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Step 1: Reasons to appeal

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1.1 Before you start

This online guide explains how to appeal a sentence on your own when you've been convicted of an indictable offence.

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
Vancouver, BC V6C 3A8
425 - 510 Burrard Street
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 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 sentence

If you think your sentence is too harsh, you must convince the appeal court that the sentence is “unfit” (unreasonable). The argument and documents you give to the court (your submissions) should 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.

Your appeal won't succeed unless you can show that one of these conditions applies to your sentence. This is called the grounds (basis) of your appeal.

Excessive sentence

If you're arguing that your sentence is excessive, provide the court with decisions (“judgments”) of the [Court of Appeal for BC](#) to show that your sentence is too high compared to the length of sentences generally given for your offence. As well, you can look up Canadian legislation and legal cases at the website of the [Canadian Legal Information Institute](#).

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The cases most useful to your appeal are those in which the circumstances of the offence are similar to yours, the background of the accused is similar, and the appeal court reduced the sentence.

You can also find judgments in law reports and case digests, which are available through the libraries of the law schools 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 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.

Illegal sentence

The [Criminal Code of Canada](#) sets out the penalties that can be imposed for every criminal offence. Any sentence that isn't authorized by the code is illegal.

To argue an appeal on the grounds that it was an illegal sentence, 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 doesn't comply with the law, as in the following examples:

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

Error in principle

The principles of sentencing that every judge must consider when imposing a sentence are:

- denunciation (public criticism) of the unlawful conduct,
- deterrence to the offender and to others of a similar mind,
- protection of the public,

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- rehabilitation of the offender, and
- reparation (make amends) for harm done to victims or to the community while promoting a sense of responsibility in offenders.

If a judge ignores or puts too much emphasis on one of these principles, the appeal court may consider changing the sentence. However, the fact that a trial judge has made an error in applying one of the principles of sentencing doesn't guarantee that the appeal court will change the sentence. You must also convince the court that the sentence is unfit.

Examples of a judge not properly applying the principles of sentencing would include the following:

- If an offender's addiction to drugs has no connection to the act of committing the offence, but the judge increases the sentence to make sure the offender has enough time to complete a drug treatment program in jail.
- If the judge says he or she isn't concerned about the rehabilitation of a 21-year-old offender and imposes a sentence of two years for automobile theft when a community-based sentence may be more appropriate.

You can find other examples of errors in how judges have applied the principles of sentencing in *Martin's Annual Criminal Code* under section 687, which describes the appeal court's powers on a sentence appeal, and under sections 718, 718.1 and 718.2, which describes the principles of sentencing. You can also find examples in the law reports *Canadian Criminal Cases* and *Criminal Reports*, and in *BC Decisions*.

A useful textbook is *Sentencing* by Clayton C. Ruby et al., available in some public libraries. It contains information about sentence lengths in Canada. You can also find legal information at the website of the [Canadian Legal Information Institute](#). The decisions of the [Supreme Court of Canada](#) can help you understand the principles of sentencing.

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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 court 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 Sentence](#) 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 print out the forms from the [PDF](#) 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. If you are representing yourself, use [Form 2](#).

The same form is used for a conviction appeal. If you're appealing both your conviction and sentence, you need to fill out only one form.

If you are **only** appealing your sentence, you must obtain leave (permission) to appeal. You have to show that your appeal is not frivolous and has a reasonable chance of success.

You must file the **original** plus **five** photocopies.

When to file

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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 sentence 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 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 are broad enough to cover any sentence appeal:

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 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.

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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. (Contact information is below.)

File your Notice of Appeal in the Court of Appeal registry in Victoria, Kamloops, or Vancouver, depending on where you were sentenced. If you were sentenced on Vancouver Island, file in the Victoria registry. If you were sentenced in the interior of British Columbia, file in the Kamloops registry. If you were sentenced 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 Notice of Application for Extension of 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 to 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;
- how likely it is that your appeal will succeed; 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.

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 25 in [How to Appeal Your Sentence](#)).
- 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 27 in [How to Appeal Your Sentence](#)). 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 29 in [How to Appeal Your Sentence](#)). 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 Get transcripts of your sentence proceedings and file them

When you go to an appeal hearing, the court must have the court transcripts of the sentencing proceedings. Transcripts are the typed records of everything that was said at these proceedings. They contain the basic information you must use for your argument on appeal.

If you're appealing your sentence in the Court of Appeal, the Court of Appeal registry orders the transcripts of the sentencing proceedings, pays for them, and sends you a copy before the hearing date.

If you're appealing *both* your conviction and your sentence in the Court of Appeal, you must order and pay for six copies of the transcripts of the trial proceedings and for six copies of the sentencing proceedings. Ask how to order transcripts at the registry of the court where you were sentenced. See [How to Appeal Your Conviction](#) for more information about appealing your conviction.

3.2 File other documents

The appeal court may also have a copy of your criminal record, pre-sentence report, and any letters of reference or other materials filed as exhibits in the court that sentenced you. If you wish to be certain that the appeal court has these documents, obtain photocopies yourself and file them with the court registry well before the hearing date set for the appeal.

You can contact the registry of the court where you were sentenced to get these documents.

File **six** photocopies of these other documents.

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3.3 Prepare your arguments and documents

In a sentence appeal, your arguments and documents (submissions) must stick to the facts that were presented to the sentencing judge. The appeal court may not allow you to bring in new information about committing the offence.

The appeal court will sometimes consider new letters of reference and any other reports about your character or background that might help the court know more about you. It may help to get letters from prison staff or others who think you're doing the best you can to rehabilitate yourself.

If you intend to rely on any new material of this kind, you must file it with the appropriate court registry well before the date of the appeal hearing. Ask the court registry how to make sure Crown counsel gets a copy.

It's a good idea to put your arguments to the court in point form. This will help you to explain them clearly in court.

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?"

Be prepared to provide the following information so that the appeal 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; and/or
 - there was an error in principle.

For how to argue these reasons, see [Reasons to appeal](#).

- The particulars of the sentence:
 - the offence and sentence dates;
 - length of sentence;
 - offence for which it was imposed;

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- whether it was concurrent (to be served at the same time as another sentence) or consecutive (to be served after another sentence); and
 - whether a co-accused was involved and, if so, what sentence he or she received.
- The circumstances of the offence:
 - whether it was premeditated 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.
- The recommendation of the pre-sentence report:
 - whether the probation officer said anything in the pre-sentence report that might persuade the court to reduce your sentence.
- Your plans upon release:
 - residence;
 - work;
 - education;
 - counselling; and/or
 - drug treatment program.

Much of this information should be contained in the court transcripts of the sentence proceedings. Be prepared to point to various parts of the transcripts to support the facts as you relate them to the court.

Sentence Statement

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- The Court of Appeal has a [Practice Directive](#) setting out instructions for what to submit for your sentence appeal. Self-represented appellants are encouraged, but not required, to follow this directive. There is also a [template](#) that you can follow to help you figure out what to include and how to format it.
- Your statement should generally not be longer than 8 pages. You must file 6 copies and deliver one copy to the Crown. The statement should include the facts, your grounds of appeal, the range and type of sentence you argue is appropriate, and the position of the Crown and defence counsel before the sentencing judge in the lower court. You should file your statement 3 weeks before the hearing.
- Also 3 weeks before the hearing, you should file 5 copies of any authorities (i.e., case law) and 6 copies of any other written material you intend to rely on at the hearing. You must deliver one copy of this material to the Crown.
- At least 2 weeks before the hearing, the Crown will file and serve you with its reply materials.
- For further information, see the [Practice Directive](#) published by the Court.

A Sentence Statement is like a factum, and you may want to include written materials similar to what is found in an appeal book. See the videos and Sections [3.1](#) and [3.2](#) of the Conviction Guidebook for further information.

3.4 Prepare a written summary of your arguments

It's a good idea to prepare a written summary for your arguments for a reduction of sentence. This will help you organize your most important points before going into court.

This summary is called the "appellant's statement." There is no standard form or format, but it should set out the following:

- The precise grounds of appeal you'll raise at the hearing.
- The length and type of sentence you think is appropriate for the offence and you, the offender.
- The positions that defence and Crown counsel recommended to the judge at the sentencing hearing.

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3.5 How to apply for release on bail pending appeal

File notices

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 for Release from Custody Pending Determination of Appeal ([Form 8](#)).

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](#).

Note: To apply for bail pending an appeal in the Court of Appeal, you first have to get permission (“leave”) to appeal your sentence. The Court of Appeal will approve your application only if your appeal has merit (a reasonable chance of succeeding).

Include four copies of any information or materials that support your case, such as any legal cases you intend to rely on.

When you apply for bail pending appeal, you must be fully prepared to present your argument outlining why your sentence should be reduced. If you don’t convince the judge at the bail hearing that your appeal has merit (a reasonable chance of succeeding), you won’t be granted bail and you won’t be allowed to proceed with your appeal.

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

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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:

- the appeal is not frivolous (meaning that it has a chance of succeeding);
- you'll surrender yourself into custody on the date set for the hearing of your appeal; and
- keeping you in custody isn't in the public interest.

File your affidavit

You must also file an affidavit in the appropriate court registry to show the truth of the facts that you're relying on to support your application. See page 23 of [How to Appeal Your Sentence](#) 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.

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 sentenced;
- 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 sentence 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.

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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 an 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.

Using your research

If you did research to find out the length of sentences in other cases to argue that your sentence is excessive, present this information when you are addressing the court.

Bring **five** photocopies of each of the cases you are using: one for each of the three judges, one for the Crown, and one for you.

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You can file these photocopies before the hearing if you want, or you can just bring them with you to the hearing.

4.2 Possible results of an appeal

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

If the Crown wants a higher sentence, which is unlikely, you'll be informed of this in writing before the hearing date.

Rather than risk an increased sentence, you can always abandon your appeal (see [Abandoning your appeal](#)). If you are considering this option, contact the [Appeals Section of the Legal Services Society](#) and ask for advice.

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](#).