

APPEAL FROM SMALL CLAIMS

This information sheet provides an overview of the procedures for appealing an order by a Provincial Court allowing or dismissing a claim if that order was made after a trial.

Note that no appeal lies from any order of the Provincial Court made in a proceeding under the Act other than an order made after a trial.

An appeal is not a new or re-trial but a review of the original trial using transcripts of the original trial and your Statement of Argument. No new evidence may be presented without leave of the court.

Appeals from an order of the Small Claims Court are governed by sections 5 to 15 of the Small Claims Act, Supreme Court Rule 49 and the standard set of directions for Small Claims appeals issued by the Chief Justice.

FILING AN APPEAL

Complete the Notice of Appeal form (form 59A) of the Supreme Court Rules and file it in the Supreme Court registry **nearest** to the Provincial Court where the decision being appealed was made **within 40 days from the date the decision was given in Small Claims Court.**

When filing the Notice of Appeal, **you must pay into court the required fees and deposits.** These include:

- a) **\$208.00** to initiate a Supreme Court proceeding, plus
 - b) **\$200.00** deposit as security for costs that the court may order you to pay if you lose or discontinue the appeal. Please note that there may be additional costs awarded against you if you lose or discontinue the appeal. Refer to Rule 57 and Appendix B of the Supreme Court Rules
 - c) **the amount of the judgment ordered by the Small Claims Court** if the order being appealed required you to pay a sum of money. **If you are unable to deposit the security for costs** or the amount of judgment as stated in items "b & c" above, you may apply to the Supreme Court for an order to reduce these amounts. **If you are unable to pay the filing fee** as stated in item "a" above or any fees payable to the crown pertaining to the appeal you may apply to the court for an indigent status order. Please request the appropriate form from the Supreme Court Registry. Note that indigent status does not cover the cost of transcripts as these fees are payable to private contractors.
- On the day you file your Notice of Appeal you must file a copy of that document in the Small Claims Court registry.**

SERVING NOTICES

The Notice of Appeal, the Small Claims Appeal Standard Directions and if applicable any order reducing the amount security for costs or the amount of judgment as stated in items "b & c" above must be served personally on each party to the proceedings who is affected by the appeal. Service must be made within seven days after filing the Notice of Appeal. **Note:** refer to Supreme Court Rule 11 for the process for serving a document. You may serve these documents yourself or have someone else do so for you (for a list of process servers refer to the Yellow Pages under "Process Servers") After serving the documents, an affidavit of service providing proof of service of the above stated documents must be filed within 14 days of the appeal being filed.

ORDER TRANSCRIPTS

Pursuant to the Standard Directions you must order and pay for the entire transcript of the evidence and the reasons for judgment given at your Small Claims trial. Registry staff in the Small Claims Court can provide information about ordering the

transcript and the transcription contractor will advise about the cost. **You must furnish proof of ordering the transcript within 14 days of filing your appeal.**

SETTING A HEARING DATE

At the same time that you file proof of service of the Notice of Appeal and proof of ordering the transcript, you must file a Notice of Hearing of Appeal in Form 59B of the Supreme Court Rules. If your time estimate for the appeal is less than 2 hours, the Notice of Hearing of Appeal may be scheduled on the Chambers list.(filing fee \$62.00). If your time estimate is more than 2 hours you must arrange for a date through the Supreme Court Trial Coordinator and file the Notice of Hearing of Appeal (filing fee \$208.00). (Registry practice may differ – check with your local registry) Then you must deliver a copy of the Notice of Hearing of Appeal to all respondents who have entered an appearance **within seven days of filing the Notice of Hearing of Appeal.**

STATEMENT OF ARGUMENT

Within 45 days after filing the Notice of Appeal you must file your Statement of Argument (in Form "A" attached to the Standard Directions) and serve one copy on each respondent.

FILING TRANSCRIPTS

Within 45 days after filing the Notice of Appeal you must file the original transcript and serve one copy on each respondent

THE HEARING

The hearing is a review of the original trial and you must be prepared to explain why you feel the Provincial Court Judge erred in interpreting the facts entered as evidence or applying the law to your case. This is done using the transcript and your Statement of Argument. If you are successful in your appeal, the Supreme Court Judge may allow you to recover your costs as part of the judgment. If these costs exceed the \$200.00 previously paid you will be required to set an appointment before the Registrar to have these cost assessed if the amount of costs are not agreed to by the opposing party. If the respondent does not pay the judgment, you must prepare the Supreme Court order and file it with the registry for entry. After the order is entered, you may file a copy in your Small Claims Court file at the Provincial Court for enforcement. If your appeal is unsuccessful, there is no appeal from an order made by the Supreme Court.

SUSPENSION OF PROCEEDINGS

When you file proof with the Small Claims Court that the security for costs and the amount of judgment has been paid into the Supreme Court and/or proof that you have obtained an order to reduce the amount of costs and/or judgment into court any proceedings to enforce the order in Small Claims Court are suspended until the Appeal is dealt with.

Note: The Registry staff cannot provide legal advice. It is strongly recommended that you seek legal advice if you are contemplating an appeal. Supreme Court is formal and more complex and litigants are expected to be aware of the law and of legal procedures. Litigation in Supreme Court is costly. Further costs may be awarded against the unsuccessful party pursuant to Appendix B of the Rules of Court. These costs can be considerable.

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This is an Information Sheet. In the event of any conflict between this information and any Acts, Rules or law, the provision of the Acts, Rules or law apply.