



NOVASCOTIA
PUBLIC PROSECUTION SERVICE

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APPEALS TO THE COURT OF APPEAL

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

APPEALS TO THE COURT OF APPEAL Under Part XXI of the Criminal Code

A. Statement of Principle

1. The paramount obligation on the Crown in an appeal under Part XXI of the **Criminal Code** is to present the Court of Appeal with all the facts and legal authorities the Crown considers relevant to the issues the court must decide.
2. The right of the Attorney General to appeal is to be exercised with restraint, in the public interest.

B. Appeal by the Attorney General Against Dismissal

1. The right of the Attorney General to appeal a dismissal can only be invoked if it is determined that the trial court:
 - (a) erred in law,
 - (b) erroneously refused or failed to exercise jurisdiction on an indictment, or
 - (c) erroneously stayed proceedings on an indictment or erroneously quashed an indictment.
2. In addition, the right of the Attorney General to appeal against a judgment or verdict of acquittal can only be invoked if it is determined that the judgment or verdict would not necessarily have been the same if the error in law had not been made.
3. In determining whether to launch an appeal in those cases where the right of the Attorney General to appeal can be invoked, the Crown Attorney charged with the responsibility for making the decision whether to appeal shall consider:
 - (a) the seriousness of the error of law made in the proceedings and its importance to the administration of justice;
 - (b) the potential impact of the decision as a precedent in subsequent prosecutions;
 - (c) whether the error of law, although not of general application, is determinative of a case that is so important that it is in the public interest that it be appealed;

- (d) whether a decision not to appeal might bring the administration of justice into disrepute; and
- (e) whether unusual and compelling circumstances exist requiring guidance from the Court of Appeal.

C. Appeals by the Attorney General Against Sentence

1. The right of the Attorney General to seek leave to appeal against sentence can only be invoked if it is determined that the sentence imposed by the trial court is unfit. In determining whether a sentence imposed by a trial court is unfit, the Crown Attorney charged with the responsibility for making the decision whether to seek leave to appeal shall consider:
 - (a) whether the sentence is contrary to the **Criminal Code**;
 - (b) whether the sentence reflects an error in principle;
 - (c) whether the quantum of sentence is so low as to be manifestly inadequate;
 - (d) whether unusual and compelling circumstances exist requiring sentencing guidance from the Court of Appeal; and
 - (e) the position taken by the Crown in the trial court.

D. Crown Appeal Procedure

1. When the Crown Attorney with carriage of a trial prosecution concludes that the right of the Attorney General to appeal should be invoked the Crown Attorney shall make a written recommendation to the Chief Crown Attorney of the region in which the prosecution originated. If the Chief Crown Attorney for the region agrees with the recommendation, or concludes that the recommendation should be reviewed by the Appeals Branch, a **Recommendation for Appeal** (see Appendix "A") shall be fully completed and submitted to the Chief Crown Attorney (Appeals).
2. The Chief Crown Attorney (Appeals) may also receive recommendations from other sources that the right of the Attorney General to appeal be invoked.
3. Upon receipt of a **Recommendation for Appeal**, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions of the recommendation in writing.

4. When the Appeals Branch has reached a decision whether or not to launch an appeal, the Chief Crown Attorney (Appeals) shall notify the Director of Public Prosecutions in writing.
5. If the regional Chief Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch, the Director of Public Prosecutions shall review the decision.
6. The Chief Crown Attorney (Appeals), or a Crown Attorney in the Appeals Branch instructed by the Chief Crown Attorney (Appeals), may exercise the right of the Attorney General to appeal to the Court of Appeal.

E. Crown Representation in the Court of Appeal

1. Crown representation in the Court of Appeal on appeals under Part XXI of the **Criminal Code** is the responsibility of the Appeals Branch. Crown Attorneys who are not members of the Appeals Branch may, with the consent of the Chief Crown Attorney (Appeals), represent the Crown on an appeal under Part XXI of the **Criminal Code** before the Court of Appeal, but when doing so are accountable to the Chief Crown Attorney (Appeals).

F. Abandonment of Crown Appeals

1. The decision to appeal must be made on the basis of the best available material.
2. If the Crown Attorney with carriage of an appeal has concerns during preparation of the appeals as to whether the public interest will best be served by continuing the appeal, the Crown Attorney shall consult with the Chief Crown Attorney (Appeals) and the regional Chief Crown Attorney who recommended the appeal and decide whether the appeal should be abandoned.
3. Where the Chief Crown Attorney (Appeals) concludes that an appeal should be abandoned, the Director of Public Prosecutions shall be notified in writing of the reasons for the abandonment.
4. If the regional Chief Crown Attorney who recommended the appeal is not satisfied with the decision of the Appeals Branch to abandon the appeal, the Director of Public Prosecutions shall review the decision.