

## Appealing a Decision of the Court of Queen's Bench

This fact sheet deals with further appealing a small claims decision from the Court of Queen's Bench to the New Brunswick Court of Appeal. The purpose of this fact sheet is to provide additional information not included in the Small Claims Court guide. For an introduction to appeals, including appealing a *Small Claims Court* adjudicator's ruling on an application or the decision of a Small Claims Court adjudicator to the Court of Queen's Bench please refer to page 42 in the guide. Appeals are covered starting at section 39 of the Small Claims Court General Regulation, available on the Department of Justice website, in the legislation link.

### A Note on Self-representation

Our legal system gives every individual the right to represent himself or herself in legal proceedings before the courts. However, the judicial system can be very complex, not only in the courtroom, but also in the proceedings leading up to court appearances. There are often many forms and documents to be completed and possibly witnesses to summon. While one party may choose self-representation, the other may be represented by a lawyer. Lawyers are specialists in the field of law and may request that the *Rules of Court* and the rules of evidence be strictly followed throughout the proceeding. As a self-represented litigant, you will be expected to follow these rules and may find little leniency for errors. Although the presiding judge may explain the general procedure to you, he or she will not conduct your case for you or act as your lawyer.

If you decide to represent yourself, note that each court may have different forms and procedures. Thoroughly investigate and prepare for the legal process well in advance. The Court of Appeal of New Brunswick is the highest court in the Province, and tends to be a very formal court. There are specific rules and processes that must be followed in the Court of Appeal, and strict compliance with the rules is generally required. This document can only provide a brief overview of some of the requirements. You may wish to have a lawyer to represent you at the Court of Appeal.

### Requesting Permission to Appeal a Decision of the Court of Queen's Bench to the Court of Appeal:

- You must get permission, or "leave" from the Court of Appeal to appeal a decision of the Court of Queen's Bench. **Fill out a Request for Leave to Appeal (Form 18)** accompanied by the **\$50** filing fee. This form must be filed with the **Registrar** of the Court of Appeal. You must **apply within 30 days** of the Court of Queen's Bench decision.

The Registrar's role for the Court of Appeal is similar to that of the Clerk for the Court of Queen's Bench and the Clerk of the Small Claims Court.





You must set out the reasons (called "grounds") for appeal. You can only appeal a small claims decision of the Court of Queen's Bench based on an error of law (basically, that the Judge made a mistake when applying the law to your case - see Step 2 below). It is wise to get help from a lawyer. You will need to provide the evidence you will use and a written outline of your arguments. Your written submissions to the court *cannot be longer than 20 pages*. Once you have filed your **Request for Leave to Appeal**, the Court of Queen's Bench will send its file on your action to the Registrar of the Court of Appeal, who will forward your appeal request and evidence to the other parties. The respondent(s) then has 30 days to file their written arguments concerning leave to appeal (*no more than 20 pages long*) with the Registrar.

A judge of the Court of Appeal will review all of the written material that is filed, and will usually decide whether to allow the appeal to proceed based only on this written material. The judge may, however, ask the parties to come to court to make oral arguments on the leave to appeal request. If this happens, the Registrar will set the time and date of the hearing on the request for leave to appeal and notify the parties. At the hearing, each party will generally have **30 minutes** to present his or her oral argument.

#### If the Court of Appeal Agrees to Hear the Appeal:

Once the judge has made a decision whether to allow the appeal to proceed, the Registrar will notify the parties. The person appealing then has no more than **30 days** to file a **Notice of Appeal (Form 19)** and pay the Registrar a \$50 filing fee. The person *responding* to a **Notice of Appeal** must pay **\$25** to file their arguments.

A **transcript** is the written record of the hearing. The stenographer is the person who types the transcript. The person appealing has to pay for the transcript by the page. The cost may vary. The average transcript is between 60 and 70 pages long and costs about \$3.50 per page (for a total between \$200 and \$250).

The person appealing must also order and pay for a **transcript** from the court stenographer of the Queen's Bench hearing within **30 days** of the Registrar's notice that leave to appeal was granted. Once the transcript is prepared, the court stenographer will send it directly to the Registrar of the Court of Appeal, who will notify the parties that the transcript has been added to the court file. It is very important for the person who is appealing to make sure the Registrar receives a copy of the transcript. Failing to do so could result in the appeal being dismissed for delay. If the person making the appeal wants to file a further written argument (20 pages maximum) he/she can file it within 30 days of the date of the notice that the transcript is ready. The person responding to the appeal can file a further written argument within 30 days of the person appealing filing his/hers, or within 60 days of the notice that the transcript is ready if the person appealing does not file any further written argument.

The Registrar will advise the parties of the date set for the appeal. At the appeal, the Court will listen to the arguments of the parties and decide the case. Each party will have **1 hour** to present his or her oral arguments. The Court's decision may include allowing or dismissing the appeal or any other order the Court considers to be appropriate. The Registrar will prepare copies of the formal judgment and send them to the parties. Evidence used by the parties as exhibits will be returned or made available for pickup at the office of the Registrar of the Court of Appeal.



### Tips for Your Appeal

- **Be Prepared** - If you come to the court well prepared, you will gain credibility with the judges. Be familiar with the facts of the case and the law that applies to them. Think through your arguments.
- **Be Credible** - Judges are human, and if they do not trust you, your job will be harder. Judges trust people who do not exaggerate and who acknowledge the weaknesses of their case.
- **Be Reasonable** - As a self-represented litigant, you are probably emotionally invested in your case. It is important to remember that the Court of Appeal must decide the case reasonably and in accordance with the law. The more you look at your arguments from an outsider's perspective, the more likely it is that you can make your arguments reasonable and persuasive.

### Building Your Written and Oral Arguments for the Appeal Hearing

You have two opportunities to make your argument to the Court of Appeal: in written form (sometimes called a "factum"), and in oral argument. In many ways, your written argument is the more important of the two. You submit your written argument before you make your oral argument. The judges read it before they see you, and they may form an opinion about your case before you say a word. If you can state your arguments persuasively in written form, this will help your case.

### STEP 1: Read the Court of Queen's Bench Decision

The first thing you should do is read the decision you are appealing. Read it carefully and more than once. You are looking for legal mistakes that give the Court of Appeal a reason to overturn the decision. These mistakes are not easy to find because judgments can be full of 'legalese'. You may need to research to understand the court's decision.

Identify the legal issues in the case. Usually these are listed at the beginning of the decision. What did the judge decide on each issue? Find out how the judge came to that legal conclusion.

There may be other documents involved in your appeal. Read them all. Material that was presented as evidence at trial may be important because it may reveal a mistake made by the judge. Reading all of this material will help you to be as prepared as possible, which is crucial.

### STEP 2: Identify the Mistakes You Will Argue

You must prove that the Court of Queen's Bench judge made a mistake that was serious enough to affect the outcome of the decision. Be prepared to show where in the decision the mistake can be found, and why it justifies overturning the decision.



Mistakes of law do not need to be obvious to justify overturning the decision. However, you must show that the mistake of law affected the outcome of the decision.

An example of a mistake of law is a judge interpreting the legal test from other cases incorrectly. The best way to find out the test that should have applied is to look for the leading cases in the relevant textbooks and then to read them.

### STEP 3: Do Legal Research

An important part of preparing for your appeal is researching the legal issues in your case. The best places to do research are in a law library or online.

In Fredericton, you can use the Gérard V. La Forest Law Library at the University of New Brunswick, located in Ludlow Hall. Its website can be accessed at [www2.unb.ca/lawlibrary](http://www2.unb.ca/lawlibrary).

In Moncton, you can use the Bibliothèque de droit Michel-Bastarache at the Université de Moncton. Its website is [www.umoncton.ca/umcm-bibliotheque-droit](http://www.umoncton.ca/umcm-bibliotheque-droit).

CanLII ([www.canlii.org](http://www.canlii.org)) is a free online legal database. You can search court cases by key word or topic, and have access to the decisions of the New Brunswick courts as well as the Supreme Court of Canada. Legal research can sometimes be difficult and cases can be hard to interpret if you have no legal training.

Every argument you wish to make will be more persuasive if you can point to legal authority that agrees with your position. The best legal authority is usually case law. The best cases are those that are recent, those that are decided by appeal courts (especially the New Brunswick Court of Appeal) or the Supreme Court of Canada, and those that have similar facts to your case. If you can show that the Court of Appeal made the decision that you want it to make in another case, you will have a very persuasive argument.

The only cases that are binding on the New Brunswick Court of Appeal are other New Brunswick Court of Appeal of cases and Supreme Court of Canada cases. Binding means the court must do the same thing in your case as in the other case. Decisions by other courts of appeal in Canada or in other lower New Brunswick courts are persuasive, but they are not binding. If you are going to use non-binding legal authority, you must be prepared to argue why the Court of Appeal should follow the reasoning in that case.

### STEP 4: Decide What Arguments You Will Make

Don't make too many arguments. Even if you find several mistakes, it is best to take more time to argue the most important mistakes. This is especially true in oral argument, where you may want to limit yourself to two or three of the most persuasive errors. If you try to argue ten or twelve points, your weaker arguments may drown out your stronger ones.



### STEP 5: Arguments You Cannot Make

Never insult the Court of Queen's Bench judge whose decision you are appealing or the other party. This does nothing to advance your position, and it will ruin your credibility and make you appear unreasonable. If you want to argue that the judge made a mistake, be prepared to show where in the judgment the mistake was made. In other words, do not make unsupported arguments.

### The Risks of Appealing a Case

If you lose an appeal, you can be ordered to pay the other side's legal expenses (called "costs"). Even if you win and the judge orders the other side to pay costs, you will have to pay some of your own expenses out of pocket. It is very rare for a costs award to cover all the legal costs of an appeal. Also, keep in mind that self-represented parties do not receive the same kind of costs that parties with lawyers receive. This is because parties who represent themselves do not have to pay a lawyer.

If you are going to ask for costs at the end of your appeal, you have to state this in your Notice of Appeal. You also have to be prepared to prove your out-of-pocket expenses by showing the judge receipts for your expenses.

### Presenting Your Case in Court

You will receive a letter from the Court of Appeal confirming the date and time of your appeal. This letter will state how long you have to argue your appeal. Come to the court early and sit on a bench at the back. When it is your turn, move to the front of the room so the judges can see and hear you.

Three judges will hear your appeal. You must stand up when the judges enter and exit the room and every time you speak. You should call the judges "Justice."

If you are the person bringing the appeal, you will present your argument first. Use your time wisely. Practice your argument to make sure you will stay within the time limit. The judges will stop you to ask questions so do not plan to speak for the entire time. Do not be discouraged if the judges interrupt to ask questions. You are there to assist the judges to understand your arguments. Listen to the question, take a moment to think of the answer, and answer briefly.

Remember that the judges have read the materials for the case, so they are familiar with the facts, the decision of the lower court judge, and your written arguments. They also know the law, so simply state how the law applies to the facts of your case. If you run out of time, say that you will rely on the arguments in your written arguments for any point you do not have time to address.





- Focus on the most important arguments.
- Highlight only the relevant facts.
- Do not simply read your written arguments to the judges. The judges have read them already.
- Behave respectfully and stay calm. Lawyers often refer to each other as "my friend" and to everyone else (other than the judges) as Mr. or Ms.

### Structure Your Oral Argument

**Opening:** Start with one sentence explaining the background of the appeal, such as "This is an appeal from a judgment of the Court of Queen's Bench on a small claims matter." Explain in one sentence the decisions of the lower courts. Give the judges a short summary or 'map' of your arguments: this helps them to listen for what is important. For example, say, "In my argument I will show that the Court of Queen's Bench judge erred in two/three/four ways." Then list the errors. End your opening comments by stating what you are asking the court to do (the "remedy" you are asking for).

**Issues:** Start with your strongest argument. For each argument, review the important facts and law. Then apply the law to the facts and state your conclusion. Use your legal research to show how you think the trial judge made a mistake.

**Conclusion:** Plan your last sentence so that it gives a strong final message. You can simply list again the ways in which you think the lower court judge made a mistake and the final order you want the Court of Appeal to make. For example, you could ask that the court grant your appeal with costs. Do not be discouraged if you do not get to the conclusion. Remember that oral argument is the chance for the judges to ask you questions about the problems they see with your argument.

### Civility and Politeness

The way you behave is very important. You will get your point across more effectively if you are polite and respectful to the judges and the other party, and you stay within your time. Try to answer the judges' questions in a straightforward and direct way. The Court of Appeal is not a court where the parties are confrontational or argumentative.

PLEIS-NB would like to acknowledge Pro Bono Law Ontario for permission to adapt certain content from the publication, *Court of Appeal Handbook: A Guide to Representing Yourself at the Court of Appeal of Ontario*.

