



**Manitoba
Department of Justice
Public Prosecutions**

Guideline No. 4:APP:1

Policy Directive

**Subject: Appeal
-Principles & Procedures**

Date: October 10, 1990

POLICY STATEMENT:

General

The governing principle in the decision to appeal on behalf of the Crown will be one of restraint. Appeals will only be taken in cases where there is a substantial public interest to be served by bringing the matter before an appellate court. An error of law, in the case of an acquittal, or an unfit sentence will not justify an appeal unless, having regard to the circumstances of the case the public interest requires that an appeal be taken. An appeal will not be taken unless there is a reasonable expectation that it will be successful.

Acquittals

Generally, an appeal against acquittal by the Crown must be based on an error in law. Findings of fact and of credibility do not found an appeal by the Crown. In Summary Conviction Offences circumstances may arise where it is necessary for an appellate Court to give direction on an issue of mixed fact and law.

In indictable offences a Crown appeal against acquittal must be based solely on an error of law which is limited to exclusion of a crucial piece of evidence, a misdirection on the law in reasons for judgment, an error of law in the charge to the jury, or the granting of a constitutional remedy such as striking down legislation.

Sentence

An appeal against sentence must proceed on the basis that it is inordinately low on its face, having regard to the offender's background as well as aggravating and mitigating factors, or that the sentencing judge committed a demonstrable error in principle in imposing the sentence.

Some factors (not inclusive) that enter into a decision to appeal are:

1. The seriousness of the offence;
2. The previous record, or character of the offender;
3. The sentence given to a co-accused (principle of parity);
4. The sentence is illegal;
5. The sentence is inordinately low on its face, outside any previously appropriate range;
6. The position taken by the Crown at the sentencing hearing;
7. The facts admitted by defence counsel, or proved by the Crown, at the sentencing hearing;
8. The principle of totality, including other matters dealt with on the same day, and a sentence already being served;
9. Whether a plea to a lesser offence was accepted, and the reasons leading to that decision;
10. Time spent in custody awaiting sentence, and the reasons for this;
11. Whether the accused was on probation, on parole, pending on other matters when the offence occurred, or was re-involved (and convicted) while awaiting sentence.

PROCEDURE

Summary Conviction Appeals

All recommendations shall be made directly to the Senior Crown Attorney in charge of the section in which the case originates.

Appeals to the Court of Appeal

Recommendations shall be made concurrently to the General Counsel Unit in Winnipeg and the responsible Director. The decision to appeal will be the joint responsibility of the General Counsel Unit and the Director.

Timeliness

The 30 day limit for filing and service of appeals necessitates the expeditious forwarding of recommendations to appeal.

Recommendations - Contents

Appended to this guideline is the Recommendation for Appeal form which is to be filled out in its entirety by the Crown Attorneys recommending appeals to the Court of Appeal. A thorough and accurate detail is necessary to ensure that the recommendation can be properly assessed. Recommendations for appeal from acquittal must contain a clear statement of the error of law committed by the trial Judge. All recommendations should include reference to any authorities counsel rely on in support of the allegation that the trial Judge erred in law or imposed a sentence which is unfit. Appeals will not be launched without adequate documentation. Recommendations must also attach the written material referred to on page two of the form, unmarked.

Note: The Appellate Court will not consider any such material which has not been filed and entered as an exhibit in the Court below.

Transcripts

As a general policy, transcripts of proceedings in trial Courts will not be ordered until an appeal has been filed by the Crown Attorney in charge of authorizing that particular appeal.

Exceptions to the rule will be approved by the Crown Attorney in charge of the appeal, in the following circumstances:

- (a) In the case of acquittal appeals, after a discussion between trial counsel and appeal counsel as to the merits of the case, of an expedited transcript of the reasons for judgment, in a decision to exclude evidence, or to charge a jury to acquit, on an alleged ground in law;
- (b) In the case of sentence, only after a discussion between the trial and appeal counsel will an expedited transcript be ordered;

Transcripts - Sentence Appeals

(a) Sentence After Guilty Plea

On occasion, the facts of an offence may be read in by Crown Counsel, and the matter of sentencing adjourned, for several reasons. In such a case, Appellate counsel must be advised of all court appearances during which representations were made by counsel, and commented upon by the Presiding Judge (in order to have all relevant transcripts before the Appeal Court).

(b) Sentence After Trial

On a Crown appeal after trial, as to sentence, the findings of fact of the trial Judge are crucial. Whether sentencing proceeds the same day, or after an adjournment for the submission of materials, the findings of fact concerning the offence are vital to the sentence appeal.

A transcript of the Judges reasons for convicting are a necessary part of the statement of facts for the verdict reached in the trial Court.

Trial counsel must record the necessary information along with his or her notes of the reasons for judgment to allow appellate counsel to obtain the required material.