
Court of Appeal Criminal Chambers Practice Tips

A Panel Discussion with Justice Fitch, Ursula
Botz, Q.C., and Tom Arbogast

May 12, 2020

Welcome and Overview

We will cover:

- The practicalities of chambers applications
- Ancillary applications that may be heard by a single judge
 - Bail, appointment of counsel, extensions of time, leave to appeal, stays pending appeal
- The jurisdiction of a single judge

Chambers – the basics

- Single justice of the Court of Appeal
- For applications pertaining to preliminary/procedural matters
- Location: usually in Vancouver
- “Regular” Chambers – Courtroom 70
- Open every day of the week, except when the Registry indicates a day is closed for hearings
- A Justice of the Court also sits in Chambers in Victoria, usually one day per month (usually on Mondays)

Chambers - the basics

- Appearances by teleconference
- Appearances by videoconference

Practice Directive:

Chambers Applications by Telephone or Videoconference (Civil & Criminal Practice Directive, 19 September 2011)

How to initiate a Chambers application

General steps:

- Contact the Crown – determine Crown’s position and availability
- Check the available dates on the Court of Appeal website:

Court of Appeal for British Columbia Available Chambers Dates for Motions

Date Created: Tuesday, April 28, 2020 17:00:08 PM

Valid Until: 4:00 PM on April 29, 2020

Vancouver

May, 2020

Monday, 4 May, 2020
Tuesday, 5 May, 2020
Wednesday, 6 May, 2020
Thursday, 7 May, 2020
Friday, 8 May, 2020
Tuesday, 12 May, 2020
Wednesday, 13 May, 2020
Thursday, 14 May, 2020
Friday, 15 May, 2020

Tuesday, 19 May, 2020
Wednesday, 20 May, 2020
Thursday, 21 May, 2020
Friday, 22 May, 2020
Monday, 25 May, 2020
Tuesday, 26 May, 2020
Wednesday, 27 May, 2020
Thursday, 28 May, 2020
Friday, 29 May, 2020

How to initiate a Chambers application

- Contact the Registry to confirm availability

Court of Appeal Locations & Contacts

Contact Information for British Columbia Court of Appeal

Contacts	Telephone	Fax
General Inquiries	604.660.2468	604.660.1951
Appeal Hearings (Maria Littlejohn) - before 3 or 5 judges Scheduling (applies to all locations)	604.660.2865	604.660.1951
Chambers Hearings (Manjit Gungray) - before 1 judge Scheduling (applies to all locations)	604.660.2859	604.660.1951
Case Management (Torri Enderton)	604.660.2445	604.660.1951
Registrar's Appointments (Kristine Dhamrait) - see Registrar's Office	604.660-2729	604.660.1951

How to initiate a Chambers application

File your documents:

- Notice of Motion/Application
- Supporting Affidavit
- Memorandum of Argument (optional)
- Requisition – to schedule the appearance

How to initiate a Chambers application

Court of Appeal File No.

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

NOTICE OF MOTION

TO: *[List all the parties to be served]*

TAKE NOTICE THAT AN APPLICATION will be made by*[name the party]* to the presiding justice at*[address of courthouse]*, British Columbia, at 9:30 a.m. on*[day of the week – Monday-Friday - and the date]*, for an order pursuant to*[Rule/enactment]* that*[set out the required order]*

AND TAKE NOTICE THAT in support of the application will be read the affidavit of*[name of deponent]* sworn on *[date]*.

The applicant anticipates that this application will be *[contested/uncontested]*.....

Dated: Signed
[name of signer].....

This application will take no more than 30 minutes to be heard.

How to initiate a Chambers application Requisition

Court of Appeal File No.

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

REQUISITION – GENERAL

Filed by:[*party(ies)*].....

Required:

Date:

.....[*dd/mmm/yyyy*].....

Signature of

[] filing party [] lawyer for filing party(ies)

.....[*type or print name*].....

Chambers appearances - IRL

- Confirm the afternoon before that your matter is on the Chambers list
- All Chambers hearings are listed to start at 9:30 a.m.
- the list will include both civil and criminal matters
- Arrive well before 9:30 a.m.
 - check in with the clerk
 - speak with opposing counsel
 - discuss new available dates, if your matter is likely to end with an adjournment
- Time estimate for your application

Chambers – the list



Court of Appeal for British Columbia Chambers List

Page 1 of 2

Willcock, JA

Chambers 1

Courtroom 70

Friday, April 17, 2020

TIME	CASE NO.	STYLE OF CAUSE	TYPE
9:30 am	1 CA46622	MERTZ, PATRICIA JOANNE (A) v. SYMCHYCK, ROBERT MICHEAL	- Reserve Chambers Judgment
	2 CA46702	KAPOOR, SAPNA (A) v. MAKKAR, SONAM Teleconference at 9:30AM	- Case Management
	3 CA46206	R. v. PATRICK, RANDY EDWARD (A) Teleconference at 9:30AM Publication Ban(s): Other, Section 16(4) Sex Offender Information and Registration Act	- Bail Hearing

Chambers appearances - IRL

Dress code:

- Counsel do not need to gown for Chambers appearances
- However, there are some do's and don'ts....

Chambers appearances

DO:



DON'T:



Chambers appearances - IRL

Calling the list

Reserved judgments

Criminal matters

Civil matters

Chambers appearances

Only one counsel speaks at a time

Only one counsel stands at a time

Counsel must stand when addressing the Chambers judge

Don't interrupt the judge

Counsel should know:

- The jurisdiction of the Chambers judge to make the order or direction sought
- The applicable Rule, *Criminal Code* section, and/or Practice Directive

Remember -- it's an application – NOT the appeal!

Leave time for the respondent.



COURT OF APPEAL

**British Columbia Court of Appeal
Practice Directive (Civil and Criminal)
Title: Appearing before the Court**

Issued: 11 October 2019

Effective: Immediately

Cite as: *Appearing before the Court* (Civil & Criminal Practice Directive, 11 October 2019)

This practice directive deals with introducing and addressing either a division of the Court of Appeal, a Justice in chambers, or a Registrar. It is primarily for the benefit of more recently called members of the legal profession who are, or will be, making their first appearances before the Court, but may also be of use to those who are self-represented.

The practice before the Court is as follows:

Chambers in the time of COVID-19

THE HONOURABLE ROBERT J. BAUMAN
CHIEF JUSTICE OF BRITISH COLUMBIA



THE LAW COURTS
400 - 800 HORNBY STREET
VANCOUVER, B.C.
V6Z 2C5

COURT OF APPEAL

Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19

Dated 20 April 2020

This Notice replaces the Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19 issued 30 March 2020. It provides important new information regarding the continuation of Court operations.

Chambers in the time of COVID-19

3.4 Chambers Hearings

All chambers applications will proceed by teleconference unless otherwise directed. For all new chambers applications, litigants must file and serve materials according to the timelines required under the *Court of Appeal Act*, *Court of Appeal Rules*, *Criminal Code*, the *Court of Appeal Criminal Rules* and the Court's Civil and Criminal Practice Directives. Chambers applications may also proceed in writing by approval of the Court on consent request addressed to the Registrar.

The Court's capacity to hear a full chambers list may remain compromised.

.....(emphasis added)

Chambers in the time of COVID-19

Litigants should coordinate with one another **before** filing a chambers application

Litigants must check the online list of available dates **before** filing a chambers application

Litigants should be patient with the occasional need to re-book chambers applications to other dates, given expected demands.

Given the need to conduct chambers matters by teleconference and get materials to the presiding judge, the late filing of chambers materials will not be permitted.

Perspective from the Bench

Jurisdiction – Powers of a single judge (1/2)

Counsel need to focus on jurisdiction

The Court of Appeal is a statutory court: its jurisdiction is defined and limited to what has been conferred by the *Criminal Code*

- *Knox Contracting Ltd. v. Canada*, [1990] 2 SCR 338

Other statutes, such as the *Court of Appeal Act*, cannot grant jurisdiction where not granted by the *Code*

- *R. v. Wadhams*, 2014 BCCA 83; *R. v. Verma*, 2019 BCCA 313

Jurisdiction – Powers of a single judge (2/2)

The *Code* distinguishes between the Court (that is, a division of the Court) and a single justice

- Ask yourself: does a single judge have jurisdiction to grant the relief you are seeking?

Applications are brought pursuant to Rule 17 of the *Criminal Appeal Rules, 1986*, B.C. Reg. 145/86

Common applications in criminal appeal chambers include judicial interim release (679), appointment of counsel (684), extension of time to appeal (678(2)), and leave to appeal (839)

Single judges cannot dismiss an appeal (686(1)(b)), but they can dismiss an application for leave if leave is required (in sentence appeals or summary conviction appeals)

Applications for Bail Pending Appeal: Criminal Code

679 (1) A judge of the court of appeal may, in accordance with this section, release an appellant from custody pending the determination of his appeal if,

(a) in the case of an appeal to the court of appeal against conviction, the appellant has given notice of appeal or, where leave is required, notice of his application for leave to appeal pursuant to section 678;

(b) in the case of an appeal to the court of appeal against sentence only, the appellant has been granted leave to appeal; or

(c) in the case of an appeal or an application for leave to appeal to the Supreme Court of Canada, the appellant has filed and served his notice of appeal or, where leave is required, his application for leave to appeal.

Bail Pending Appeal: Conviction Appeals *Code*

Circumstances in which appellant may be released.

679 (3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

- (a) the appeal or application for leave to appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.

Bail Pending Appeal: Sentence Appeals *Code*

679 (4) In the case of an appeal referred to in paragraph (1)(b), the judge of the court of appeal may order that the appellant be released pending the determination of his

appeal or until otherwise ordered by a judge of the court of appeal if the appellant establishes that

(a) the appeal has sufficient merit that, in the circumstances, it would cause unnecessary hardship if he were detained in custody;

(b) he will surrender himself into custody in accordance with the terms of the order; and

(c) his detention is not necessary in the public interest.

Bail Pending Conviction Appeal – *Reviewability v. Enforceability*

R. v. Myles, 2020 BCCA 105

[19] Release pending an appeal from conviction is governed by [s. 679\(3\)](#)(a)–(c) of the *Code*. As explained in *R. v. Oland*, [2017 SCC 17](#), the applicant for release bears the burden of establishing the *Code* criteria on a balance of probabilities (at para. 19). The presumption of innocence is no longer an informing principle because one or more convictions has been entered.

[20] A three-pronged analysis is required:

[20] The first criterion [for release] requires the appeal judge to examine the grounds of appeal with a view to ensuring that they are not “not frivolous” ([s. 679\(3\)](#)(a)). Courts have used different language to describe this standard. While not in issue on this appeal, the “not frivolous” test is widely recognized as being a very low bar

[21] The second criterion requires the applicant to show that “he will surrender himself into custody in accordance with the terms of the [release] order” ([s. 679\(3\)](#)(b)). The appeal judge must be satisfied that the applicant will not flee the jurisdiction and will surrender into custody as required.

[22] The third criterion requires the applicant to establish that “his detention is not necessary in the public interest” ([s. 679\(3\)](#)(c)). ...

Oland. [Internal references omitted].

Myles, cont.

[30] That brings me to the third prong of the release analysis, namely, whether Mr. Myles has shown that “his detention is not necessary in the public interest” (s. 679(3)(c)).

[31] In deciding whether this burden is met, I must consider two issues: (1) public safety; and (2) public confidence in the administration of justice. On the second of these issues, I am obliged to weigh the interest in enforceability of the verdict against the interest in reviewability: *Oland* at paras. 22–24. It is generally understood that judgments should be immediately enforced. At the same time, society recognizes that the justice system is not infallible. Accordingly, when assessing bail, the appeal court must be mindful of the fact that persons who seek to challenge the legality of their convictions should be entitled to a meaningful review process that does not require them to serve a substantial part or the whole of their sentence, only to find that the conviction on which that sentence was based was unlawful: *Oland* at para. 25. [Emphasis added]

Bail Pending Sentence Appeal – *the test*

R. v. Hansen, 2015 BCCA 427: Leave must be granted.

R. v. Davies, 2019 BCCA 235: *more stringent than a conviction appeal*

[13] The test for merit on a sentence appeal is more stringent than the test for judicial interim release pending a conviction appeal. The reason is simply stated, that at the sentence appeal stage, the conviction is no longer contested, and even the possibility of innocence is no longer an issue (see *R. v. Leis*, [2008 SKCA 103](#); Gary T. Trotter, *The Law of Bail in Canada*, loose leaf, 3rd ed. (Toronto: Carswell, 2010) at 10-36; *R. v. Wilder*, [2007 BCCA 344](#) at para. [14](#)).

[14] The question becomes whether there is sufficient merit in the appeal that a fit sentence will be served before the appeal can be heard and a decision rendered. If so, the hardship test has been met (see *Wilder*). If not, then it can hardly be said that there is unnecessary hardship serving an appropriate sentence.

Practicalities

How to set a bail application

- Timing: **Rule 17**
- Applications to the court or a justice
 - 1) A party who wishes to make an application to the court or a justice shall do so on 2 clear days' notice to the other party to the appeal, unless the court or a justice otherwise orders.
 - 2) The applicant shall file a copy of the notice of appeal with his application together with the material upon which he relies, verified by affidavit, unless the court or a justice otherwise orders, and he shall serve all material, including the affidavits, on the other party to the appeal.
- Contacting Crown
- Appeal bail cannot be prospective – Challenges due to timing

What to file

Notice of application

Affidavit(s)

Rule 19 **Procedure on release application**

Other things to include in affidavit: that the appellant will abide by any conditions imposed by the Court

Written argument?

Other materials?

Other Considerations

How to approach the argument

What materials are available?

Have a PLAN in place (Sometimes this is difficult to put in place on short notice/ better to wait than forge ahead)

A preview of the merits of the appeal

Be Brave

Applications to Reconsider

S. 680 review (application to Chief Justice); addressing legal correctness of dismissal (Rule 20)

or;

A material change in circumstances (*R. v. Daniels*, 119 C.C.C. (3d) 413 (Ont.C.A.))

- Concedes legal correctness of initial decision
 - More comprehensive or additional legal argument
 - Further facts that may change assessment

Perspective from the Bench

Section 684 applications

Section 684 (1) of the *Criminal Code*:

A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

Section 684 applications – “the interests of justice”

R. v. Silcoff, 2012 BCCA 463 (MacKenzie J.A. in Chambers)

[23] The factors to be considered under the requirement of “interests of justice” are as follows:

- a. The points to be argued on appeal;
- b. The complexity of the case;
- c. Any point of general importance in the appeal;
- d. The applicant’s competency to present the appeal;
- e. The need for counsel to find facts, research law or make argument;
- f. The nature and extent of the penalty imposed; and
- g. The merits of the appeal.

Section 684 applications – “the interests of justice”

R. v. Silcoff, 2012 BCCA 463 (MacKenzie J.A. in Chambers)

[24] As to the merits of the appeal, the threshold requirement is an arguable appeal: *R. v. Donald*, 2008 BCCA 316 at para. 15, 258 B.C.A.C. 117 (Saunders J.A. in Chambers).

[26] Even where other factors favour the appointment of counsel, it will not be in the interests of justice to appoint counsel where an appeal has no merit: *R. v. Hoskins*, 2012 BCCA 51 at paras. 30-32, 315 B.C.A.C. 238 (Garson J.A. in Chambers).

Section 684 applications – financial prerequisites

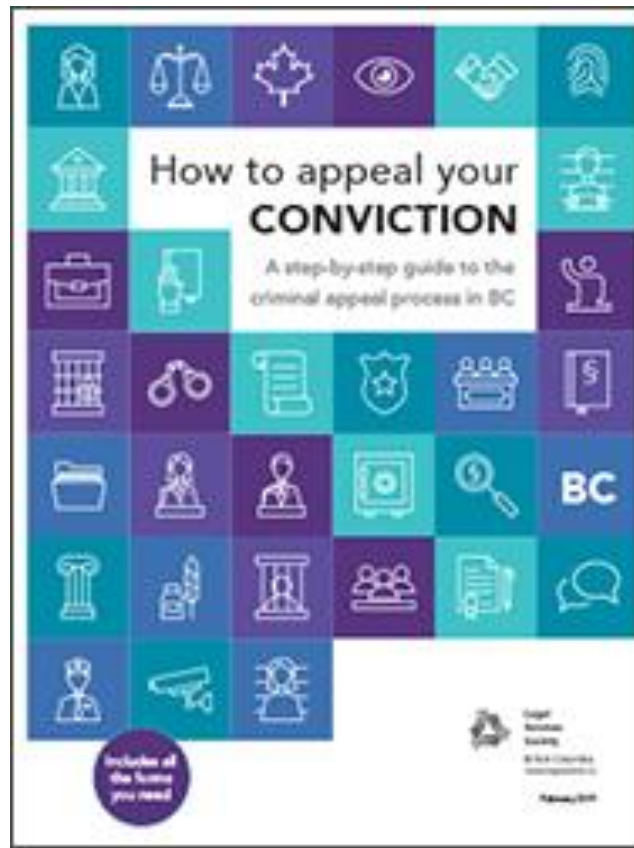
Section 684 applications are generally brought by unrepresented appellants who have been denied funding for their appeal by the Legal Services Society.

Applications for a Court-Appointed Lawyer Under Section 684 of the Criminal Code (Criminal Practice Directive, 19 September 2011):

Applicants should generally be able to show that:

1. They cannot afford to retain counsel for the appeal;
2. They applied to the Legal Services Society for legal aid and were refused.



Section 684 applications – LSS refusal



Section 684 applications – LSS refusal

Letter of Authority (Exhibit A)

[The court handling your appeal.]

-  Court of Appeal for BC
-  Supreme Court of BC

Legal Services Society
400 – 510 Burrard Street
Vancouver BC V6C 3A8

Attention: Appeals

I intend to apply under section 684 of the Criminal Code for assignment of counsel in my appeal for the offence(s) of

Please send your letter with the following information to:

- 1 Whether you have refused me legal aid for my appeal.
- 2 Whether the refusal was for financial reasons.
- 3 The grounds of appeal you considered.
- 4 The materials from the trial record that you reviewed (enclosing a copy of those materials).

This is my authority for you to release this information in your letter to the court.

[Print your name]

[your signature]

Dated at _____ on _____
[city/town] [day, month, year]

Section 684 applications – LSS ‘refusal package’

LSS will send to the Court of Appeal a letter setting out:

- whether legal aid has been refused
- whether the refusal was for financial reasons
- the grounds of appeal LSS considered
- the materials from the trial record reviewed by LSS (enclosing a copy of those materials)



Legal
Services
Society

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0956
www.lss.bc.ca

Appeals

VANCOUVER

April 3, 2020

APR 07 2020

**COURT OF APPEAL
REGISTRY**

Court of Appeal Registry
800 Hornby Street, Suite 400
Vancouver, BC V6Z 2E1

COPY
(for Crown)

Dear Sirs/Mesdames:

Re:

Section 684 application ~ Conviction Appeal
Court of Appeal File No.


We have received the attached letter of authority from

1. The Legal Services Society has refused legal aid for this appeal.
2. The refusal was not for financial reasons.
3. The ground of appeal we considered was whether there was unreasonable delay in bringing the case to trial.
4. The materials from the trial record we considered and have enclosed are:
 - a) Reasons on the s. 11(b) Charter application,
 - b) Reasons for Judgment,

I have enclosed two sets of the documents noted above. I understand you will be forwarding one set to Crown counsel at the Vancouver Criminal Appeals office.

Yours truly,

LEGAL SERVICES SOCIETY

for 
Rod Holloway
Barrister & Solicitor
Direct ph: (604) 601-6078

RH/tmb
Enclosures

**Section 684
applications –
LSS ‘refusal
package’**

Section 684 applications brought by appellants personally

- s. 684 application
- s. 684 affidavit
- Crown Counsel will generally prepare a memorandum briefly setting out the Crown's position on the application.

Section 684 applications brought by appellants personally

- Involvement of LSLAP?
- Where appellant wants a s. 684 order for the transcripts/appeal books only.
- Applications for limited s. 684 orders.

Section 684 applications – limited or interim orders

What does it mean?

- The practical management of the process (LABC)

What is counsel's role?

- Assess merits
- Order materials if necessary
- Communicate with the client
- Determine if full s.684 application should be brought

What to file

- Approach as an “appeal lite”
- File a written argument (not a factum)
- Do not need to advance multiple grounds but meritorious one (or two)

Section 684 applications – scope for reconsideration?

There is no general power of review by a division of the Court of a decision of a Chambers judge refusing the appointment of counsel. However, a change in circumstances may entitle an appellant to bring a further application under s. 684. *R. v. Edwards*, 2002 BCCA 412

Section 684 applications

Perspective from the Bench

Applications for Extension of Time to Appeal

Timelines for bringing an appeal:

Appeals by the accused

- Conviction appeal - 30 days from date sentence imposed
- Application for leave to appeal sentence – 30 days from date sentence imposed

Appeals by the Crown

- Appeal from Acquittal - 30 days from date of acquittal
- Application for leave to appeal sentence – 30 days from date sentence imposed

Applications for Extension of Time to Appeal

Under s. 678(2) of the *Criminal Code*, the court of appeal or a judge thereof may at any time extend the time within which notice of appeal or notice of an application for leave to appeal may be given.

- discretionary power

Extension applications - factors

R. v. Roberge, 2005 SCC 48

1. Whether the applicant formed a *bona fide* intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
2. Whether counsel moved diligently;
3. Whether a proper explanation for the delay has been offered;
4. The extent of the delay;

.....

Extension applications - factors

...

5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
6. The merits of the application for leave to appeal.

The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted.

Extension applications - factors

The merits of the appeal --

- a “reasonably arguable ground of appeal”

(see, for example, *R. v. Hobbs*, 2018 BCCA 128, at paras. 35 and 46)

Extension applications – how to avoid having to bring them in the first place

- Helping the client to file a notice of appeal
- Filing a notice of appeal as agent
- Contacting LSS on behalf of the client
- Notifying Crown

Extension applications - practicalities

- Working with Legal Aid
- Communicating with the client; the realities of being incarcerated and getting messages
- Communicating with the Crown
- Telling the “story” of what transpired to get the Notice filed



Extension applications

Both the appellant AND COUNSEL have a responsibility to act with diligence:

R. v. Roberge

R. v. Cooke, 2013 BCCA 536

Extension applications – the Crown

- Held to high standard
- *R. v. Li* (1992), 9 B.C.A.C. 107

For us to start to impose a more rigorous regime upon the bar we must first be assured that the Crown with its resources will not set a bad example in this respect.

See also: *R. v. Jordan*, 2014 BCCA 516

Extension applications - Practicalities

What to file:

- Notice of application
- Affidavit(s)
 - Affidavit from appellant
 - LSS assessment process -- affidavit from LSS
 - Affidavit from counsel

Process if Crown does not oppose

Process if Crown does oppose – Chambers appearance

Extension applications

Perspective from the Bench

Applications for Leave to Appeal (1/6)

Leave to appeal from dismissal of a summary conviction appeal

Statutory test: s. 839 of the *Criminal Code*:

- an appeal to the court of appeal ... may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone...

R. v. Winfield, 2009 YKCA 9 at para. 13:

- An applicant must establish: (a) the ground of appeal involves a question of law alone, (b) the issue is one of importance, and (c) there is sufficient merit in the proposed appeal that it has a reasonable possibility of success
- The overriding consideration is the interests of justice

The test for leave is the same whether the appeal is from conviction or sentence

The appeal is from the summary conviction appeal court, not the trial court

What is a question of law? (2/6)

Issues of statutory interpretation: *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40

The *mens rea* of an offence: *R. v. Skalbania*, [1997] 3 SCR 995

The application of a legal standard to the facts: *R. v. Shepherd*, 2009 SCC 35

The legality of a sentence but **not** the fitness of a sentence: *R. v. Thomas*, [1980] 53 CCC (2d) 285 (BCCA)

Admissibility of evidence: *R. v. McRitchie*, [1975] 36 CCC (2d) 39 (BCCA) aff'd [1977] 2 SCR 600; *R. v. Simpson*, [1977] 77 DLR (3d) 507 (Ont CA)

Application of the wrong legal test: *R. v. G. (G.)*, [1995] 97 CCC (3d) 362 (Ont CA)

The finding of a *Charter* violation based on undisputed facts: *R. v. Heaslip*, [1983] 9 CCC (3d) 480 (Ont CA); *R. v. Kelly*, [1985] 17 CCC (3d) 419 (Ont CA)

Admissibility of evidence under s. 24(2): *R. v. Buhay*, 2003 SCC 30

Applications for Leave to Appeal (3/6)

Different from applications for leave to appeal in civil cases

- In civil law, leave is often granted generally
- The test is more restrictive in criminal cases: there must be a question of law that requires attention of the Court
- The question is generally set out in the order granting leave

Need to clearly identify/frame the question of law

- Before granting leave, the judge will ask: what question of law requires attention of the Court?
- Do not simply state that the case is wrongly decided; you must focus on framing the question of law

Applications for Leave to Appeal (4/6)

What to file:

- Application for leave to appeal (within 30 days of the order)
- Within 30 days of filing the application: reasons for judgment or sentence of the original trial judge; reasons for judgment of the summary conviction appeal judge; the order of the summary conviction appeal judge; and a short outline of argument

Timelines if leave to appeal is granted:

- Hearing within 180 days of date leave is granted
- Factum within 60 days

See Practice Directive, “Summary Conviction Appeals”

No scope for review: *R. v. Staetter*, 2014 BCCA 294

- The Court does not have the jurisdiction under s. 839 of the *Code* to vary the decision of a single judge denying leave to appeal from a summary conviction appeal
- Jurisdiction to vary is **not** granted by s. 9(6) of the *Court of Appeal Act*: *R. v. B.C. Tel*, 2002 BCCA 363

Applications for Leave to Appeal (5/6)

Applications for leave to appeal sentence: s. 675(1)(b)

- Ordinarily heard at time of sentence appeal
- Sometimes needs to be addressed in advance:
 - There is no appeal until leave is granted
 - As such, leave might need to be obtained before an ancillary application (i.e. bail, a stay)
 - *R. v. Hansen*, 2015 BCCA 427; *R. v. Adamson*, 2007 BCCA 644 (Chiasson J.A. in Chambers)
 - Exception is appointment of counsel
 - see language of s. 684(1): A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal ...

Test: the appeal must have a reasonable chance of success

- *R. v. Hawthorne* (1992), 21 B.C.A.C. 173 (Gibbs J.A. in Chambers)

Applications for Leave to Appeal (6/6)

Questions?

Applications for Stays Pending Appeal

Section 683(5), *Criminal Code*

- Obligation to pay a fine
- Order of forfeiture or disposition of forfeited property
- Restitution order
- Obligation to pay victim surcharge
- Probation order
- Conditional Sentence Order

Applications for Stays Pending Appeal

Section 320.25 of the *Criminal Code* (formerly s. 261)

- Driving prohibition
- The test: *R. v. Pawson*, 2020 BCCA 94

Abandonments

- An appellant must file a notice of abandonment (Rule 14)
- What can be abandoned in Chambers?
 - Application for leave to appeal from dismissal of summary conviction appeal
 - Application for leave to appeal sentence
 - Application for extension of time to appeal

Abandonments in Chambers

Form 11

[Paragraph 14 (1) (a)]

COURT OF APPEAL

NOTICE OF ABANDONMENT OF APPEAL

Court of Appeal
File Number:.....

REGINA

Respondent

vs.

Appellant

I hereby give notice that Iabandon this appeal for:

- Conviction appeal
- Sentence appeal
- Other (*Specify nature of appeal*)

Dated at, British Columbia,

this day of, 20.....

This notice was signed in
the presence of:

.....
(*Signature of appellant or solicitor*)

.....
(*Print name of appellant or solicitor*)

Where signed by the appellant,
this notice was signed
in the presence of:

.....
Witness

.....
(*Print name of witness*)

To the Respondent
To the Registrar

Abandonments in Chambers

The practice:

- Crown Counsel speaks to these
- Crown Counsel drafts and files orders dismissing applications as abandoned

Applications in Chambers for dismissal for want of prosecution

- Applications by the Crown
- Registrar's References under Rule 13(3)

Case Management Conferences (CMCs)

Jurisdiction grounded in rr. 2(3) and 15 of the *Court of Appeal Criminal Appeal Rules, 1986*

Purpose of CMCs:

- Promote timeliness in the prosecution of the appeal and consistency in the resolution of ancillary applications
- Provide judicial guidance in complex cases
- Provide assistance to self-represented litigants

Initiation is at the direction of the Court or as requested by counsel

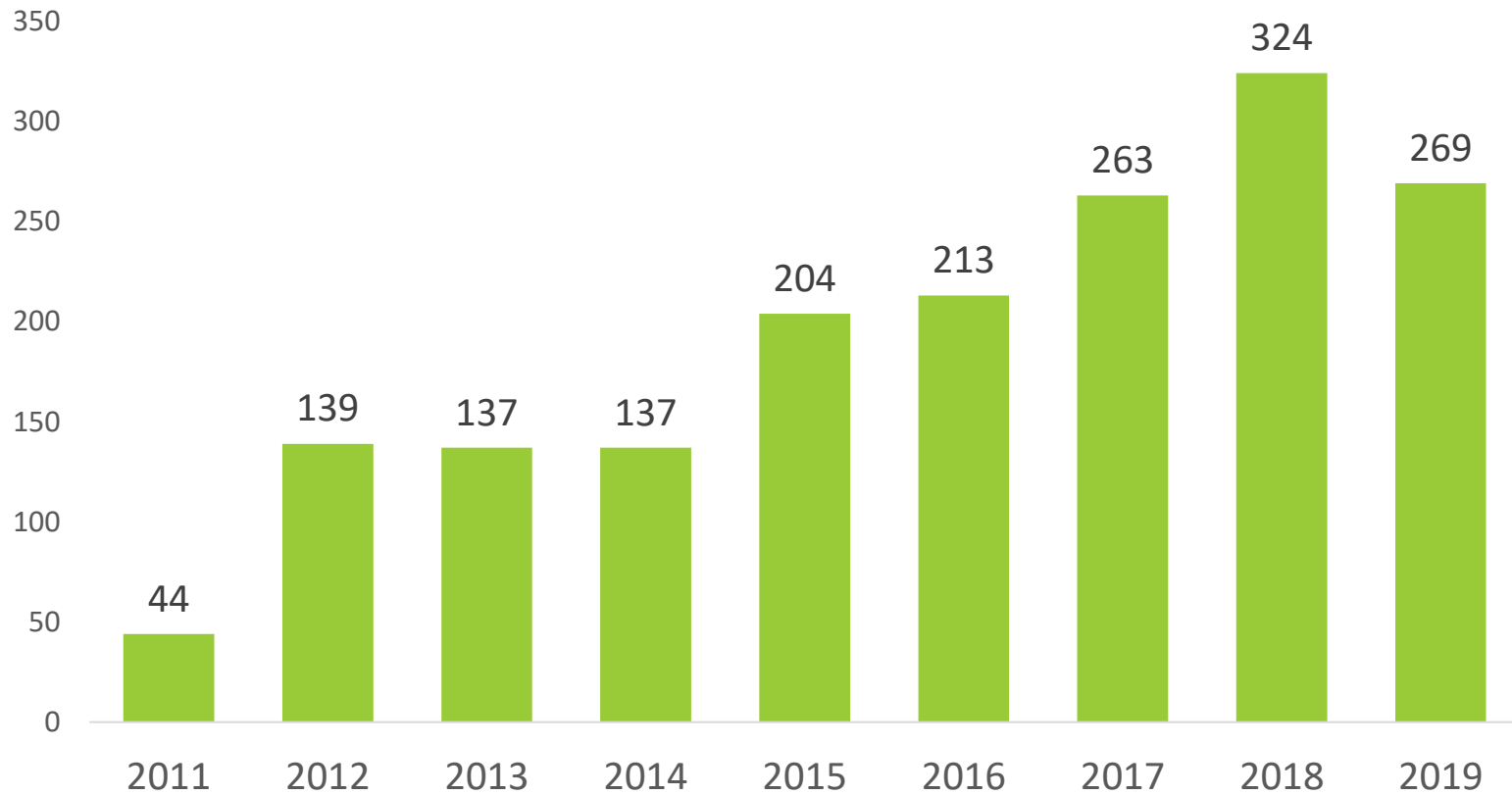
Expectations of counsel at CMCs:

- Define what the issues are: What needs to be decided? Are the parties at an impasse? How can the Court be of assistance in moving the appeal forward?
- These are brief conferences: it is helpful for counsel to define issues beforehand

Expectations of counsel between CMCs:

- Move the matters along in accordance with the directions of the Court
- Keep the Court updated on progress
- Reduce unnecessary appearances

Criminal Case Management Hearings



CMCs and Ineffective Assistance of Counsel Allegations

See Practice Directive, “Ineffective Assistance of Trial Counsel”

Importance of Stage One inquiry

As counsel for the appellant, you must:

- Take steps to satisfy yourself that there is a foundation for the allegations
 - the appellant must establish, on a balance of probabilities, both that the representation provided by trial counsel was incompetent and that the incompetent representation resulted in a miscarriage of justice: *R. v. Dunbar et al*, 2003 BCCA 667 at para. 24
- Informally notify trial counsel of the nature of the allegations
- Give trial counsel a reasonable opportunity to informally respond to you

Then follow the practice directive for the next steps

- Affidavit from the appellant setting out the allegations to go trial counsel
- Must obtain a waiver of solicitor-client privilege
- Trial counsel will file an affidavit in response; you must ensure this does not exceed the scope of the waiver

Concluding Thoughts & Final Questions
