

NOTICE

COURT OF APPEAL

RE: DIRECTIVE REGARDING APPEAL PROCEEDINGS INVOLVING ALLEGATIONS OF INEFFECTIVE COUNSEL IN FIRST INSTANCE

Preamble

In criminal appeals from conviction and or sentence, the appellant may raise grounds of appeal suggesting that their counsel was ineffective or otherwise contributed to a miscarriage of justice in first instance. In such cases, the appellant will often want to provide the Court with information concerning instructions to and conduct of counsel. This information will typically come before the Court by way of a motion for leave to file fresh evidence. Any response to such evidence will usually come from counsel in first instance. The response could consist of affidavits to be considered by the Court on the fresh evidence motion.

If the appellant is represented by counsel it is expected they will undertake an assessment of the merits of the complaint against counsel prior to raising these issues in the Notice of Appeal. In most cases that assessment will include giving counsel notice of the allegations against them and providing a reasonable opportunity to respond.

A useful discussion of the issues raised in appeals involving allegations of ineffective trial counsel can be found in the Supreme Court of Canada decision in *R. v. G.D.B.*, [2000 SCC 22 \(CanLII\)](#), [2000] 1 S.C.R. 520 and this Court's decision in *R. v. Le (T.D.)*, [2011 MBCA 83 \(CanLII\)](#), 270 Man.R. (2d) 82.

Directive

1. All Notices of Appeal in criminal matters will be reviewed by the Registrar or Deputy Registrar. As part of this review, an attempt will be made to discern whether the grounds of appeal include allegations with respect to the conduct of counsel in first instance. If Crown counsel becomes aware that an Appellant is raising such issues he or she will promptly notify the Registrar.

2. If the Registrar or Deputy Registrar determines the grounds of appeal include allegations with respect to the conduct of counsel in first instance, a letter enclosing a copy of the Notice of Appeal will be sent to that counsel. This letter will be copied to the parties to the appeal. In addition the Registrar or Deputy Registrar shall report the matter to the Chief Justice who may consider appointing a judge to provide directions, on his or her own initiative or on motion.
3. Counsel in first instance will be provided with copies of correspondence or documents filed with the Court with respect to any motion for directions.
4. Counsel for the appellant in first instance must advise the Court on the hearing of any motion for directions whether they intend to participate in the proceeding. In particular, counsel will advise the Court whether they intend to make any motion or file affidavit evidence.
5. Should the response by counsel involve disclosure of potentially privileged information, a motion for directions regarding waiver of privilege would be expected.
6. In some circumstances, the nature of the allegations against counsel may result in an application for intervener status on the appeal.

ISSUED BY:

Original Signed by

D. McCoy – Registrar

Court of Appeal

Manitoba

Date: January 15, 2016