

PRACTICE DIRECTIVE

Applications for a Court-Appointed Lawyer Under Section 684 of the *Criminal Code*

Application is made by notice of motion and affidavit, according to the forms attached.

Applicants should generally be able to show that:

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

Fill out the **Letter of Authority** (Appendix A) and make three copies. Mail the original to the Legal Services Society.

Applicants must show the Court there is a reasonable possibility the appeal will succeed. To assist the Court in assessing the application, applicants must authorize the Legal Services Society to give the Court all the materials they have on the case, excluding any confidential letters of counsel assessing the merit of the appeal.

Fill out the **Notice of Motion** for Appointment of Counsel (Appendix B). File the original and two copies with the Registry.

Fill out the **Affidavit** for Appointment of Counsel (Appendix C). File the original and two copies with the Registry.

Applicants should include the following details in their affidavit:

1. Why they cannot afford a lawyer.
2. Their education level and their ability to defend themselves.
3. They applied for legal aid and were refused.
4. Proof that they authorized Legal Services Society to send the materials on the case to the Registry (copies of the Letter of Authority).
5. The main points to be argued.
6. Why the case is complex.
7. Why the case may succeed.
8. Why they need a lawyer to organize the case and present it.

9. Whether they have already had one level of appeal.

See ***Re Baig and the Queen*** (1990), 58 C.C.C. (3d) 156 (B.C.C.A.) and ***R. v. Redlick*** (1996), 75 B.C.A.C. 241.

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

December 12, 2005
November 8, 2010

Exhibit A

Letter of Authority

Legal Services Society
400 – 510 Burrard Street
Vancouver, B.C.
V6C 3A8

Attention: Appeals Division

I intend to apply under section 684 of the **Criminal Code** for assignment of counsel in my appeal
[describe the conviction and/or sentence you are appealing]

Please send your letter to the Court of Appeal Registry, 400 - 800 Hornby Street, Vancouver, B.C.,
V6Z 2C5. Your letter should state:

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).

[your signature]

[please print your name]

Dated at _____ on _____.
[place] *[day, month, year]*

EXHIBIT B

Court of Appeal File No. _____
Court of Appeal Registry _____

COURT OF APPEAL

BETWEEN:

REGINA

Plaintiff*
(Respondent/Appellant)

AND:

Defendant*
(Appellant/Respondent)

NOTICE OF MOTION FOR APPOINTMENT OF COUNSEL

TAKE NOTICE that an application will be made by _____, the Appellant, to the Presiding Judge in Chambers at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, at 9:30 in the forenoon, or soon thereafter as the Appellant may be heard, on the _____ day of _____, 20_____ for an Order that counsel be assigned to act on behalf of the Appellant, pursuant to Section 684 of the **Criminal Code**.

AND TAKE NOTICE that in support of the application will be read the affidavit of _____, the Appellant, sworn the _____ day of _____, 20_____.

DATED at the _____ of _____ in the Province of British Columbia, this _____ day of _____, 20_____.

APPELLANT

TO: The Registrar, Court of Appeal
400 - 800 Hornby Street, Vancouver, B.C. V6Z 2C5

AND TO: Criminal Appeals and Special Prosecutions
Crown Counsel
6th floor, 865 Hornby Street, Vancouver, B.C. V6Z 2E6

OR TO: Federal Prosecution Service
British Columbia
Department of Justice
Suite 900, 840 Howe Street, Vancouver, B.C. V6Z 2S9

This NOTICE OF MOTION is filed by _____, Appellant, of _____, whose address for service is _____.

EXHIBIT C

Instructions

Use the same registry number as on your Notice of Appeal

Court No. _____
Registry _____

COURT OF APPEAL

BETWEEN

REGINA

AND

You are the appellant.
Print your name on the line.

_____ APPELLANT

AFFIDAVIT FOR APPOINTMENT

OF COUNSEL

Print your name. Give the name of the prison. Then say where it is located. First say if it is a city/town/village, then give its name.

I, _____, presently incarcerated at _____, in the _____ of _____, in the province of British Columbia,

MAKE OATH AND SAY AS FOLLOWS:

Fill in the amounts as accurately as you can.

- 1. I am the Appellant and personally know about the matters referred to in this Affidavit, except where they are based on information and belief, in which case I believe them to be true.
- 2. I cannot afford a lawyer because of my financial circumstances.
 - a) my income is \$ _____
 - b) my expenses are \$ _____
 - c) my debts total \$ _____
 - d) all the things that I own have a value of \$ _____

Put down the highest grade you went to.

3. I am not able to present the appeal myself. I have no legal training and my education level is:

Give the date you were refused legal aid.

4. I have been refused legal aid. I applied for legal aid but was refused on: _____ (day, month, year).

Attach three copies of the "Letter of Authority". Label them "Exhibit A".

5. On _____ (day/month/year) I sent a letter to the Legal Services Society authorizing the release of the materials on my appeal to the Registry. A copy of this letter is attached. It is marked "Exhibit A".

List the errors in the decision under appeal.

6. At the appeal I will be arguing the following points:

7. I need a lawyer to argue my case because I do not have the necessary skills to organize the facts, research the law, and present the case myself.

Give reasons why you think your case is complex.

8. I believe my case is complex because:

Give reasons why you think your case may succeed

9. I believe my case may succeed because:

If you have appealed at a lower court, give the place and name of the court, and the date you appealed.

10. I have/have not appealed at a lower court.

At: _____
On: _____ (day/month/year)

I swear this Affidavit in support of an application that the Court of Appeal or a Judge of that Court assign counsel to act on my behalf.

You sign in front of the lawyer or notary. You are the appellant.

SWORN BEFORE ME at the city of _____, in the Province of British Columbia, this _____ day of _____, 20____.

Signature of Appellant

The lawyer or notary fills out the date and place, and signs.

A Commissioner for Taking Affidavits Within British Columbia