Guidebook for Respondents (Civil & Family Matters)

STEP 1: How to Respond to an Appeal

1.1 What is an appeal

What is an appeal?

At the conclusion of a proceeding in a lower court, such as the Saskatchewan Court of King's Bench, 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.

An appeal *is not* a new trial or a rehearing of the 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, the appellant must ask the permission of the court to appeal through a process called "leave to appeal." Even if the Court of Appeal hears the appeal, it will not:

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

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

1.2 Does the appellant have a right to appeal?

There is no right to appeal a lower court or tribunal decision to the Court of Appeal, unless a statute gives that right. An appellant must read the applicable statute to understand whether there is a right to appeal a decision and, if so, how to appeal and the procedural timelines that must be followed. 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 thata 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 there is a right to appeal or whether leave (permission) to appeal is required can be very difficult – sometimes even for lawyers. If an appellant cannot figure this out on his or her own, he or she will have to ask a lawyer for help. The court's registry office staff cannot answer this question.

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 Saskatchewan Court of King's Bench to the Court of Appeal.

If an appellant does not have an automatic right to appeal, he or she must make an application to the court to obtain leave (permission) to appeal. For example, interlocutory decisions from the Court of King's Bench cannot be appealed to the Court of Appeal without leave.

Decisions from Small Claims Court or the Office of Residential Tenancies

A party 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.

Decisions from Saskatchewan administrative tribunals

Some decisions from 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. An appellant must read the

applicable statute to understand whether he or she has a right to appeal a decision and, if so, how to appeal and the procedural timelines that must be followed.

What the Court of Appeal 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 of the case or interpreting the law. The mistake must have had the effect on the outcome of the case that it led to an 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.

1.3 What happens to the order being appealed?

Bringing an appeal will not automatically stay (stop) enforcement of the order or judgment made by the decision-maker below. If it is necessary, the appellant 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. 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.

If there is no automatic stay, an appellant may choose to make an application to impose a stay in chambers to a judge of the Court of Appeal. You can find more information about how to make these applications in Section 2.2.

1.4 How do I respond to an appeal?

Two types of appeals

In Saskatchewan, there is not always a guaranteed right of appeal. There are three situations:

1. the appellant has no right of appeal at all;
2. the appellant must ask a judge of the Court of Appeal for permission to appeal the case (called "leave to appeal"); or
3. the appellant has an automatic right of appeal.

If the appeal is one where leave to appeal is required, the appellant will serve you with 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 4b and possibly a brief of law specifying the grounds for seeking leave.

If the appeal is one where leave to appeal is not required (where there is an automatic right of appeal) then no such application is required and the appellant will serve you with a notice of appeal in Form 1a. The question of what right the appellant has to appeal is discussed in Section 1.2.

If the appellant missed the deadline for filing a notice of appeal or application for leave to appeal

The appellant may apply for an extension of time if he or she missed the deadline (usually 30 days) for filing a notice of appeal. The appellant will serve you with application documents at least three days before a hearing by a single judge in chambers (the chambers date will be in the Notice of Application to Extend Time for Appeal).

If you intend to oppose the appellant's application, you may respond by serving and filing your own affidavit or argument with proof of service at least one day before the chambers date. Alternatively, you can simply appear on the chambers date and make an oral argument.

The application for an extension will be heard by a Court of Appeal judge in chambers. The appellant will present reasons why an extension should be granted. As the respondent, you will be able to present reasons why the extension should not be granted. After your presentation, the appellant may have an opportunity to reply to your presentation.

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

1. Did the appellant have a *bona fide* (genuine) intention to appeal before missing the deadline?
2. Did the appellant act with reasonable diligence in filing a Notice of Application to Extend Time for Appeal?
3. How long did the appellant delay?
4. Is there a reasonable excuse for the appellant's delay?
5. Does the appeal have merit?
6. Will you (the respondent) be prejudiced if the appellant gets an extension of time?

1.5 If the appellant applies for leave to appeal

If the appellant is applying for leave to appeal, he or she must serve you with 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 4b and possibly a brief of law specifying the grounds for seeking leave. Unless the statute that applies to the decision being appealed says otherwise, service of these documents on you must be made within 15 days after the date of the judgment or order the appellant wants to appeal and at least three days before the chambers date (the chambers date will be in the Notice of Application to Obtain Leave to Appeal).

If you intend to oppose the appellant's application for leave to appeal, you may respond by serving and filing your own affidavit or argument with proof of service at least one day before the chambers date. Alternatively, you can simply appear on the chambers date and make an oral argument.

The leave application will be heard by a Court of Appeal judge in chambers. The appellant will present reasons why leave should be granted. As the respondent, you will be able to present reasons why leave to appeal should not be granted. After your presentation, the appellant may have an opportunity to reply to your presentation.

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

1. Does the appeal have sufficient merit to warrant the attention of the Court of Appeal? The 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 the appeal of sufficient importance to warrant the attention of the Court of Appeal? For example, the 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 the chambers judge grants the appellant leave to appeal, the appeal process continues. There is no appeal from a decision that denies leave to appeal (s. 20(3) of *The Court of Appeal Act, 2000*).

If the appellant missed the deadline for filing the application for leave to appeal

The appellant may apply for an extension of time if he or she missed the deadline (usually 15 days) for making an application for leave to appeal. This application is usually made at the same time that the appellant is applying for leave to appeal.

The appellant will serve you with a Notice of Application to Extend Time for Appeal in Form 3a and may include an affidavit that supports the application. The appellant will have modified 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. The appellant will also serve you with 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 possibly a brief of law explaining the basis for the proposed extension. All of these documents will be served on you at least three days before the chambers date (the chambers date will be in the Notice of Application to Extend Time for Appeal and the Notice of Application to Obtain Leave to Appeal).

If you intend to oppose the appellant's applications for an extension of time and for leave to appeal, you may respond by serving and filing your own affidavit or argument with proof of service at least one day before the chambers date. Alternatively, you can simply appear on the chambers date and make an oral argument.

The applications will be heard by a Court of Appeal judge in chambers. The appellant will present reasons why an extension of time and leave should be granted. As the respondent, you will be able to present reasons why neither an extension of time nor leave to appeal should be granted. After your presentation, the appellant may have an opportunity to reply.

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

1. Did the appellant have a *bona fide* (genuine) intention to seek leave to appeal before missing the deadline?
2. Did the appellant act with reasonable diligence in filing a Notice of Application to Extend Time for Appeal?
3. How long did the appellant delay?
4. Is there a reasonable excuse for the appellant's delay?

5. Does the appeal have merit?
6. Will you (the respondent) be prejudiced if the appellant gets an extension of time?

1.6 The appellant serves a notice of appeal

If the appellant has an automatic right of appeal he or she will serve you with a notice of appeal in Form 1a. Unless the statute that applies to the decision under appeal says otherwise, a notice of appeal must be served within 30 days after the date of the judgment or order the appellant is appealing.

If the appellant did not have an automatic right of appeal but was given leave to appeal, he or she must serve you with a notice of appeal in Form 1a within 10 days after the date of the order granting leave to appeal.

1.7 A transcript may be prepared

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. There is usually only a transcript where witnesses testified in the proceedings so, for most appeals from decisions in Court of King's Bench Chambers, a transcript will not be available.

If there is no transcript available, the appeal may be an expedited appeal. Expedited appeals are described in Rule 43 and special rules apply.

If there is a transcript available, the appellant must try to reach an agreement with you 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 appellant about which parts of the transcript are required for the appeal, the appellant must then have those parts of the transcript prepared. If the parties cannot reach an agreement within 30 days after the last party was served with the notice of appeal, the appellant will have to arrange to have the complete transcript prepared.

Once the transcript is completed, the appellant must file an electronic copy of it in the court's registry office or have Transcript Services or the commercial court reporting service that prepared the transcript do so on the appellant's behalf.

1.8 The appeal book

An agreement as to the contents of the appeal book

Once an electronic copy of the transcript is filed in the court's registry office, the appellant must try to reach an agreement with you about what the appellant will include in the appeal book and how long the appellant will have to complete the appeal book. The appellant will do this by serving you (within ten days after the electronic copy of the transcript is filed) with a list of what the appellant thinks should be in the appeal book and the date by which the appellant intends to

complete the appeal book. You should look at Rule 23 to see what should be on the appellant's list.

You must either agree with the appellant's list or send the appellant back a revised list by serving the appellant with a revised list within ten days after you received the appellant's list. You should not be unreasonable or you may end up paying costs to the appellant.

If the parties cannot agree on a list of contents and a completion date within 30 days after the appellant serves you with his or her list, the appellant must apply to the registrar or to a judge to have 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 the appeal is an expedited appeal, the appellant does not need your agreement about the contents of the appeal book.

The preparation and service of the appeal book

The appellant must serve you with the appeal book either by the day you agreed to or by the day the registrar or a judge ordered or, if the appeal is an expedited appeal, within 30 days after the appellant filed his or her notice of appeal.

Rule 23 lists the contents required in the 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, the 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 the appeal book must be numbered consecutively in the specific way described in Rule 23.

The appellant cannot include any fresh evidence that was not before the lower court or tribunal in the appeal book.

Rule 24 tells you what the 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), the appellant will have to break it into volumes.

1.9 The appellant's factum or written argument

At the same time as the appellant serves you with the appeal book, he or she will serve you with a factum (if he or she is represented by a lawyer) or a written argument.

If the appellant is represented by a lawyer

If the appellant is represented by a lawyer, the lawyer will prepare 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.

1.10 Write, serve and file your written argument

You must serve and file a written argument within 30 days after receiving the appeal book and the appellant's factum or written argument unless the appeal is an expedited appeal in which case your time period for serving and filing a written argument is shortened to 15 days.

What is a written argument?

If you are not represented by a lawyer, you do not have to file a formal factum. Instead, within 15 or 30 days after receiving the appeal book and the appellant's factum or written argument, you must serve the appellant with a written argument, which is no longer than 40 pages. Your written argument is your response to the appeal. 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:

1. an introduction summarizing the main reasons why the appeal should not succeed;
2. a concise summary of your position on the facts stated in the appellant's factum or written argument and a concise statement of any other facts that were before the court or tribunal below that you consider relevant;
3. a concise argument on the points of law or fact raised by the appeal; and
4. a statement of the precise order that you want the court to make, including on costs.

You must file three copies of your written argument (at least one of which has an original signature on it) with proof that you have served it on the other party or parties.

1.11 Scheduling the appeal for hearing

Once the registrar has received all of the parties' factums or written arguments, he or she will schedule the 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 but, if you know of an upcoming date or dates when you are not available, you can contact the registrar with this information before a hearing date is set.

STEP 2: Applications and Hearings

2.1 Making chambers applications

You may decide it is necessary to make certain applications to court before the appeal comes up for hearing. Common types of applications are dealt with in Section 2.2 of this guidebook.

These applications are made in chambers, 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 calling the registry office at 306-787-5382, by 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. 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 an affidavit to set out those facts.
3. Serve a copy of the notice of application, draft order, affidavit and any other document that you intend to rely upon, such as a brief of law 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 affidavit or argument on the other party or parties to the appeal at least 1 day before the chambers date.
2. File a copy of your affidavit or argument with proof of service that you have served them at the Court of Appeal's registry office at least 1 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 chambers judge 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 A CHAMBER 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. 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.

2.2 Common applications

APPLICATION FOR LEAVE TO APPEAL

Applications for leave to appeal are discussed in Section 1.5.

APPLICATION FOR AN EXTENSION OF TIME

Applications for an extension of time are discussed in Section 1.4 and Section 1.5.

APPLICATION TO IMPOSE 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, the appellant may want to apply to have a stay of execution imposed until the appeal is heard and dealt with. The appellant would follow the steps set out in Section 3.2 of the Guidebook for Appellants.

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). You must also prepare a draft order in Form 6b and, if you wish, a brief of law 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 documents are not served and filed by the dates set, the applicant may apply to a panel of the court to have the appeal dismissed.

2.3 How to prepare for the 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 respond to the 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 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 respond to the appeal at the hearing. There are sometimes ways to get pro bono (free) 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.

2.4 What happens at the hearing

At the hearing

On the hearing date, the court might 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 the appeal that you are responding to, you should come up to the counsel table at the front of the public seating area in the courtroom. As the respondent, you will sit to the right of the podium or lectern on the counsel table. Usually, the judges will want to hear from the appellant first and will then 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 appellant 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. 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.

- The appellant makes his or her presentation to the judges first. The appellant will present a summary of how he or she believes the decision-maker in the previous hearing misunderstood the facts of the case or made a mistake in interpreting the law.
- You make your presentation next. Your presentation should be directed to showing the earlier decision-maker made no mistakes in its judgment.
- Your presentation should normally follow what you have set out in your written argument or factum. In other words, your written argument is your "presentation guide" and it is helpful to follow the important points that you have highlighted throughout your written argument. Doing so will keep you on track during your presentation and remind you of the points that you plan to cover.
- The appellant has an opportunity to reply to new issues you raised in your presentation.

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.

2.5 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 3: After the Hearing

3.1 Getting judgment

The judgment

The Court of Appeal may:

- dismiss the 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

3.2 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).

3.3 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.