

COURT OF APPEAL FOR BRITISH COLUMBIA

COVID-19 OVERVIEW OF THE PROCESS FOR APPELLANTS

NOTE: This process is **ONLY** applicable during the COVID 19 crisis and **is to be used TOGETHER with the attached footnotes.**

START



Determine whether you have the right to appeal or whether you need leave to appeal

Leave to appeal

Right to appeal

Initial Documents:

- File¹ your [Notice of Application for Leave to Appeal \(Form 1\)](#) within **30 days²** of the decision you want to appeal
- Serve a filed copy on each respondent
- File¹ proof of service within **10 days³** of serving all respondents

Hearing Documents:

- File¹ your [Notice of Motion for Leave to Appeal \(Form 3\)](#) and your [Motion Book \(Form 4\)](#) within **30 days³** of filing your Notice of Application for Leave to Appeal
- Serve a filed copy on each respondent at least **10 business days³** before the hearing

The Hearing:

- Your application will be heard⁴ by a single judge sitting in Chambers who will grant or refuse leave to appeal
- If **leave is granted** you must serve a copy of the order granting leave on each respondent who did not file a Notice of Appearance

Leave Refused

Leave Granted

Application for Review:

- You *may* ask a division of three judges of the Court to review the decision of the single judge who heard your application
- You must file¹ and serve [Notice of Application to Vary an Order of a Justice \(Form 15\)](#) and if necessary, an [Affidavit](#) to support your case within **7 days³** of the day leave was refused
- You must file¹ and serve [Motion Book \(Form 16\)](#) within **14 days³** of the Notice of Application to Vary an Order of a Justice. For hearings by videoconference, you must also complete and submit **Appendix A** at least 14 days before the hearing.
- Attend the hearing⁵ – the division of the Court will either allow your application or end your appeal

END

Refused

Allowed

Initial documents:

- File¹ your [Notice of Appeal \(Form 7\)](#) within **30 days²** of the decision you want to appeal
- Serve a filed copy on each respondent
- File¹ proof of service within **10 days³** of serving all respondents

The Appeal Record and Transcript:

- File¹ your [Appeal Record \(Form 9\)](#) within **60 days³** of the date of your Notice of Appeal or the date when leave to appeal was granted
- If witnesses testified at your trial, file a [Transcript](#) **at the same time**
- Serve a filed copy of the Appeal Record and (if applicable) the Transcript on each respondent

The Factum and Appeal Book:

- File¹ your [Factum \(Form 10\)](#) within **30 days³** of filing your Appeal Record
- File¹ your [Appeal Book \(Form 12\)](#) **at the same time** as your Factum
- Serve a filed copy of your Factum and the Appeal Book on each respondent
- If applicable, file¹ your [Reply \(Form 11\)](#) within **7 days³** of being served with the respondent's Factum

The Certificate of Readiness:

- File¹ a [Certificate of Readiness \(Form 14\)](#) **immediately** after your factum has been filed (must be filed within 365 days of the Notice of Appeal or Notice of Application for Leave to Appeal)³
- Contact the [Registry](#) and reserve a time and date for your appeal
- File¹ a [Notice of Hearing \(Form 34\)](#) within **2 months³** of your Certificate of Readiness
- Serve a filed copy on each respondent
- For hearings by videoconference, you must also complete and submit **Appendix A** at least 14 days before the hearing.

The Appeal:

- Your appeal will be heard⁵ by a division of three judges who will either allow or dismiss your appeal
- After the hearing, you may need to draft or approve the **Court Order**

END

Appeal Process Chart - Covid-19 Edition - Footnotes

1. Filing of Documents During COVID-19

Beginning 13 July 2020, the Court of Appeal Registry re-opened to the public for in person filing; please check the Court's website however to confirm the Registry is open before you attend. Filings made on or after 14 July 2020 must comply with this new [Notice to the Public Regarding Modified Filing Directions in Civil and Criminal Appeals](#), including the requirement for counsel to e-file in most civil appeals. People who are self-represented are encouraged to e-file using [Court Services Online](#) (CSO) in accordance with the Notice, but alternative filing methods (including fax, mail, and courier) are also available.

A checklist and quick guides to assist counsel/litigants with e-filing documents in accordance with these requirements are available [here](#).

2. Required Time Periods for New Appeals During COVID-19

The required time periods to start civil or family proceedings stopped running on 26 March 2020. For further details, see [Ministerial Order No. M098](#). This means that until further notice you may start an appeal if you wish to do so, but, if you are unable to start an appeal, you can wait without concern that the limitation period to start civil or family proceedings will expire.

The suspension of time periods started on 26 March 2020 and will remain in effect until the state of emergency declared under s. 9(1) of the *Emergency Program Act* on 18 March 2020 expires or is cancelled. This means that any notice of appeal or application for leave to appeal that needed to be filed before 26 March 2020 is still subject to the usual 30-day timeline, including those that needed to be filed between 18 March 2020 and 26 March 2020.

Parties should continue to file and serve notices of appeal or applications for leave to appeal in criminal matters within required time periods.

3. Filing and Service Deadlines During COVID-19

The filing and service deadlines for all existing appeals, existing applications for leave to appeal, and other existing matters before the Court were suspended by direction of the Chief Justice and they will remain suspended until further notice. This means that the required time periods to file or serve materials stopped running on 18 March 2020 and will not start to run again until further notice. On the date that filing and service deadlines start running again, you will have the same amount of time to file and serve materials as you would have been allowed on 18 March 2020.

The timelines for taking a step required by court order or direction have not been suspended. However, litigants can expect the Court will likely consider the unusual circumstances created by the COVID-19 pandemic as a factor if litigants are asking for an extension of time.

Despite the suspension of deadlines, the registry is accepting filings in all matters, including matters that are not urgent. Parties are encouraged to take steps to continue their appeals and to communicate with one another on how they will proceed.

4. Chambers Hearings During COVID-19

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 happen in writing by approval of the Court if the parties agree and make a request by letter to the Registrar.

Please see section 3.4 of [Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19](#) for more information.

5. Appeal Hearings During COVID-19

Since early April, the Court has conducted most appeals by video conference using Zoom. As of 13 July 2020, however, the Court has been able to have appeal hearings in the courtroom or by video conference subject to certain limitations (e.g. a maximum of 4 counsel/litigants can be in the courtroom and a maximum of 7 people can be seated in the gallery).

Seven days before the appeal hearing is scheduled to take place counsel/litigants must submit the [Court Proceedings Form](#) to tell the Court whether they prefer to have the hearing in a courtroom or by video and to provide information about who/how many people will make submissions and any privacy or confidentiality concerns.

Please see section 3.3 of the [Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19](#) and the [Notice to the Public Regarding Videoconference Proceedings](#) in the Court of Appeal for more information.