

Guidebook for Indictable Conviction Appeals

STEP 1: Reasons to Appeal

1.1 Before you start

This online guide explains how to appeal a conviction for an indictable offence on your own. You can find out whether you were convicted of an indictable offence by contacting the court where you were convicted.

Before you go ahead with your appeal, it is a good idea to find out whether you can get legal aid through Legal Aid Saskatchewan. You should call the Legal Aid office nearest you.

If you've been refused legal aid and do not have enough money to hire a lawyer, you might be able to get a court-appointed lawyer or pro-bono lawyer.

1.2 Reasons for appealing your conviction

The purpose of a conviction appeal is not to retry your case. You cannot ask the court to hear the evidence again to determine whether you should have been found guilty. According to s. 686 of the *Criminal Code*, an appeal court can only set aside your conviction for one of the following three reasons:

- the verdict is unreasonable or cannot be supported by the evidence;
- the judge made an error of law; or
- there was a miscarriage of justice.

Unreasonable verdict

You may challenge your conviction if the verdict is 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 a reasonable judge or jury to have found you guilty.

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 might consider overturning the conviction.

However, it is very difficult to succeed on this ground of 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 might think the trial 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 an error of law was made at the trial. If you establish that an error of law was 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 will not allow the appeal. Section 686(1)(b)(iii) of the *Criminal Code* permits the court to dismiss an appeal when the verdict could not 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 court considers to be a miscarriage of justice, your conviction will be set aside.

Examples of a miscarriage of justice include things such as a jury member being biased or a judge refusing to provide an interpreter for an accused person who does not understand English.

STEP 2: File a Notice of Appeal

2.1 Finding the court's criminal forms

To find the court's criminal forms, go to the court's website at www.sasklawcourts.ca or contact the registry office at (306) 787-5382 or caregistrar@sasklawcourts.ca.

If you are in custody, the correctional centre or penitentiary where you are being held will also have copies of these forms or be able to obtain copies for you.

2.2 Filing a notice of appeal

To let the court know you want to appeal, you must first file a notice of appeal in Form A. 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 sign and file the original notice of appeal.

When to file

You must file your notice of appeal within 30 days after 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.

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

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 usually 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

You will need to file the completed original notice of appeal by mailing it to the registry office. The registrar will provide a copy of your notice of appeal to the Crown.

2.3 Filing a late notice of appeal

Maybe you did not know you had a right to appeal and only learned of that right after the appeal period. Or maybe you planned to appeal but something outside your control caused a delay. In such cases, send your notice of appeal to the registry office anyway. The registrar will contact the Crown to see whether it will consent to late filing.

If the Crown will not consent to late filing, you will have to file an application for an extension of time to appeal to be heard by a judge in chambers using Form N supported by an affidavit in Form O. For information about how to complete these forms, call or write to the registry office.

2.4 Applying for 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 filed a notice of appeal,
- you have no money to hire a lawyer for your appeal, and
- you applied to Legal Aid and were refused by the local office *and* by the head office in Saskatoon.

Take the following steps:

1. Apply to the local office of Legal Aid.
2. If the local office of Legal Aid denies you representation, obtain a written copy of the denial decision and appeal that decision to the head office of Legal Aid in Saskatoon – the local office will provide you with instructions about how to do this when they deny you representation.
3. If the head office of Legal Aid also denies you representation, obtain a written copy of that denial decision and prepare a notice of motion in Form I and an affidavit in Form J. You will need to insert a chambers date into your notice of motion. You can find out when the court's

next chambers dates are by telephoning the registry office at (306) 787-5382 or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule. In your affidavit, you should tell the court about:

- your financial situation,
 - your education and knowledge of the court process,
 - the complexity of your case,
 - your grounds of appeal (the main points you will argue), and
 - the reasons why you believe that you need a lawyer to organize and present your case.
4. Send a copy of your notice of motion, affidavit and the letters from Legal Aid (local office and head office) to Court Services Branch of the Ministry of Justice and Attorney General (the address is on the bottom of Form I) and file a copy of this material at the Court of Appeal’s registry office at least three days before the chambers date inserted in your notice of motion.

If you are in custody when the application is heard, arrangements will be made by the registry office for you to appear by telephone before a judge of the court in chambers.

STEP 3: Prepare for Your Hearing

3.1 Review the transcript of your trial

When you file your notice of appeal, the registrar will order a transcript of your trial. A transcript is a typed record of everything that was said at your trial. It will contain the basic information you will use for your argument on your appeal. Once the registrar receives the transcript, he or she will send you or your lawyer a copy of it. You should review the transcript when you receive it.

3.2 Prepare your written argument

It is a good idea to prepare and file a written outline of your argument. This is called a factum when it is filed by a lawyer, but is called a written argument if you file it yourself. Your written argument should not be longer than 15 pages. At the hearing, you should base your oral arguments on the outline that you have presented in your written argument. Your written argument helps you to clearly explain your argument to the court.

File your original written argument at the registry office within 60 days after you receive the transcript from the registrar.

3.3 Do some research

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

You can look up Canadian legislation and legal cases on the website of the Canadian Legal Information Institute.

You can find court decisions in books called law reports and case digests and in annotated copies of the *Criminal Code*. If there is a specific court decision you are looking for and you cannot find it, you can contact the registry office to see whether the staff there can find it for you, but the staff in the registry office cannot conduct legal research for you.

3.4 When you can use fresh (new) evidence

In exceptional circumstances, the Court of Appeal may allow you to introduce, by affidavit, fresh evidence on matters that were not heard at trial. However, before the court will hear that evidence, you must usually 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 at the trial,
- 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 is hard to satisfy all of these conditions, so applications to introduce fresh evidence are usually not successful.

3.5 How to apply for release on bail pending appeal

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 motion in Form L and an affidavit in Form M in the registry office.

Prepare your notice of motion and affidavit

You will need to insert a chambers date into your notice of motion. You can find out when the court's next chambers dates are by telephoning the registry office at 306 - 787-5382 or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.

Your affidavit should contain at least the following information:

- where you lived before you were convicted;
- where you intend to live if you are released;
- the name of your employer and the place of your employment before you were convicted;
- your employment prospects if released;
- any supports you will have in the community if you are released; and
- any special individual circumstances relating to your physical and mental health, or potential for harm to you or your family if you are not released.

Write your written argument for release on bail

When you are writing your argument for release on bail, it is very important to be as persuasive as possible. There is no required form or format, but your written argument should help you convince the court of the following:

- your appeal has merit (a chance of succeeding);
- you will attend at court on the date of your appeal and will surrender yourself into custody if you lose your appeal; and
- keeping you in custody is not necessary in the public interest.

File your notice of motion, affidavit and written argument

File a copy of these documents at the Court of Appeal's registry office at least three days before the chambers date inserted in your notice of motion.

If you are in custody when the application is heard, arrangements will be made by the registry office for you to appear by telephone before a judge of the court in chambers and registry office staff will advise you of these arrangements.

3.6 Abandoning your appeal

If you have filed a notice of appeal but decide you do not want to go ahead with it, you have to file a notice of abandonment in Form H. Fill in the form and send it to the registry office.

Except in rare situations, you cannot re-open your appeal once it is abandoned.

STEP 4: Appear at the Hearing

4.1 Address the court

You are the appellant, the person making the appeal. Usually you are the first to speak to the court and provide it with basic information. In the Court of Appeal, three judges (or, rarely, five or seven judges) will hear your appeal.

At the beginning of the hearing, you will be asked to give the reasons why you think the appeal should be allowed. State the points clearly and politely. At this time, do the following:

- state the grounds of appeal that you are using to make your arguments,
- point out briefly the facts or the parts of the transcript that support your arguments, and
- refer to any reported court decisions that support your position.

If the judges ask questions, take your time answering and try to be as persuasive as you can.

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 raised. The court will then decide whether to allow or dismiss the appeal.

4.2 Possible results of an appeal

The Court of Appeal may give you an answer on the day of your appeal hearing. But sometimes the court will reserve its decision (make it later) and you will have to wait. The court may allow your appeal or it may dismiss it. If the 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 court allows an appeal, it will order a new trial. The court will generally only acquit someone if the evidence is so weak that a new trial could not end in a conviction.

Appealing to the Supreme Court of Canada

If you want to appeal to the Supreme Court of Canada (SCC), contact the SCC registry office for information. Ask the SCC registry office for their unrepresented criminal litigant appeals materials, or access the material from the SCC's website.

Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

registry-greffe@scc-csc.ca
613-996-8666
1-888-551-1185
Fax: 613-996-9138