

Please Note:

The Rules and procedures governing the appeal process are complicated. The information in this section is intended to give a general overview only. People considering appealing a lower court decision are urged to obtain legal advice.

What is the Nova Scotia Court of Appeal?

The Court of Appeal is the province's highest court. Only a few Nova Scotia cases are heard each year by the Supreme Court of Canada, so for all practical purposes the Appeal Court is the court of last resort for Nova Scotia.

Where is the Nova Scotia Court of Appeal?

The Court of Appeal is located in the Law Courts Building, 1815 Upper Water Street in Halifax. It sits only in Halifax.

What is the court's function?

The Court of Appeal provides a forum for parties to appeal the outcome of a lower court (Supreme, Provincial or Family) or an administrative tribunal hearing. The Appeal Court does not re-try cases, but rather reviews the record of the trial to ensure that no errors of law were made by the lower court.

The Court of Appeal has the authority to dismiss the appeal (confirming the decision of the lower court); allow the appeal and order a new trial; or allow the appeal, but change the Order of the lower court.

Through its judgments the Court of Appeal clarifies the law and develops consistent legal policy for the Province of Nova Scotia so that citizens know the limits of legal behaviour in their social and commercial lives.

What happens in an Appeal Court hearing?

An appeal differs significantly from a trial. Normally three judges sit on an appeal, and most appeals last only two to two and a half hours. There are no witnesses or juries in the Court of Appeal. New evidence (i.e. information not presented during the lower court proceeding) will not be considered by the Court of Appeal except in the rarest circumstances.

Before the judges enter the Courtroom, they are already entirely familiar with the appeal. They have reviewed the complete record of the lower court proceedings (as contained in the Appeal Book) as well as the written arguments of the Appellant and the Respondent, as set out in their factums.

To commence the hearing the Court Clerk calls the court to order. The Appellant first addresses the court setting out his or her legal argument, which is based on the factum that was filed earlier with the court. The Respondent then does the same. The judges frequently ask questions as the case is presented. No additional time is allowed for questions from the panel of judges. Therefore parties should plan to speak between 30 and 40 minutes only, to allow time for them to respond to judges' questions. At the hearing's conclusion, the Clerk closes or adjourns court.

Who are the judges of the Court of Appeal?

The Court of Appeal consists of the Chief Justice of Nova Scotia (who is also the Chief Justice of the Court of Appeal) and seven other judges. Semi-retired (supernumerary) judges may also form part of the court at any given time.

Court of Appeal judges do not sit on any other court, and they have no previous involvement with the cases that come before them on appeal.

What are the judges called?

The judges' title, male or female, is "Justice ..." (for example, Justice Jane Doe, Justice John Doe). Collectively they are referred to as the "Judges of the Court of Appeal".

In the Court of Appeal the judges are addressed as "My Lady" or "My Lord".

Who are the Appeal Court's key staff people and what do they do?

The Court of Appeal's senior staff member is the Registrar of the Appeal Court, a legally trained civil servant who has overall responsibility for the administration of the court. At present, the Registrar of the Court of Appeal also acts as the Prothonotary of the Supreme Court.

The Registrar is assisted by a Deputy Registrar. In addition to supervising staff, the Deputy carries out the day-to-day administration for the court in such areas as scheduling and monitoring the flow of documentation required for appeals.

The Court Clerk assists in organizing case files and documentation. The Clerk attends Appeal Court hearings, calling the court to order and ensuring that the proceedings are recorded.

No Court of Appeal staff can give members of the public legal advice.

What do people wear in the Court of Appeal?

The Appeal Court judges, the Court Clerk and lawyers wear black gowns for the hearing of appeal cases. No one gowns for Chambers.

What kinds of cases does the Court of Appeal deal with?

The Court of Appeal deals with a wide range of civil and criminal cases. The court averages about 200 to 250 appeals a year, more civil than criminal.

Not all appeals go to the Court of Appeal, since various statutes provide for appeals to other courts - for instance, summary conviction appeals from the Provincial Court are heard by the Supreme Court of Nova Scotia, as are appeals from some administrative tribunals (such as the Residential Tenancies Board).

Can every case be appealed?

The justice system provides for a right of appeal (within set time frames) in most cases. However, the reviewing court is generally limited by the findings of fact made by the lower court.

For instance, the Court of Appeal neither re-tries cases nor does it second guess the lower court's decision

about the facts of a case. Rather, it reviews the earlier decision to determine if the judge made any errors of law or if the judge made an error in applying the law to the facts.

Who can start an appeal?

Generally, only people who are parties in a case can appeal.

Who are the parties in an appeal?

The party who brings the proceeding to the Court of Appeal is called the Appellant. The Appellant appeals the decision of a lower court or tribunal.

The party against whom an appeal is brought and who must respond to the Appellant's case is called the Respondent.

Does it cost anything to appeal a case?

Apart from any legal fees, the court fee for starting an appeal in the Appeal Court is \$150 plus a law stamp fee of \$28.75. The Government of Nova Scotia has adopted a policy of waiving court fees, through an administrative process, for those who are in difficult financial circumstances.

As well, the parties are responsible for the significant costs of providing the documentation required by the Court of Appeal.

How do appeals get started?

The Appellant must first notify the Court of Appeal and the Respondent of the appeal by filing a Notice of Appeal at the Prothonotary's Office in Halifax and paying the required fees.

The Appellant must also file a Notice of Application to appear in Appeal Court Chambers to have a judge set an appeal date. The Appellant must give notice to the Respondent of the date of the Chambers application. The appellant must also complete a certificate verifying that he or she has requested the transcript.

Is there a time limit on appealing?

Yes. Although some appeals must be taken within ten days, generally the Appellant must appeal within thirty days after the lower court or tribunal gives its decision. Any party who, for good reason, requires an extension of the time for filing the Notice of Appeal must convince a judge in Chambers to extend the time.

What documents are needed for an appeal?

The appeal process is complex, and many documents must be provided by each party to the court and to the other party. It is advisable that the parties to an appeal have lawyers prepare the necessary documentation.

The Civil Procedure Rules set out the Court of Appeal's requirements respecting the necessary documentation that must be filed. The Rules include everything from the time frames and the type of documents required to instructions with respect to cover colours, spacing, margins and binding. Samples of many of the required forms are included in the Rules.

Appeals are reviews of lower court decisions, so the appeal process is based largely on the parties' written

arguments and a review of the material resulting from the earlier court process. The parties must file five copies (all required for distribution to the judges hearing the file and the Court of Appeal's Law Clerk) of the following material at the Prothonotary's Office:

An Appeal Book: a collection of relevant materials from the earlier case including (among many other things) the court's decision, a typed transcript* of the trial or hearing, copies of exhibits, an index of witnesses at the trial, and the original pleadings. The Appeal Book is filed by the Appellant. **All pages of the Appeal Book must be consecutively numbered and an index, referring to page numbers included., failing which the Appeal Book may not be accepted by the court.**

*NOTE: A transcript is a typed record of the proceedings of the court being appealed from. The appellant must apply, in writing, to the lower court for a tape(s) of the proceeding in question. The appellant will be charged for each cassette tape provided. The appellant must then have this tape (or tapes) transcribed in the proper format by a certified court reporter.

A Factum: containing a statement of facts and an outline of the legal argument submitted to the court by each of the Appellant and the Respondent.

Are there time frames for filing Appeal documents?

Yes, times frames are set out in the Rules and by the Appeal Court Chambers judge for the parties to file the various documents required in connection with an appeal.

If an appeal is not "perfected" (that is, if a party does not file the documentation by the dates set), the appeal may be dismissed by the court. A party with good reason for failing to meet the filing dates may seek an extension of the time allowed for filing documents.

Can the public attend the Court of Appeal?

Yes, Court of Appeal proceedings are open to the public. The media may apply for permission to film Appeal Court hearings on a case by case basis.

What is Appeal Court Chambers?

Each Thursday one of the Appeal Court judges sits alone to set dates for upcoming appeals or to hear various motions dealing with such matters as bail applications, and any extensions of time requested by a party. This is called Appeal Court Chambers.

Arrangements may be made in advance, in accordance with the Rules, to have uncontested Chambers applications (usually matters to be set down for a hearing date) heard by telephone conference call.

When does the Appeal Court make its decision in a case?

The Court of Appeal may give its decision orally in court shortly after the Appellant and the Respondent have presented their cases. Often the court will reserve its decision and issue a written judgment at a later date.

Is there an appeal from the Court of Appeal?

Yes, in some cases an appeal can be taken to the Supreme Court of Canada in Ottawa. In some of the most serious criminal cases a party has an automatic right to appeal; however, in most cases permission to appeal

must be granted by the Supreme Court of Canada or the N.S. Court of Appeal. Only a few Nova Scotia cases each year are heard by the Supreme Court of Canada

How can I get more information on the Court of Appeal?

The rules governing appeals to the Nova Scotia Court of Appeal are set out in the *Civil Procedure Rules*, which can be purchased at the Nova Scotia Government Bookstore. **Rule 62** covers civil appeals, and **Rule 65** sets out the process for criminal appeals. The Judicature Act sets out the powers and structure of the Court of Appeal.

In addition to this general information, the following section of this brochure provides more technical detail on the filing requirements of the parties to an appeal.

[The Legal Information Society of Nova Scotia](#) has a library available to the general public. The Society also runs a legal information and lawyer referral service which can be reached at:

455-3135 or 1-800-665-9779.

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