Guidebook for Appellants (Civil & Family Matters)

STEP 1: Deciding to Appeal

1.1 What is an appeal

What is an appeal?

At the conclusion of a proceeding in a lower court, such as the Court of King's Bench for Saskatchewan, or tribunal, such as the Automobile Injury Appeal Commission, the party who lost may want to have that decision reviewed by a higher court in the hope that it might be reversed or changed. In such cases, an "appeal" is made to the Court of Appeal, which is the highest court in Saskatchewan.

You must understand that an appeal *is not* a new trial or rehearing of your case.

What an appeal *is not*

- an appeal is **not**: a new trial;
- a hearing with witnesses or a jury;
- a chance to present fresh evidence or new witnesses to a new judge, except in exceptional circumstances; or
- a way to avoid complying with the lower court's or tribunal's order.

The Court of Appeal will not hear an appeal of every case. In some situations, you must ask the permission of the court to appeal through a process called "leave to appeal." Even if the Court of Appeal hears your appeal, it will not:

- re-hear your case from start to finish;
- change the decision just because it seems somewhat unfair; or
- change the decision just because the court might have decided the matter differently. (The decision must be incorrect due to a factual or legal error.)

In summary, for an appeal to be successful, you must show that the decision-maker made a factual or legal error that affected the outcome of your case. An appeal is not a new trial or re-hearing of your case.

1.2 Do you have a right to appeal your case?

There is no right to appeal a lower court or tribunal decision to the Court of Appeal unless a statute gives you that right. You must read the applicable statute to understand whether you have a right to appeal a decision and, if so, how to appeal and the procedural timelines that you must follow. In some situations, there may be no right to appeal, with or without leave, to the Court of Appeal.

An example of a situation where a statute requires leave to appeal is s. 194 of *The Automobile Accident Insurance Act*, which says:

> Appeal to the Court of Appeal
> 194(1) With leave of a judge of the Court of Appeal, the insurer or a claimant may appeal a decision of the Court of Queen's Bench or appeal commission to the Court of Appeal on a question of law only.
>
> (2) An appeal pursuant to this section must be made within 30 days after the date of the decision of the Court of Queen's Bench or appeal commission or within any further time that a judge of the Court of Appeal may allow.

So, if you have a decision of the Court of King's Bench for Saskatchewan or the Automobile Injury Appeal Commission made under *The Automobile Accident Insurance Act*, then you may only appeal that decision with leave.

Figuring out whether you have a right to appeal or whether you need leave (permission) to appeal can be very difficult – sometimes even for lawyers. If you cannot figure this out on your own, you will have to ask a lawyer for help. The court's registry office staff cannot answer this question for you.

Decisions from the Court of King's Bench

The Court of Appeal Act, 2000 (s. 7) creates a right to appeal most final decisions from the Court of King's Bench for Saskatchewan to the Court of Appeal.

If you do not have an automatic right to appeal, you must make an application to obtain leave (permission) to appeal. For example, interlocutory decisions in the Court of King's Bench cannot be appealed to the Court of Appeal without leave (permission). Section 2.1 on how to start an appeal discusses how you obtain leave to appeal.

Decisions from Small Claims Court or the Office of Residential Tenancies

You cannot appeal a small claims court decision of the Saskatchewan Provincial Court or a decision of the Office of Residential Tenancies directly to the Court of Appeal without appealing to the Court of King's Bench first. In both cases, once a decision is made by the Court of King's Bench on an appeal, a party who is not happy with that decision can appeal it to the Court of Appeal but only with leave (permission) to appeal. Section 2.1 on how to start an appeal discusses how you obtain leave to appeal.

Decisions from Saskatchewan administrative tribunals

Some decisions of Saskatchewan administrative tribunals may be appealed directly to the Court of Appeal. But, often those decisions must first be reviewed by the Court of King's Bench, unless the statute that created the tribunal says otherwise. You must read the applicable statute to understand whether you have a right to appeal a decision and, if so, how to appeal and the procedural timelines that you must follow.

1.3 What happens to the order you are appealing?

Bringing an appeal will not automatically stay (stop) enforcement of the order or judgment made by the decision-maker below. If it is necessary, you may have to seek a stay of the order or judgment by applying either to the judge who made the order or to a judge of the Court of Appeal.

You may choose to make an application to impose a stay in chambers to a judge of the Court of

Appeal under Rule 15 of *The Court of Appeal Rules* (Civil). You can find more information about how to make these applications in Section 3.2.

1.4 Deciding to appeal

Appeals are expensive

Before making the decision to appeal, talk to a lawyer. He or she will explain your chances of winning or losing the appeal. There are sometimes ways to get pro bono (free) advice or help with your case.

Appeals are costly and time-consuming. Before deciding to appeal, think about the money you have already spent on your case and the additional money you will need to spend on an appeal. Unless you successfully obtain a Fee Waiver Certificate, you will have to pay registry fees for filing your documents. There are also fees for getting a transcript prepared (if there is a transcript available). These fees can add up to thousands of dollars. If you lose the appeal, you may have to pay the costs of the other party and that can also add up to be hundreds or, in some cases, thousands of dollars. In addition to the monetary cost, you will have to spend a great deal of time learning about the appeal process and preparing your appeal documents.

An appeal is not a new trial

Appeals are very different from trials or applications or administrative hearings. They involve a mix of research, writing and oral advocacy skills. An appeal is not a new trial. For an appeal to be successful, you must show the Court of Appeal that the lower level decision-maker (a judge or tribunal) made a factual or legal error that affected the outcome of your case. You will have to study the law to be able to demonstrate the errors that were made by that decision-maker. You will often need to do your own legal research to fully understand how the law was interpreted and what mistakes were made. You must follow the procedures of the Court of Appeal and meet deadlines or risk having your appeal dismissed.

Think about settling your case

Consider settling your case. Settlement allows you to reach an agreement with the other party instead of having the court impose its decision on you.

Consider what the court will review at the hearing

When reviewing a case, the Court of Appeal looks at whether the decision-maker made a mistake in understanding the facts or interpreting the law. The mistake must have had the effect on the outcome of the case that it led to the incorrect decision being made. Because the Court of Appeal does not hear evidence from witnesses, it can be very difficult for the person who is appealing (the appellant) to convince the appeal judges that the previous decision-maker reached the wrong conclusion about the facts of the case.

1.5 An Appeal is expensive. What kind of help is there?

What if you cannot afford a lawyer?

The Court of Appeal cannot appoint a lawyer to represent you in a civil or family case. However, there are services that can assist you as a self-represented litigant with legal information or free or low-cost representation in the Court of Appeal.

What if you cannot afford to pay filing fees?

If you cannot afford to pay your fees for filing an appeal, you can apply for a fee waiver certificate under *The Fee Waiver Act*.

To obtain a fee waiver certificate, you will have to complete an application form and provide whatever supporting evidence is required by the court. Unless there are special circumstances, you will only be eligible for a fee waiver certificate if:

- you are in receipt of social assistance,
- you are represented by the Saskatchewan Legal Aid Commission, Pro Bono Law Saskatchewan or CLASSIC, or
- your annual household income is not above the low-income cut-off established by Statistics Canada.

If you already have a fee waiver certificate from the lower court or tribunal in the case that you are appealing, you may not need to re-apply.

Even if you obtain a fee waiver certificate, you will still be responsible for some costs (like transcripts, costs of attendance at court, etc.). These costs can amount to hundreds or, in some cases thousands of dollars.

To obtain a fee waiver certificate application form or for more information about fee waiver certificates, please contact the registry office.

1.6 What if you have missed the deadline and are too late to appeal?

IF YOU HAVE MISSED THE DEADLINE FOR FILING YOUR NOTICE OF APPEAL

Unless the statute that applies to the judgment or order that you want to appeal says otherwise, you may apply for an extension of time if you have missed the deadline for filing your notice of appeal. Take the following steps:

1. Prepare a Notice of Application to Extend Time for Appeal in Form 3a with an affidavit that supports your application (explaining why you missed the deadline). You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing to caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. Prepare a draft notice of appeal in Form 1a, a draft order in Form 3b and, if you wish, a brief or sworn affidavit explaining the basis for the proposed extension.
3. Serve a copy of the documents listed in numbers 1 and 2 above on the other party or parties to the proposed appeal at least three days before the chambers date inserted in your notice of application.
4. File a copy of the documents listed in number 1 above and proof that you have served the documents on the other party or parties, at the Court of Appeal's registry office at least three days before the chambers date inserted in your notice of application. At this time, you will also have to file a copy of the lower court's or tribunal's formal judgment or order that you want to appeal and you will have to pay a filing fee of $25.

On the return date of the application (the chambers date inserted in your notice of application), your application will be heard by a single judge in chambers. The other party or parties may appear at the hearing and argue that you should not be given an extension of time.

The judge will normally consider these factors when deciding whether to grant your application

for an extension of time:

1. Did you have a *bona fide* (genuine) intention to appeal before you missed the deadline?
2. Have you acted with reasonable diligence in filing your Notice of Application to Extend Time for Appeal?
3. How long have you delayed?
4. Is there a reasonable excuse for your delay?
5. Does your appeal have merit?
6. Will the other party or parties be prejudiced if you get an extension of time?

IF YOU HAVE MISSED THE DEADLINE FOR FILING YOUR APPLICATION FOR LEAVE TO APPEAL

Unless the statute that applies to the decision that you want leave to appeal says otherwise, you may also apply for an extension of time if you have missed the deadline for filing your application for leave to appeal. Take the following steps:

1. Prepare a Notice of Application to Extend Time for Appeal in Form 3a with an affidavit that supports your application (explaining why you missed the deadline). You will have to modify Form 3a to show that it relates to an application to extend the time to apply for leave to appeal rather than to an application to extend the time to appeal. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing to caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. Prepare a Notice of Application to Obtain Leave to Appeal in Form 4a, a draft notice of appeal in Form 1a, a draft order in Form 3b, a draft order in Form 4b and, if you wish, a brief or sworn affidavit explaining the basis for the proposed extension. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing to caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
3. Serve a copy of the documents listed in numbers 1 and 2 above on the other party or parties to the proposed appeal at least three days before the chambers date inserted in your notices of application.
4. File a copy of the documents listed in numbers 1 and 2 above and proof that you have served the documents on the other party or parties, at the Court of Appeal's registry office at least three days before the chambers date inserted in your notices of application. At this time, you will also have to file a copy of the lower court's or tribunal's formal judgment or order that you want to appeal and you will have to pay a filing fee of $50 ($25 for the application for an extension of time and $25 for the application for leave to appeal).

On the return date of the applications (the chambers date inserted in your notices of application), your applications will be heard by a single judge in chambers. The other party or parties may appear at the hearing and argue that you should not be given an extension of time or that you should not be granted leave to appeal or both.

The judge will normally consider these factors when deciding whether to grant your application for an extension of time:

1. Did you have a *bona fide* (genuine) intention to seek leave to appeal before you missed the deadline?
2. Have you acted with reasonable diligence in filing your Notice of Application to Extend Time forAppeal?
3. How long have you delayed?

4. Is there a reasonable excuse for your delay?
5. Does your appeal have merit?
6. Will the other party or parties be prejudiced if you get an extension of time?

For the factors that the judge will consider when deciding whether to grant your application for leave to appeal, please see How to apply for leave to appeal in Section 2.1.

STEP 2: Prepare Your Documents

2.1 How do you start an appeal?

In Saskatchewan, you do not have a guaranteed right of appeal. There are three situations:

1. your case is of a type where there is no right of appeal at all;
2. your case is one where you have to ask a judge of the Court of Appeal for permission to appeal the case (called "leave to appeal"); or
3. you have an automatic right of appeal.

You need to think about these questions first to know which documents to prepare. Leave to appeal and automatic rights of appeal are discussed in Section 1.2.

HOW DO YOU PREPARE IF YOU NEED LEAVE TO APPEAL?

Do you need leave to appeal?

If you do not have an automatic right to appeal, you must make an application to the court to obtain leave (permission) to appeal your case. A discussion of whether you need leave to appeal or not can be found in Section 1.2.

How to apply for leave to appeal

Follow these steps:

1. Prepare a Notice of Application to Obtain Leave to Appeal in Form 4a. You must also prepare a draft notice of appeal in Form 1a, a draft order in Form 4b and, if you wish, a brief or sworn affidavit specifying the grounds for seeking leave. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing to caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. Unless the statute that applies to the decision that you want leave to appeal says otherwise, an application for leave to appeal must be made within 15 days after the date of the judgment or order you want to appeal.
3. Serve a copy of the documents listed in number 1 above on the other party or parties to the proposed appeal within 15 days after the date of the judgment or order you want to appeal and at least three days before the chambers date inserted in your notice of application.
4. File a copy of the documents listed in number 1 above and proof that you have served the documents on the other party or parties, at the Court of Appeal's registry office within 15 days after the date of the judgment or order you want to appeal and at least three days before the chambers date inserted in your notice of application. At this time, you will also have to file a copy of the lower court's or tribunal's formal judgment or order that you want to

appeal and you will have to pay a filing fee of $25.

On the return date of the application (the chambers date inserted in your notice of application), your application will be heard by a single judge in chambers (unless the statute that applies to the decision that you want leave to appeal says otherwise). The other party or parties may appear at the hearing and argue that you should not be granted leave to appeal.

The judge will normally consider these factors when deciding whether to grant your application for leave to appeal:

1. Does your appeal have sufficient merit to warrant the attention of the Court of Appeal? Your appeal may not have sufficient merit if it is frivolous, vexatious or destined to fail, or if it will unduly delay or add to the cost of the proceedings.
2. Is your appeal of sufficient importance to warrant the attention of the Court of Appeal? For example, your appeal may be of importance to the state of the law or the administration of justice or raise new or controversial or unsettled issues of practice or points of law.

If you are not granted leave to appeal, the appeal process in the Court of Appeal is over. There is no appeal from a decision that grants or denies leave to appeal (s. 20(3) of *The Court of Appeal Act, 2000*).

2.2 What do you prepare if you have an automatic right to appeal?

Notice of appeal

A notice of appeal is a document that you prepare to advise the court and the other party that you intend to appeal your case. You can find details about notices of appeal in Parts III and IV of *The Court of Appeal Rules* (Civil).

Follow these steps:

1. Prepare a Notice of Appeal in Form 1a.
2. Serve the notice of appeal on the other party or parties to the appeal. Unless the statute that applies to the decision that you want to appeal says otherwise, a notice of appeal must be served within 30 days after the date of the judgment or order you are appealing.
3. File the notice of appeal and proof that you have served it on the other party or parties, at the Court of Appeal's registry office within 10 days after you serve it on the other party or parties. At this time, you will also have to file a copy of the lower court's or tribunal's formal judgment or order that you are appealing and you will have to pay a filing fee of $200.

2.3 After obtaining leave to appeal

If you are granted leave to appeal

If your application for leave to appeal is successful, you will have to serve a Notice of Appeal in Form 1a on the other party or parties to the appeal within 10 days after the date of the order granting you leave to appeal. You will then have to file the notice of appeal and proof that you have served it on the other party or parties, at the Court of Appeal's registry office within 10 days after you serve it on the other party or parties and you will have to pay a filing fee of $200.

2.4 Have the lower court file sent to the court's registry office

You must have the lower court or tribunal send its file to the court's registry office. You can do this by writing to the lower court or tribunal and asking for the file to be transmitted (sent). There may be a fee charged by the lower court or tribunal for this.

2.5 Obtain and file a transcript, if necessary

A transcript is a written record of a court or tribunal hearing. Rules 19, 20 and 21 of *The Court of Appeal Rules* (Civil) provide details about transcripts of evidence.

The first thing that you will have to do is figure out whether there is any transcript available from the court or tribunal hearing that your appeal relates to. There is usually only a transcript where witnesses testified in the proceedings. For most appeals from decisions in Court of King's Bench Chambers, a transcript will not be available. You can find this out for sure by asking the court or tribunal you are appealing from.

If there is no transcript available, your appeal may be an expedited appeal. Expedited appeals are described in Rule 43 and special rules apply. If your appeal is an expedited appeal, you should proceed directly to Section 2.6.

If there is a transcript available, you must try to reach an agreement with the other party or parties about which parts of the transcript are required for the appeal. Certain parts of the transcript are always required – they are listed in Rule 20. If you reach an agreement with the other party or parties about which parts of the transcript are required for the appeal, you must have those parts of the transcript prepared. If you cannot reach an agreement within 30 days after the last party was served with the notice of appeal, you will have to arrange to have the complete transcript prepared.

To arrange to have part or all of the transcript prepared, you will have to contact Transcript Services or another commercial court reporting service to order the transcript and make arrangements to pay for it (preparation of a transcript can cost thousands of dollars). You must do this within 14 days of the expiry of the 30 days you are given to try to reach an agreement on the transcript. The transcript will have to be prepared in the format for transcripts approved by the court. Once the transcript is completed, you must file an electronic copy of it in the court's registry office or have Transcript Services or the commercial court reporting service do so on your behalf.

You may contact Transcript Services by phone at 306-787-4210 or email transcript.services@gov.sk.ca to request for information. You can find contact information for commercial court reporting services in the yellow pages of the telephone book under Court & Convention Reporters. It is a good idea to start by telephoning the court reporting service you choose to get an estimate of the cost for preparation of the transcript. The court reporting service can also tell you at this time what type of deposit you will have to pay and what process you must follow to obtain the transcript.

2.6 Agreement as to contents of appeal book

Once an electronic copy of the transcript is filed in the court's registry office, you must try to reach an agreement with the other party or parties about what you will include in your appeal book and how long you will have to complete your appeal book. You do this by serving the other party or parties with a list of what you think should be in the appeal book and the date by which you intend to complete your appeal book – you need to send this list within 10 days after the electronic copy of the transcript is filed. You should look at Rule 23 for help in preparing this list.

The other party or parties must either agree with your list or send you back a revised list within 10 days after they receive your list.

If you cannot agree on a list of contents and a completion date within 30 days after you serve the

list on the other party or parties, you must apply to the registrar or to a judge in chambers to settle the list of contents of the appeal book or completion date set (contact the registry office at 306-787-5382 or caregistrar@sasklawcourts.ca to find out how to do this).

If your appeal is an expedited appeal, you do not need to reach an agreement about the contents of the appeal book but can put together your appeal book on your own.

2.7 Put together, serve and file your appeal book

If there is a transcript, you will now have either agreed to the contents of the appeal book and its completion date or the registrar or a judge will have set these requirements in response to an application from you.

If your appeal is an expedited appeal and you do not need to reach an agreement about the contents of the appeal book, you must prepare, serve and file your appeal book within 30 days after you filed your notice of appeal.

Rule 23 lists the contents required in your appeal book such as an index, the pleadings from the lower court or tribunal, the judgment or order of the lower court or tribunal, the reasons for the judgment or order, your notice of appeal, the exhibits filed in the lower court or tribunal (whether through witnesses or attached to affidavits) and the transcript, if there is one. The pages of your appeal book must be numbered consecutively in the specific way described in Rule 23.

You cannot include any fresh evidence (new evidence) that was not before the lower court or tribunal in your appeal book.

Rule 24 tells you what your appeal book should look like. The cover must be blue. Both sides of the page may be used. If there are more than 200 sheets of paper in the appeal book (400 pages of material where you are using both sides of the page), you will have to break it into volumes.

Once your appeal book is prepared, you must serve it on the other party or parties to the appeal and file three copies of it (one for each judge who will hear your appeal), with proof of service that you have served it on the other party or parties, at the Court of Appeal's registry office. At this time,you will also have to pay a filing fee of $100.

2.8 Write, serve and file your written argument

At the same time as you serve and file your appeal book, you must serve and file a written argument or factum.

What is a factum?

A party who is represented by a lawyer must prepare, serve and file a formal written argument called a factum. Rules 27 through 31 describe what a factum must contain and look like in great detail, including the substance required, page length, colour, font size, spacing, margins, etc.

What is a written argument?

If you are not represented by a lawyer, you may, but do not have to file a formal factum. Instead, at the same time as you serve your appeal book, you may serve a written argument which should be no longer than 40 pages in length. Your written argument should explain what your appeal is all about. Although you are not bound by the strict rules which apply to a factum, it may be useful to include the following parts in your written argument, which are also required in a factum:

1. an introduction summarizing the context for the appeal.
2. a concise summary of the facts.
3. a concise argument on the points of law or fact raised by the appeal and explaining the errors you say were made.
4. a statement of the precise order that you want the court to make, including on costs.

When you file three copies of your appeal book, you must also file three copies of your written argument or factum with proof of service that you have served it on the other party or parties.

Respondent's factum or written argument

The other party must serve and file a factum (if they have a lawyer) or written argument within 30 days after receiving your appeal book unless your appeal is an expedited appeal in which case the time period for serving and filing a respondent factum or written argument is shortened to 15 days.

If you are the person responding to an appeal (the respondent), you should read the Guidebook for Respondents.

2.9 Scheduling the appeal for hearing

Once the registrar has received all of the parties' factums or written arguments, he or she will schedule your appeal for hearing. Hearing dates are usually about six to eight weeks after the last factum or written argument is filed. The registrar will generally consult the parties before setting a hearing date. If you know of an upcoming date or dates when you are not available, you can provide the registrar with this information before a hearing date is set. You may email the registry office at caregistrar@sasklawcourts.ca to provide your availability.

STEP 3: Applications and Hearings

3.1 Making chambers applications

You may decide it is necessary to make certain applications to court before your appeal comes up for hearing. Common types of applications are dealt with in Section 3.2 of this guidebook.

Applications are made in chambers, usually before a single judge. In some instances, the Registrar may also hear applications in chambers. In all chambers applications, evidence is given by affidavit. Applications can be scheduled for any date on which the court sits in chambers. The court sits in chambers in Regina on the second and fourth Wednesday of each month and in Saskatoon five times per year. You can find upcoming chambers dates by telephoning the registry office at 306-787-5382, emailing caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.

How to make a chambers application

Part XIV of *The Court of Appeal Rules* (Civil) tells you how to bring an application in chambers. You must:

1. Prepare a notice of application and draft order in the appropriate forms. If there are no specific forms for the application that you want to make, you will have to modify other Court of Appeal forms to meet your purpose. The Court of Appeal website at sasklawcourts.ca provides forms in both PDF or Word versions so you may edit the documents or provide additional information. You will need to insert a

chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website(www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. If you intend to rely on facts at the hearing of the application, prepare or obtain a sworn affidavit to set out those facts.
3. Serve a copy of the notice of application, draft order, sworn affidavit and any other document that you intend to rely upon, such as a brief or written argument, on the other party or parties to the appeal at least three days before the chambers date inserted in your notice of application.
4. File a copy of the documents listed in number 3 above and proof of service that you have served the documents on the other party or parties, at the Court of Appeal's registry office at least three days before the chambers date inserted in your notice of application. At this time, you will have to pay a filing fee of $25.

It is a good idea to check with the other party or parties before inserting a chambers date in your notice of application to ensure that they are available at that time.

How to reply to a chambers application

You have an opportunity to reply to another party's application. If you intend to rely on facts to reply to the application, you must prepare or obtain an affidavit setting out those facts. If you intend to make an argument in reply to the application, you may wish to put your argument in writing. In either case, you must:

1. serve a copy of your sworn affidavit or argument on the other party or parties to the appeal at least one full day before the chambers date.
2. file a copy of your sworn affidavit or argument with proof of service that you have served them at the Court ofAppeal's registry office at least one day before the chambers date.

What orders can a chambers judge make?

If you bring an application before a single judge in chambers, make sure that the judge has the ability to do what you are asking. In the Court of Appeal, some things must be decided by the court (a panel of three judges) and some things can be decided by a single judge. Section 20 of *The Court of Appeal Act, 2000* tells you what a chambers judge can do. Generally speaking, a judge in chambers can make an order that is incidental to the appeal and does not involve a decision of the appeal on the merits.

What orders cannot be made by a chambers judge?

Any order described as being one that must be made by "the court" cannot be made by a chambers judge alone. So, for example, a chambers judge cannot decide an intervenor application (Rule 17) or an application to adduce fresh evidence (Rule 59). In addition, a chambers judge cannot quash an appeal (Rule 46.1) or dismiss an appeal for want of prosecution (Rule 46).

What orders can the registrar make in chambers?

The registrar can hear and determine applications under Rules 10(2), 18, 22(5), 28(1), 34(1) and 43(3) as indicated in Practice Directive #9. These type of applications could include settling the contents of the appeal book or seeking to extend the length of the factum.

What orders cannot be made by the registrar in chambers?

Similar to a single judge in chambers, any order described as being one that must be made by "the court" cannot be made by the registrar. The registrar is also not able to make any orders that involve a decision on the appeal on the merits. So, for example, the registrar cannot decide a leave application (Rule 49) or an application to extend time to appeal (Rule 71).

HOW TO PREPARE FOR THE CHAMBERS HEARING

Get organized

With very rare exceptions, chambers hearings are open to the public. It is a good idea to watch a chambers hearing before you conduct your own; it will give you a better understanding of court procedure, and how you should best conduct your application. Because the court does not have chambers every day, you should contact the court's registry office at 306-787-5382 or caregistrar@sasklawcourts.ca to find out when would be a good day to watch a chambers hearing.

The most important thing to remember about getting ready for a court hearing is that you need to be organized. It is a good idea to make notes about how you want to present the details of your application.

You may also want to talk with a lawyer about how to present and argue your application at the hearing. There are sometimes ways to get pro bono (free) advice or help with your case.

What happens in chambers?

On the date of the chambers hearing, you can appear either remotely (by Webex video or telephone) or in person. If you intend to appear by Webex video or telephone, you must contact the registry office at 306- 787-5382 or caregistrar@sasklawcourts.ca prior to the chambers date to confirm this so the staff can provide you the connection details.

In advance of chambers, the registry staff may contact you by email or by phone to advise of a change in date or time and connection details if you wish to appear remotely. On the chamber date, there will be a clerk in chambers, sitting at the front of the room between you and the judge's seat. If you are appearing in person, you should come a bit early so that you can introduce yourself to the clerk and ask questions if you have any concerning procedure. If you are appearing remotely, make sure to dial into Webex or call in by phone about 10 minutes early to make sure there are no audio or video connection issues.

After everybody has arrived and introduced themselves to the clerk and when it is time for chambers to start, the clerk will leave the chambers room and will come back in with the judge. You should stand up when the clerk and judge enter the room.

When it is time for your application, you should come up to the counsel table at the front of the public seating area in the chambers room. Usually, the judge will want to hear from the person making the application first and will then hear from the person responding to the application. When you are not speaking to the judge, you can sit down but you should stand up when you are speaking to the judge or when the judge is speaking to you. You do not need to stand if you are appearing remotely.

The judge will have read the documents that you have served and filed on your application so you do not need to read or repeat them. You should try to summarize your argument and answer any questions the judge asks you. If you don't understand a question from the judge, it is okay to ask the judge to ask the question in a different way or to clarify the question.

After the judge finishes hearing the application, he or she may give a decision immediately. This is called an oral decision or a decision from the bench. Or, the judge might "reserve" the decision which means that he or she will provide a written decision at a later date. The Court of Appeal registry office will email or mail the written decision to you when it is released.

The same procedure would apply if you are appearing before the registrar in chambers.

Etiquette in Chambers

You must conduct yourself in a way that is respectful of the dignity of the parties who are conducting their application. The courtroom is a formal setting and your conduct should be polite and respectful to the judge, the other parties, their lawyers and court staff. You must not disrupt or interfere with an application that is being heard.

Note also:

- dress in appropriate clothing (no hats);
- address the judges respectfully using "Justice," "Judge," "Sir,"or "Madam";
- you cannot take photos or videos;
- you cannot record the proceedings in the courtroom or remotely; and
- turn your cellphone off.

3.2 Common applications

APPLICATION FOR LEAVE TO APPEAL

Applications for leave to appeal are discussed in Section 2.1.

APPLICATION FOR AN EXTENSION OF TIME

Applications for an extension of time are discussed in Section 1.6.

APPLICATION TO IMPOSE STAY OF EXECUTION

Bringing an appeal may not automatically stay (stop) enforcement of the order made by the decision-maker below. You will have to look at the statute that applies to the decision you are appealing to see what it says about a stay. If the statute does not say anything about a stay, Rule 15 of *The Court of Appeal Rules* (Civil) will apply. Figuring out whether there is an automatic stay or not can be very difficult – sometimes even for lawyers. If you cannot figure this out on your own, you will have to ask a lawyer for help. The court's registry office staff cannot answer this question for you.

How to make an application to impose a stay of execution

If there is no automatic stay of execution, you may want to apply to have a stay of execution imposed until your appeal is heard and dealt with. Follow these steps:

1. Prepare a Notice of Application to Impose Stay of Execution in Form 5a with an affidavit that supports your application (setting out the facts that support your position that a stay should be imposed). You must also prepare a draft order in Form 5b and, if you wish, a brief of law specifying the basis for seeking the imposition of a stay. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing to caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website

(www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. Serve a copy of the documents listed in number 1 above on the other party or parties to the appeal at least three days before the chambers date inserted in your notice of application.
3. File a copy of the documents listed in number 1 above and proof or service that you have served the documents on the other party or parties, at the Court of Appeal's registry office at least three days before the chambers date inserted in your notice of application. At this time, you will also have to pay a filing fee of $25.

On the return date of the application (the chambers date inserted in your notice of application), your application will be heard by a single judge in chambers. The other party or parties may appear at the hearing and argue that a stay should not be imposed.

As discussed above, a judge in chambers can make an order that is incidental to the appeal and does not involve a decision of the appeal on the merits. If the order to impose a stay has the *effect* of deciding the appeal on its merits, this will be a factor that the judge will consider when deciding whether to impose the stay.

APPLICATION TO MOVE THE APPEAL ALONG (APPLICATION FOR PERFECTION)

You will see throughout this guidebook that there are rules about which documents need to be served and filed and what timelines need to be followed by all parties to an appeal. Once all documents have been served and filed on an appeal, the appeal is called "perfected" and is ready to be scheduled for hearing. If another party to the appeal is not complying with the rules and you want the appeal to be perfected so that it can be scheduled for hearing, you could bring an application for perfection.

Follow these steps:

1. Prepare a Notice of Application to Perfect Appeal in Form 6a with an affidavit that supports your application(explaining what timelines have not been met and what you have done to try to move the appeal forward). Form 6a is set up for use by a respondent so, if you are the appellant, you will have to modify Form 6a to show that. You must also prepare a draft order in Form 6b and, if you wish, a brief specifying the basis for the application. You will need to insert a chambers date into your notice of application. You can find out when the court's next chambers dates are by telephoning the registry office at 306-787-5382, emailing caregistrar@sasklawcourts.ca or by checking the Courts of Saskatchewan website (www.sasklawcourts.ca), under Court of Appeal – Annual Sitting Schedule.
2. Serve a copy of the documents listed in number 1 above on the other party or parties to the appeal at least three days before the chambers date inserted in your notice of application.
3. File a copy of the documents listed in number 1 above and proof of service that you have served the documents on the other party or parties, at the Court of Appeal's registry office at least three days before the chambers date inserted in your notice of application. At this time, you will have to pay a filing fee of $25.

On the return date of the application (the chambers date inserted in your notice of application), your application will be heard by a single judge in chambers. The other party or parties may appear at the hearing to oppose your application.

On an application for perfection, if the party applying has complied with the rules and the other party has not, the chambers judge will likely make an order setting out specific dates by which specific documents must be served and filed. The judge may also order that if the specific documents are not served and filed by the specific dates set, the applicant may apply to a panel of the court to have the appeal dismissed.

3.3 Abandoning your appeal

If you have filed a notice of appeal but decide you do not want to go ahead with it, you have to file a notice of abandonment in Form 8. You will need to fill out the form, serve it on the other party or parties to the appeal and file it with proof of service at the registry office.

Except in rare situations, you cannot re-open your appeal once it is abandoned.

3.4 How to prepare for the appeal hearing

Get organized

With very rare exceptions, Court of Appeal hearings are open to the public. It is a good idea to watch an appeal hearing before you conduct your own; it will give you a better understanding of court procedure, and how you should best conduct your appeal. Because the court does not hear appeals every day, you should contact the court's registry office at 306-787-5382 or caregistrar@sasklawcourts.ca to find out when would be a good day to watch an appeal hearing.

The most important thing to remember about getting ready for a court hearing is that you need to be organized. It is a good idea to make notes about how you want to present the details about your case including, for example, the facts that you believe the decision-maker misunderstood, the law that you are relying on, the transcript paragraphs you will be referring to, and so on.

You may also want to talk with a lawyer about how to present and argue your appeal at the hearing. There are sometimes ways to get pro bono (free) legal advice or help with your case.

When the hearing is scheduled by the Court, you will receive a Notice of Hearing either by email or mail providing the date and time for the hearing. The notice will also explain that you may appear for the hearing in person or remotely (by Webex video or telephone). You will need to contact the registry office by telephone at 306-787-5382 or by email at caregistrar@sasklawcourts.ca to advise if you wish to appear remotely for the hearing. The Registry staff will provide you the connection details for the hearing.

3.5 What happens at the hearing

At the hearing

On the hearing date, the court may be hearing more than one appeal. There will be a clerk in court, wearing a black robe and sitting at the front of the room between you and the bench where the judges sit. You should come a bit early so that you can introduce yourself to the clerk and find out if there is more than one appeal scheduled for hearing that day. If you are appearing remotely, make sure to dial into Webex or call in by phone about 10 minutes early to make sure there are no audio or video connection issues.

After everybody has arrived and introduced themselves to the clerk and when it is time for court to start, the clerk will leave the courtroom and will come back in with three judges. You should stand up when the clerk and judges enter the room. You are not required to stand if you are appearing remotely.

When it is time to argue your appeal, you should come up to the counsel table at the front of the public seating area in the courtroom. As the appellant, you will sit to the left of the podium or lectern on the counsel table. Usually, the judges will want to hear from the appellant first and willthen hear from the respondent. When you are not speaking to the judges, you can sit down; but, you should stand up when you are speaking to the judges or when a judge is speaking to you. If you appear remotely, you will want your audio unmuted when you are speaking and

muted when the respondent is speaking.

The judges will have read the documents that have been served and filed on the appeal so you do not need to read or repeat them in court. You should try to summarize your argument and answer any questions a judge asks you. If you don't understand a question from a judge, it is okay to ask the judge to ask the question in a different way or to clarify the question.

- As the appellant, you will make your presentation to the judges first. You should present a summary of how you believe the previous decision-maker made a mistake in either the interpretation of the law or the facts presented below. You should not attempt to simply re-argue the case that you made in the court or tribunal below. You should focus on what you say were the key errors made by the judge or tribunal.
- Your presentation should normally follow what you have set out in your written argument or factum. In other words, your written argument or factum is your "presentation guide" and it is helpful to follow the important points that you have highlighted throughout your written argument or factum. Doing so will keep you on track during your presentation and remind you of the points that you plan to cover.
- Once your presentation is finished, the respondent makes his or her presentation. The respondent's presentation will focus on proving that the previous decision-maker made the correct decision and that the grounds of appeal advanced by you are without merit.
- You have an opportunity to reply to address issues raised by the respondent that you did not address during your initial presentation. If you reply, you cannot repeat anything that you have already said. This is not a time to repeat or emphasize your position on the appeal; it is a chance to address new issues raised by the respondent.

Courtroom etiquette

You must conduct yourself in a way that is respectful of the dignity of the parties who are conducting their appeal. The courtroom is a formal setting and your conduct should be polite and respectful to the judges, the other parties, their lawyers and court staff. You must not disrupt or interfere with an appeal that is being heard.

Note also:

- dress in appropriate clothing (no hats);
- address the judges respectfully using "Justice," "Judge," "Sir,"or "Madam";
- you cannot take photos or videos;
- you cannot record the proceedings in the courtroom or remotely; and
- turn your cellphone off.

3.6 Introducing Evidence (New or Fresh Evidence)

In general, you cannot introduce new or fresh evidence on an appeal. You must rely on the evidence that you or the other party or parties submitted in the previous proceedings. However, you may introduce new or fresh evidence with leave (permission) from the panel of the court hearing the appeal. Rule 59 provides details about how to bring an application to court to decide this issue.

These are the general principles the court will consider on your application to admit fresh evidence:

1. the evidence will generally not be admitted if you could have introduced it at trial;
2. the evidence must be *relevant* in the sense that it relates to a decisive or potentially decisive issue in the case;
3. the evidence must be *credible* in the sense that it is reasonably capable of belief; and

4. if believed, the evidence must be such that it could reasonably, when taken with the other evidence introduced, be expected to have affected the result.

STEP 4: After the Hearing

4.1 Getting judgment

The judgment

The Court of Appeal may:

- dismiss your appeal (confirm the decision of the previous decision-maker);
- allow the appeal and order a new trial or hearing; or
- allow the appeal and change the previous order.

The judges will sometimes give their decision immediately after hearing the appeal. This is called an oral decision or a decision from the bench. Other times, the judges will "reserve" their decision, which means that they will provide a written decision at a later date.

The Court of Appeal registry office will email or mail the written decision when it is released.

Further appeals

The Court of Appeal's decision is final unless the Supreme Court of Canada in Ottawa agrees to hear your case. Further information can be found on its website. Here is contact information for the Supreme Court of Canada:

Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

registry-greffe@scc-csc.ca
613-996-8666
1-888-551-1185
Fax: 613-996-9138

4.2 Costs

The court and its judges have the discretion to award costs of a chambers application and of an appeal and each case is decided individually. These costs cover a portion of the expenses incurred on the application or appeal. If you are not successful, you usually have to pay costs to the other party or parties and this can amount to hundreds or, in some cases, thousands of dollars.

The scale of costs is set out in the Tariff in *The Court of Appeal Rules* (Civil).

4.3 Court orders

Drafting the order

An order needs to be prepared when a judge has given a decision in chambers and a judgment needs to be prepared when the court has given a decision after the appeal hearing. The parties,

not the court, are responsible for preparing an order or judgment. Any party can prepare the order or judgment, but usually the successful party does so.

You draft an order by starting with the draft order served and filed on the chambers application and making any changes to it that are necessary based on what the chambers judge decided. You draft a judgment by starting with one of Form 10a, Form 10b, Form 10c or Form 10d and making any changes to it that are necessary based on what the court decided.

After you draft the order or judgment, you must serve a copy of the proposed order or judgment on the other party or parties to the appeal so that they can raise (with the registrar) any concerns that they have about whether the order or judgment is consistent with the decision made by the judge or the court (Rule 57.1). They have at least three days to do this.

Once you have given the other party or parties at least three days to raise concerns with the registrar, you can file the order or judgment with proof of service that you have served the document on the other party or parties, at the Court of Appeal's registry office. You will need to file as many copies of the order or judgment as you want returned to you, plus one for the court's file. At this time, you will have to pay an issuing fee of $20.

Enforcing your court order or judgment

There are different ways to enforce a court order or judgment, depending on what was ordered and whether the other parties are willing to comply. You might need to return to court to take enforcement proceedings if the other parties do not willingly comply with the decision of the Court of Appeal. All enforcement proceedings take place in the court where the matter originally commenced. An overview of your options is available on the Court of King's Bench website under Enforcing Orders at https://sasklawcourts.ca/kings-bench/enforcing-orders/. A lawyer can advise you which options are best.