



**Manitoba  
Department of Justice  
Public Prosecutions**

**Guideline No. 4:APP:1.4**

**Policy Directive**

**Subject: Appeal - Acquittal - Governing Principles**

**Date: November 5, 1992**

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## **POLICY STATEMENT:**

Crown Attorneys must be fair, objective, and accurate in their requests for assessments of appeals from acquittal, in order to save the accused, and the state, needless costs which result in the launching of a Crown appeal which may subsequently display little merit.

### General

Generally, an appeal against acquittal by the Crown must be based on an error in law. Findings of fact, and of credibility, do not found an appeal by the Crown. There are variations between summary conviction, and indictable offence appeals however.

### Summary Conviction Offences

Such an appeal must be based on:

- a question of law;
- a question of jurisdiction;
- the fact that the decision is unreasonable, or unsupported by the evidence.

The second and third factors may also be influenced by the public interest aspect. It may be that a higher Court should rule on the issue ruled on by the Provincial Court, to give direction on a point not grounded in pure law. In such a case, the request for appeal should include all pertinent material, including any relevant authority.

-see other APPEAL sub-topics for further guidelines.

### Indictable Offences

Strictly speaking, a Crown appeal against acquittal on an indictable offence must be based on error in law.

In the case of a Jury trial, this would require the exclusion of a crucial piece of evidence, or a clear error in law in the charge to the Jury.

In the case of trial by Judge alone, this would require the exclusion of a crucial piece of evidence, or clear misdirection on the law, in the reasons for judgment.

As to evidentiary issues, the request must accompany an explanation of the Judge's reasons for exclusion, in an accurate and clear manner, as well as any authority clearly offended, or ignored.

In the case of misdirection in law to the Jury, or self-misdirection, again, an explanation of the error clearly and accurately set out, as well as authorities offended, must accompany the request for appeal.

Trial counsel may mistake findings of fact, and credibility, in the face of their perception of the case presented, as without foundation, or unwarranted. It is important to note that Appellate Courts are loathe to grant Crown appeals from acquittal, unless a clear error in law can be established. Appellant counsel depend, and rely on, trial counsel to give a true and accurate assessment of the case, when deciding whether or not an appeal is warranted.

Often, a later review of a (costly) transcript may not bear out the complaints of trial counsel.

-see other APPEAL sub-topics for further guidelines.