



COURT OF APPEAL

**British Columbia Court of Appeal
Practice Directive (Criminal)**

Title: Pilot Project Regarding Criminal Conviction/Acquittal Appeals

Issued: 28 March 2012

Effective: January 1, 2012

**Cite as: *Pilot Project Regarding Criminal Conviction/Acquittal Appeals*
(Criminal Practice Directive, 28 March 2012)**

EXPLANATORY NOTE

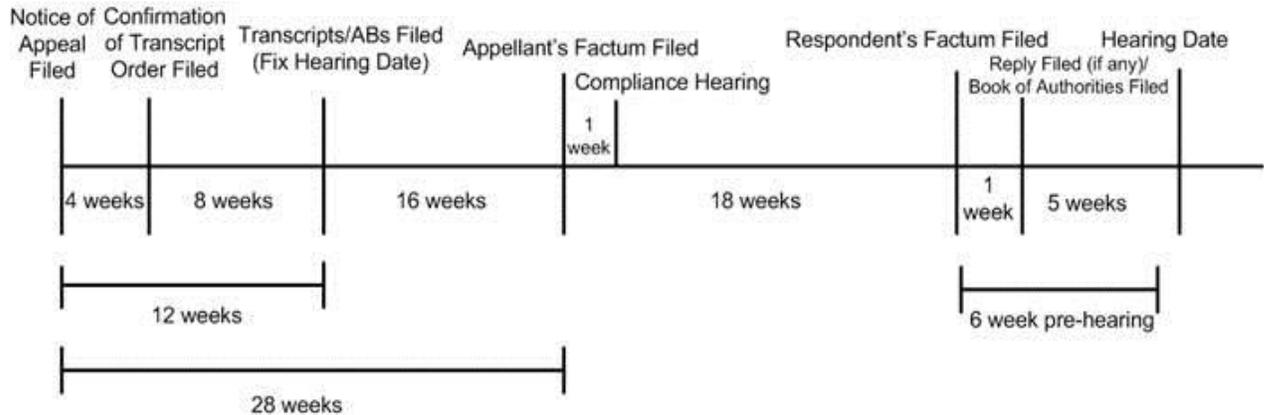
The Court of Appeal initiated a Pilot Project in September 2010 with the goal of reducing unnecessary delays in the hearing of appeals. Without restricting the power of the Court, or a justice, to give such directions as are necessary to ensure the appeal is heard in a timely manner, the Court adopted a protocol designed to have all criminal conviction/acquittal appeals heard within one year of the filing of Notice of Appeal, or so soon thereafter as possible. This protocol was adopted after consultation with representatives of the federal and provincial Crown, defence bar, and Legal Services Society, as well as Registry staff and representatives of transcription companies. A further consultation occurred with representatives of these groups in January 2012 and January 2013.

The Pilot Project has been monitored from the outset with a view to evaluating the Project at an original end date of December 31, 2011. Because of the limited number of appeals available for analysis by that date, the Project has been extended to December 31, 2013. In the meantime, following the completion of an appeal, the parties or counsel are invited to complete an optional, anonymous questionnaire giving their feedback on how the Pilot Project operated. A questionnaire has also been sent to all members of the Court for their feedback. The results will be used by Rules Committee and the Court to assess the Pilot Project and any proposed amendments to Criminal Appeal Rules, 1986. An interim summary of survey results has been prepared and was made available to judges, the advisory committee and counsel who requested a copy.

At any time during this Pilot Project, counsel may contact the Registrar to provide comments or suggestions concerning the Project. The subcommittee may also have further meetings with those who participated in setting up the Pilot Project to invite their suggestions for improvements.

The Court thanks all counsel and other participants for their assistance in all aspects of this Pilot Project.

Timeline for Criminal Conviction Appeal
 Notice of Appeal to Hearing Date = 1 year



This schematic timeline shows the filing timetable, setting the maximum time for the appeals to be heard at one year from the date the appeal is filed. This timeline is detailed in Appendix A - Criminal Appeal Filing Schedule Advisory Letter. It is expected to apply to most appeals subject to this Pilot Project.

PRACTICE DIRECTIVE

1. Introduction and Purpose

The Court wishes to reduce unacceptable delays in the prosecution of appeals from conviction and acquittal (and combined conviction/sentence) appeals. In furtherance of that objective, and after consultations with representatives of federal and provincial Crown counsel, defence counsel and the Legal Services Society, the Court has been testing the effectiveness of new proposed time limits for filings by way of a Pilot Project which has been monitored from the outset. Comments from the profession and the Court will be solicited before formalizing any new time limits in the Rules.

The aim of the Court is to have all conviction and acquittal appeals heard within one year from the filing of the Notice of Appeal. This Pilot Project does not apply to appeals against sentence only, to forfeiture appeals, or to appeals concerning extradition and international mutual assistance.

The Pilot Project involves: (a) new time limits for the filing of all appeal documents, (b) setting appeal hearing dates early in the appellate process, and (c) imposing a

mandatory “Compliance Hearing” 29 weeks after filing of the Notice of Appeal to monitor and ensure compliance with deadlines.

Flexibility is built into the timeline. When an appeal should be heard on an expedited basis (for instance, where an appellant is in custody), counsel will have the opportunity to agree to an abbreviated timetable.

There may also be exceptional circumstances when the time limits set out in the Pilot Project may not be realistic. In these cases, counsel may request the appointment of a case management judge by sending a letter directed to the attention of the Registrar. Exceptional circumstances may include cases involving self-represented litigants or complex or lengthy trials.

2. Standard Deadlines

When an appeal subject to this Practice Directive is commenced by the filing of the Notice of Appeal, the registry will prepare and send a “Criminal Appeal Filing Schedule Advisory Letter” (Appendix A) to the parties or their counsel. This letter will set out the standard deadlines that will govern the case.

The specific dates for filing will be set out in each letter, as applicable to each individual appeal. The appellant and respondent will be required to meet those stated deadlines. The Registrar will be monitoring the filing dates and will contact counsel if a filing date is missed.

3. Setting Hearing Dates

When the Transcripts and Appeal Books are filed (according to the schedule set out in the Criminal Appeal Filing Schedule Advisory Letter), counsel will contact the Court Scheduler to arrange for an agreed hearing date which falls within one year of the date the Notice of Appeal was filed. Once a date is agreed upon, counsel will file a “Notice of Appeal Hearing” (Appendix B).

4. If Problems with the Schedule Arise

If at any time counsel foresee or encounter any difficulties in adhering to the dates set out in the Criminal Appeal Filing Schedule Advisory Letter, or with the proposed appeal hearing date, then they are to contact the registry immediately, and in advance of any applicable filing deadline, so that the matter can be addressed by the Registrar or set before a justice in chambers expeditiously.

5. Compliance Hearing Date

The Criminal Appeal Filing Schedule Advisory Letter will include a date for a “Compliance Hearing”, set for one week after the due date for the appellant’s factum. If the appellant (or appellant’s counsel) misses the deadline for filing the appellant’s factum counsel will be notified by the registry that they are expected to appear on

the “Compliance Hearing” date scheduled. At that hearing, counsel will be required to provide an agreed revised filing schedule and be prepared to tell the court the reason for the delay, what steps have been taken to overcome the delay and how they propose to meet the scheduled hearing date. New hearing dates will only be set in exceptional circumstances.

The new hearing schedule replaces the original schedule and will be monitored by the Registrar.

If the appellant’s factum is filed on time (before the Compliance Hearing date), then the registry will automatically cancel the Compliance Hearing and counsel need not attend.

6. Expedited Hearings – Agreed Filing Schedule

Notwithstanding Heading 2 above, counsel may agree to a different schedule, so long as that agreed schedule honours the Court’s goal of hearing the appeal within one year of the filing of the Notice of Appeal.

The agreed schedule shall be in the form set out in Appendix C, entitled “Joint Criminal Appeal Filing Schedule”. The Joint Schedule may be filed at any time after the Notice of Appeal is filed. Upon filing, the Joint Schedule will supersede and govern the proceeding, effective from the date of filing.

7. Exceptional Circumstances - Request for Case Management Judge

After receiving the Criminal Appeal Filing Schedule Advisory Letter, if the timeline appears to be unrealistic for a specific appeal, or if the timeline would work a hardship on a party, then the party or counsel may contact the registry immediately to ask for a case management judge. The case management judge will consider the circumstances and may direct an alternate schedule for filing material. Counsel should attend the hearing with an agreed filing schedule and a proposed hearing date (which has been approved by the Court Scheduler in advance of the hearing).

8. Pilot Project Monitoring and Assessment

This Pilot Project was commenced on Tuesday, 7 September 2010, and will run until 31 December 2013. Appeals commenced on or between those dates will be subject to the Pilot Project.



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

History:

Replaces the Practice Directive titled Pilot Project Regarding Criminal Conviction/Acquittal Appeals, dated 14 May 2010.

Revised February 2013

APPENDIX A

Criminal Appeal Filing Schedule Advisory Letter

Date

Appellant (or Counsel)	Respondent (or Counsel)
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Re: R. v. A.B., CAxxxxx
Criminal Appeal Filing Schedule Advisory Letter

A Notice of Appeal was filed in the above-captioned matter on (date). This letter is being sent pursuant to the Practice Directive dated 28 March 2012 “Pilot Project regarding Criminal Conviction/Acquittal Appeals”

The aim of the Pilot Project is to have conviction and acquittal appeals heard on or before (date).

In accordance with the Practice Directive, the following deadlines apply:

- (a) By date (4 weeks after filing Notice of Appeal) – appellant to file and serve written confirmation that Transcript has been ordered, by letter from counsel or by filing a copy of the request sent to the transcription company.
- (b) By date (12 weeks after filing Notice of Appeal) – appellant to file and serve Transcript and Appeal Book.

Upon filing the Transcript and Appeal Book, appellant’s counsel will contact the Court Scheduler with a few agreed hearing dates. Counsel will confirm the hearing date by filing a Notice of Appeal Hearing (Appendix B).

- (c) By date (28 weeks after filing Notice of Appeal) – appellant to file and serve appellant’s factum. If the appellant’s factum is filed by this deadline, the Compliance Hearing (set out below in (d)) will be automatically cancelled by the Court Scheduler and counsel need not appear or otherwise take steps to adjourn the Compliance Hearing.
- (d) Date to be set - (1 week after the date set for filing the appellant’s factum) Compliance Hearing date.

(e) Date to be set: (Not less than 6 weeks before hearing date): respondent to file and serve respondent's factum.

(f) Date to be set: (Not less than 5 weeks before hearing date): appellant to file and serve reply factum, if any; and appellant and respondent, or jointly, to file and serve a book of authorities.

If a Joint Criminal Appeal Filing Schedule is filed and approved after the date of this Criminal Appeal Filing Schedule Advisory Letter, then the Joint Schedule will govern the proceeding, effective from the date of approval by a justice.

Deputy Registrar

APPENDIX B
Notice of Appeal Hearing

Date

Registrar, B.C. Court of Appeal
The Law Courts
400 – 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

Dear Registrar:

Re: R. v. A.B., CAxxxxx
Notice of Appeal Hearing

We write further to the Practice Directive dated 28 March 2012, “Pilot Project regarding Criminal Conviction/Acquittal Appeals”.

The Notice of Appeal in this matter was filed on: (date).

The Transcript and Appeal Books in this matter were filed on: (date).

After consultation with the Court Scheduler, the hearing of the appeal in this matter has been set for date (within one year of the filing of the Notice of Appeal).

Yours truly,

(Appellant or Respondent/Counsel or party’s signature)
(Appellant or Respondent/Counsel or party’s name and address)

APPENDIX C
Joint Criminal Appeal Filing Schedule

Style of cause

Date: _____

Appellant (or Counsel)	Respondent (or Counsel)
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Counsel (or the parties) agree to the following schedule for filing of materials in this appeal:

1. The Notice of Appeal was filed: (date filed)
2. Written confirmation of request for Transcript and Appeal Books to be filed: (date)
3. Transcript/Appeal Books to be filed: (date)
4. Appellant's Factum to be filed: (date)
5. Compliance Hearing (1 week after #4): (date)
6. Respondent's Factum to be filed: (date)
7. Appellant's Reply, if any, to be filed: (date)
8. The hearing of this appeal was originally set to be heard: (date) [if hearing date was set before this Joint Schedule is filed by counsel]
9. (a) Counsel agree that the hearing of this appeal is estimated to require: (hours/days)

OR

9. (b) Counsel each estimate that the hearing of this appeal will require:

Appellant's estimate: (hours/days)

Respondent's estimate: (hours/days)

10. Agreed hearing date (confirmed by Court Scheduler): (date)

Appellant (Counsel)

Respondent (Counsel)