

Respondent Guidebook for Crown Appeals

STEP 1: Reasons for a Crown Appeal

1.1 Before you respond

This online guide explains how to respond to a Crown appeal of your acquittal or sentence on your own.

Before you respond to a Crown 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 have been refused legal aid and do not have enough money to hire a lawyer, you may be able to get a court-appointed lawyer or pro-bono lawyer.

1.2 Reasons for a Crown appeal of an acquittal

The purpose of an acquittal appeal is not to retry the case. The Crown cannot ask the court to hear the evidence again to determine whether you should have been found guilty. An appeal court can only set aside an acquittal if the judge made an error of law that can reasonably be thought to have had a material bearing on the acquittal.

Error of law

The Crown may appeal an acquittal because an error of law that had a bearing on the acquittal was made at the trial. If the Crown establishes that an error of law of this kind was indeed made, your acquittal 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.

1.3 Reasons for a Crown appeal of sentence

If the Crown thinks that your sentence is too light, it must convince the court that the sentence is “demonstrably unfit” in the circumstances. The Crown’s appeal will not succeed unless it can show one or more of the following:

- the sentence is demonstrably unfit (too light), given the gravity of the offence and your moral culpability in its commission, your background, the circumstances of the offence and the sentences given to other offenders in similar circumstances, among other things;
- the sentence is illegal; or
- an error in a principle of sentencing resulted in an unreasonable sentence.

Demonstrably unfit sentence

If the Crown is arguing that your sentence is demonstrably unfit (too light), it will provide the court with decisions (judgments) to show that your sentence is lower or lighter than the sentences generally given for the type of offence you committed. You will want to respond to this, if possible, by providing the court with decisions (judgments) to show that your sentence is the same or higher than the length of sentences generally given for the offence. The cases most useful to you are ones from Saskatchewan in which the circumstances of the offence are similar to yours, the background of the offender is similar and the sentence was the same or lower.

Illegal sentence

The *Criminal Code* sets out the penalties that can be imposed for every criminal offence. Any sentence that is not authorized by the *Code* is illegal.

To argue an appeal on the ground that it was an illegal sentence, the Crown must be able to compare the exact sentence you received with the legislation that applies to your situation (usually a specific *Criminal Code* section), and show that your sentence does not comply with the law, as in the following example:

- A conditional sentence order (CSO) for an offence that would carry a sentence of more than two years is illegal. It is contrary to section 742.1 of the *Criminal Code* which says that a CSO is only available where the trial court could otherwise impose a sentence of imprisonment of less than two years.

Error in principle

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing sanctions (sentences) that have one or more of the following objectives:

- denunciation of the unlawful conduct,
- deterrence to the offender and to others,
- separation of the offender from society, where necessary,
- rehabilitation of the offender,
- reparation (making amends) for harm done to victims or to the community, and
- promoting a sense of responsibility and acknowledgement of the harm done to victims and to the community in the offender.

The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Other sentencing principles can be found in section 718.2 of the *Criminal Code*.

If a judge ignores or puts too much emphasis on one of these principles, the Court of Appeal might consider changing the sentence. However, the fact that the trial judge made an error in applying one of the principles of sentencing does not guarantee that the Court of Appeal will change the sentence. The Crown must also convince the court that the sentence is unfit.

STEP 2: Get a Court-Appointed Lawyer

2.1 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:

- the Crown has 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 the Crown 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 and sentence proceedings

When the Crown files its notice of appeal, the registrar will order a transcript of your trial or sentence proceedings. 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 in response to the 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 10 days after you receive the Crown's factum (for a sentence appeal) or within 30 days after you receive the Crown's factum (for any other Crown appeal).

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.

STEP 4: Appear at the Hearing

4.1 Address the court

The Crown is the appellant, the person making the appeal. Usually the Crown lawyer will be the first to address the court and provide it with information. In the Court of Appeal, three judges (or, rarely, five or seven judges) will hear the appeal.

After the Crown has addressed the court, you will be asked to give the reasons why you think the Crown's appeal should be dismissed. State the points clearly and politely. At this time, do the following:

- state the basis for your arguments,
- point out briefly 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 have the right to briefly reply to any arguments you 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 the Crown's appeal or it may dismiss it.

If the court allows the Crown's acquittal appeal, it can do one of two things:

- convict you, or
- order a new trial.

In most cases where the Court of Appeal allows an acquittal appeal, it will order a new trial.

If the Court of Appeal allows the Crown's sentence appeal, it can "vary the sentence within the limits prescribed by law" (increase the sentence that the sentencing judge gave you).

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.

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