



COURT OF APPEAL

British Columbia Court of Appeal

Practice Directive (Criminal)

Title: Mental Disorder Appeals

Issued: September 4, 2012

Effective: Immediately

Cite as: *Mental Disorder Appeals* (Criminal Practice Directive, 4 September 2012)

This Directive applies to all appeals relating to a disposition made by a court or the Review Board or a placement decision made by the Review Board filed pursuant to s. 672.72 of the *Criminal Code*. The intent of this Directive is to expedite these appeals and identify unusual circumstances requiring the Court's attention. It is intended that these appeals shall be concluded within 90 days of the receipt of the decision made by a court or the Review Board. This Directive is a guideline. Issues that arise outside of the scope of this Directive may be dealt with by a pre-hearing conference justice.

Pursuant to the terms of this Directive, an unrepresented appellant is only required to file a Notice of Appeal in the form below to pursue an appeal under s.672.72 of the *Criminal Code*.

A. Initiating an Appeal

1. An appellant¹ shall file a Notice of Appeal in the attached form within 15 days of receiving a copy of the reasons for disposition or placement decision from the Review Board or the court (s. 672.72(2) of the *Criminal Code*).
2. The registrar shall promptly deliver a copy of the Notice of Appeal to:
 - a. The Review Board, if the appeal is from a decision of the Review Board;
 - b. The Representative of the Director of Adult Forensic Psychiatric Services, or, in the case of a "young person", the Representative of the Director of Youth Forensic Psychiatric Services and others referred to in s. 141 of the *Youth Criminal Justice Act*, as applicable (the "Director");
 - c. Counsel for the Attorney General who appeared or made representations at the Review Board or before the court, if applicable;
 - d. Counsel who appeared at the Review Board on behalf of the appellant;

¹ For the purposes of this practice directive, "appellant" is used to describe an offender who is appealing from a disposition or placement. While this practice directive applies to all appellants who are offenders, it shall also apply to any other party who appeals. For those other parties, changes, where appropriate, may be made to the procedure.

- e. The Legal Services Society (where consent has been given on the Notice of Appeal);
 - f. Any party designated by the Court or Review Board pursuant to s.672.5(4) of the *Criminal Code*.
3. Any person or body other than the Director wishing to be added as a respondent to the appeal shall file an appearance. Only the Director and those filing an appearance will receive further copies of materials filed (i.e. transcripts, statements etc.).
 4. Pursuant to s. 672.74 of the *Criminal Code*, after the registrar notifies the Review Board or court that an appeal has been filed, the Review Board or court will promptly transmit to the Court of Appeal a copy of the complete record (or disposition information) relating to the disposition before the Review Board. In addition, the Review Board or court will send a copy of this record to the appellant or to appellant's counsel.

B. Pre-Hearing Conference

1. The registrar will arrange a pre-hearing conference with the appellant and the respondent(s) to be held within two weeks of the filing of the notice of appeal.
2. An unrepresented appellant may appear at the pre-hearing conference in person, or by videoconference, if available. If the unrepresented appellant is unable to appear in person or by videoconference, he/she may apply by letter directed to the attention of the pre-hearing conference justice to appear by teleconference, or in some other manner.
3. The purpose of the pre-hearing conference is to discuss with the presiding justice the timetable for the appeal including any extensions or abridgments of time, representation of the appellant, any interlocutory applications such as those respecting dispositions under appeal under s.672.76 of the *Criminal Code* and other matters at the discretion of the pre-hearing justice.
4. Once a pre-hearing conference has been held, the registrar shall order four copies of the transcript of proceedings before the Review Board, or the court, plus such additional copies as are required by the parties. The registrar will also order one electronic copy of the transcript. On receipt, the paper copies of the transcript shall be forwarded by the registrar to all parties. Parties wishing electronic copies of the transcript shall make the request directly to the transcription company.
5. Once the transcripts are received, the registrar shall notify the parties of available hearing dates and schedule the appeal. The hearing should be scheduled within 90 days of the receipt of the decision under appeal where at all possible, having regard to the circumstances of the appeal.

C. Unrepresented Parties

1. The unrepresented appellant is not required to file any document except the Notice of Appeal.
2. The unrepresented appellant may file material, including an Appellant's Statement, which shall not exceed 10 pages, and list in point form the

mistakes the appellant submits the Review Board or court made in the disposition or placement order. The appellant may give examples of the mistakes alleged.

3. The unrepresented appellant may also file material, such as the material listed below under "Represented Parties".
4. The Appellant's Statement, and any other material, must be filed with the Court of Appeal at least four weeks before the hearing of the appeal.
5. All material filed with the Court of Appeal will be copied and distributed to the relevant parties by the Court registry staff.
6. An unrepresented appellant who has filed an Appellant's Statement may rely on that Statement without appearing at the hearing of the appeal. An appellant may consent to the hearing of the appeal in his or her absence by checking off the appropriate box on the notice of appeal.

D. Represented Parties

1. Four weeks before the appeal is scheduled to be heard the appellant shall file four copies of an Appellant's Statement and an appeal book containing the disposition of the Review Board or the placement decision, or the order of the court, any reasons for the decision, any exhibits or other material relied upon in the Appellant's Statement and a copy of the notice of appeal.
2. The appellant shall also file three copies of a book of authorities containing only those authorities referred to in the Appellant's Statement.
3. The appellant shall also file any additional copies of these documents as are required for service on the respondents.
4. The Appellant's Statement shall not exceed 10 pages, headed in the Style of Proceedings and containing the following information in point form:
 - a. The precise ground(s) of appeal to be relied on at the hearing of the appeal. In support of these grounds, appropriate references should be made to the reasons, the transcripts, and/or the exhibits.
 - i. Transcript references shall be to the page number in the transcript;
 - ii. Appeal book references shall be to the original exhibit number of the exhibit and the page number where the exhibit is reproduced in the appeal book.
 - b. The type of disposition which the appellant submits is appropriate for this offence(s) and this offender;
 - c. The position taken by each party before the Review Board/court with respect to the disposition.
5. The appellant shall deliver this material to the respondent(s) on the appeal.
6. The respondent(s) shall file a Respondent's Statement, not to exceed 10 pages, two weeks before the hearing of the appeal. The Respondent's Statement shall follow the format set out in #4 above, except it shall contain the respondent's position on the grounds of appeal and disposition raised by the appellant. The respondent(s) shall deliver to the appellant the Respondent's Statement, authorities and an appeal book containing any

additional exhibits which were not included in the appellant's appeal book and which were referred to in the Respondent's Statement.

7. If the unrepresented appellant does not file an Appellant's Statement or an appeal book, the respondent(s) shall:
 - a. Prepare a Respondent's Statement, not to exceed 20 pages, setting out the relevant history and their understanding of any issues arising from the court or Review Board hearing.
 - b. The respondent shall also include in the Respondent's Statement its position on the issues raised.
 - c. The respondent shall also file and serve on the other parties an appeal book containing the material referred to in #D1 and a book of authorities.
 - d. The respondent shall prepare the appropriate copies for the Court and for service on the appellant and any other respondent.
 - e. Other respondents may also file and serve on the other parties an appeal book and book of authorities.
8. Notwithstanding the above requirements, where an appeal is more complicated than the usual Review Board appeal or court hearing, the parties may, by filing their consent, or at the direction of the pre-hearing justice, follow the usual procedures for a conviction appeal, including the filing of appeal books, factums and books of authorities, together with a filing schedule for all documents. The hearing date shall be within 90 days of the receipt of the decision under appeal, or so soon thereafter as possible.

The Honourable Chief Justice Finch
for the Court of Appeal of British Columbia

History: Replaces *Mental Disorder Appeals* (Criminal Practice Directive, 19 September 2011) which replaced the Practice Directive titled *Mental Disorder Appeals*, dated 2 March 1998.

The Court of Appeal will be asked at the hearing of this appeal to make the following order:

[set out the order you want the Court to make].

The hearing before the Review Board/Provincial Court/Supreme Court [circle one] took _____ days/hours [circle one].

I consent to Legal Services Society (Legal Aid) receiving a copy of this Notice of Appeal as an indication of my intent to apply for legal representation.

I consent / do not consent to this appeal being heard in my absence. [circle one]

Date: ...[dd/mom/yyyy- e.g. 14/Mar/2012]

.....

Signature of appellant lawyer for appellant

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

To the Respondent(s):

This Notice of Appeal is given by _____ (name) _____, the appellant or solicitors for the appellant, whose address for service is
