

Court of Appeal of Alberta New Criminal Appeal Rules

New criminal appeal rules and prescribed forms will come into effect on August 1, 2018. These rules are a complete rewrite of the present rules and better reflect the existing practice. The Consolidated Practice Directions respecting criminal appeals have largely been incorporated directly into the criminal appeal rules.

The new rules introduce deadlines for filing documents or taking steps where none existed before and in some cases shorten existing deadlines (See Appendix A). It is the responsibility of lawyers and litigants to ensure that, starting on August 1, 2018, they are fully complying with the new deadlines. However, there may be cases where a new or shortened deadline will have already expired on existing appeals when the new rules take effect on August 1, 2018. In those cases, a grace period will be observed until November 1, 2018, before compliance with the new deadlines will be enforced.

Any criminal appeal filed on or after August 1, 2018, will be subject to the deadlines in the new rules, and a grace period will not be observed.

Any questions concerning the new deadlines or any other aspect of the new criminal appeal rules can be directed to the case management officers as follows:

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The new rules and forms are posted on the Court's website (www.albertacourts.ca) under Court of Appeal > Publications > Rules of Court and Consolidated Practice Directions. Lawyers and litigants are encouraged to review the entire text of the rules in advance, but the following provisions are highlighted.

Prescribed Forms

There are 11 new prescribed forms. Some forms retain content from existing forms; others introduce new or revised content. There are still two separate forms for a Notice of Appeal – one where the appellant is self-represented and one where the appellant has counsel. Notably, there is a prescribed form for an application for permission to appeal.

Appeal Period

Unless an enactment provides otherwise, an application for permission to appeal or a notice of appeal (where permission to appeal is not required) must be filed within one month after the date of the decision. "Date of decision" is defined as the later of the date

that the decision being appealed is made and for a conviction appeal, the date that the sentencing decision is made.

Where permission to appeal is required and has been obtained, the notice of appeal must be filed within 10 days after permission to appeal is granted.

Deadlines - Appeal Record & Factums

See Appendix A for a summary of all deadlines applicable in a criminal appeal.

A deadline for filing an appeal record in a conviction appeal has been introduced. The deadline for filing an appeal record in a sentence appeal has been reduced.

Generally, the deadlines for filing an appellant's factum have been reduced. A deadline for the filing of the respondent's factum in a conviction appeal has been introduced to reflect existing practice. Deadlines for the filing of the respondent's factum in a sentence appeal have not changed.

Failure to Comply with Deadlines

New consequences for late filing have been introduced.

If the appellant misses a filing deadline and:

- the appellant is self-represented and is in custody, the Registrar may refer the appeal to a single appeal judge for directions, but
- if the appellant is represented by counsel or is self-represented and not in custody, the appeal will be struck.

Sentence Appeals Where Conviction is Appealed to Supreme Court of Canada

Contrary to current practice, after the conviction appeal is resolved, the sentence component of the appeal will proceed and will be scheduled for hearing notwithstanding any actual or potential conviction appeal to the Supreme Court of Canada.

Applications to Withdraw as Counsel of Record

Historically, applications to withdraw as counsel of record were heard by a panel of three judges. Those applications can now be heard by a single appeal judge.

Judgments/Orders

A formal judgment is not required unless an appeal to the Supreme Court of Canada is filed, applied for or contemplated.

Unless otherwise directed, where the Attorney General prepares a formal order or judgment and the other party is self-represented, the approval of the other party is not required.

Appendix A – Summary of Deadlines Applicable to Criminal Appeals

	Conviction (includes Acquittal and Decision) (16.2(2))	Sentence (16.2(2))
Appeal Record	<p>10 days after notice of appeal filed, order transcripts and commence preparation (16.12(1)(a))</p> <p>File appeal record 4 months after notice of appeal filed (16.12(3)(d))</p>	<ul style="list-style-type: none"> • If sentence only appeal where net sentence is 6 months or less, 2 months after notice of appeal filed (16.12(3)(a)) • If sentence only appeal where net sentence is more than 6 months, 3 months after notice of appeal filed (16.12(3)(b)) • If sentence appeal following conviction appeal, 2 months after conviction appeal dismissed or abandoned (16.12(3)(c))
Appellant Factum	<p>Before the earlier of:</p> <ul style="list-style-type: none"> • 2 months after appeal record filed or • 6 months after notice of appeal filed (16.16(2)(a)) 	<ul style="list-style-type: none"> • If sentence only appeal, before the earlier of 2 months after appeal record filed or 4 months after notice of appeal filed (16.16(2)(b)) • If sentence appeal following conviction appeal, 3 months after conviction appeal dismissed, struck or abandoned (16.16(2)(c))
Respondent Factum	<p>2 months after appellant's factum served (16.16(4)(a))</p>	<p>Before the earlier of:</p> <ul style="list-style-type: none"> • 1 month after appellant's factum served or • 10 days before opening day (16.16(4)(b))