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

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ARCS/ORCS FILE NUMBER: <b>56010-00</b>	EFFECTIVE DATE: <b>November 18, 2005</b>	POLICY CODE: <b>APP 1</b>
SUBJECT: <b>Appeals by Crown to the Court of Appeal and Supreme Court of Canada</b>		CROSS-REFERENCE: <b>MED 1 ENV1</b>

**POLICY**

This policy outlines the minimum requirements that must be met before an appeal to the Court of Appeal or Supreme Court of Canada will be approved. The fact that the criteria are met does not necessarily mean that an appeal will be initiated. Cases meeting the requirements will be considered on their own merits by the Director, CASP or designated Court of Appeal Crown Counsel.

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

Subject to the policy entitled Environmental Prosecutions (ENV 1), all Crown appeals to the Court of Appeal and Supreme Court of Canada are to be approved by the Director of Criminal Appeals and Special Prosecutions (CASP) or the designated Court of Appeal Crown Counsel.

**Appeal Against Acquittal to the Court of Appeal**

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

1. it involves a question of law alone (section 676(1)(a));
2. a reasonable argument can be made that the verdict would not necessarily have been the same if the error in law had not been made (Vezeau v. The Queen (1976) 28 CCC (2d) 81 (SCC)); and

**3. the public interest requires an appeal.**

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

- **whether public safety concerns, taking into account the seriousness of the offence and the circumstances of the offender, warrant a reconsideration of the case**
- **whether the issue raised by the case is one of general importance and no similar case is under appeal**
- **whether there are conflicting judgments on the question of law to be appealed**
- **whether it is likely that an appeal, if taken, would be successful**
- **whether there exists a proper record upon which to litigate the question of law**

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

**Appeal Against Sentence to the Court of Appeal**

**No appeal against sentence will be approved unless:**

- 1. the sentence imposed in the trial court is either illegal or unfit<sup>1</sup>; and**
- 2. (a) the proposed appeal involves a serious offence or relates to an offender who constitutes a serious threat to the community;**
  - (b) the proposed appeal raises an important question of general application concerning the principles of sentencing; or**
  - (c) the public interest in the proper administration of justice requires that the sentence be appealed.**

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

### **Procedure to Request an Appeal**

- 1. All requests for appeal from acquittal or sentence should be in the standard form (copies attached). It is imperative that all information identified on the Fact Sheet be provided with the appeal request.**
- 2. Administrative Crown Counsel should be advised of all requests by trial Crown Counsel for a Crown appeal, and all requests must be approved by Regional or Deputy Regional Crown Counsel before being forwarded to the Director, CASP.**
- 3. Time is of the essence. The Crown appeal request form must be submitted to the Director of CASP well in advance of the expiration of the 30 day time limit for filing the Notice of Appeal and serving the accused/respondent.**
- 4. The requesting office should order all necessary transcripts on an expedited basis, including transcripts of reasons for judgment, reasons for sentence, significant rulings during the trial, and portions of the judge's charge relevant to the grounds of appeal. The appeal request form should be forwarded immediately and transcripts as soon as possible.**
- 5. Where Regional Crown Counsel and the Director, CASP, disagree about whether an appeal or application for leave to appeal should be taken to either the Court of Appeal or the Supreme Court of Canada, the matter must be referred for resolution to the Assistant Deputy Attorney General (ADAG) at the earliest opportunity prior to the expiration of the appeal period.**
- 6. CASP may request Regional Crown Counsel to provide counsel to conduct an appeal. Crown Counsel attached to a Region or at Headquarters may request to be given conduct of an appeal after consultation with Regional or Deputy Regional Crown Counsel or the pertinent Director at Headquarters, respectively. The request is to be made to the Director, CASP.**
- 7. Subject to the policy entitled Environmental Prosecutions (ENV 1) and in the absence of a specific arrangement under the last paragraph, the Criminal Appeals office will have conduct of all appeals to the British Columbia Court of Appeal and Supreme Court of Canada.**

### **Additional Considerations in Relation to Crown and Defence Appeals**

- 1. If there is a media enquiry concerning an acquittal or sentence, Crown Counsel should indicate that decisions concerning whether to appeal are made following a complete review of the case. Crown Counsel should not outline their recommendation regarding appeal or make any public pronouncement regarding the likelihood of a Crown appeal being taken from an acquittal or**

- sentence. See the policy entitled **Media – Guidelines for Crown Counsel – Communications (MED 1)**.
- 2. Crown Counsel should refrain from making any representations about positions the Crown will take in response to a defence appeal or any interlocutory application connected to an appeal, including an application for bail pending appeal.**
  - 3. Crown Counsel should refrain from entering into any arrangement which purports to fetter the discretion of the Attorney General to commence an appeal unless the written approval of the ADAG to such an arrangement is obtained in advance.**

### **Interventions in the Court of Appeal and the Supreme Court of Canada**

**Recommendations to the ADAG about whether or not the Attorney General of British Columbia should intervene in appeals to be heard in the Court of Appeal or Supreme Court of Canada will be made following consultation between the Director, Legal Operations and the Director, CASP, or his or her designate.**

### **DISCUSSION**

The 30 day time limit for sentence appeals runs from the date of sentence.

The 30 day time limit for appeals from acquittal runs from the date of the acquittal and not from the date of sentence. (For example, where a verdict of acquittal is directed by the trial judge at the close of the Crown's case on the charged offence, but the trial continues on a lesser and included offence, the 30 day appeal period runs from the date of the directed verdict of acquittal.)

Criminal Appeals staff may have relatively little information about the file and therefore may require assistance. When Criminal Appeals staff seek information from a local Crown Counsel office with respect to a case, it is incumbent upon the local office to obtain the required information rather than direct the Criminal Appeals staff elsewhere.

**FACT SHEET - CROWN APPEAL AGAINST SENTENCE**

1. Name of accused.
2. Lower Court registry number and location.
3. Place of sentencing.
4. Name of judge.
5. Of what was accused convicted and what sentence was imposed. **A copy of the endorsed Information or Indictment to be attached.**
6. Plea at trial.
7. Whether a jury trial.
8. Length of trial, give dates.
9. Place and date of reasons for conviction.
10. Place and date of reasons for sentence. **Transcript of Reasons for Sentence must be forwarded to criminal appeals office as soon as possible.**
11. Attach a statement of the facts as found by the trial judge for the purpose of sentence.
  - (a) If accused convicted after trial, where are the facts as stated by the court? (e.g.) Judge's reasons for conviction; Judge's reasons for sentence.
  - (b) If accused convicted upon guilty plea, give the date the facts were read in. Did accused deny any of the facts read in by Crown? What facts denied? Did Crown then prove those facts?
12. If accused in custody, place of incarceration.
13. Where can the accused be served with the Notice of Appeal? Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. Outline basis of appeal against sentence.
16. What was the Crown's position on sentence?
17. What cases were cited by the Crown and defence on sentence.
18. Were any witnesses called on sentence? Give names, by whom called, purpose.
19. List documents placed before judge on sentence: **(Copies to be attached)**
  - (a) criminal record; (YES/NO)
  - (b) pre-sentence reports; (YES/NO)
  - (c) character letter; (YES/NO)
  - (d) psychiatric/psychologist reports; (YES/NO)
  - (e) Victim Impact Statements; (YES/NO)
  - (e) other. (YES/NO)
20. Was any portion of the facts contained in the documents on sentencing denied by the accused? What was denied?
21. Did the accused admit additional convictions to those on the record sheet or in the pre-sentence report? If so, what were those admissions?

22. Were there co-accused - whether tried with the accused or separately? Indicate any circumstances which would justify any disparity between the co-accused's sentence and this sentence.
23. How much time did accused spend in custody prior to sentence? Did any portion of this time result from other sentences?
24. Names of all Crown Counsel involved.
25. Names and telephone numbers of all Court Reporters (Court Recording Service) involved in the trial and sentencing.
26. Names, addresses and telephone numbers of any victims who require notification.

**FACT SHEET**

**CROWN APPEAL AGAINST ACQUITTAL - JUDICIAL STAY OF PROCEEDINGS**

1. Name of accused.
2. Lower Court registry number
3. Lower Court registry location.
4. Place of acquittal or stay of proceedings.
5. Name of judge.
6. Offence of which accused acquitted or on which stay of proceedings entered and section of *Criminal Code* of offence.  
**A copy of the endorsed Information or Indictment to be attached.**
7. Plea at trial.
8. Whether a jury trial.
9. Length of trial (give dates).
10. Place and date of acquittal or stay of proceedings.  
**Transcript of Reasons for Acquittal or Stay of Proceedings to be forwarded to Criminal Appeals office as soon as possible.**
11. If trial by judge without a jury, attach a statement of the facts as found by the trial judge upon which acquittal or stay of proceedings based.
12. If accused in custody, place of incarceration.
13. Where can the accused be served with the Notice of Appeal? Provide most recent known address and place of employment and known previous addresses.
14. Where the accused is not in custody give the name, detachment and telephone number of the officer who will arrange service of the Notice of Appeal on the accused.
15. What error(s) of law alone would form the basis for this appeal?
16. Explain why the verdict in this case would have been different if the error(s) in law had not occurred.
17. What position did the Crown take at trial on the issues forming the basis for the appeal.
18. What cases were cited by the Crown and defence on the issues.
19. Provide any additional information which would assist in determining if this is a case requiring a Crown appeal.
20. Names of all Crown Counsel involved.
21. Names and telephone numbers of all Court Reporters (or Court Recording Service) involved in the trial.
22. Name, address and phone numbers of defence counsel at trial.
23. Names, addresses and telephone numbers of any victims who require notification.