



Criminal Rules Reform Initiative **Discussion Paper**

Overview

[1] Section 482 of the *Criminal Code*, R.S.C. 1985, c. C-46, provides the Court of Appeal for British Columbia (the “Court”) with independent authority to establish and publish its own rules in criminal appeal proceedings.

[2] The Court is inviting feedback on the [British Columbia Court of Appeal Criminal Appeal Rules, 1986](#), B.C. Reg. 145/86 (the “*Criminal Appeal Rules*”) as part of its criminal rules reform initiative. The objectives of the reform initiative are two-fold:

- a) to harmonize and consolidate the Court’s current criminal rules, Practice Directives, and potentially matters within the inherent jurisdiction of the Court, through the creation of new rules that reflect and, where appropriate, update the existing practices of the Court and its users; and,
- b) to identify areas in the Court’s criminal appeal processes that may be in need of refinement, clarification, modernization, or overall change.

[3] The purpose of this Discussion Paper is to provide court users with a general overview of the current structure and content of the *Criminal Appeal Rules* and Practice Directives, and to invite feedback on ideas for reform. This paper is not an authoritative statement of the law on the Court’s criminal rules and should not be treated as such. Rather, it is intended solely to guide the discussion and gather feedback for the consultation.

[4] The Court welcomes input from all court users, including lawyers, paralegals, legal assistants, articling students, law librarians, legal organizations, and parties (including self-represented litigants), about how the *Criminal Appeal Rules* are working for people who engage regularly with the Court’s criminal appeal processes.

How to participate

[5] Feedback and comments can be provided via e-mail to CACriminalRules@bccourts.ca with the subject line “**Criminal Rules Consultation**”. If you prefer to provide feedback anonymously, an online survey is available [here](#).

[6] The Court invites input on any rule reform ideas relevant to the Court’s criminal appeal processes and encourages those responding to bring their concerns forward along with any suggested solutions. Please be as specific as possible in your responses. Questions you may wish to ask yourself in providing input include:

- a) As a court user, what works well under the current ***Criminal Appeal Rules*** and the Court’s Practice Directives?
- b) What is not working?
- c) What (if any) procedures hinder or deter the ability to commence or advance a criminal appeal effectively?
- d) How do the *Criminal Appeal Rules* or Practice Directives create challenges in your appeals practice, if at all?
- e) Would more comprehensive and detailed *Rules* be helpful?
- f) What specific process issues should be included in the new *Rules*?
- g) What areas are in need of clarity or amplification in the *Rules* or Practice Directives?
- h) Please share any additional feedback about the *Criminal Appeal Rules* or Practice Directives that are not captured by the questions above.

[7] The deadline for submitting responses is **May 2, 2025**.

Current Rules and Practice Directives

[8] The processes for criminal appeals are set out in the *Criminal Appeal Rules* and Practice Directives. One of the objectives of the reform initiative is to allow court users to find what they need in one place. This may require incorporating some or all of the Court's Practice Directives into a new and more comprehensive set of *Rules*.

[9] In its current form, the *Criminal Appeal Rules* consist of 20 rules, which address:

- a) the process for commencing an appeal;
- b) documents required to advance a conviction appeal or appeal from acquittal;
- c) sentence appeals;
- d) pre-hearing matters (e.g., summary dismissal, abandonment, pre-hearing conferences, filing deadlines, applications to the Court or a justice, non-compliance with the *Rules*); and,
- e) release from custody (including s. 680, *Criminal Code* reviews).

[10] The [Criminal Practice Directives](#) supplement the *Rules* on matters of practice and procedure. At this time, the Practice Directives address the following:

- a) the process to follow to apply for a court-appointed lawyer ([Appointment of Counsel under s. 684 of the Criminal Code](#));
- b) the stages involved in advancing a claim of ineffective assistance of trial counsel, including the process for case management of such appeals ([Ineffective Assistance of Trial Counsel](#));
- c) the process for initiating and expediting Review Board appeals, including the case management process for such appeals ([Mental Disorder Appeals](#));
- d) the requirements for filings on sentence appeals, including how to prepare a Statement and Reply ([Sentence Appeals](#));
- e) the process and filing requirements for documents on appeals from forfeiture orders or dangerous or long term offender designations ([Forfeiture, Dangerous and Long Term Offender Appeals](#));
- f) the filing requirements and timelines relevant to summary conviction appeals ([Summary Conviction Appeals](#));

- g) the timelines for filings in criminal conviction and acquittal appeals, including setting timelines for compliance hearings, expedited hearings, and hearing dates ([Criminal Conviction/Acquittal Appeals Timeline](#));
- h) the terms of order required when a conviction appeal is allowed and a new trial is ordered with respect to a charge(s) on which the appellant is incarcerated ([In Custody Appellants and New Trials](#));
- i) in extradition matters, the terms of an order (when granted) to allow bail pending an appeal from committal to continue without a further application in chambers ([Extradition Appeals](#));
- j) requiring appellants to file an electronic copy of a transcript at the same time as the paper transcript ([Criminal Transcripts](#));
- k) the format for producing factums ([Factums in Criminal Appeals](#)); and,
- l) directing that all filings of books be double-sided, except for factums and statements ([Double-siding of Appeal Materials](#)).

Context for feedback

[11] In addition to the information set out above, the discussion below sets out greater context about the main appellate processes captured by the current *Criminal Appeal Rules* and Practice Directives. The information below is not exhaustive, but may assist with orienting your feedback or identifying issues for you to consider in suggesting any reform.

Commencing an appeal

[12] Within 30 days after the imposition of sentence, a prosecutor who wishes to appeal that sentence or a defendant who wishes to appeal their conviction, sentence, or both conviction and sentence, must file a notice of appeal or application for leave to appeal (Rules 3–4). The applicable forms vary depending on whether a defendant is represented by counsel or is unrepresented and in custody at an institution. The Court has discretion to extend the filing deadlines in certain circumstances where the criteria for an extension of time have been met.

Release from custody

[13] Rule 19 sets out the process for applying for release from custody pending an appeal. When applying for release, an appellant must provide an affidavit that, at the very least, sets out the places they have resided for the three-year period preceding the date of sentence; the place where they intend to reside if released; employment information and prospects; the contact information of any relevant sureties; and, a statement of any criminal convictions from the five years preceding the conviction. Where the appellant is unrepresented, submissions on release must be in writing, unless otherwise ordered.

[14] If granted bail pending appeal, the appellant will likely be subject to a release order containing various conditions. This includes a specified surrender date, which is now generally set as the date of pronouncement of the Court's decision on the appeal.

[15] If denied bail pending appeal, Rule 20 allows an appellant to seek direction from the Chief Justice under s. 680 of the *Criminal Code* for a review of the decision.

Timelines for conviction and acquittal appeals

[16] Since 2014, the Court has aimed to have all conviction and acquittal appeals heard within one year from the filing of the notice of appeal. Pursuant to the Court's Practice Directive on Criminal Conviction/Acquittal Appeals Timeline, the Court's registry sends a letter to each party once a notice of appeal has been filed, setting out the standard deadlines that apply. This Practice Directive also explains the process for setting hearing dates, what to do if problems with the schedule arise, compliance hearing dates, and agreeing on a filing schedule for expedited hearings.

[17] It should be noted the timelines contemplated in the Practice Directive do not align with the filing deadlines set out in the current version of the Rules. One of the objectives of the Rules revision will be to harmonize the two. More complex appeals are case managed, meaning that a filing schedule for the appeal is likely to be set as the progress of the case is monitored. That schedule may not accord with the timelines identified in either of the *Rules* or the related Practice Directive.

Summary conviction appeals

[18] Where there is an appeal from an order of a summary conviction appeal judge, the Court has a Practice Directive ([Summary Conviction Appeals](#)) that sets out the timelines and materials required for filing.

[19] Summary conviction appeals are generally dealt with on a shortened timeline. Leave applications are intended to be heard within 60 days of the appeal being filed. If leave is granted, the appeal itself must be scheduled within 180 days from that date. The appellant is responsible for obtaining the record from the court below to facilitate the hearing of the application for leave to appeal and, if leave is granted, the hearing of the appeal.

Sentence appeals

[20] The *Rules* relating to sentence appeals (Rules 11–12) are supplemented by a Practice Directive on [Sentence Appeals](#). This Directive provides guidance on how parties should prepare their Sentence Statement and Reply to the Statement, which function as their written submissions in the appeal.

[21] Similar to summary conviction appeals, most sentence appeals (which usually require leave) are dealt with on a shortened timeline, typically within 180 days of the appeal being filed. It is not uncommon for the issue of leave to appeal to be left to the division that hears the merits of the sentence appeal. An exception arises where an offender seeks bail pending appeal from sentence alone, in which case leave to appeal is a statutory pre-requisite to release.

[22] If an individual is self-represented, they are still encouraged, but not required, to comply with the procedure in the Practice Directive. In many of the latter appeals, case management is necessary to clarify the grounds of appeal and ensure an appropriate record is established for an assessment of the merits.

Case management

[23] The Court's Registrar may refer a criminal appeal to case management (Rule 15). Counsel may also request a case management judge where the timeline for an

appeal appears unrealistic given the complexities of the case, or would cause a hardship. Case management generally occurs in appeals involving a self-represented litigant, where the appeal involves allegations of ineffective assistance of trial counsel, or where the appeal appears on its face to be exceptionally complex.

Special applications

[24] Part 4 of the *Rules* address other pre-hearing matters such as summary dismissal for want of prosecution (Rule 13), abandonment of an appeal (Rule 14), pre-hearing or case management conferences (Rule 15), and any other applications to the Court or a justice.

Court appointed counsel – s. 684 applications

[25] An appellant may apply for court appointed counsel to assist with their appeal pursuant to s. 684 of the *Criminal Code*. The related [Practice Directive](#) explains that the applicant must be able to show they cannot afford to retain counsel for the appeal, that it is “desirable” to appoint counsel, and that they applied for legal aid funding but were refused. An important part of the application includes a merits assessment. Applicants must show that there is a reasonable possibility their appeal will succeed. To that extent, applicants must authorize Legal Aid BC to provide the Court with all materials they have on the case except any privileged letters assessing the merits of the appeal. In accordance with the legal test, an applicant’s affidavit should include details on why they cannot afford a lawyer; their education level and ability to advance an appeal; that they applied for legal aid funding and were refused; the main points to be argued; why the case is complex and why it may succeed; why they need a lawyer to organize and present the case; and whether they have already had one level of appeal.

Ineffective assistance of trial counsel

[26] In appeals where a party will be making allegations of ineffective assistance of trial counsel as a ground of appeal, there is a [Practice Directive](#) outlining the steps appellate counsel and self-represented litigants must follow to advance the argument. These appeals require case management soon after the notice of appeal is filed.

[27] The Practice Directive provides a significant level of detail about the process to be followed due to the serious nature of the allegation. In other jurisdictions, this process has been codified through formal rules. Usually, when ineffective assistance claims are made, the appeal is closely case managed to ensure the matter is efficiently dealt with at the time of the appeal.

Subject matter appeals

[28] The Court has jurisdiction to hear criminal appeals pertaining to specific subject matters, including [extradition appeals](#), [mental disorder appeals](#), and [forfeiture, dangerous, or long-term offender appeals](#). Over time, the Court has developed Practice Directives specific to these appeals to manage their complexities. For example, the Practice Directive on forfeiture orders and dangerous or long-term offender designations require longer written arguments in the form of a factum.

Filing, preparation of documents and e-filing availability

[29] While the current *Rules* set out basic timelines by which steps in an appeal must be completed, in practice, parties may sometimes face challenges in meeting these deadlines, often due to circumstances beyond their control (e.g., the timeliness of transcripts, approval of representation by Legal Aid BC, pre-hearing applications).

[30] In preparing materials for filing, parties are also advised to include sufficient information about any relevant publication bans, sealing orders, or anonymization orders from the court below (see [Practice Directive here](#)).

[31] At this time, the Court does not require parties on criminal appeals to use e-filing, but as part of the modernization of court processes, this may be an issue to consider as part of the rules reform process.

Conclusion

[32] As stated, the information set out above is not exhaustive. Rather, it is included to provide you with general context that may assist in orienting your feedback, or to identify issues for you to consider in suggesting reform.

[33] The Court invites discussion and feedback on any of the criminal appeal processes that are highlighted in this Discussion Paper, or other matters that occur to you in your consideration of the *Rules*, the Practice Directives, and this reform initiative. Comments on whether more comprehensive and detailed *Rules* would be helpful, specific process issues that should be included, areas in need of clarity or amplification, and the practical workability of the Court's current criminal appeal processes are most welcome.

Where to send feedback

- Send feedback via email to CACriminalRules@bccourts.ca with the subject line "Criminal Rules Consultation".
- If you prefer to share feedback anonymously, please complete the survey [here](#).
- Deadline: **May 2, 2025**

Consultation Reference Materials

- [Section 482, Criminal Code](#)
- [British Columbia Court of Appeal Criminal Appeal Rules, 1986](#)
- [Criminal Practice Directives](#)