

BC Court of Appeal: How to Appeal your Conviction

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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.

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 apply for legal aid funding for your appeal by calling a prisoners-only line at 1-888-839-8889 (call no charge). Or you can call the LSS 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've been refused legal aid, you can [apply for a review of that refusal](#). The representative who refused your application will provide you with a form that indicates if a review is available. If so, your request for review must:

1. be in writing;
2. set out why you disagree with the decision; and
3. include copies of your supporting documents.

You must apply for a review within 30 days from the refusal decision. Mail or fax your request to:

Provincial Supervisor, Legal Aid Applications
425 - 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787

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If you are not in custody, go to the legal aid office nearest you. It's a good idea to call before you go. Phone the LSS Call Centre at 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (no charge, elsewhere in BC), or go to the [LSS website](#).

While there is no guarantee of finding a volunteer, you can try to obtain [pro bono \(free\) legal assistance](#) with your appeal.

If you want to try 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 plus taxes. If you decide you want to hire him or her, remember to ask them how much you can expect to pay.

If you've been refused legal aid and do not have enough money to hire a lawyer, you may be able to get a [court-appointed lawyer](#).

1.2 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.

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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.

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2.1 Gathering the forms you'll need

To find the court forms you will need for your appeal, go to the [BC Court of Appeal Criminal Rules Forms](#) page of the Courts of British Columbia website. The court forms are available in two formats: Word and PDF. You can type your information into the Word version online and then print it out, or print out the PDF version and complete it by hand.

Note: Some of the less commonly used forms referred to in this guide are not available online. You will find tear-out versions of those forms inside the booklet [How to Appeal Your Conviction](#) published by the Legal Services Society. Ask for a copy of the booklet at a [Legal Aid office](#) or [Community Partner](#) (call to find out if they have one first). You may also be able to print out the forms from the PDF version of “How to Appeal Your Conviction” or find a copy of the booklet at a [Court of Appeal registry](#).

2.2 Filing a Notice of Appeal

To let the court know you want to appeal, you must first file a form called [Notice of Appeal or Application for Leave to Appeal](#).

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.

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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.

If you wish to apply for release on bail until your conviction appeal, see [How to apply for release on bail pending appeal](#).

Note: When you refer to the judge on your forms, a Provincial Court judge is “The Honourable Judge.”

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

You will 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 (see below).

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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: 250-356-1478
Fax: 250-356-6279

Court of Appeal Registry
223 – 455 Columbia Street
Kamloops, BC V2C 6K4
Telephone: 250-828-4344
Fax: 250-828-4332

Court of Appeal Registry
#400 - 800 Hornby Street
Vancouver, BC V6Z 2C5
Telephone: 604-660-2468
Fax: 604-660-1951

2.3 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](#). In this case, file your Notice of Appeal ([Form 2](#)) together with a Notice of Application for Extension of Time to Appeal ([Form 7](#)).

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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. On an application to extend the time to appeal, the Court will consider:

1. whether you had a genuine intention to appeal before the deadline;
2. whether you told the Crown expressly or impliedly that you intended to appeal;
3. whether the Crown would be unduly prejudiced by an extension of time;
4. whether there is merit to your appeal in the sense that there is a reasonably arguable ground;
and
5. whether it is in the interests of justice, i.e. the interest of the parties, that an extension be granted.

You should try to address these factors in your application.

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 Application to Extend 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:

Appeals Section
Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Phone: 604-601-6085 (call collect)
Fax: 604-682-0956

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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.

2.4 Getting 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 Court of Appeal, but only after you've filed your Notice of Appeal, as described in [Filing a 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 the information and materials referred to in the Letter of Authority:

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- Fill out the Letter of Authority (Exhibit A) (page 31 in [How to Appeal Your Conviction](#).)
- 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" below.
- 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 (page 33 in [How to Appeal Your Conviction](#)). 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 (page 35 in [How to Appeal Your Conviction](#)). 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 must sign the affidavit in front of a "commissioner for taking affidavits for BC," who can be a lawyer or a notary public. You can find a notary through [BC Notaries](#) or in the [Yellow Pages](#). To find a private lawyer, look in the [Yellow Pages](#) under Lawyers – Criminal, or try the [Lawyer Referral Service](#) of the Canadian Bar Association, BC Branch.

When the application is heard, you'll be brought in person before a [Chambers](#) judge of the Court of Appeal.

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3.1 File copies of your trial transcripts and appeal book

After filing your Notice of Appeal, you must, within 60 days:

1. File 4 copies of each of an appeal book and transcript; and
2. Deliver one copy of the appeal book and transcript to the Crown.

Appeal Book

An [appeal book](#) ([Form 4](#)) is a bound document with a blue cover. It contains, among other items, the Information or Indictment relating to your offence, as well as evidence (exhibits and affidavits) from the court below. You can find more information about what to include on [Form 4](#), and details about the format of the appeal book at [Rule 8](#).

Transcripts

When you go to an appeal hearing, the court must have the 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, including the evidence and rulings below. See [Form 5](#) for more information about what transcripts must include, and [Rule 8](#) for more information about the required format.

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.

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3.2 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](#)" ([Form 6](#)) or a "statement of argument." The guidelines for preparing a factum are included in [How to Appeal Your Conviction](#) (beginning on page 17). 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 "[When you can use new evidence](#)".

The Court of Appeal has a [Practice Directive](#) with further information about how to prepare your factum.

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. Within 30 days of receiving your factum, the responding party must file their factum and deliver a copy to you. If you then want to Reply to the respondent's factum, you must file your reply factum within 7 days of receiving the respondent's factum and promptly deliver to them a copy.

See [Form 6](#) for more information about what to include in your factum, and [Rule 10](#) for more information about the timing and format requirements.

3.3 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. As well, you can look up Canadian legislation and legal cases on the website of the [Canadian Legal Information Institute](#).

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You can find court decisions in books called law reports and case digests, which are available through the law libraries at the [University of British Columbia](#) and the [University of Victoria](#), and through the various branches of the [BC Courthouse Library Society](#).

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.

3.4 When you can use 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. [Rule 31](#) provides information about how to apply to introduce new evidence.

3.5 How to apply for release on bail pending appeal

File notices

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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 ([Form 8](#)) in the appropriate registry.

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](#)); and
- your sworn affidavit (statement of facts). See [File your affidavit](#).

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.

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 court registry to show the truth of the facts that you're relying on to support your application. See page 29 of [How to Appeal Your Conviction](#) 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 find a notary through [BC Notaries](#) or in the [Yellow Pages](#). To find a private lawyer, look in the [Yellow Pages](#) under Lawyers – Criminal, or try the [Lawyer Referral Service](#) of the Canadian Bar Association, BC Branch.

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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.

3.6 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 ([Form 11](#)).

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.

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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. 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.

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. The Court may give its decision at the end of the hearing, or may reserve judgment and give its decision at a later time.

4.2 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

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- 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.

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 registry office for their unrepresented criminal litigant appeals materials, or access the materials from the [court's website](#).