

NOVA SCOTIA COURT OF APPEAL
APPLICATION FOR LEAVE TO APPEAL (WORKERS' COMPENSATION)

1. On a limited basis, the Nova Scotia Court of Appeal can review a Workers' Compensation Appeals Tribunal (WCAT) decision for errors in law or jurisdiction. Section 256(1) of the Workers' Compensation Act provides that any participant in a decision of WCAT may file a Notice of Application for Leave to Appeal, (FORM 90.07A), to the Nova Scotia Court of Appeal on any question as to the jurisdiction of WCAT or on any question of law, but not on a question of fact.
2. A participant who wishes to file a Notice of Application for Leave to Appeal must do so within 30 days of receiving the WCAT decision. The Notice of Application for Leave to Appeal must be filed with the Registrar of the Nova Scotia Court of Appeal. Remember time is calculated in accordance with Civil Procedure Rule 94. This means that you do not count the date the decision you wish to appeal was made, you do not count any Saturday or Sunday or holiday on which the Prothonotary's office is closed and you exclude the 25th day. By way of example: if you received the decision you wish to appeal on January 12, 2012 - the Notice of Appeal must be filed no later than February 24th, 2012.
3. You must attach a copy of the WCAT decision to your Notice of Application for Leave to Appeal.
4. "Leave to Appeal" means to give permission to file a Notice of Appeal. Therefore, this is a two step process. First, the person bringing the application for leave to appeal seeks the courts' permission to hear the appeal. Where it is clear, to the Nova Scotia Court of Appeal, that the appeal could not succeed, it denies or refuses leave without giving reason and that is the end of the appeal process. Where the Court of Appeal is of the view that the appeal could succeed, it grants leave and gives directions for further filings. In this case, the Appellant will be directed to file a Notice of Appeal (Tribunal) using Form 90.07B within a certain amount of time after the leave hearing.
5. You must file an original and five (5) copies of your Notice of Application for Leave to Appeal with the Registrar of the Court. The fee is \$246.80 (this represents the court filing fee of \$218.05 plus the Law Stamp fee of \$28.75). You may apply for a waiver of the court filing fees by completing the necessary form entitled "Waiver of Fees Application". Your income will determine whether your court fees are waived. Five certified copies of your Notice of Application for Leave to Appeal will be returned to you by the Registrar. You must send certified copies to the other parties as set out below.
6. You must serve one certified copy of the Notice of Application for Leave to Appeal on each of the following Respondents and these three Respondents must be named on your Notice of Application for Leave to Appeal:

a) Workers' Compensation Board - Paula Arab, Q.C., WCB, 100-5595 Fenwick Street, PO Box 1150, Halifax, NS, B3J 2Y2, (Fax: 491-8916);

b) Workers' Compensation Appeals Tribunal – Alexander (Sandy) MacIntosh, WCAT, 1002-5670 Spring Garden Road, Halifax, NS, B3J 1H6, (Fax: 424-2321);

c) Attorney General of Nova Scotia – Edward Gores, Q.C., Departmental of Justice (NS) 1690 Hollis Street, 8th Floor, PO Box 7, Halifax, NS B3J 2L6 (Fax: 424-1730)

d) Your employer must be provided with a copy of the Notice of Application for Leave to Appeal **IF** your employer attended and participated in the hearing before WCAT.

7. Once your Notice of Application for Leave to Appeal has been filed you will receive a letter from the Registrar setting out the next steps you must follow to have the leave application set down for hearing.
8. If you have not already done so, you should contact the Workers' Advisers Program at 1-800-774-4712 for the Halifax office and 1-800-890-6786 for the Sydney office, to determine whether or not you qualify for legal assistance to help you with your Application for Leave to Appeal at the Nova Scotia Court of Appeal.
9. Important reminder: When presenting your legal argument on whether Leave to Appeal should be granted, you must address the standard of review. The standard of review is the test which the Court of Appeal will follow when they review the WCAT decision to determine whether there was an error made by the appeals commissioner.
10. Practical reminder: You should be aware that in addition to the court filing fee and the Law Stamp fee, you as the Appellant will incur expenses to put together the Appeal Book which the Court of Appeal requires to be filed. The most costly portion of the Appeal Book will be the transcription which you are responsible for having prepared at your own expense. You will also need to prepare five copies of the Appeal Book and therefore the photocopying fees and the binding fees paid to a company who does this work, such as Staples, will be your responsibility and constitutes an out of pocket expense. If a Workers' Adviser represents you on your Application for Leave to Appeal, these out of pocket expenses will be covered by the Workers Advisers Program.
11. For more information:
Registrar, Nova Scotia Court of Appeal
1815 Upper Water Street
Halifax, NS
Telephone: 424-8962
Fax: 424-0524

February 2016
Updated: March 2017