

How to appeal your conviction



Legal
Services
Society

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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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Introduction

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

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 the Lower Mainland) or 1-866-577-2525 (no charge, in the rest of BC), or go to the LSS website at www.lss.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. If you decide you want to hire him or her, remember to ask them how much you can expect to pay. Contact the service at:

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

Reasons for appealing your conviction

The purpose of a conviction appeal is not to retry your case. You can't ask the court to hear your evidence again to determine whether you should have been found guilty. An appeal court can only set aside your conviction for one of the following three reasons:

- the **verdict was unreasonable** or couldn't be supported by the evidence;
- the judge made an **error of law**; or
- there was a **miscarriage of justice** on any grounds (basis).

Unreasonable verdict

You may appeal your conviction if the verdict was unreasonable, given the evidence presented. Challenging a conviction on the grounds of unreasonable verdict focuses only on the weakness of the evidence. You must persuade the appeal court that the evidence was too weak for reasonable jurors to find you guilty beyond a reasonable doubt.

For example, if the only evidence linking an accused person to a bank robbery came from an eyewitness who wasn't certain she identified the correct person, the appeal court would probably consider changing the conviction.

However, it's very difficult to succeed on these grounds for appeal. The appeal court is rarely interested in arguments about the credibility of witnesses or the importance given to various pieces of evidence at the trial. For example, you may think the judge was wrong to believe the Crown's witnesses instead of you or your witnesses. But that kind of appeal rarely succeeds.

Error of law

You may appeal your conviction because errors of law were made at the trial. If you establish that errors of law were indeed made, your conviction may be set aside. Wrongful admission of evidence, a wrong interpretation of a Charter right, or a misdirection (giving the wrong instructions) to the jury on a crucial question of law are all examples of errors of law.

However, if the court thinks that even without the error the verdict would still have been the same, it won't allow the appeal. Section 686(1)(b)(iii) of the Criminal Code of Canada permits the court to dismiss an appeal when the verdict couldn't possibly have been different.

Miscarriage of justice

You may appeal your conviction because of a miscarriage of justice. If there are errors of both fact and law that the appeal court considers to be a miscarriage of justice, your conviction will be set aside. Examples of a miscarriage of justice include a jury member being biased or a judge refusing to provide an interpreter for an accused person who doesn't understand English very well.

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 3.)

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 3 and 4.)

File a Notice of Appeal

To let the court know you want to appeal, you must first file a Notice of Appeal. Which kind of Notice of Appeal form you need to fill out depends on whether your conviction 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 are not sure whether you were convicted of an indictable offence or a summary offence, check with the lawyer who represented you in court, or with the registry at the courthouse where the trial was held.

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 11).

The same form is used for a sentence 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 13).

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 4.)

If you wish to apply for release on bail until your conviction appeal, see "How to apply for release on bail pending appeal" on page 6.

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 conviction that relates to any or all of the three categories of unreasonable verdict, error of law, or miscarriage of justice.

If you have difficulty wording your grounds of appeal, include the following ground, which allows you to add more grounds later:

"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 convicted of an indictable offence, file your Notice of Appeal in the Court of Appeal registry in Victoria, Kamloops, or Vancouver, depending on where you were convicted. If you were convicted on Vancouver Island, file in the Victoria registry. If you were convicted in the interior of British Columbia, file in the Kamloops registry. If you were convicted 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 you were convicted of 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 convicted 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 (see more about this on page 5). In this 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 15. The form called Notice of Appeal or Application for Leave to Appeal is on page 11. 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 15. The Notice of Appeal — Defence Appeals Against Conviction, Sentence or Other Order is on page 13. 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 of Appeal.

How to prepare for your appeal

Get transcripts of your trial and file them

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

In the Court of Appeal

If you're appealing a conviction in the Court of Appeal, you must order and pay for the **original** plus **five** copies of the transcripts of the trial proceedings. Ask how to order transcripts at the registry of the court where you were convicted. You need to file the transcripts with the Court of Appeal registry within 60 days of filing your Notice of Appeal.

In the Supreme Court

If you're appealing a conviction in the Supreme Court of BC, you must order and pay for the **original** plus **three** copies of the transcripts of the trial proceedings. Contact the Provincial Court where you were convicted 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 45 days of filing your Notice of Appeal.

Prepare your arguments and documents

It's a good idea to prepare and file a written outline of your argument. This is called a "factum" or a "statement of argument." The guidelines for preparing a factum are on pages 17 to 23 of this booklet. At the hearing itself, you base your arguments on the outline that you've presented in your factum. Your factum helps you to clearly explain your argument to the court.

Note that witnesses aren't called in appeal cases except in rare instances. Usually, the appeal hearing can deal only with the evidence already given at the trial, which is contained in the court transcript. You can't refer to new evidence without permission ("leave") of the court. See "Using new evidence" on page 6.

In the Court of Appeal

File your factum (statement of argument) with the court registry **within 30 days** of filing your transcripts. File the **original** plus **five** photocopies of the factum with the court registry.

In the Supreme Court

Prepare your factum (statement of argument) **at least 30 days before** the hearing of the appeal. File the **original** plus **two** photocopies of the factum with the court registry.

Do some research

Refer to any reported court decisions (“judgments”) that support your position. Try to use decisions of the Supreme Court of Canada, the BC Court of Appeal, or courts of appeal from other provinces.

You can find court decisions in books called 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 the Lower Mainland or 1-800-665-2570 (no charge) in the rest of BC. You can also go to www.bccls.bc.ca.

Useful resources available at the libraries include *Martin’s Annual Criminal Code* (which includes helpful explanations), 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. Judgments of the Supreme Court of Canada are available at www.scc-csc.gc.ca (click the “Judgments” button at the top of the screen). As well, you can look up Canadian legislation and legal cases at www.canlii.org, the website of the Canadian Legal Information Institute.

Using new evidence

In exceptional circumstances, the appeal court will allow you to introduce, by affidavit, new evidence on matters that weren’t heard at trial. However, before the appeal court will hear that evidence, you must persuade the court that:

- the evidence could not have been called at trial,
- the evidence is relevant because it relates to an issue that was a deciding factor,
- the evidence is reliable, and
- the evidence could reasonably be expected to have affected the outcome (when taken with the other evidence presented at the trial).

It’s hard to satisfy all of these conditions, so applications to introduce new evidence are rarely successful.

How to apply for release on bail pending appeal

File notices

If you are in custody and wish to be released until your conviction 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 25.

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

- the Notice of Application for Release from Custody Pending Determination of Appeal 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 this page.

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

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 27. Applications for bail pending appeal 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” below.

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:

- your appeal has enough merit (chance of succeeding) that keeping you in custody would cause unnecessary hardship;
- you’ll surrender yourself into custody on the date set for the hearing of your appeal; and
- keeping you in custody isn’t necessary 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 29 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 convicted;
- 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 conviction 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.

Possible results of an appeal

The appeal court may allow your appeal or it may dismiss it. If the appeal court allows your appeal, it can do one of three things:

- acquit you,
- order a new trial, or
- substitute a conviction for a different offence.

In most cases where the appeal court allows an appeal, it will order a new trial. The appeal court will generally only acquit someone if the evidence is so weak that a new trial couldn't end in a conviction.

If you are already in custody and the court orders a new trial, you'll be kept in custody until your second trial, unless you can persuade the appeal court to grant you bail.

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, and
- how likely is it that your appeal will succeed.

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 31.
- 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" on page 10.
- 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 33. 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 35. 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 8 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 37).

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 your 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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APPELLANT'S (RESPONDENT'S) FACTUM — (Court of Appeal OR Supreme Court of British Columbia)

Cover Page
(Coloured buff for appellant's factum.
Coloured green for respondent's factum.)
- - - - -

(Indicate the court handling your appeal)

- Court of Appeal*
 Supreme Court of BC

File No. _____

_____ Registry

ON APPEAL FROM: (State court or judge from whose order the appeal is brought,
together with the date that the order was pronounced.)

(Style of Cause)

REGINA

RESPONDENT

v.

_____ APPELLANT

APPELLANT'S (RESPONDENT'S) FACTUM

(Name of counsel for appellant)

Counsel

(Name of counsel for respondent)

Counsel

(The index is printed on the right side of the factum. All pages in the remainder of the factum are printed on the left. Pages should be numbered consecutively beginning at the first page of Part 1. The factum shall be double spaced, except for excerpts from an authority or a reproduction of an enactment, which shall be single spaced.)

INDEX	
PART	PAGE
PART 1 STATEMENT OF FACTS	(State page where applicable Part begins.)
PART 2 ERRORS IN JUDGMENT (Appellant's factum) ISSUE(S) ON APPEAL (Respondent's factum)	
PART 3 ARGUMENT	
PART 4 NATURE OF ORDER SOUGHT	
APPENDICES (if any)	
LIST OF AUTHORITIES	

(In Parts 1 to 4, the left margin shall have printed numbers that correspond to the appropriate line of that page.)

Part 1	
1	
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STATEMENT OF FACTS

Briefly state the history of your case (the offence and sentence, as well as the name of the judge and the court dates) and the facts of your case. Number each of your paragraphs in order.

List the source(s) you're using to back up your statement of facts; for example, testimony or exhibits (evidence that was filed in the court) or the reasons the judge gave for your conviction. Also write down the page or line number where you can find these facts in the court transcripts or your appeal book (this is a collection of documents you make containing an index, a copy of the information or indictment, a copy of all exhibits, a list of exhibits and affidavits, a copy of the order under appeal, and a copy of the Notice of Appeal).

Part 2

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ERRORS IN JUDGMENT (Appellant's factum)

(or)

ISSUE(S) ON APPEAL (Respondent's factum)

Briefly state the errors made in the judge's charge to the jury, the judgment, or the order you are appealing. Be specific.

SAMPLE ONLY

Part 3

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ARGUMENT

Outline your argument for appeal and include the specific laws or facts you will rely on. Include the page or line numbers where you can find this information in the court transcripts or your appeal book (this is a collection of documents you make containing an index, a copy of the information or indictment, a copy of all exhibits, a list of exhibits and affidavits, a copy of the order under appeal, and a copy of the Notice of Appeal). If you talk about a specific law or laws, you can either attach copies in an appendix, or put them inside a separate cover of the same colour as your factum, and file it at the same time.

Part 4

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NATURE OF ORDER SOUGHT

Describe what kind of order you want the court to make.

SAMPLE ONLY

LIST OF AUTHORITIES PAGE(S)

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In alphabetical order, list all the legal cases (“authorities”) you’ve referred to in the other parts of the factum. Next to each, write the page number(s) where they can be found in the factum. Also provide enough information so that someone could find the case (called a “citation”). For example: *R. v. Oakes*, [1986] 1 S.C.R. 103, 24 C.C.C. (3d) 321. If you use a decision of the Supreme Court of Canada, put the *Supreme Court Reports*’ citation first.

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

COURT OF APPEAL

REGINA

RESPONDENT

vs.

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 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 his 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

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.

Free copies of this brochure are available from:

Distribution
Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Telephone: (604) 601-6075
Fax: (604) 682-0965
E-mail: distribution@lss.bc.ca

This brochure can also be read online at www.lss.bc.ca