

You have been given this Victims' Guide to Appeals because an appeal has been filed in a case which affects you. This document is to help you understand the appeal process. It is an outline only, sourced from frequently asked questions. You can also ask your Court Victim Advisor, a police officer involved in your case, or the Crown lawyer dealing with the appeal about the process.

WHAT IS AN APPEAL?

An appeal is not a retrial. An appeal means that someone is challenging a court decision. They do this by asking a higher court to consider the decision and decide whether it was right or wrong. Usually appeals are brought by the offender/defendant. However, the prosecution (the Crown) can also appeal but in more limited circumstances (for example, an offender/defendant can appeal a conviction, but the Crown cannot appeal an acquittal). The person who is appealing is generally referred to as "the appellant".

There are many reasons why the offender/defendant might appeal, some of the most common reasons are:

- To challenge a decision about bail or name suppression.
- To challenge a pre-trial decision, for example, about what evidence can be heard at their trial.
- To challenge their convictions (if found guilty, or after pleading guilty).
- To challenge the length and/or type of sentence they received.

Which court deals with the appeal will depend on which court made the decision that is being challenged and whether the defendant requested a jury trial. In all cases, however, the appeal court will be a higher court, meaning that the lower court must do what it says. The four main levels in our court system are (from lowest to highest) the District Court, the High Court, the Court of Appeal, and the Supreme Court.

NOTICE OF APPEAL

The first step in an appeal is when a Notice of Appeal is filed in court. This sets out who is appealing, what they are appealing, and which court will be dealing with the appeal. You can ask the Court Victim Advisor or police officer from your case to explain those details to you.

The Notice of Appeal is only the first step in the journey of an appeal. Because it is filed early on, it often does not fully explain all of the arguments the appellant wants to make.

From start to finish, the appeal process usually takes quite a long time. There are many reasons for this, such as:

- The appeal court needs to get all relevant documents from the lower court, and these documents need to be put into casebooks and given to both sides.
- Some appeals may require new evidence (including expert reports).
- The appellant may want (or need) to use a new lawyer for the appeal (for example, not all lawyers do appeal work).
- Where the appellant is in prison, there can be communication delays.
- When the court has time available to hear the appeal.

Although this can be frustrating, it is in everyone's best interests for the court to have everything that is needed before an appeal is heard in court. This lessens the chance of having to move the hearing date at short notice, the appellant bringing a further appeal challenging the appeal court's process, or the appellant later asking the court to reopen the appeal to consider additional matters or evidence.

LEAVE TO APPEAL

Some appeals are "as of right". This means that the appellant has a right to appeal, regardless of whether their argument is a strong one or has any chance of succeeding. For example, every person convicted of a crime in New Zealand has the right to appeal against their conviction and their sentence. This does not mean they have to appeal, but if they want to, then they are entitled to do so.

Other appeals first require a court to give "leave" (or permission) for the appeal. This means the appellant must first persuade the court that there is good reason why they should be allowed to appeal. Permission is also needed when an appeal is filed later than it should have been as there are time limits for filing appeals. A court considering whether to give leave will usually consider the strength of the proposed appeal as well as any other factors that are in the interests of justice. For

example, the court might consider whether the proposed appeal raises an issue of general or public importance. If leave is given, the appellant can then progress the appeal. If leave is not given, the appeal will not be heard, and the lower court's decision will stand.

WHEN WILL THE APPEAL BE HEARD?

Sometimes appeals can be decided "on the papers" which means there is no hearing in court. This is more common when the court is considering whether to give leave to appeal (for pre-trial appeals, second appeals and applications to appeal to the Supreme Court, for example).

Appeals as of right, or where leave has been given, are usually argued in open court before a Judge or Judges (depending on which court is hearing the appeal, there may be more than one Judge. For example, in the Court of Appeal and Supreme Court there will usually be three or more Judges hearing the appeal).

The date of the appeal hearing is called the "fixture date". The Court Victim Advisor or police officer will notify you of this date. Often the fixture date is not set until many months after the appeal has been filed. This is because deciding the date depends on a number of factors, including:

- whether there is need for the appeal to be heard urgently,
- what the decision being appealed is,
- how complex the issues are,
- how long the appeal is likely to take,
- whether any evidence is required,
- when the lawyers involved are available, and
- when the court has the time available.

The courts are busy and often appeal dates are allocated some way in the future. This can be frustrating but unfortunately cannot be avoided.

WHO WILL BE AT THE APPEAL HEARING?

An appeal is usually heard in "open court", which means that anyone can attend and watch what is happening. It will be attended by the lawyers for both sides. Sometimes witnesses will be called to

give evidence, which can happen either in person or remotely (which is when a person appears from another location, by audio and/or video technology). The appellant may be given permission to attend in person or remotely if they are in prison/elsewhere, but often they will not be present at the hearing of the appeal.

Generally, when a decision is appealed, there will be a new Crown lawyer responsible for the file. This means it will not usually be handled by the prosecutor you have dealt with before, for example during the trial or sentencing. In New Zealand, prosecutions are conducted either by Police prosecutors or, for more serious offending, by Crown Solicitors and the lawyers who work with them, known as “Crown prosecutors”. It is these Crown lawyers you will likely already have met and seen involved in the case.

However, when a matter that has been prosecuted by a Crown Solicitor’s office is appealed, the appeal becomes the responsibility of Crown Law. Crown Law is the office headed up by the Solicitor-General, the government’s chief legal advisor who has oversight of all criminal prosecutions. The lawyers who work at Crown Law are called “Crown Counsel”. They will usually deal with the appeal on the Crown’s behalf and are specialists in criminal appeals. By the time the appeal is heard in court, they will be fully prepared and will have all the information they need to conduct the case.

As you likely already know, the Crown lawyer is not specifically your lawyer; they are the community’s lawyer. The Crown lawyer will often say things and make arguments in court that you agree with. Sometimes, however, a Crown lawyer may need to accept or agree with things that you do not support. When this happens, they will have thought about this very carefully and can explain to you the reason for this. An example might be if a sentence appears much longer than sentences given in similar cases. In that example a Crown lawyer may have to accept that the sentence is too severe and could, or should, be reduced on appeal.

GOING TO COURT

You are entitled to attend the appeal hearing, but you don’t have to if you don’t want to: it is your choice. If you do want to, you can go along to court or you can ask to watch remotely. Let your Court Victim Advisor, or your police contact know you want to observe the hearing and how that would

work best for you. You may bring a support person with you. If the hearing is out of town, arrangements can also be made for you to travel to attend court if you would like to do so.

At the appeal hearing itself, the first thing that happens is that the Judge/s will enter the courtroom, and the lawyers will introduce themselves to the court. Usually there will be one lawyer for each side, but sometimes there may be more. If you are in court, the Crown lawyer may also tell the Judge that you are there. If there is any evidence to be called in the hearing, this will happen first. Then the lawyers will make their arguments. The party appealing will go first. They will try to persuade the Judge/s that there is an error and that it needs to be corrected by the appeal court. Then the other side has their chance to speak in response. Finally, the appealing party will have a chance to address the court with any matters in reply. During the appeal the Judge/s may ask questions. Sometimes there are lots of questions, sometimes there are none.

It is important to understand that the appeal court has much more information about the appeal than what will be discussed in the appeal hearing. There is simply not time for both sides or the Judge/s to mention everything. Both sides will also have filed written submissions with the court before the hearing. These will usually be long documents setting out the arguments. The court will also have a large case file; copies of the exhibits; all previous court decisions; and if there has been a trial, a full transcript of all of the evidence that was given. In essence, the appeal hearing is a chance for both sides to make their best points, to emphasise certain things and to clarify others. Do not be concerned if you do not hear things discussed that you consider to be important, as that does not necessarily mean that the Judge/s do not have the information.

It is also important to understand that appeals are often focused on very specific and narrow issues. They might be very legalistic with only short mention of the background facts. Sometimes they are only focused on an offender/defendant and their circumstances. While that can be confronting for victims, the police and/or the Crown lawyer can explain to you why certain things are being given more attention than others. For example, in name suppression appeals, the person seeking name suppression will likely be arguing that publication of their name would cause them “extreme hardship” (which is the legal test), and the court will be looking at the effect of publication on the offender/defendant, as opposed to the effect of their offending on the victim. This focus can be

difficult for victims. Your Court Victim Advisor, the police, and the Crown lawyer can help to explain the arguments made during an appeal hearing and why topics you might not be expecting or wanting to hear discussed have been a focus, or why topics you expected and wanted to hear discussed were not mentioned at all. Sometimes an appeal will require distressing subjects to be brought up. Whenever they can, a Court Victim Advisor, police officer or Crown lawyer will tell you if this is likely to happen.

If it would be of assistance to you, the Crown lawyer will be happy to meet with you before and/or after the hearing to answer any questions that you have. Your Court Victim Advisor or your police contact can assist you to make these arrangements.

DECISION

Most of the time the appeal court will “reserve” its decision. This means it will thank both sides for attending the appeal, but the court will not announce its decision on the day. Instead, the Judge/s will go away and consider the arguments and write their judgment which will be given on a later date. This gives the Judge/s a chance to write a thorough explanation of why they have reached the decision that they have reached.

There is no set timeframe for a reserve judgment to be given. Sometimes it might only be a matter of days or weeks. However, sometimes it can take much longer.

Your Court Victim Advisor or police contact will tell you when an appeal judgment is released. They will tell you what was decided and what this means in your case. Appeal decisions can themselves be appealed, but only in certain limited circumstances.

In some cases, once released the decision could be published on the court’s website, where the public can read it. The media may choose to report on the decision as well if they are allowed. This is something that your Court Victim Advisor, police contact or the Crown lawyer can talk to you about.

As at all stages in the proceedings, if you have any questions at all about what has happened, or what can or will happen now, you can ask.

COMPLAINTS

If you think your rights have not been met, or you've not received the standard of service you expect, you can make a complaint. An agency that receives a complaint must respond promptly and fairly.

You can make a complaint by:

- contacting the Crown Lawyer in your case – issues are often resolved by speaking directly with the Crown Lawyer. If you don't have their contact details, the Police or Court Victim Advisor can put you in contact with them.
- calling the Victims' Information Line on 0800 650 654 – the Information Line staff will give you information about your rights and tell you how to make a complaint and who to send it to completing the online form or writing to victimscentre@justice.govt.nz.

FURTHER INFORMATION

There are people involved in this process who can help you to navigate it: Court Victim Advisors, police officers, Crown lawyers. You can speak to someone involved in your case if you have any questions. They can make sure that the right person answers your questions and provides the right information. If it is appropriate, the Police or Court Victim Advisor can put you in contact with the Crown Lawyer, who you can contact with any questions that you have. There are also other resources available which may be of assistance:

- There is a website you can look at: www.victiminfo.govt.nz/en/information-for-victims/.
- The Victims' Rights Act 2002 is available online at: www.legislation.govt.nz/act/public/2002/0039/latest/DLM157813.html.
- There is also the Victims section of the Solicitor-Generals Prosecution Guidelines 2024 online at: www.crownlaw.govt.nz/prosecution-guidelines/victims.

APPEALS PROCESS FOR VICTIMS: MAP

