

Criminal Appeals to the Court of Appeal

A. Is there a right to appeal? (Sections 675 – 676.1 & 784 of the Criminal Code and as specified in other legislation)

- No – an appeal may not be filed.
- Yes – proceed to Box B.

B. Is permission (leave) to appeal (PTA) required? (Sections 675 – 676.1 of the Criminal Code and as specified in other legislation)

- No – proceed to Box C.
- Yes – applicant files and serves an Application¹ (Form AP-3), a Memorandum of Argument, an (optional) Affidavit and any other materials at least 10 days before the application date. The respondent files a Memorandum of Argument, an (optional) Affidavit and any other materials at least 5 days before the application date.

Note: There are some instances (e.g., sentence appeals) where the leave application is argued in conjunction with the appeal and a separate application is not filed.

Application for permission to appeal is heard by a single judge in chambers

Application allowed

Application denied

Application reserved

Reasons for Decision filed

C. Permission (leave) to appeal is not required or PTA granted:

Appellant files and serves a Notice of Appeal (Form A [In person] or Form B [with counsel]) within (*Rule 843*):

- 10 days after PTA granted,
- 30 days from the date of sentence, acquittal, finding of not criminally responsible or finding of unfit to stand trial or
- the applicable legislated appeal period

Conviction Appeal²

Sentence Only Appeal

Sentence Following Conv. Appeal

The appellant orders transcripts within 10 days of filing the notice of appeal and files and serves a copy of the order form within 5 days of ordering. (*Rule 14.15*)

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There is no specified deadline for the filing of the e-transcript and appeal record.

The appellant files the e-transcript (if applicable) and the appeal record no later than:

- 4 months from the date on which the notice of appeal was filed where the sentence is more than 6 months (*CPD G.3(c)(i)*); or
- 6 weeks from the date on which the notice of appeal was filed where the sentence is 6 months or less. (*CPD G.3(d)*)⁴

The appellant files the e-transcript (if applicable) and the appeal record no later than 3 months from the date on which the conviction appeal was dismissed or abandoned. (*CPD G.3(c)(ii)*)⁴

The appellant's factum, extracts of key evidence and book of authorities are filed not later than 4 months after the appeal record is readied (or filed if date of ready unknown). (*Rule 840(6.1)*)³

The appellant's factum, extracts of key evidence and book of authorities are filed no later than 4 months from the date on which the notice of appeal was filed. (*CPD G.4(a)(i)*)⁴

The appellant's factum, extracts of key evidence and book of authorities are filed no later than 3 months from the date on which the conviction appeal was dismissed or abandoned. (*CPD G.4(a)(ii)*)⁴

There is no specified deadline for the filing of the respondent's factum, extracts of key evidence and book of authorities, or letter of intention not to file a factum.

The respondent's factum, extracts of key evidence and book of authorities, or a letter of intention not to file a factum, are filed before the earlier of 1 month after the appellant's factum is served or 10 days before the opening day of sittings. (*CPD G.4(c)*)

The respondent's factum, extracts of key evidence and book of authorities, or a letter of intention not to file a factum, are filed before the earlier of 1 month after the appellant's factum is served or 10 days before the opening day of sittings. (*CPD G.4(c)*)

Attend Criminal Speak to List, if required (*CPD F.8*)

Appeal scheduled for hearing before a panel of three judges (*Rule 14.33 and CPD G.7*)

Appeal allowed or allowed in part

Appeal dismissed

Appeal reserved

Reasons for judgment filed

¹ Applications for permission to appeal must be heard within 6 months from the date of the filing of the application failing which the application will be deemed to have been abandoned (rule 14.44(2)).

² Conviction appeals include acquittal and decision appeals.

³ If the appellant misses this deadline, the conviction appeal will be deemed to have been abandoned (rule 840(6.1)) unless the appellant is unrepresented.

⁴ If the appellant misses this deadline, the sentence appeal will be struck (CPD G.3(c) and G.4 (a)) **unless the appellant is unrepresented**. Once a sentence appeal is struck, it must be restored within 3 months of having been struck, failing which the appeal will be deemed to have been abandoned (CPD G.13(c)).

⁵ Part G.7(b) and (c) of the Consolidated Practice Directions reads as follows:

(b) Subject to (c) below, 20 days before the opening day of any sitting, the following matters will be moved to the Fixed Hearing List and will be scheduled to be heard during the next sentence sittings:

(i) every appeal where:

- (1) the sentence appeal record, appellant's sentence factum and any extracts of key evidence have been filed; or
- (2) there is an order of the Court directing that the appeal be moved to the Fixed Hearing List; and

(ii) every appeal, other than those filed by the Crown, where:

- (1) the appellant is not represented by counsel and
 - a) the sentence appeal record has been filed, or
 - b) the appellant is in custody and the appeal record has not been ordered; or
- (2) the sentence is six months or less, the appellant is in custody and judicial interim release has not been granted.

(c) Despite (b) above, the following appeals will not be moved to the Fixed Hearing List:

(i) every appeal:

- (1) where the notice of appeal was filed fewer than 20 days before the opening day of a sitting;
- (2) that has been adjourned either by written consent or by order of the Court; or
- (3) where the appellant is not represented by counsel and is waiting to find out whether Legal Aid will appoint counsel; and

(ii) unless 7(b)(ii)(2) applies, every appeal where:

- (1) a sentence appeal record has not been filed; or
- (2) the appellant is represented by counsel but the sentence appeal record, appellant's sentence factum and any extracts of key evidence have not been filed.

In addition:

- an appeal can be dismissed for want of prosecution (rules 14.37(2)(d) and 14.62) or abandoned at any stage of the appeal (rule 860C), and
- other than applications for permission to appeal and applications to admit new evidence, all applications must be heard within 3 months from the date of the filing of the application failing which the application will be deemed to have been abandoned (rule 14.52).