

- Court of Appeal*
 Supreme Court of BC

Court File No. _____
_____ Registry

Instructions

Use the same registry number that's on your Notice of Appeal.

You are the appellant. Print your name on the line.

Print your name. Give your address or the name of the prison where you are incarcerated, then say if it is located in a city or town, and give the name of that place.

Fill in the amounts in part 2 as accurately as you can.

In part 3, put down the highest grade you reached.

In part 4, give the date you were refused legal aid.

REGINA

RESPONDENT

v.

APPELLANT

I, _____, presently residing at _____ or incarcerated at _____, in the _____ of _____, in the province of British Columbia,

MAKE OATH AND SAY AS FOLLOWS:

1. I am the appellant and personally know about the matters referred to in this Affidavit, except where they are based on information and belief, in which case I believe them to be true.

2. I cannot afford a lawyer because of my financial circumstances.
 - a) my income is: \$
 - b) my expenses are: \$
 - c) my debts total: \$
 - d) all the things that I own have a value of: \$

3. I am not able to present the appeal myself. I have no legal training and my education level is:

4. I have been refused legal aid. I applied for legal aid but was refused on _____
(day/month/year).

(OVER)

Attach a copy of the "Letter of Authority."

List the errors in the decision under appeal.

Give reasons why you think your case is complex.

Give reasons why you think your case may succeed.

If you have appealed at a lower court, give the place and name of the court, and the date you appealed.

You sign in front of the lawyer or notary. You are the appellant.

The lawyer or notary fills out the date and place, and signs.

5. On _____ (day/month/year) I sent a letter to the Legal Services Society authorizing the release of the materials on my appeal to the registry. A copy of this letter is attached. It is marked Exhibit A.

6. At the appeal I will be arguing the following points:

7. I need a lawyer to argue my case because I do not have the necessary skills to organize the facts, research the law, and present the case myself.

8. I believe that my case is complex because:

9. I believe that my case may succeed because:

10. I have/have not appealed at a lower court.

at: _____

on: _____
(day/month/year)

I swear this Affidavit in support of an application that the Court or a Judge of that Court assign counsel to act on my behalf.

SWORN BEFORE ME at the city/town of _____)
_____, in the province _____)
of British Columbia, this _____ day _____)
of _____, _____) Signature of appellant
(month) (year))

_____)
A commissioner for taking)
affidavits for British Columbia)

**NOTICE OF ABANDONMENT OF APPEAL –
(Court of Appeal OR Supreme Court of British Columbia)**

(Indicate the court handling your appeal)

- Court of Appeal*
- Supreme Court of BC*

File No. _____

REGINA

RESPONDENT

v.

APPELLANT

I hereby give notice that I, _____, abandon this appeal for:

- Conviction appeal
- Sentence appeal
- Other (specify nature of appeal)

Dated at _____, British Columbia, this _____ day of _____, 20_____.

(Signature of appellant or solicitor)

(Print name of appellant or solicitor)

Where signed by the appellant,
this notice was signed in
the presence of:

Witness

Print name of witness

To the Respondent
To the Registrar

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ALSO AVAILABLE

If You Can't Pay Your Court Fine on Time



 Legal
Services
Society
British Columbia
www.lss.bc.ca

If You Can't Pay Your Court Fine on Time

This brochure explains what to do if someone cannot pay a court fine on time. It covers the four possible options: paying part of the fine by the due date, asking for an extension, asking for jail time instead, or doing nothing. It also explains what happens if fines are not paid.

How to get the brochure above or *How to Appeal Your Sentence*:

Read online (in PDF) at
www.legalaid.bc.ca/publications

Order online: www.crownpub.bc.ca
(click the Legal Services Society image)

Phone: 1-800-663-6105 (call no charge)

250-387-6409 (in Victoria)

Fax: 250-387-1120

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PO Box 9452 Stn Prov Govt
Victoria, BC V8W 9V7