

Guidebook for Sentence Appeals

STEP 1: Reasons to Appeal

1.1 Before you start

This online guide explains how to appeal a sentence (imposed for a conviction for an indictable offence) on your own.

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 or the main line at 1-800-667-3764. You can find a list of legal aid offices online: <https://legalaid.sk.ca/contact/office-locator/>.

If you have 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 sentence

If you think your sentence is too harsh, you must convince the Court of Appeal that the sentence is “unfit” (unreasonable). Your appeal will not succeed unless you can 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.

These are called grounds for an appeal.

Excessive sentence

If you are arguing that your sentence is excessive, try to provide the court with decisions (judgments) of the Court of Appeal for Saskatchewan 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 offender is similar and the sentence was 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 the sentence is illegal, 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 does not comply with the law, as in the following examples:

- A sentence or a combination of sentences of more than two years' imprisonment to be followed by a probation period, is illegal. It is contrary to section 731(1)(b) of the *Criminal Code*, which says that 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 is an illegal sentence because it is contrary to section 732.2(2)(b) of the *Criminal Code*.

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 of 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. You must also convince the court that the sentence is unfit.

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 criminal forms page of the court's website:

<https://sasklawcourts.ca/court-of-appeal/rules-practice-directives/>

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 conviction appeal. If you are 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 (Refer to 2.3 Filing a late Notice of 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 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 should be broad enough to cover any sentence appeal and which usually allow you to add more grounds later:

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

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 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 their office

Take the following steps:

1. Apply to the local office of Legal Aid. You can find a list of legal aid offices here:
http://www.legalaid.sk.ca/contact/office_list.php
2. If the local office of Legal Aid denies you representation, obtain a written copy of the denial decision and prepare a notice of application in Form I and an affidavit in Form J. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at (306) 787-5382, emailing to caregistrar@sasklawcourts.ca 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.
3. Send a copy of your notice of application, affidavit and the denial letter from Legal Aid 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 application.

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 sentence proceedings

When you file your notice of appeal, the registrar will order a transcript of your sentence proceedings. A transcript is a typed record of everything that was said at your sentence proceedings. 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 40 pages. At the hearing, you 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.

In a sentence appeal, your argument must stick to the facts that were presented to the sentencing judge. 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?”

Consider providing the following information so that the 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, or
 - there was an error in principle.
- The circumstances of the offence:
 - whether it was pre-meditated 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
- Your plans upon release:
 - residence,
 - work,

- education,
- counselling, or
- drug treatment program.

File your original written argument at the registry office within 20 days after you receive the transcript from the registrar.

3.3 How to apply for release on bail pending appeal

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

Prepare your notice of application and affidavit

You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at (306) 787-5382, emailing to caregistrar@sasklawcourts.ca 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 aren't 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 for release should help you to convince the court of the following:

- your appeal has merit (a chance of succeeding);
- you'll 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.

You should be fully prepared to present your argument outlining why your sentence should be reduced. If you do not convince the judge at the bail hearing that your appeal has a chance of succeeding, you will not be granted bail.

File your notice of application, 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 application.

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.

3.4 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 address the court and provide it with basic information. In the Court of Appeal, three judges (or, rarely, 5 or 7 judges) will be present at the hearing of 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. If the judges ask questions about the facts, take your time answering and try to be as persuasive as you can.

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.

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

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

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