

**Court of Appeal of Alberta  
Criminal Appeal Rules**

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	Starts at rule #
Division 1: Interpretation and Application	16.1
<i>What this part applies to</i>	16.1
<i>Definitions</i>	16.2
<i>Application of civil rules</i>	16.3
Division 2: Starting an Appeal	16.4
<i>Permission to appeal</i>	16.4
<i>Date of decision</i>	16.5
<i>Self-represented appellants</i>	16.6
<i>How to start an appeal</i>	16.7
<i>Service of the application for permission to appeal or notice of appeal</i>	16.8
<i>Method of service</i>	16.9
<i>Variation of a sentence</i>	16.10
<i>Types of appeals</i>	16.11
Division 3: Appeal Documents	16.12
<i>Preparation of Appeal Record</i>	16.12
<i>Contents of Appeal Record – conviction appeals</i>	16.13
<i>Contents of Appeal Record – sentence appeals</i>	16.14
<i>Format of Appeal Record</i>	16.15
<i>Factums in criminal appeals</i>	16.16
<i>Contents of factums</i>	16.17
<i>Format of factums</i>	16.18
<i>Other appeal documents</i>	16.19
Division 4: Scheduling Oral Argument	16.20
<i>Scheduling conviction appeals</i>	16.20
<i>Unscheduled conviction appeals</i>	16.21
<i>Scheduling sentence appeals</i>	16.22
Division 5: Applications	16.23
<i>Bringing Applications</i>	16.23
<i>Application for permission to appeal</i>	16.24
<i>Judicial interim release</i>	16.25
<i>Application to admit new evidence</i>	16.26
<i>Application to reconsider a previous decision</i>	16.27
<i>Application to restore</i>	16.28
<i>Summary determination of appeals</i>	16.29
Division 6: General Rules	16.30
<i>Presence at appeals</i>	16.30
<i>Duties of counsel</i>	16.31
<i>Abandonment of appeals</i>	16.32
<i>Restoring criminal appeals</i>	16.33
<i>New trials</i>	16.34
<i>Scope of sentence appeals</i>	16.35
<i>Judgment in appeals</i>	16.36

## **Part 16**

### **Criminal Appeal Rules**

*These Rules are made by the Court of Appeal pursuant to section 482 of the Criminal Code, and are included with the civil rules for convenience.*

#### **Division 1**

#### **Interpretation and Application**

#### **What this Part applies to**

**16.1** This Part applies to all criminal appeals to the Court of Appeal of Alberta, including those arising from or under the appeal procedures set out in:

- (a) the *Criminal Code*;
- (b) the *Extradition Act*;
- (c) the *Youth Criminal Justice Act*; and
- (d) the *Provincial Offences Procedure Act* (Alberta).

#### **Definitions**

**16.2(1)** Unless otherwise specified in this Part, and as the context requires, terms used in this Part have the same meaning as in the *Criminal Code* or the *Provincial Offences Procedure Act* (Alberta).

**(2)** In this Part:

“Attorney General” has the meaning set out in section 2 of the *Criminal Code*;

“civil rules” means the *Alberta Rules of Court* (AR 124/2010);

“conviction appeal” means an appeal from a conviction, acquittal or stay, or any decision that otherwise concludes criminal proceedings, other than a sentence appeal, including

- (a) any decision described in section 672.72, subsection 675(3), and sections 676, 784 and 839 of the *Criminal Code*,
- (b) an appeal from a costs order in a criminal matter,
- (c) an appeal or review of a decision under the *Extradition Act*,
- (d) an appeal from a decision that a person is unfit to stand trial or is not criminally responsible on account of mental disorder under Part XX.1 of the

*Criminal Code*, and

- (e) any appeal with respect to a finding that an offender is a dangerous offender or long-term offender;

“Court” means the Court of Appeal of Alberta;

“criminal appeal” means an appeal to which this Part applies;

“file” means to submit the correct document through the Court of Appeal Management System or otherwise as permitted in accordance with the *Court of Appeal Practice Direction – Electronic Filing*, adopted by the Alberta Court of Appeal and as amended from time to time, and obtain an acknowledgment by the Registrar that the document has been accepted for filing;

“permission to appeal” means

- (i) an application for leave to appeal,
- (ii) an application for a certificate of sufficient importance justifying a further appeal, and
- (iii) an application under section 680 of the *Criminal Code* for review of an interim release decision;

“Registrar” means a person appointed as a Registrar of the Court under the *Court of Appeal Act* (Alberta) and includes a Deputy Registrar of the Court and any person designated by a Registrar or the Chief Justice of Alberta to act for a Registrar;

“self-represented appellant” means an appellant who is not represented by counsel; and

“sentence appeal” means an appeal from a sentence, direction respecting parole, or other disposition following conviction, including the declarations, orders and dispositions listed in section 673, paragraph 675(1)(b) and paragraph 676(1)(d) of the *Criminal Code*, but not an appeal with respect to a finding that an offender is a dangerous offender or long-term offender.

**(3)** A reference in this Part to a form is a reference to the forms in the Schedule of Criminal Appeal Forms, varied to suit the case, or a form to the like effect.

## **Application of civil rules**

**16.3(1)** Subject to this Part, to any enactment, and to any direction by a case management officer or a single appeal judge, if this Part does not deal with a matter, the provisions of Part 14 of the civil rules respecting standard civil appeals (including rule 14.2) apply to criminal appeals, subject to any modifications or exceptions required to make them appropriate for the administration of criminal justice.

**(2)** For greater certainty, the following provisions of the civil rules do not apply to criminal appeals:

- (a) Part 5 [*Disclosure of Information*];
- (b) Part 10, Division 2 [*Recoverable Costs of Litigation*];
- (c) Part 14, Division 1, Subdivision 2 [*Appeals as of Right*];
- (d) Part 14, Division 1, Subdivision 3 [*Appeals with Permission*];
- (e) Part 14, Division 1, Subdivision 4 and rule 14.11 [*Cross appeals*];
- (f) Part 14, Division 5, Subdivision 3 [*Settlement Using Court Processes*];
- (g) Part 14, Division 5, Subdivision 4 [*Judicial Dispute Resolution on Appeal*]; and
- (h) Part 14, Division 5, Subdivision 7 [*Security for Costs*].

## **Division 2 Starting an Appeal**

### **Permission to appeal**

**16.4(1)** Where an appellant requires permission to appeal because

- (a) leave to appeal to the Court is required under the *Criminal Code* in a summary conviction matter,
- (b) a direction is required under section 680 of the *Criminal Code* for review of an order respecting judicial interim release,
- (c) a certificate of sufficient importance is required to appeal under the *Provincial Offences Procedure Act*,  
or
- (d) the appeal is of an order respecting costs,

the appellant shall bring an application for permission to appeal pursuant to rule 16.24 [*Application for permission to appeal*] and Form CRA-C.

**(2)** If permission to appeal is granted the appellant shall file a notice of appeal pursuant to rule 16.7 [*How to start an appeal*].

**(3)** In any case referred to in subsection (1), the application for

permission to appeal must be brought within

- (a) the time stated in any enactment for commencing the appeal, and
- (b) if paragraph (a) does not apply, one month after the date of the decision.

**(4)** Where permission to appeal is required in a case not referred to in subsection (1), the appellant shall file a notice of appeal pursuant to rule 16.7 [*How to start an appeal*], and unless otherwise ordered the application for permission to appeal is deemed to be included in the notice of appeal, and will be heard at the same time as and by the panel hearing the appeal.

### **Date of decision**

**16.5** In this Part, “date of decision” means the later of

- (a) the date that the decision being appealed is made, and
- (b) for a conviction appeal, where the sentencing occurs later than the conviction decision, the date that the sentencing decision is made.

### **Self-represented appellants**

**16.6(1)** A self-represented appellant who is in custody may start an appeal by filing with a senior officer of the institution in which the appellant is in custody, within the time specified in rule 16.7 [*How to start an appeal*], 3 copies of a notice of appeal in Form CRA-A.

**(2)** The senior officer must endorse on the notice of appeal the date it was received, return a copy to the appellant, retain a copy, and forthwith forward a copy to the Registrar.

### **How to start an appeal**

**16.7(1)** An appeal, other than an appeal by a self-represented appellant in custody referred to in rule 16.6, must be started by filing with the Registrar a notice of appeal

- (a) using Form CRA-A for an appeal by a self-represented appellant, or
- (b) using Form CRA-B for all other appeals.

**(2)** The notice of appeal must be filed within

- (a) the time for starting an appeal stated in an enactment,
- (b) if the appellant is granted permission to appeal, 10 days after permission to appeal is granted, or
- (c) if paragraphs (a) and (b) do not apply, one month after the date of decision,

and subject to rule 16.8 [*Service of the notice of appeal*] a

filed copy must be served on the respondent within those time limits.

#### **Information note**

The deadline for appealing a disposition under section 672.72 of the *Criminal Code* is 15 days after receipt of a copy of the placement or disposition decision. The deadline for appealing under section 50 of the *Extradition Act* is 30 days from the decision.

If convictions are entered, or sentences are imposed simultaneously by a trial judge in connection with both a summary conviction matter and an indictable matter, both matters may be appealed together to the Court of Appeal: *Criminal Code*, subsections 675(1.1) & 676(1.1).

#### **Service of the application for permission to appeal or notice of appeal**

**16.8(1)** If the appellant is not the Attorney General or prosecutor, the Registrar must forthwith forward a filed copy of the application for permission to appeal or notice of appeal to the Attorney General or prosecutor.

**(2)** In all other cases the appellant must serve a filed copy of the application for permission to appeal or notice of appeal on the respondent in accordance with rule 16.9 [*Method of service*], within the time specified in rule 16.7 [*How to start an appeal*].

#### **Method of service**

**16.9(1)** Subject to any enactment, an application for permission to appeal and a notice of appeal as of right filed by the Attorney General must be personally served on the respondent.

**(2)** An application for permission to appeal and a notice of appeal as of right filed by a convicted person must be served on the Attorney General.

**(3)** Any documents other than an application for permission to appeal or a notice of appeal as of right subsequently required to be served on a party to a criminal appeal may be served at the address for service provided by that party, or on the lawyer of record for that party.

#### **Variation of a sentence**

**16.10** If a sentence appeal is started by a convicted person, and the Attorney General proposes to argue on appeal that the sentence should be varied, the Attorney General must file and serve a Notice of Variation of Sentence in Form CRA-D on or before filing the respondent's sentence factum.

## **Types of appeal**

**16.11** Unless otherwise ordered, where an appeal is started from both conviction and sentence,

- (a) the two components of the appeal are to proceed as separate appeals,
- (b) the appeal respecting conviction is to be adjudicated first, and
- (c) the appeal respecting sentence, or an appeal respecting a dangerous offender or long-term offender finding is to be adjudicated second.

## **Division 3 Appeal Documents**

### **Preparation of Appeal Record**

**16.12(1)** The appellant must,

- (a) within 10 days after filing a notice of appeal
  - (i) order or commence preparation of the Appeal Record, and
  - (ii) order from Transcript Management Services the transcripts required by paragraph 16.13(1)(d) or 16.14(1)(d), and
- (b) within five days after ordering the appeal record and transcripts, file a copy of the order and serve a filed copy on the respondent.

**(2)** Subject to rule 16.13 [*Contents of Appeal Record – conviction appeals*] and rule 16.14 [*Contents of Appeal Record – sentence appeals*], the appellant must file an Appeal Record that meets the requirements of rule 16.15 [*Format of Appeal Record*] and serve a filed copy of the Appeal Record and the Transcripts on every other party to the appeal.

**(3)** The Appeal Record and Transcripts must be prepared promptly and filed and served forthwith after they are available, and

- (a) in an appeal from sentence only where the net sentence is 6 months or less, not later than 2 months after the date on which the notice of appeal was filed,
- (b) in an appeal from sentence only where the net sentence is greater than 6 months, not later than 3 months after the date on which the notice of appeal was filed,
- (c) for the sentencing part of any appeal as to both conviction and sentence, not later than 2 months after the date on which the conviction appeal was dismissed, struck or abandoned, or
- (d) in all other appeals, not later than 4 months after the date on which the notice of appeal was filed.

**(4)** If the Appeal Record and Transcripts are not filed and served within the applicable deadline, and an extension is not obtained

- (a) if the appellant is a self-represented appellant and is in custody, the Registrar may refer the appeal to a single appeal judge for directions, and
- (b) in all other cases, the appeal will be struck by the Registrar.

### **Contents of Appeal Record - conviction appeals**

**16.13(1)** The Appeal Record for conviction appeals must contain the following:

- (a) a table of contents for Parts 1 and 2 which must list separately each document and show the page number where the document can be found
- (b) Part 1 - Pleadings, consisting of
  - (i) the Information, Indictment or other originating document, and endorsements, and
  - (ii) for a further appeal in a summary conviction matter,
    - (A) the written or transcribed reasons of the Alberta Court of Justice, and
    - (B) the notice of appeal to the Court of King's Bench of Alberta.
- (c) Part 2 - Final Documents, which must include
  - (i) the written or transcribed reasons
    - (A) that led to the decision being appealed, and
    - (B) for any decision rendered during the trial that is relevant to the disposition of the appeal,
  - (ii) the charge to the jury, and the verdict of the jury,
  - (iii) any formal record of the decision, including any certificate of conviction, order of acquittal, report of criminal trial, or report of criminal appeal,
  - (iv) any restricted court access order,
  - (v) for appeals referred to in subrule 16.4(1), the order granting permission to appeal,
  - (vi) the notice of appeal,
  - (vii) when an enactment requires service on the Attorney General for Alberta or the Attorney General for Canada, or both, proof of that service, and
  - (viii) if there is no oral record that can be transcribed for Part 3, a notation to that effect in the table of



contents.

- (d) Part 3 - Transcripts, which must contain the following information
  - (i) a table of contents listing separately each part of the transcript, the name of each witness and questioner and showing the page number where the part or the testimony of the witness or questioner begins,
  - (ii) all oral evidence, but only such part of the argument that is necessary to determine the appeal,
  - (iii) in the case of an appeal from a judgment in a jury trial, the address to the jury of each party, the judge's charge to the jury and the answers given to any questions from the jury, and
  - (iv) a list and description of all the exhibits entered in the trial court and the page in the transcripts where the entry of the exhibits is shown.
- (2) The Appeal Record must not contain any comment, argument, trial briefs, legal authorities, evidence, affidavits, exhibits or new evidence.

### **Contents of Appeal Record - sentence appeals**

**16.14(1)** The Appeal Record for sentence appeals must contain the following:

- (a) a table of contents as required by paragraph 16.13(a),
- (b) Part 1 - Pleadings, consisting of the Information, Indictment or other originating document, and endorsements,
- (c) Part 2 - Final Documents, which must include
  - (i) any written or transcribed reasons for conviction, and the reasons for the sentence,
  - (ii) any formal record of the decision, including the certificate of conviction, report of criminal trial, or report of criminal appeal, and any resulting orders, prohibitions, authorizations or warrants arising from the sentencing,
  - (iii) the notice of appeal,
  - (iv) any Notice of Variation of Sentence in Form CRA-D, and
  - (v) any restricted court access order.
- (d) Part 3 - Transcripts, which must include:
  - (i) 16.13(1)(d)(i),
  - (ii) the plea and particulars, and any oral evidence given

- at the sentencing,
- (iii) speaking to sentence,
    - (A) in the case of a guilty plea, from the time of the plea, and
    - (B) in other cases, from the time of conviction, and
  - (iv) a list and description of all the exhibits entered in the trial court and the page in the transcripts where the entry of the exhibits is shown.
- (2) The Appeal Record must not contain any comment, argument, trial briefs, legal authorities, evidence, affidavits, exhibits or new evidence.

### **Format of Appeal Record**

**16.15(1)** Part 1 and Part 2 of the Appeal Record must,

- (a) have electronic bookmarks as required by rule 16.37(1)(i),
- (b) be continuously paginated, with the cover page being page 1, and
- (c) have a red cover page.

(2) Part 3 of the Appeal Record must

- (a) be prepared by an official court reporter or comply with the *Transcript Fees and Format Regulation* (AR 167/2020), and
- (b) be prepared in an electronic format approved by the Registrar and filed before Parts 1 and 2 of the Appeal Record are filed.

(3) Repealed.

(4) A case management officer may set or vary the contents or format of the Appeal Record as the nature of the appeal requires, including giving direction respecting transcripts.

#### **Information note**

If any document required to be included in the Appeal Record is not available at the time of preparation, a note to that effect must be inserted in the Appeal Record in its place, and the unavailable document must be filed as soon as possible or included in or appended to another document required to be filed..

### **Factums in criminal appeals**

**16.16(1)** The appellant must file an appellant's factum that meets the requirements of rule 16.17 [*Contents of factums*], rule 16.18 [*Format of factums*] and rule 16.37 [*Requirements for all*]

*documents*].

**(2)** The appellant's factum must be filed and served as follows:

- (a) for a conviction appeal, before the earlier of
  - (i) 2 months after the filing of the Appeal Record, and
  - (ii) 6 months after the filing of the notice of appeal;
- (b) for an appeal of sentence only, before the earlier of
  - (i) 2 months after the filing of the Appeal Record, and
  - (ii) 4 months after the filing of the notice of appeal;
- (c) for the sentencing part of any appeal as to both conviction and sentence,
  - (i) where a sentence Appeal Record has been previously filed, 2 months after the date the conviction appeal was dismissed, struck or abandoned, or
  - (ii) where a sentence Appeal Record has not been previously filed, 3 months after the conviction appeal was dismissed, struck or abandoned.

**(3)** If the appellant's factum is not filed and served by the applicable deadline, and an extension is not obtained,

- (a) if the appellant is a self-represented appellant and is in custody, the Registrar may refer the appeal to a single appeal judge for directions, and
- (b) in all other cases, the appeal will be struck by the Registrar.

**(4)** The respondent must file and serve a respondent's factum that meets the requirements of rule 16.17 [*Contents of factums*], rule 16.18 [*Format of factums*] and rule 16.37 [*Requirements for all documents*], or a letter of intention not to file a factum

- (a) for any conviction appeal, no later than 2 months after service of the appellant's factum.
- (b) for any sentence appeal, before the earlier of
  - (i) 1 month after service of the appellant's factum, and
  - (ii) 10 days before the opening day of the sitting at which the appeal is to be heard.

**(5)** A respondent that does not file a factum is not permitted to present oral argument unless the panel of the Court hearing the appeal orders otherwise.

## **Contents of factums**

**16.17(1)** A factum must include the following:

- (a) a table of contents, including page numbers;
- (b) Part 1 – Facts: in the appellant’s factum, a statement of facts (including, if desired, a concise introductory statement of the legal issues raised), and in the respondent’s factum, its position on the facts as stated by the appellant, and any other facts considered relevant;
- (c) Part 2 – Grounds of Appeal: in the appellant’s factum, a concise statement of the grounds for appeal, and in the respondent’s factum, its position in regards to the stated grounds, and any other points that may properly be put in issue;
- (d) Part 3 – Standard of Review: a statement on the relevant standard of review;
- (e) Part 4 – Argument: a discussion addressing the questions of law or fact raised by the appeal;
- (f) Part 5 – Relief Sought: a statement of the relief sought;
- (g) the estimated time required for the oral argument, not exceeding 45 minutes for each separately represented party in the appeal;
- (h) a Table of Authorities listing each statute, regulation and other authority referred to, and including
  - (i) any neutral citation assigned to the authority by the court that decided it,
  - (ii) at least one print citation where available,
  - (iii) where available, a hyperlink to each authority,
  - (iv) where only an extract of a statute or regulation is relevant, a hyperlink to that extract only, where available, and
    - (i) copies or extracts of any authorities, identified separately and appended to the factum, for which a hyperlink is not available;
- (i) Repealed.

**(2)** A factum in a sentence appeal must include a Sentence Appeal Questionnaire in Form CRA-E immediately following the table of contents

- (a) in the appellant’s sentence factum, or
- (b) where the appellant is a self-represented appellant and

that party's factum does not include the Sentence Appeal Questionnaire, in the respondent's sentence factum.

(3) A case management officer may vary the format requirements of or dispense with the preparation of a factum.

#### **Information note**

Rule 16.37 [*Requirements for all documents*] contains format requirements for all documents. Extracts of Key Evidence must not be attached to factums. Authorities should not be cited or hyperlinked to proprietary electronic databases, as the Court and other parties may not have access to them.

#### **Format of factums**

**16.18(1)** Factums must be

- (a) formatted using at least 12 point font, one-inch margins and at least 1.5 line spacing, except for quotations,
- (b) be continuously paginated, with the cover page being page 1, and
- (c) have electronic bookmarks as required by rule 16.37(1)(i).

(2) Parts 1 to 5 of a factum must not exceed 30 pages in length for each separately represented party or intervenor.

(3) Factums must contain precise references to the location, page numbers and paragraph numbers or lines of the Appeal Record, Extracts of Key Evidence and authorities referred to.

(4) Each factum must have a cover prepared as required by rule 16.37 [*Requirements for all documents*], in the following colours:

- (a) appellants – beige or ivory;
- (b) respondents – green;
- (c) intervenors – blue.

#### **Other appeal documents**

**16.19(1)** Where needed to resolve the issues in the appeal, each party to an appeal may file Extracts of Key Evidence

- (a) containing extracts of the transcripts, exhibits and other material on the record needed to resolve the issues in the appeal,
- (b) excluding any evidence, exhibits and other materials unlikely to be needed, and

(c) not containing any comment, argument, trial briefs, legal authorities or new evidence.

**(2)** Extracts of Key Evidence must be prepared as required by rule 16.37 [*Requirements for all documents*] and

- (a) have a table of contents describing separately each document, including each exhibit to any affidavit, and showing the page number where the document can be found,
- (b) be continuously paginated, with the cover page being page 1,
- (c) have electronic bookmarks as required by rule 16.37(1)(i), and
- (d) have a cover page in the following colours:
  - (i) appellants – yellow;
  - (ii) respondents – pink;
  - (iii) intervenors – blue.

**(3)** A party preparing Extracts of Key Evidence must file, when or before filing that party's factum, a copy of the Extracts of Key Evidence and must serve a filed copy on every other party to the appeal.

**(4)** Records that are subject to a restricted court access order must be filed as separate Extracts of Key Evidence and identified as such.

**(5)** If any document required for the Appeal Record is not available at the time of its preparation, a copy of the unavailable document must be filed as soon as possible or included in or appended to another document to be filed.

**(6)** A party to an appeal that wishes to file a condensed book of key documents intended to be referred to during the oral argument must

- (a) prepare the condensed book in compliance with the *Consolidated Practice Directions of the Court of Appeal of Alberta*, and
- (b) file the condensed book and serve a filed copy of the condensed book on all the other parties to the appeal 2 business days or more before the date scheduled for hearing the oral argument.

**(7)** The clerk of a trial court must, on request of the Attorney

General or counsel for the Attorney General, supply certified copies of any exhibits or records in the clerk's possession that are required for an appeal.

(8) On request of the Court, the trial judge must provide a report on any matter related to the case.

#### **Division 4 Scheduling Oral Argument**

##### **Scheduling conviction appeals**

**16.20(1)** Subject to any enactment, no later than 20 days after the deadline for the filing of the last factum in any conviction appeal,

- (a) the parties must contact the Registrar to schedule the oral hearing, and
- (b) the Registrar must, after consulting with the parties, schedule the appeal at a suitable time on the Criminal Appeal Hearing List.

(2) Repealed.

(3) Repealed.

(4) Repealed.

##### **Information Note**

Section 672.72(3) of the *Criminal Code* provides that appeals from dispositions (after findings of not criminally responsible by reason of mental disorder) are to be expedited. Sections 51(1) and 57(5) of the *Extradition Act* require that appeals be heard at an early date.

##### **Unscheduled conviction appeals**

**16.21** If oral argument of a conviction appeal is not scheduled within 9 months of the filing of the notice of appeal, and no extension or direction has been received from a case management officer

- (a) if the appellant is represented by counsel, the appeal will be struck by the Registrar, and
- (b) if the appellant is a self-represented appellant, the Registrar will schedule the appeal for oral argument.

##### **Scheduling sentence appeals**

**16.22(1)** Subject to the direction of a case management officer, 20 days before the opening day of each scheduled sitting for sentence appeals the Registrar will set down at that sitting every sentence appeal where

- (a) the appeal record and appellant's factum have been filed,
  - (b) the appeal record has been filed in a sentence appeal started by a self-represented appellant,
  - (c) the appeal record has not been ordered in a sentence appeal started by a self-represented appellant who is in custody, or
  - (d) the net sentence is 6 months or less, the appellant is in custody, and judicial interim release has not been granted.
- (2) The Registrar must advise any self-represented party of the scheduled date of the sentence appeal.
- (3) Unless otherwise ordered, the sentence appeal must proceed in accordance with the deadlines in this Part, notwithstanding that an appeal of the conviction appeal decision or an application for leave to appeal the conviction appeal decision has been filed with the Supreme Court of Canada.

#### **Information Note**

Sentence appeals are heard every month in Edmonton and Calgary, except in July and August. Parties who wish to schedule matters (such as appeals of sentences of short duration) during the sittings in July should contact a case management officer for advice.

A case management officer can defer oral argument on sentence appeals where a self-represented party is awaiting confirmation of Legal Aid coverage, where a self-represented party intends to file a factum, or where other circumstances make the default scheduling rules inappropriate.

### **Division 5 Applications**

#### **Bringing applications**

**16.23(1)** Subject to subrule 16.4(3), to bring an application the applicant must file an application and the other material required by subrule (2)

- (a) for an application to a single appeal judge, at least 10 days before the application is scheduled to be heard, and
- (b) for an application to a panel of the Court, at least 20 days before the application is scheduled to be heard, and

must within those same times, serve a filed copy of the application and other materials on every other party to the appeal.

(2) Subject to rule 16.24 [*Application for permission to appeal*], the applicant must file and serve

- (a) an application in Form CRA-F that must



- (i) state briefly the grounds for the application,
  - (ii) identify the material or evidence intended to be relied on,
  - (iii) refer precisely to any applicable provision of an enactment or rule, and
  - (iv) state the remedy sought,
- (b) any accompanying affidavit, if required,
  - (c) other material to be relied on, even if previously filed, and
  - (d) a memorandum of argument prepared in compliance with subrule 16.23(4).
- (3) The respondent to an application**
- (a) to a single appeal judge must, at least 5 days before the application is scheduled to be heard, file
    - (i) a reply memorandum of argument and any accompanying affidavit (if required) and any other materials to be relied on, or
    - (ii) a letter indicating that no additional materials will be filed by the respondent.
  - (b) to a panel of the Court must, at least 10 days before the application is scheduled to be heard, file
    - (i) a reply memorandum of argument and any accompanying affidavit (if required) and any other materials to be relied on, or
    - (ii) a letter indicating that no additional materials will be filed by the respondent, andmust within those same times, serve a filed copy of those materials on every other party to the appeal.
- (4) Memoranda filed on an application must be formatted as required by rule 16.18(1)(a) and**
- (a) excluding the cover page, table of contents, list of authorities and any chronology referred to in paragraph (b), must not be longer than 10 pages on an application for permission to appeal and 5 pages for any other application, and
  - (b) may in addition attach a chronology, where that is relevant to the application.
- (5) A respondent who fails to respond to an application or who elects not to file a memorandum in response to an application may not present oral argument at the hearing of the application unless the single appeal judge or the panel of the Court otherwise**

permits.

(6) Unless otherwise permitted,

- (a) subject to paragraph (b), oral argument on an application, including a reply, before a single appeal judge or a panel of the Court may not exceed 15 minutes for each party to the application,
- (b) oral argument on an application for permission to appeal, including a reply, may not exceed 30 minutes for each party to the application, and
- (c) consolidated applications are to be treated as one application for the purpose of this rule.

#### **Information Note**

All of the materials should be filed simultaneously, unless the application must be filed first to preserve a time limit. If in urgent matters the applicant wishes to abridge the time limits, a case management officer should be consulted for directions

### **Application for permission to appeal**

**16.24(1)** An application for permission to appeal must

- (a) be in Form CRA-C and comply with rule 16.23 [*Bringing applications*],
- (b) state the exact questions of law on which permission to appeal is requested, and
- (c) include the written or transcribed reasons of the Alberta Court of Justice and the Court of King's Bench of Alberta.

(2) Subject to any enactment, no appeal lies from an order of a single appeal judge granting or denying permission to appeal.

(3) An application for permission to appeal that has not been heard within 6 months from the date of the filing of the application is deemed to have been abandoned unless a case management officer otherwise directs.

### **Judicial interim release**

**16.25(1)** An application for judicial interim release may not be brought until

- (a) a notice of appeal or an application for permission to appeal has been filed, and
- (b) the Appeal Record has been ordered, or counsel undertakes to order the Appeal Record within 10 days of the filing of

the application.

- (2) An application for judicial interim release in an appeal against sentence only is deemed to include an application for permission to appeal sentence.
- (3) Unless otherwise ordered, an application for judicial interim release pending appeal must be based on an affidavit of the applicant deposing to any facts relevant and material to the application, which must include:
  - (a) particulars of the applicant's criminal record and any pending criminal charges, including any pending criminal charges outside Canada, and
  - (b) an undertaking to surrender into custody in accordance with the terms of any order granted.
- (4) Unless otherwise ordered, an order granting judicial interim release must be in form CRA-G.
- (5) An appellant who is granted judicial interim release must diligently prosecute the appeal, must comply strictly with all appeal deadlines, and must keep the Registrar informed of any changes of address or contact information.
- (6) If an appellant is granted judicial interim release and the appeal is struck or abandoned a warrant for arrest may issue without further order.

#### **Information Note**

The affidavit in support of judicial interim release should generally disclose the prior and proposed place of residence and employment of the applicant, and any other information likely to be pertinent to the application.

#### **Application to admit new evidence**

**16.26(1)** An application to admit new evidence must be filed and served prior to the filing of, and prior to the deadline for filing, the applicant's factum.

(2) In addition to the documents required by subrule 16.23(2), the applicant must file as a separate electronic document a copy of the proposed new evidence.

#### **Application to reconsider a previous decision**

**16.27** An application to reconsider a previous decision of the Court must be filed and served and must be returnable prior to the filing of, and prior to the deadline for filing, the applicant's factum.

### Information note

This Rule does not prevent a party from arguing that a prior precedential decision has been overruled by a decision of the Supreme Court of Canada, or by a legislative change. It also does not prevent argument about the *ratio decidendi* of the prior decision, nor whether it can be distinguished on recognized grounds.

### Application to restore

**16.28** An application to restore an appeal that has been struck or an application for permission to appeal that has been deemed abandoned must be filed, served and granted within 6 months after having been struck or deemed abandoned.

### Summary determination of appeals

**16.29(1)** The Registrar may refer to the Court for summary determination any appeal that

- (a) does not show a substantial ground of appeal,
- (b) appears to be frivolous or vexatious, or
- (c) can be determined without a full hearing.

**(2)** The Registrar may refer to a single appeal judge for summary determination any appeal that does not show a substantial ground of appeal, or that should have been filed with another court.

## Division 6 General Rules

### Presence at appeals

**16.30(1)** Subject to subrule (2), an appellant or respondent in custody is entitled to be present at the hearing of the appeal.

**(2)** An appellant who is in custody and who is represented by counsel is not entitled to be present on the hearing of any appeal on a question of law alone, or any application unless the right to be present is granted by an enactment, or a single appeal judge orders the appellant to be present.

**(3)** A single appeal judge may order that an appellant or respondent who is entitled to be present at an application or appeal appear instead by means of a telecommunication device, closed-circuit television, or other suitable method of communication.

### Information Note

Subject to the direction of a single appeal judge, the entitlement of an appellant who is in custody to be present at the hearing of the appeal is specified in section 688 of the *Criminal Code*.

### **Duties of counsel**

**16.31(1)** Counsel who are retained to represent a party in a criminal appeal must forthwith advise the Registrar in writing of

- (a) counsel's retainer or its termination,
- (b) any intention to abandon the appeal, and
- (c) any change in whether a party in custody is or is not to be present in court for any application or appeal.

**(2)** A lawyer of record in a criminal appeal must apply to a single appeal judge, on notice to the client and the Attorney General, for permission to withdraw from the record unless a Notice of Change of Representation in Form CRA-H is filed by another lawyer.

**(3)** A lawyer of record in a criminal appeal who is given permission to withdraw from the record shall within 10 days after permission was granted file with the Registrar and serve on the Attorney General a statement setting out an address for service or the last known address and contact information of the client.

### **Abandonment of appeals**

**16.32** An appellant may abandon the appeal by filing and serving a Notice of Abandonment in Form CRA-I.

### **Restoring criminal appeals**

**16.33(1)** An appeal that has been struck or an application for permission to appeal that has been deemed to have been abandoned may be restored with the filed written consent of the parties, or by order of a single appeal judge granted under rule 16.28 [*Application to restore*], but no fee is payable for restoring a criminal appeal.

**(2)** An order or written consent restoring an appeal must set deadlines and directions for the filing of any outstanding materials, and if the appellant fails to comply with any of those deadlines or directions, the appeal is deemed to have been struck again.

### **New trials**

**16.34** Unless otherwise ordered, where the Court orders a new trial

- (a) the presiding judge is deemed to have directed that the person charged is remanded to appear at the next sitting of the court appealed from that has jurisdiction in the case, and
- (b) Repealed.

### **Scope of sentence appeals**

**16.35** In any sentence appeal the Court on its own motion may

treat the whole matter of sentence as open to variation, but if the Court intends to vary a sentence pursuant to this rule, notice and an opportunity to be heard must be provided to the parties.

### **Judgment in appeals**

**16.36(1)** Subject to rule 16.36(3), formal judgments in criminal appeals shall be prepared by counsel for the Attorney General in accordance with R. 9.2.

**(2)** Where a judge of the Court dissents from the decision of the Court on a point of law, any judgment of the Court that is prepared must specify the grounds on which the dissent is based.

**(3)** Unless otherwise directed, where the Attorney General prepares a formal order or judgment resulting from an application or appeal, and the other party is self-represented, the approval of the other party is not required.

### **Requirements for all documents**

**16.37(1)** All materials prepared for an appeal must

- (a) be succinct, legible and divided into a single series of consecutively numbered paragraphs,
- (b) include the names of the parties in a style of cause in Form CRA-J,
  - (i) as set out in the notice of appeal, unless amended,
  - (ii) listed in the same order in which they were listed in the style of cause in the court appealed from, and
  - (iii) showing the status of the party in the appeal and in the court appealed from,
- (c) identify the nature of the material, the name of the party filing it, and that party's status on the appeal,
- (d) provide an address for service,
- (e) Repealed.
- (f) Repealed.
- (g) be 8.5" x 11" in size.
- (h) unless otherwise permitted by a case management officer, be filed in electronic form in accordance with the *Court of Appeal of Alberta Practice Direction – Electronic Filing*, and
- (i) include an electronic bookmark to
  - (i) the cover page, listing the name of the document, the name of the party filing the document, the appeal number and a brief style of cause,

- (ii) each heading and subheading of the document as listed in the Table of Contents, and
- (iii) the first page of each tab, exhibit or attachment, listing a description of the tab, exhibit or attachment.

**(2)** The Appeal Record, factums, Extracts of Key Evidence and Condensed Books must have a cover page in Form CRA-K that includes the name of the Court, the location of the office of the Registrar of the Court and the appeal number assigned by the Registrar.

## **Coming Into Force**

### **Coming into force**

**16.38** These Rules come into force and

- (a) the *Bail Rules – Appellate Division of Alberta*, (1972) C Gaz I, 2898-9, and
- (b) the *Rules of the Appellate Division of the Supreme Court of Alberta as to Criminal Appeals*, SI/77-174, (1977) C Gaz II, 4270

are repealed on August 1, 2018.

## **Schedule of Criminal Appeal Forms**

CRA-A - Notice of Criminal Appeal - Self-Represented Appellant  
CRA-B - Notice of Criminal Appeal  
CRA-C - Application for Permission to Appeal  
CRA-D - Notice of Variation of Sentence  
CRA-E - Sentence Appeal Questionnaire  
CRA-F - Application  
CRA-G - Order for Judicial Interim Release Pending Appeal  
CRA-H - Notice of Change of Representation  
CRA-I - Abandonment of Criminal Appeal  
CRA-J - Criminal Appeal Style of Cause  
CRA-K - Cover Page