

Nunavut Court of Justice

Prisoner Appeals: A Guide



Nunavut Criminal Appeal Rules, Rule 26



Steps to Filing a Prisoner Appeal

1. Prepare a “notice of appeal” form. Use “Form A”, which can be found in Appendix A of this pamphlet;
2. When filling out the “Form A”, write the reason(s) why you think you should get an appeal;
3. If you want to explain your reason(s) to the court in person, remember to check the box on the “Form A” that says you wish to be present at your appeal hearing;
4. Give your warden **three (3) copies** of your notice to appeal. You have **sixty (60) days** after the trial judge’s decision to do this.

NOTE: There is a full-page copy of Form A in the back of this pamphlet that you can photocopy and fill out. Remember to give three (3) copies to your warden.



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Introduction

The legal system is very hard to figure out. It is even harder without the help of a lawyer. It is the hardest when you are trying to figure out the process while in jail and without a lawyer.

When a judgment has been made against you during trial, and you want to have the trial judge's decision reviewed, you can "appeal" it.

When you "appeal" a decision, you are asking another judge (the "Appellate judge") to take another look at the trial judge's decision and to decide if that judgment was fair or appropriate under the law.

If you are in custody and decide to make an appeal and represent yourself, this is commonly referred to as a "prisoner appeal". This pamphlet seeks to help you through the appeal process by making the requirements, dates, and steps in the process more understandable and accessible to you.

What is an "Appeal"?

An "appeal" is the process of asking a judge in a higher court (the "Appellate judge") to review a decision made by a judge in a lower court (the "trial judge").

So, for example,

- The trial judge has sentenced you to jail for 3 years.
- You think the trial judge made a mistake, because most crimes like the one you went to jail for only get 1.5 years of jail time.

In this case, you can ask an appellate judge or court to review your case and the trial judge's decision. You can do this by filing out Form A, which can be found at the back of this pamphlet (in Appendix A). Whenever this pamphlet refers to a "notice of appeal" form or "leave to appeal" form, it is talking about Form A.

What is a "Prisoner Appeal"?

A prisoner appeal is when a person who is in jail applies for an appeal without the help of a lawyer. The rules for a prisoner appeal are very different than the rules for a regular appeal, because the person who is making the appeal (in this case, you) is in custody.

Because you are in custody, you cannot just go to the Courthouse and give them a copy of your “Form A”. Instead, the *Rules* say that you can give all of your forms to your warden. Your warden will then make sure your documents get to where they need to be.

What kinds of decisions can you appeal?

Below is a list of some of the decisions that you can appeal:

- Your sentence
- Your conviction
- A trial judge’s decision that you are “mentally unfit” to appear at trial
- An Appellate judge’s decision to refuse to give you permission to appeal. You have seven (7) days after this refusal to ask the court to review the judge’s decision.

Are there any rules that you need to follow when making an appeal?

Yes.

You must follow the *Criminal Appeals Rules* when making an appeal. You should be able to find a copy of these rules at the place where you are in custody.

This pamphlet summarizes the rules that apply to prisoner appeals.

It is important that you try your hardest to follow all the Rules that apply to you. If you do not follow the *Criminal Appeal Rules*, your appeal may take longer or it may be taken off of the Court list.

How do you make an appeal?

An “appeal” starts when you give a special type of form to your warden. This special form, called a “Notice of Appeal”, is laid out for you in “Form A”. A copy of “Form A” can be found in **Appendix A**.

Once you have filled out this form, you must provide your warden with **three (3) copies**.

After you give your warden three (3) copies (this is also called “serving” your warden):

1. Your warden should stamp or write (“endorse”) on each copy the date that he or she received that document;
2. After putting the date on these documents, your warden should then
 - a. **return one (1) copy** to you;
 - b. **send one (1) copy to the Registrar;** and
 - c. **keep one (1) copy for him or herself.**

The steps that come after you give your “Form A” to your warden will depend on whether you have a *right* to appeal, or whether you have to *ask permission*.

How do you know if you need permission (“leave”) to appeal?

The *Criminal Code* tells you whether you will need to ask permission to appeal or whether you have a right to appeal. This will depend on the kind of crime you were found guilty of. It might be hard for you to figure out what type of appeal you should be making without legal help.

If you do have to ask for the court’s permission to appeal, you would do this the same way you would file your “notice of appeal” – by filling out “Form A”.

What should you do if you need permission (“leave”) to appeal?

The process for applying for “leave to appeal” is the same process that you go through when you have to submit a “notice of appeal”.

You will have to fill out a “Form A” and provide **three (3) copies** to your warden. Your warden will stamp the copies and give one copy to the Court Registry. It is then the appeal court’s job to figure out if you are allowed to appeal or not, or if you have a right to appeal.

What should be included in your appeal documents?

It is important that you explain why you are asking for an appeal in the documents that you submit to the Court:

- What did the trial judge do wrong?
- Did he or she make a mistake about the law?
- Did they give you an incorrect sentence?
- Did they ignore very important facts about your case or your personal circumstances?

Remember that there has to be some legal support for the mistake you are saying that the judge has made.

You must lay out all of this information when you give your “Notice of Appeal” to the Court, or when you are asking the Court for permission to appeal.

It is also important that you sign your “Form A”. If the “Form A” is not signed, it will not be accepted by the Court.



You should not include:

- A section asking or demanding a certain time or place for your hearing. This is up to the Court to decide.

The Court’s registry will add your case to the list for the next appeal court date once you have given them your documents. After that, you will receive directions from the Court or a judge about what to do next.

What happens when the Court Registry gets your appeal papers?

If you are **appealing your sentence**, the Registry will receive one (1) copy of your Notice of Appeal from your Warden. The Registry will send a copy of your Notice of Appeal to the other side’s lawyer.

If you are **appealing your conviction**, the *Rules* require that “appeal books” be prepared and sent to the opposing side’s lawyer. You do not need to worry about this part of the process – once the Registry has received your Notice of Appeal form, it will order the appeal books for you.

What happens when the Court or the appellate judge receives your Notice of Appeal?

The appellate judge, or Court, has a few different things that they can do once they have looked at your “Form A”, and any other documents you have attached to it:

- If you applied to the Court, and the Court allows you to apply for an appeal, it can also decide – at the same time - to allow or deny your appeal based on the documents you have given them. This is called a decision “on the merits”.



- The Court also has another option if it allows you to apply for an appeal. It can let you *explain* why you should get an appeal. If the Court chooses to let you explain your reasons, it will choose a later day for this to happen (your “hearing” date). On this later date, the Court will listen to what you say, and what the other side has to say, and will then decide if they should allow your appeal.



What happens if you get a “hearing” date?

After you file your notice of appeal, if it is placed on the Court list for an upcoming date, you will have a chance to make an argument for why you think your appeal should be allowed. The choices you have for how to make your argument will depend on what part of the trial judge’s decision you want reviewed.

If you are appealing your sentence, you can make your argument either in writing, or by speaking to the Court. If you wish to make your argument in person, by phone or by video, you will have to mention this on your “Form A”.

What happens when a Court “allows” an appeal?

If the Court “allows” your appeal, then the Court do one of two things:

- It can make its own decision about what should have happened, and use that instead of the trial judge’s decision
- It can send your case back to another trial judge. The new trial judge will look at your case and make a new decision. The new trial judge will have to keep in mind anything that the appellate judge has told them to think about or do.



If the Court allows you to appeal, can it decide to make your sentence longer?

Yes, but two things must happen first.

1. In your notice of appeal, you must have asked the court to take another look at your sentence
2. The appeal court must tell you that they are thinking about making your sentence longer. They must do this before they make any decision. They must tell you before they make a decision so that you have a chance to explain why you do not think that making your sentence longer is the right choice.



The appeal court is not allowed to make your sentence longer if they do not tell you first.

Can the Court refuse to look at (or “dismiss”) your appeal?

Yes.

A judge may dismiss your case if you do not show up to your hearing.

If you have a real and important reason that explains why you were unable to appear, you can apply to the Court to have the dismissal put aside (also referred to as “vacated”). If the Court agrees that your absence was because of a special reason, the Court may put your case back on the Court list.

An appellate judge can also refuse to grant you permission to apply for an appeal.

After you have applied for an appeal, the Court can refuse to give you an appeal. If they refuse, or “deny” the appeal, then everything remains the same – your sentence, your conviction, and all facts that were accepted at the trial will remain the same.

What does it mean to “file” and “serve” your documents?



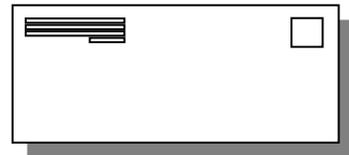
“Filing” a document simply means giving the Court registry a copy of any documents they require. The registry then takes these documents, stamps them with that date, and puts them away in your Court File.

“Filing” your documents tells the Court that you have filled out all of the forms that you need to before your case can go forward. It also lets the Court know when you have given them each document in your file. It is a very important part of making your claim to the Court.

“Serving” your documents on the other party is also an important and necessary part of the legal process.

When you “serve” the other party, you are simply giving them a copy of the documents that you have put in the Court file. Not all documents need to be “served”. This is explained in the *Rules*.

When you are making an appeal while in custody, you do not need to worry about giving your documents directly to the Court or the Court Registry. This is explained below.



Do you have to prove that you have “served” your documents?

In a prisoner appeal, you do not need to give the Registrar or Court any extra information to prove that you have “served” the other party with your documents. After the warden stamps or writes the date on the **three (3) copies** of your “Form A”, it is considered (or “deemed”) to have been “served” on the responding party.

How much time do you have to start your appeal?



Sixty (60) days.

This is how long you have to start the appeal process. The question is: when does the countdown begin?

The 60-day countdown begins at different times depending on *what* you are trying to appeal.

You have to ask yourself,

- Do you want a new judge to review your sentence and/or your conviction?**

If so, the 60-day countdown begins on the day the trial judge gives you a sentence. The day that you are ordered to do time in jail is Day 1. However,

- Do you want a new judge to review the trial judge’s decision that you are “unfit to stand trial by reason of insanity”?**

If so, the 60-day countdown begins on the day the judge makes this decision, or gives the “verdict”, that you are unfit.

What if you need more time to get your appeal papers ready?

You can ask the Court or an appellate judge to give you more or less time to file your appeal. If you ask an appellate judge and they deny your request, you can ask the appeal court to take another look at the appellate judge's decision.



If your request for more time is denied, you have another **seven (7) days** after that to ask the appeal court to take another look at your request for more time. The court can agree or refuse to take another look at your request. If they agree, the appeal court will take a look at your request and make a decision on whether to give you more time or not.

What if you decide you want a lawyer to represent you, but you have already started the appeal process?

It is perfectly OK to decide that you would prefer to be represented by a lawyer (also referred to as "Counsel"). In fact, it is encouraged that you get help from a legal aid lawyer during the appeal process. Appeals are very technical and very difficult, and are very hard to do without legal help, especially while you are in jail.

If you have already given a completed "Form A" to your warden, you can still get a lawyer. Sometimes it may be smart to file your documents first, just in case you are running out of time, and then talk to Maliganik Tukisinarvik (legal aid) about getting a lawyer.

Once you have found a lawyer, they will have to tell the Court that they are now your "legal representation". After your lawyer has told the Court that they are working with you, they can then begin helping you through the appeal process.

What if you have already handed in your Notice of Appeal, but decide you don't want to appeal anymore?

You can decide to stop your appeal at any time before it gets before the Court.

To stop your appeal, you must fill out “**Form D**” (“Notice of Abandonment”). This form can be found in **Appendix B**. You must sign Form D and get your Warden to sign it as your witness.

“Form D” must then be sent to the Court Registry so that the Court knows that you want to stop the appeal.

Do you have to remain in custody while your appeal is being decided?

You can apply to be released from custody while your appeal is being decided. You have to give your warden copies of your “Form A” before you can apply to be released.

To start, you must first let the other lawyer (the “prosecutor” in criminal cases) know that you plan on asking the court for a release from custody (this is called “giving notice”). You must do this **at least two (2) days before** you ask the court if you can be released.

To let the other lawyer know that you are planning to ask the court to release you while you are waiting for your appeal, you will have to fill out another form. This time, you must fill out the “Notice of Application for Release of Custody Pending Appeal” (**Form E**). After you finish filling out this form, you must give a copy to your Warden. Both you and your Warden will sign the form, at the same time. Your Warden will then send the signed form to the court.

A copy of Form E is in this pamphlet, in **Appendix C**.

Asking for release while you are waiting for your appeal is a very difficult, complicated process.

It is suggested that you get help from a lawyer.

Contact information for all Legal Aid services in Nunavut is listed in Appendix D (on page 28).

APPENDIX A

FORM A
NOTICE OF APPEAL
FOR PRISONER APPEALS

IN THE NUNAVUT COURT OF APPEAL

(Write your Full Name)

Appellant

- v -

HER MAJESTY THE QUEEN

Respondent

TO: THE REGISTRAR

The Nunavut Court of Appeal
Nunavut Justice Centre
P.O. Box 297
Iqaluit, NU X0A 0H0

NOTICE OF APPEAL

On _____ at _____ in Nunavut,
(Date of trial or hearing) (Community where your hearing took place)

before the Nunavut Court of Justice, I was convicted of:

(List charges here)

The Judge who sentenced me was _____, and I was sentenced to:
(Name of Judge)

(Write sentence here)

At trial, I pled Guilty Not Guilty (Check the box that applies)

I am in custody at the following address:
(Check the box that applies)

Baffin Correctional Centre (BCC)
1550 Federal Road
P.O. Box 368
Iqaluit, NU
X0A 0H0

Rankin Inlet Healing Facility
30273-23 Kugyuk Ave.
P.O. Box 850
Rankin Inlet, NU

North Slave Correctional Centre (NSCC)
Corrections, Department of Justice
Government of the Northwest Territories
71 Kam Lake Road
P.O. Box 278
Yellowknife, NT
X1A 2N2 Canada

Nunavut Women’s Correctional Centre
1546 Federal Road
P.O. Box 368
Iqaluit, NU
X0A 0H0

Makigiavik
1550 Federal Road
P.O. Box 368
Iqaluit, NU
X0A 0H0

Other: _____

I would like to appeal for the following reasons:

(List reason(s) why you want an appeal here. You can write on the back of this form if you need more space.)

If I am given a date in front of the Court to explain the reason(s) why I believe the Court should allow my appeal, I can explain my reasons in person (at the appeal hearing) or in writing.

(If you do not want to go to your appeal hearing, check off “in writing” below and attach your written reason(s) to this form. You must give both to your Warden to start the appeal process.)

I choose to explain my reasons:

(Check the box that applies)

In person

In writing

If I have chosen to explain my reasons in writing, **I will have also attached a copy of my written reason(s) to this Form A Notice of Appeal.**

If I am given the option to have a jury trial, I choose as follows:

(Check the box that applies)

- I would like to have a jury trial
- I do not want to have a jury trial

Language

I understand the following languages:

(Check the boxes that apply)

- English
- Inuktitut
- French
- Inuinnaqtun

I understand what is written on this form:

(Check the box that applies)

- Yes
- No

I require(d) a translator to properly understand what is written on this form:

(Check the box that applies)

- Yes
- No

If I have an appeal hearing, I will require a translator:

(Check the box that applies)

Yes

No

If I have an appeal hearing, I will require a translator who can translate:

(Check the box that applies)

Inuktitut

Inuinnaqtun

French

Dated on

_____ (Write full date here)

Appellant's Name:

_____ (Write your name here)

Appellant's Signature

_____ (Sign your name here)

Three (3) copies of this Notice of Appeal are to be served upon the Warden or designate of the Warden of the Institution in which the Appellant is imprisoned within **sixty (60) days** of the sentence being imposed upon him or her.

APPENDIX B

FORM D
NOTICE OF ABANDONMENT OF APPEAL

IN THE NUNAVUT COURT OF APPEAL

(Write your Full Name)

Appellant

- v -

HER MAJESTY THE QUEEN

Respondent

TO: THE REGISTRAR

The Nunavut Court of Appeal
Nunavut Justice Centre
P.O. Box 297
Iqaluit, NU X0A 0H0

NOTICE OF ABANDONMENT OF APPEAL

I, _____ of _____,
(write your full name here) (write your home community)

Nunavut, give notice that I abandon my Appeal.

DATED at _____ the _____ day of _____, 20____.
(community or city) (day) (month) (year)

SIGNED: _____
(sign your name here)

THIS NOTICE WAS SIGNED IN THE PRESENCE OF:

WITNESS (YOUR WARDEN)

APPENDIX C

FORM E
NOTICE OF APPLICATION FOR RELEASE FROM CUSTODY PENDING APPEAL

IN THE NUNAVUT COURT OF APPEAL

(Write your Full Name)

Applicant/Appellant

- v -

HER MAJESTY THE QUEEN

Respondent

TO: PUBLIC PROSECUTION SERVICE OF CANADA
Nunavut Regional Office (Iqaluit)
P.O. Box 1030
Iqaluit, Nunavut
X0A 0H9

NOTICE TO PROSECUTOR OF APPLICATION FOR RELEASE FROM CUSTODY PENDING PRISONER APPEAL
(Section 679(1) of the *Criminal Code*)

TAKE NOTICE that I, _____, the
(write your full name here)

APPLICANT, will make an application for bail pending appeal on _____,
(write date that you will file your application for bail pending appeal)

at the Court of Appeal for Nunavut, Building 510, P.O. Box 297, Iqaluit, Nunavut.

THE GROUNDS FOR THIS APPLICATION ARE:

(Write *why* you are asking to be released until your appeal hearing)

1. On _____, I was convicted by the Honourable Justice
(write date of your conviction)

_____ of:
(write the name of the judge)

(Write what you were convicted of in this box)

2. I was sentenced as follows:

(Write the sentence you were given. For example, the judge could have told you to spend 90 days in jail and told you that you have to follow certain rules for 12 months after you get out of jail (“probation”).)

3. I **have / have not** been on bail since _____.

(circle one option)

(if you are already on bail for these charges,
write the date that you were first released on bail)

4. I do not pose a flight risk.

5. I **have / have not** been found guilty of a criminal offense before this.
(circle one option)

(If you have been found guilty of a criminal offense before, list the year(s) you were found guilty and the offense(s) you were found guilty of.

6. I have the strong support of my community, family, and/or friends.

7. I **do / do not** have children.
(circle one option)

8. I **am / am not** a Canadian citizen.
(circle one option)

9. My release on bail pending appeal will not be against the public interest.

I WILL BE SEEKING THE FOLLOWING RELIEF: Bail pending appeal, under s. 679(1) of the *Criminal Code*, on such terms and conditions as the Court may deem appropriate.

DATED at _____ **on the** _____ **day of** _____, **20**_____.
(community or city) (day) (month) (year)

SIGNED: _____
(sign your name here)

THIS NOTICE WAS SIGNED IN THE PRESENCE OF:

WITNESS (YOUR WARDEN MUST SIGN HERE)

DATE

CC: **THE REGISTRAR OF THIS HONOURABLE COURT**
The Nunavut Court of Appeal
Nunavut Justice Centre
P.O. Box 297
Iqaluit, NU X0A 0H0

APPENDIX D

RESOURCES AVAILABLE TO YOU

RESOURCES TO HELP YOU WITH YOUR APPLICATION(S)

LEGAL SERVICES BOARD, NUNAVUT

Below is the contact information for the three (3) Legal Aid offices in the territory. Please contact the one closest to you for help with your appeal and/or bail pending appeal application.

Maliiganik Tukisiiniakvik Legal Services

(867) 975-6395

P.O. Box 29, Bldg#1104-B

Inuksigait Plaza

Iqaluit, Nunavut

X0A 0H0

Kivalliq Legal Services

(867) 645-2536

P.O. Box 420

Rankin Inlet, Nunavut

X0C 0G0

Kitikmeot Law Centre

(867) 983-2906

25 Mitik St.

Cambridge Bay, Nunavut

X0B 0C0

GLOSSARY

GLOSSARY OF TERMS

Allow v. Denying Appeals	<p>An appeal is allowed when the judge or court agrees to hear the case, or disagrees with the trial judge's decision.</p> <p>An appeal is denied when the judge or court refuses to hear the case, or agrees with the trial judge's decision.</p>
Appeal	Asking a judge in a higher level of court to review the decision of a lower court.
Appellant	The word used to refer to the person who is asking for the appeal.
Appellate Court	A term used for courts that are able to hear appeals.
Appellate Judge	A term used for a judge who is a member of an appellate court. Only appellate judges can hear appeals.
Claim	A request made to the court for some kind of decision on an issue.
Conviction	A finding of guilt on a criminal charge.
Counsel	Another word for lawyer .
Court	<p>The place where legal arguments are made. Legal arguments that are made in court are heard by a judge, a jury, or a justice.</p> <p>Court is also sometimes a term that is used to talk about the judges as a group (for example, " the Court found Mr. Sam had been telling the truth").</p>
Court of Appeals	The title or name of the Court that hears appeals.
Court File	A folder that contains all the documents that are related to a case and that have been given to the court's registry.
Court List	A list of all the people and cases that are scheduled to appear at court to make legal arguments.
Decision	The answer a judge or justice gives in response to a legal question or a claim.
Decision "on the	When a judge makes a decision based on the documents that you have

merits”	provided them, without listening to oral arguments in court.
Deemed Service	When a document is considered to have been given to the registry and the opposing party even though it was not given to them directly.
Endorse/Endorsement	A person’s signature, when placed on a document. For example, “She endorsed the information sheet” means the same thing as “She signed the information sheet”.
Filing	A term used to describe when a person gives a document to the Court to put away in a Court file. Sometimes things have to be “filed” by a certain day or time. If these documents are not filed on time, the Court may have to give its permission before a case can continue.
Hearing	A term for when oral arguments are made in court, in front of a judge or justice.
Judge	The title of the decision-maker. Judges hear the case and make a decision based on the information given to them.
Judgment	The final decision of a judge.
Leave to Appeal	In some cases, you have to ask the Court to give you permission to appeal the decision of another court. Asking for “leave to appeal” is essentially asking the Court for permission to appeal a judge’s decision. Sometimes, this is also referred to as “leave of the Court”.
Notice of Appeal	The document must be filled out so that the opposite party knows that an appeal will be happening.
Opposing side / Opposing Counsel	For prisoner appeals, the opposing counsel will be the lawyer that is taking legal action against criminal acts – also referred to as the “prosecutor”.
Prisoner Appeal	The term for an appeal made by a person who is serving a custodial sentence in a prison.
Registrar	The part of the Court that deals with the paperwork, documents, court files, and scheduling.

Respondent	The party who did not ask for an appeal, and who is defending the trial court's decision.
Right of Appeal	When the law says that you are able to appeal.
Sentence	The punishment given to an accused person who has been found guilty by the judge and/or jury.
Serve/Service	Providing copies of documents to another person.
Trial Judge	The judge who hears your case and makes a decision as to whether to convict you and what your sentence should be. Sometimes, when a trial judge is deciding on a sentence, they will be referred to as the "sentencing judge".
Unfit to Stand Trial	When the court makes the decision that, because of a mental disorder, an accused person is not able to defend themselves in court. This may be because the accused is unable to understand what is happening, is unable to understand the consequences of what is happening and/or is unable to communicate with his or her lawyer.
Verdict	The decision of whether a person is found guilty or not guilty. For example, if a jury finds you guilty, then you have received a " guilty verdict ".
Warden	The person who is responsible for supervising prison facilities.