

How To Appeal An Order Made In Small Claims Court

Introduction

This Guidebook provides a step by step procedure that you can follow to appeal an order (decision) made by a judge after a British Columbia Small Claims Court trial.

What is an Appeal?

Small Claims Court appeals are heard by a Supreme Court Judge. Appeals always take the form of a review of what happened at the Small Claims trial. The review is based on a transcript. A transcript is a document prepared by a court reporter. The document contains everything that was said in court.

After reviewing the transcript of the Small Claims Court trial, a Supreme Court Judge could decide to hold a new trial, but that will be very rare. In most cases, after a review of the transcript, and after hearing from the people involved in the lawsuit, the Supreme Court Judge will make a decision.

In making a decision, the Judge can:

1. Make any order the Small Claims Court Judge could have made. In other words, the Judge can allow or dismiss the claim. The Judge could also impose reasonable terms and conditions on the order and make any additional orders that the judge thinks would be just in the case.
2. Award costs to any party to the appeal.

What Can Be Appealed?

To appeal, it is not enough for a person who lost at trial to be unhappy with the result. In order to appeal, a person must show that the Small Claims Court judge, in making the decision, made a mistake about the facts or made a mistake about the law.

Mistakes about the facts

In making a decision, the Small Claims Court judge may have made a mistake about the facts of the case. That is, the evidence given by witnesses at the trial may have been misunderstood by the judge. A judge's mistake about the facts in a case would be grounds for an appeal.

Mistakes about the law

In making a decision, the Small Claims Court judge may have made a mistake about the law which should be applied to the case. If a judge makes an error in the application of the law, that would be grounds for an appeal.

Not every error made by a Small Claims Court judge will be the basis for a successful appeal. The test which the Supreme Court Judge must apply is called the "clearly wrong test". If the Small Claims Court judge's decision about the facts or the law is not clearly wrong, the appeal will fail.

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

How big must the mistake be?

Not every error made by a Small Claims Court Judge will be the basis for a successful appeal. The test which the Supreme Court Judge must apply is called the “clearly wrong test”. If the Small Claims Court judge’s decision about the facts or the law is not clearly wrong, the appeal will fail.

Getting legal help

Trying to determine whether you have grounds for an appeal which might be successful may be difficult. Try to obtain some legal advice. If you are eligible, you may be able to obtain legal advice from a [local legal aid office](#). Click here for the address and telephone number of the Legal Services Society office nearest you. If legal aid can’t help you, they may still be able to refer you to a free legal advice clinic.

You can also obtain legal advice from a lawyer in private practice or through the [Lawyer Referral Service](#). The Service enables members of the public to consult with a lawyer for up to 30 minutes for a fee of \$25. In the Lower Mainland, call 604-687-3221; if you live outside Vancouver, call toll-free 1-800-663-1919. Ask to be referred to a lawyer who has experience with the type of legal problem that was involved in your lawsuit. You may also wish to read “[How to Find a Lawyer and Prepare for Your First Interview with a Lawyer](#).”

Appealing Can Be Very Costly

A number of things make appealing a Small Claims order very costly. First, the person who appeals must pay for having the transcript prepared. Transcripts cost several dollars per page. So, depending on how long the trial lasted, the transcript could be many pages and may cost hundreds of dollars.

Second, unlike after a Small Claims trial, a Supreme Court Judge after an appeal can award costs. The person who wins the appeal, if represented by a lawyer, can be awarded costs to cover part of the lawyer’s fees. The person who loses must pay those costs. Again those costs could easily be in the thousands of dollars.

Third, the cost of filing an appeal, and posting security for costs will be a minimum of \$400 (unless a Judge orders that such fees will not have to be paid; See Step 4).

Laws that Apply to Appeals

The law which governs appeals includes:

1. [The Small Claims Act, sections 5 to 15](#);
2. [Rule 18-3 of the Supreme Court Civil Rules](#);
3. [The Practice Direction of the Chief Justice regarding Standard Directions for Appeals from Provincial Court Pursuant to the Small Claims Act](#); and
4. [Decisions of the Supreme Court in cases which have dealt with appeals](#).

Appellants and respondents

At this point, you should learn the meaning of two words. The person who is appealing the Small Claims Court order is called the appellant. The person who won the case in Small Claims Court and against whom the appeal is being made is called the Respondent.

You must act quickly

You have 40 days, beginning on the day after the order being appealed was made, to do all the things required by [Sections 7 to 11 of the Small Claims Act](#). This includes filing the Notice of Appeal. A Supreme Court Judge could extend the time, but you should not count on being given more time.

Steps to Appeal a Small Claims Court Order

The list that follows explains the 15 steps you must take to appeal a Small Claims Court order. On the next page, each of the steps is described in brief and then the rest of this guidebook explains each step in detail.

1. Obtain a copy of the written order made by the Small Claims Court Judge which is being appealed.
2. Obtain and fill in a Notice of Appeal form.
3. File the Notice of Appeal at the Supreme Court Registry closest to the place where the Small Claims Court order was made.
4. At the time of filing the Notice of Appeal, you must:
 - pay a \$200 filing fee (unless you obtain an Order from the Supreme Court reducing the fee);
 - pay \$200 as security for costs (unless you obtain an Order from the Supreme Court reducing that amount). The \$200 may be paid to the Respondent if you lose the Appeal.
 - If you were required to pay money by the Small Claims Court Order that you are appealing, you must either:
 - ✦ deposit the amount required to be paid under the Order at the Supreme Court Registry; or
 - ✦ bring an application to a Supreme Court Judge to reduce that amount. For example, if a Small Claims Court Judge found you liable to pay \$8,000 to the person who sued you and you wish to appeal, you would have to pay \$8,000 to the Court Registry. If you were unable to pay \$8,000, you could apply to a Supreme Court Judge to reduce the amount being deposited.
5. On the same day that the Notice of Appeal is filed in the Supreme Court Registry, a copy of the Notice of Appeal must be filed at the Small Claims Registry where the Order being appealed was made.
6. Within 7 days of filing the Notice of Appeal, serve the Notice of Appeal on each person who was a party to the lawsuit in Small Claims Court who will be affected by the Appeal. If you need more time to serve the Notice of Appeal, you must bring an application to a Supreme Court Judge.
7. Apply to the Registrar for a date for hearing the Appeal. That date cannot be less than 21 days after applying for the date. Before the Registrar will set a hearing date, the Appellant must prove the money to be deposited in Step 4 has been deposited (or an Order has been obtained which reduces the amount required to be deposited).
8. Serve the Notice of Hearing of Appeal on the Respondent. Act quickly. There is a deadline which must be met (unless a Judge grants an Order extending the time). See Step 10.
9. The Appellant must order transcripts of the oral evidence given at trial and the Small Claims Court Judge's reasons for judgment. The Appellant must pay for a copy of the transcript for the Court and one for each party to the appeal. Act quickly. There is a deadline which must be met (unless a Judge grants an Order extending the time). See Step 10.
10. Within 14 days of filing the Notice of Appeal, the Appellant must prove to Registrar that the transcript has been ordered and that the Notice of Appeal and Notice of Hearing of Appeal have been served on the Respondent.
11. Prepare a Statement of Argument.
12. Within 45 days of filing the Notice of Appeal, the Appellant must:
 - File at the Supreme Court Registry the original copy of the transcript and Statement of Argument; and
 - Serve a copy of the transcript and Statement of Argument on the Respondent.

13. At this point, the Respondent will have to prepare a Statement of Argument. The Respondent must file the Statement of Argument at the Supreme Court Registry and deliver a copy to the Appellant not less than 14 days before the hearing of the appeal.

14. Prepare for the hearing.

15. Appear in Court.

Step 1: Obtain a copy of the order

The order is made by the Small Claims Court judge which is being appealed. If you do not already have a copy of the order that you want to appeal, you should go to the Court Registry in the Court House where the order was made. Ask the Clerk for a copy. There may be a small photocopying fee which you will have to pay.

Step 2: Complete a Notice of Appeal form

The Supreme Court Civil Rules say there are two forms you can use. One comes with directions about the steps required for an appeal (Form 74). That is the form referred to in this Factsheet.

[Obtain a blank copy of a Notice to Appeal form.](#)
[View a sample of a completed Notice of Appeal form.](#)

You will see that the form is easy to fill out.

Note:

You may abandon your appeal at any time after you have filed the Notice of Appeal. If you choose to do this, you will need to complete and file a Notice of Abandonment of Appeal and serve it on the Respondent.

[Obtain a blank Notice of Abandonment of Appeal form.](#)
[View a sample of a completed Notice of Abandonment of Appeal form.](#)

Step 3: File the Notice of Appeal

This takes place at the Supreme Court Registry closest to the place where the Small Claims Court Order was made.

Step 4: Pay all fees

This includes the \$200 Filing Fee and \$200 Security for Costs. Also, deposit with the Court Registry the amount of money the Small Claims Court Judge ordered to be paid to the Respondent. Alternatively, bring an application to a Judge to reduce the amounts payable.

If you can afford to pay the amounts required, bring a cheque with you to the Court Registry at the time you wish to file the Notice of Appeal. You can then skip down to Step 5.

If you cannot afford the filing fee, you may want to apply to a Supreme Court Judge to reduce the amount to be paid.

To succeed in reducing the filing fee, you must be able to prove that you are indigent (see [Supreme Court Civil Rule 20-5](#)). The B.C. Court of Appeal has considered the meaning of that word in a case called Johnston v. Johnston. The Court said “indigent” means “a person who has some means but such scanty means that he is needy and poor.”

The Court refused to approve any particular standard for determining whether a person is “indigent”, and each case will be looked at individually. However, if you receive social assistance or persons with disabilities benefits and you prove this to the court, you will be declared indigent.

If you cannot afford to pay the security for costs (or the amount required to be paid to the Respondent by the Small Claims Court Order) you may want to apply to a Supreme Court Judge to reduce the amounts to be paid.

It is not clear what test the Court will apply to succeed in an application to reduce these amounts. However, it is clear that evidence of an inability to pay the amount required will be vital.

To apply to a Supreme Court Judge, you will have to do the following things:

1. Prepare a Notice of Application;
2. Prepare an Affidavit;
3. Make copies of the Notice of Application and Affidavit and file them in the Supreme Court Registry;
4. Appear in Supreme Court Chambers to ask for the Order;
5. Prepare the Order; and
6. File the Order at the Supreme Court Registry.

For details about each of these steps, please continue reading.

Prepare a Notice of Application

A Notice of Application is a document which tells a Judge:

- When a person applying for an Order will be appearing in Court;
- What type of Order the person wants to obtain; and
- What evidence will be used to support the request for an Order.

[Obtain a blank Notice of Application.](#)

[View a sample of a completed Notice of Application.](#)

Prepare an Affidavit

An Affidavit is a document which sets out certain facts which you swear under oath to be true. The Affidavit which you must prepare must contain the following:

1. A statement that you are going to begin an appeal.
2. A copy of the Notice of Appeal.
3. The name and ages of your dependents.
4. A statement of whether you are employed or unemployed.
5. A list of your sources of income e.
6. A list of the names of other people who support you or your dependent(s).
7. A statement of the amount of your income and value of your assets.
8. A statement of your monthly expenses and debts.

[View a sample of a completed Affidavit and a Statement of Income and Assets and Statement of Monthly Expenses.](#)

[Obtain a blank Affidavit form which you can use.](#)

Swear the Affidavit and exhibits

Take the Affidavit (and exhibits) and some picture identification to a lawyer or notary public to swear the Affidavit. You will then sign the Affidavit and swear that the contents of the Affidavit are true. Unless you go to a Legal Services office and are eligible for legal aid, you should expect to pay a fee for swearing the Affidavit. Make two photocopies of the Notice of Application and Affidavit, and of the exhibits.

File the Notice of Application and Affidavit

Take your completed Notice of Application and sworn Affidavit to the Supreme Court Registry. The Clerk will inform you of the date and time you are to appear in Court to speak to the Judge about obtaining your Order. You may also have to pay a special Court fee (around \$80) for applying for an Order to waive the security for costs. Remember, if you are not indigent and are not asking a Judge to waive the filing fees, you will have to pay those fees. That is, you will have to pay a \$200 filing fee.

Appear in court

You must attend Court on the date which has been set for you to appear. Be sure to arrive at least 15 minutes early.

The person presiding in Court may either be a Supreme Court Judge or a Master. Ask the Clerk whether you will be appearing in front of a Master or a Judge. When speaking to a Master, call him or her “Your Honour.” When speaking to a Judge call him “My Lord” or her “My Lady.”

When your case is called, you should stand up and go to the front of the Courtroom. Remain standing and say:

“Your Honour (or My Lord or My Lady) my name is _____. I want to appeal an Order made by a Small Claims Court Judge. I cannot afford to pay the security for costs” [and if appropriate] “and the money required to be paid under Section 8(2) of the Small Claims Act, and the filing fees.”

“I am making this application to ask you to make an Order to reduce the amount which I must pay into Court.”

“Also, because of the time it will take to prepare an Order, I am asking for an extension of time to serve the Notice of Appeal and Notice of Hearing of Appeal.”

The Master or Judge will read your Affidavit and may ask you some questions including what the Small Claims Trial was about and why you are appealing. The Master or Judge will then either grant or refuse the Order you are seeking.

Prepare an Order

If you succeed, you must prepare an Order. An Order is a written document which sets out in a formal way what the Master or Judge stated in Court.

[Obtain a blank Order form.](#)

[View a sample of a completed Order.](#)

File the Order

After preparing the Order, make a photocopy of it. Take the original and copy and file them at the Court Registry. Within a few days, your Order (if it was correctly prepared) should be signed by the Court staff and be ready for you to pick up.

Step 5: File the Notice of Appeal

Do so in Small Claims Court on the same day it was filed in Supreme Court. When you file the Notice of Appeal, be sure to attach the [Supreme Court Practice Direction, Standard Directions for Appeals from Provincial Court pursuant to the Small Claims Act.](#)

[Section 7 of the Small Claims Act](#) says that the Notice of Appeal must be filed in the Small Claims Court Registry on the same day that it is filed in the Supreme Court Registry. However, in a case decided in 1993 called *First City Trust v. Bridges Café Ltd.*, the court recognized that in certain places in British Columbia the distance between the location of the Supreme Court Registry and the Small Claims Registry was so great as to make it very difficult to comply with Section 7.

In that case, the filing took place on the next day. The Court held that the right of appeal would not be lost, even if the filing did not occur on the same day, as long as the Respondent was not prejudiced. Therefore, every reasonable effort should be made to file the Notice of Appeal in the Small Claims Court Registry on the same day or at the latest the day after the Notice of Appeal was filed in Supreme Court Registry.

Step 6: Serve the Notice of Appeal

Within 7 days of filing the Notice of Appeal, serve the Notice of Appeal on each person who was a party to the lawsuit in Small Claims Court who will be affected by the Appeal. If you need more time to serve the Notice of Appeal, you must bring an application to a Supreme Court Judge. See Step 4 above.

The Appellant can serve the Notice of Appeal, or can have a process server or a friend give the documents to the Respondent. If you decide on using a process server, look in the [yellow pages](#) under “Process Servers.” To save money you should telephone several process servers to get quotes about how much it will cost to have the documents served because prices vary. You should also confirm that the process server will provide you with a sworn Affidavit of Service. An Affidavit of Service is a document that proves to the Court that the documents were served on the Respondent.

The person who is going to serve the document should be given two copies of the document. They should compare the two copies to ensure that they are the same. This is because one copy will be given to the Respondent to be served and the second copy will be attached to an Affidavit of Service. In the Affidavit of Service the person serving the document will be swearing that they gave a copy of the document to the Respondent. Unless they first compare the documents, they will not know that the copy of the documents attached to the Affidavit of Service are the same as those given to the Respondent.

If the person delivering the documents does not already know the Respondent, they should confirm that the documents are being given to the right person. This can be done simply by asking the name of the person being given the documents.

After leaving a copy of each document with the Respondent to be served, the person serving the document must make a note of the time, date, and place (street address, city, and province) where the documents were served. This information will be needed to prepare an Affidavit of Service.

Note:

If you need more time to serve the Notice of Appeal, you will have to get an Order to allow you more time. See Step 4 above.

Also note: Step 8 requires that a Notice of Hearing of Appeal must be served on the Respondent. Step 7 tells you how to prepare a Notice of Hearing of Appeal. If possible try to arrange to have the Notice of Appeal and Notice of Hearing of Appeal served at the same time. That will be more convenient and save money if you are using a process server.

IF YOU ARE THE RESPONDENT and have a Notice of Appeal served on you and you wish to oppose the appeal, you must:

1. Complete a Notice of Interest Form 70.
2. File the Notice of Interest at the Registry named on the Notice of Appeal.
3. Serve a copy of the Notice of Interest on the Appellant at the address set out on the Notice of Appeal.
4. Act quickly, as you must file and serve your Notice of Interest within a certain number of days from when the Notice of Appeal was served on you. The time you are given is based on where you reside.
 - If you reside in BC, you must file and serve within 7 days.
 - If you reside anywhere else in Canada, you must file and serve within 21 days.
 - If you reside in the USA, you must file and serve within 28 days.
 - If you reside outside Canada and the USA, you must file and serve within 42 days.

[Obtain a blank Notice of Interest form.](#)
[View a sample of a completed Notice of Interest form.](#)

View the sample. You will see that the form is very easy to complete.

Step 7: Apply to the Registrar

Apply for a date for hearing the Appeal. That date cannot be less than 21 days after applying for the date. Before the Registrar will set a hearing date, the Appellant must prove the money to be deposited in Step 4 has been deposited (or an Order has been obtained which reduces the amount required to be deposited).

Note:

If you fail to file the deposit or any proof or documents required within the time limits, the Respondent may apply to have your appeal dismissed summarily (without a hearing) or apply for an order to have the Small Claims order under appeal no longer suspended. This would mean you would have to begin payment as indicated on the Small Claims order or you could risk garnishment (see [Factsheet 19](#)) and potentially lose your right to appeal the Small Claims order.

This step requires you to prepare a Notice of Hearing of Appeal. It is a very simple document.

[Obtain a blank Notice of Hearing of Appeal form.](#)
[View a sample of a completed Notice of Hearing of Appeal form.](#)

To prepare a Notice of Hearing of Appeal, merely fill in the name of the Appellant after the word “Between:” Then fill in the name of the Respondent after the word “And:”. Make a photocopy.

Then go to the Supreme Court Registry. Take with you the money required under Step 4 or a copy of the order you obtained in Step 4. Also take the Notice of Hearing of Appeal and the photocopy. The Registry staff will insert on the Notice of Hearing of Appeal the date the hearing will take place and give you back a stamped copy. If the registry staff asks you for a time estimate, simply reply “As a layperson, I am unable to estimate the time the appeal will take”.

Then make one photocopy of the completed Notice of Hearing of Appeal for yourself, and two for each Respondent. One copy for the Respondent will be given to the Respondent and a second will be attached to an Affidavit of Service.

Step 8: Serve Documents

Serve the Notice of Hearing of Appeal on the Respondent. Also, serve any order obtained under Step 4. Be sure to act quickly. There is a deadline which must be met (unless a Judge grants an order extending the time). See Step 10 for instructions on how to serve the documents.

Step 9: Appellant: Order and pay for transcripts

The Appellant must order transcripts of the oral evidence given at the Small Claims Court trial and the Judge’s reasons for judgment. The Appellant must pay for a copy of the transcript for the Court and one for each party to the appeal. Act quickly. There is a deadline which must be met (unless a Judge grants an Order extending the time). See Step 10.

Transcripts are prepared by Court Reporters. You will have to make arrangements with the Court Reporters who work in your area of the Province to prepare the transcripts that you will need. To find out who may do the work in your area you may wish to speak to the Court Registry staff. Alternatively, you may wish to telephone Court Reporters listed in the yellow pages under “Reporters-Court & Convention.”

Step 10: Prove documents served

Within 14 days of filing the Notice of Appeal, the Appellant must prove to the Registrar that the transcript has been ordered and that the Notice of Appeal, Notice of Hearing of Appeal, and the Order reducing the amount of money to be paid under Step 4 (if any) have been served on the Respondent.

To prove that the Notice of Appeal, Notice of Hearing of Appeal and Order (if any) have been served, you will need to file an Affidavit of Service. A process server usually will prepare and have sworn an Affidavit of Service as part of the work they do for you. If you or a friend serve the documents, you will have to prepare your own Affidavit of Service. Refer to [Supreme Court Civil Rule 4-3](#) for the process for personal service of a document.

[Obtain a blank Affidavit of Personal Service form.](#)
[Obtain a sample completed Affidavit of Personal Service form.](#)

Have the Affidavit of Service Sworn

When you have completed filling in the blanks on the Affidavit of Service, take it and a copy of the Notice of Appeal, Notice of Hearing of Appeal, and Order (if any), together with the person who served the documents (if you did not serve them yourself), to a lawyer or a Notary Public for swearing.

File the Affidavit of Service

After the Affidavit of Service is sworn, make a photocopy of it (plus the exhibits) and file the originally sworn copy at the Supreme Court Registry.

Step 11: Prepare a Statement of Argument

An Appellant's Statement of Argument is a document which sets out:

1. What the Appellant thinks was wrong with the Small Claims Court Order;
2. Where in the transcript the Small Claims Court Judge made an error in law or in fact; and,
3. What Order the Appellant would like to see the Supreme Court Judge make.

[Obtain a blank copy of an Appellant's Statement of Argument form.](#)
[View a sample of a completed Statement of Argument.](#)

Before you can prepare your Statement of Argument you must first pick up the transcript from the Court

Reporter. Next, you must carefully read your copy of the transcript. You should make a note of the pages in the evidence or the Judge's reasons for judgment that contain the error in fact or law that you say should result in your appeal being successful. You should also look at copies of any exhibits which were given to the Judge during the Small Claims trial (like contracts, photos, reports, affidavits) to see if the exhibits contain evidence which would help your appeal.

When completing a Statement of Argument, the first step is to decide whether parts of the Small Claims Order are acceptable, or whether you do not agree with the entire Order. Then, on the Statement of Argument, list what you do not agree with.

Then, on the Statement of Argument you should list the evidence and the page and line numbers in the transcript, which will show the Supreme Court Judge where the Small Claims Court Judge made an error. This will become more clear to you if you view the sample and complete your Statement of Argument in the same way. The sample is based on the case described earlier in this Factsheet in which the Judge failed to apply the Limitation Act.

Finally, in the portion of the Statement of Argument dealing with the nature of the Order you are seeking, you should state what you want the Judge to do. For example, if you brought a lawsuit in Small Claims Court and you lost, you may want the Supreme Court Judge to make an Order for what you sued for. So, if you were owed money and you sued for \$8000 and you lost, you would ask in your Statement of Argument for an Order that the Respondent pay you \$8000. On the other hand, if you were the Defendant in the same lawsuit and you lost at the trial, you might want an Order dismissing the claim.

It would be very useful to get some legal advice when filling in the Statement of Argument.

[Find out more information about obtaining legal advice.](#)

Step 12: Appellant: File and serve documents

Within 45 days of filing the Notice of Appeal, the Appellant must:

1. File at the Supreme Court Registry the original copy of the transcript;
2. File a Statement of Argument; and
3. Serve a copy of the transcript and Statement of Argument on the Respondent.

After you have prepared the Statement of Argument make a photocopy for yourself and each Respondent. Take the original and each copy, plus a copy of the transcript to the Supreme Court Registry. The Registry will date stamp the Statement of Argument. You can then serve the Statement of Argument and transcript on the Respondent.

Step 13: Respondent: File a Statement of Argument

At this point the Respondent will have to prepare a Statement of Argument. The Respondent must file the Statement of Argument and deliver a copy to the Appellant not less than 14 days before the hearing of the appeal.

A Respondent's Statement of Argument is a document which sets out:

1. What paragraphs the Respondent disagrees with in the Appellant's argument;
2. Why the Respondent disagrees with the Appellant's argument; and,
3. What Order the Respondent would like to see the Supreme Court Judge make.

Obtain a blank Respondent's Statement of Argument form.

The Respondent should start to prepare the Respondent's Statement of Argument by first carefully reading the Appellant's Statement of Argument. Note where you think errors were made. The Respondent should then read the transcript and review all the exhibits and list the page and line on the transcript that supports the Respondent's case. Then fill in the form in a manner similar to that in which the Appellant's Statement of Argument was completed.

It would be very useful to get some legal advice when filling in the Statement of Argument.

[Find out more information about obtaining legal advice.](#)

Step 14: Prepare for the hearing

The hearing will not be a new trial. A Judge could order a new trial at the end of the hearing. But the trial would occur at a later date. So the hearing will have a different format than what you experienced at the trial. For example, no witnesses will be called to give evidence. Instead, what usually happens is that the Appellant first tells the Judge what the trial was about. The Appellant then tells the Judge what decision(s) made by the Small Claims Court Judge that the Appellant disagrees with and why.

The Appellant may go through the Appellant's argument set out in the Statement of Argument. The Judge might read the portions of the transcript and the exhibits which the Appellant refers to in the Statement of Argument. The Judge may also ask the Appellant questions. The Appellant might conclude by noting the Order that the Appellant would like the Judge to make.

It would then be the Respondent's turn. The Respondent might take the Judge through the Respondent's argument as set out in the Respondent's Statement of Argument. The Respondent would answer questions the Judge had. The Respondent would conclude by telling the Judge what Order the Respondent would like the Judge to make.

To prepare for this type of hearing you should carefully review your Statement of Argument and any exhibits that you are going to refer to. You might also make notes of what you want to say.

Small Claims appeals do not happen often. However, if you can watch one before your case occurs it will help to give you a good idea of what is likely to happen. To find out if an appeal will happen before your case goes ahead, call the Supreme Court Registry and ask to speak to the Trial Coordinator.

Step 15: Appear in Court

The day of the hearing, make sure you bring your copy of the Statement of Argument, transcript, and exhibits to Court with you on the day of your hearing. Arrive earlier than the time appointed for the hearing to begin.

Find the trial list, which will usually be posted somewhere in the Court building. This list tells which cases are to be tried on that date and in which particular Courtroom they will take place. If your case is not on the list, then you should immediately check with the Court Clerk or Registry. Otherwise, go to the proper Courtroom and be seated in the gallery.

When your case is called move forward to the Counsel table. Stand while speaking to the Judge. Introduce yourself to the Court. In Supreme Court a Judge is called “My Lord or My Lady” or “Your Lordship or Your Ladyship.”

The Judge probably will have read both Statements of Argument and will have some familiarity with the case. The Appellant will then present their case first, followed by the Respondent.

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, *Alternatives to Going to Court*). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca.

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca.

The Supreme Court of BC's website has information for people who are representing themselves in court: www.Courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: www.JusticeAccessCentre.bc.ca.

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court Rules can be found at:

- www.BCLaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_00
- For additional information about the new court rules: www.ag.gov.bc.ca/new-rules/

Court forms are available at:

www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm. They can be completed online and filed electronically using Court Services Online: www.CourtServicesOnline.gov.bc.ca. They can also be printed and completed manually; or completed online, printed and filed.

Common legal terms

You can find out the meaning of legal terms at this multilingual website: www.LegalGlossary.ca.

Family law

For information about family law claims, see: www.FamilyLaw.LSS.bc.ca.

This guidebook is part of a series:

Guidebooks for Representing Yourself in Supreme Court Civil Matters.

Produced by: www.JusticeEducation.ca

Funded by: www.LawFoundationBC.org



© July 2011. The Law Centre

ISBN 978-0-9866690-7-1

This Guidebook was prepared by The Law Centre – www.TheLawCentre.ca.

NOTES

FORM 70 (RULES 18-1 (22), 18-1 (8), 18-3 (8) AND 21-5 (47))

No.

In the Supreme Court of British Columbia

Between

..... [Plaintiff(s)]

1 And

..... [Defendant(s)]

NOTICE OF INTEREST

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

TAKE NOTICE that I have an interest in this proceeding.

2 Name:

3 Address for service: *[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]*

.....
.....
.....
.....
.....

Fax number address for service (if any):

E-mail address for service (if any):

Date:

[dd mmm yyyy]

Signature of

.... filing person lawyer for filing person(s)

.....
[type or print name]

4

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the appellant.

1. Complete a Notice of Interest Form 70
 2. File the Notice of Interest at the Registry named on the Notice of Appeal.
 3. Serve a copy of the Notice of Interest on the Appellant at the address set out on the Notice of Appeal.
 4. Act quickly, as you must file and serve your Notice of Interest within a certain number of days from when the Notice of Appeal was served on you. The time you are given is based on where you reside.
 - If you reside in BC, you must file and serve within 7 days.
 - If you reside anywhere else in Canada, you must file and serve within 21 days.
 - If you reside in the USA, you must file and serve within 28 days.
 - If you reside outside Canada and the USA, you must file and serve within 42 days.
-

NOTES

Form 74 RULE 18-3 (2)

1 No.

In the Supreme Court of British Columbia

Between

2 [Appellant(s)]

And

3 [Respondent(s)]

NOTICE OF APPEAL – STANDARD DIRECTIONS *[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

To:

4
[name of person or body appealed from]

5 And to:
[name(s) of all other persons who may be affected by the order sought]

WHEREAS on
[dd mmm yyyy]

6 made the following
[name(s) of person or body from whose decision/direction/order appeal is brought]

.... decision direction order [add, if applicable, in]:
[Action Number/File Number]

7;
[state concisely the decision, direction, or order]

AND WHEREAS an appeal lies to this court a judge of this court under

8;
[name and section of enactment allowing appeal]

9 TAKE NOTICE that appeal(s) from the
[name(s) of appellant(s)]

.... decision direction order on the following grounds:

10

.....
[concisely set out grounds of appeal]

ATTACHED is the standard set of directions, in the form directed by the Chief Justice of the Supreme Court of British Columbia, governing the conduct of the appeal.

11

The appellant(s) estimate(s) that the hearing of the appeal will take
[time estimate]

If you intend to oppose the appeal, you or your lawyer must

- (a) file a Notice of Interest in Form 70 in the above-named registry of this court within the time for Notice of Interest described below, and
- (b) serve a copy of the Notice of Interest on the appellant's(s') address for service set out in this Notice of Appeal.

Time for Notice of Interest

A Notice of Interest must be filed and served on the appellant(s),

- (a) if you reside in British Columbia, within 7 days after the date on which a copy of the filed notice of appeal was served on you,
- (b) if you reside anywhere else within Canada, within 21 days after the date on which a copy of the filed notice of appeal was served on you,
- (c) if you reside in the United States of America, within 28 days after the date on which a copy of the filed notice of appeal was served on you,
- (d) if you reside elsewhere, within 42 days after the date on which a copy of the filed notice of appeal was served on you, or
- (e) if the time for Notice of Interest has been set by order of the court, within that time.

The appellant's(s') address for service is: [Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]

12

.....

Fax number address for service (if any):

E-mail address for service (if any):

13

Date:
[dd mmm yyyy] Signature of

.... appellant lawyer for appellant(s)

.....
[type or print name]

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the respondent.

1. On the top right of the form there is a place for a number and Registry name. Leave those blank. The Court clerk can fill them in.
2. After the word “between”, fill in the name of the Appellant, as it appears on the Small Claims Order being appealed.
3. Before the word “Respondent”, fill in the name of the person who won the Small Claims trial.
4. After the word “To”, fill in “The Provincial Court of BC – Small Claims Division”.
5. After the word “And to”, fill in the name of the Respondent.
6. After the words “Whereas on”, fill in the date when the Small Claims Order was made. Then insert the name of the Judge who made the Order. After the words “made the following”, check the box to the left of the word “decision”.
7. In the area below the word “decision”, write down what the Small Claims Order says the Judge ordered. After the words “Whereas an appeal lies to” check the box to the left of the words “this court”.
8. In the space below the words “this court”, insert “Small Claims Act, section 5”.
9. After the words “take notice that”, fill in the name of the Appellant. Then, check the box to the left of the word “decision”.

10. After the words “on the following grounds”, insert the reason you are appealing the decision. Examples are listed below.
 - a. “The Judge did not give proper weight to the evidence;”
 - b. “The Judge applied the wrong law in making the decision.”

 11. Leave blank the area after the sentence that begins with “The appellant estimates”. If the Clerk at the Registry asks you for a time estimate when you are filing the document, reply, “As a layperson, I am unable to estimate the time the appeal will take”.

 12. After the words “The appellant’s address for service is”, record the address for service in the event the Respondent needs to serve documents on you. You may also provide a phone number, fax number, and/or email address.

 13. Then, date and sign the Notice of Appeal in the place provided. Check the box to the left of the word “Appellant” and type or print your name beneath your signature.
-

NOTES

FORM 75 (RULE 18-3 (9))

No.

In the Supreme Court of British Columbia

Between

1 [Appellant(s)]

And

..... [Respondent(s)]

NOTICE OF HEARING OF APPEAL

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

TAKE NOTICE that this appeal will be heard at on
[time of day] [dd mmm yyyy]

At
[address]

.....
Registrar

Time estimate:

.....
Signature of

.... appellant lawyer for appellant(s)

.....
[type or print name]

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the appellant.

1. To prepare a Notice of Hearing of Appeal, fill in the name of the Appellant after the word “Between:” Then fill in the name of the Respondent after the word “And:”. Make a photocopy.
-

NOTES

FORM 76 (RULE 18-3 (10))

2 **1** No.

In the Supreme Court of British Columbia

Between

3 Appellant

And

..... Respondent

NOTICE OF ABANDONMENT OF APPEAL

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

TAKE NOTICE that the appellant,
[name]

abandons this appeal.

[Check the correct box and complete any required information.]

4 This appeal has not yet been set for hearing.
.... The date scheduled for the hearing of this appeal is
[dd mmm yyyy]

Date:
[dd mmm yyyy] Signature of

.... appellant lawyer for appellant(s)

.....
[type or print name]

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the respondent.

1. After the word “No.”, insert the file number that the Registry recorded on your Notice of Appeal at the time you filed it.
 2. Insert the place you filed your Notice of Appeal. For example, Victoria.
 3. Add the names of the parties.
 4. If you have not yet received a date for hearing, you will check the box before the words “This appeal has not yet been set for hearing” and leave blank the areas before and after the sentence that begins with the words “The date scheduled”.
-

NOTES

FORM 109
(RULE 22-2 (2) AND (7))

1

This is the 1st affidavit
Of _____
[name]
in this case and was made on _____
[dd/mmm/yyyy]

2

No. _____
_____ Registry

In the Supreme Court of British Columbia
In Bankruptcy
In the matter of the bankruptcy of

[your name]

AFFIDAVIT

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

3

I, _____ of _____, _____
[name] [address] [occupation]

SWEAR (OR AFFIRM) THAT:

4

1

5

SWORN (OR AFFIRMED) BEFORE ME)
at _____, British Columbia)
on _____)
[dd/mmm/yyyy])
_____)
A commissioner for taking affidavits for British Columbia)
_____)
[print name or affix stamp of commissioner])

[The following endorsement must be completed if required under Rule 22-2 (7) of the Supreme Court Civil Rules.]

Endorsement of Interpreter
[if applicable]

I, _____ of _____, _____
[name] [address] [occupation]

CERTIFY THAT:

- 1 I have a knowledge of the English and _____ languages and I am competent to interpret from one to the other.
- 2 I am advised by the person swearing or affirming the affidavit and believe that the person swearing or affirming the affidavit understands the _____ language.
- 3 Before the affidavit on which this endorsement appears was made by the person swearing or affirming the affidavit I correctly interpreted it for the person swearing or affirming the affidavit from the English language into the _____ language and the person swearing or affirming the affidavit appeared to fully understand the contents.

Date: _____
[dd/mmm/yyyy]

Signature of interpreter

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm. They can be completed online and filed electronically using Court Services Online: www.courtservicesonline.gov.bc.ca. They can also be printed and completed manually; or completed online, printed and filed.

This document must be filed in the court registry and attached to your notice of motion.

1. State your name and date that you swore the affidavit.
2. This information identifies your case within the court system. Insert the court file number and the location of the registry (e.g., Vancouver).
3. State your name, address, and occupation.
4. List the facts that you want the court to know about your application for bankruptcy, in numbered paragraphs. For example:
 1. I am the bankrupt in these proceedings and as such have personal knowledge of the matters hereinafter deposed to.
 2. My bankruptcy was caused by (provide explanation) and the details are set out in the Trustee's s. 170 report, attached as Exhibit A). (The trustee's report is also called a section 170 report, a S170 report, or a Report of Trustee on Bankrupt's Application for Discharge).

3. My original application for discharge was heard on (date). The result of the application was (state the result). (Or, if the application was adjourned, explain why.)
4. I am presently (employed/unemployed). I attach as Exhibit B to this affidavit my last 3 paystubs (if applicable).
5. I attach as Exhibit C to this affidavit an accurate statement of my monthly income and expenses for myself (and others, if applicable).
6. I make this affidavit in support of my application for an absolute discharge from bankruptcy, pursuant to the provisions of the *Bankruptcy and Insolvency Act*.

You might also include the following information if it is relevant to your application:

- Your past and present personal and financial situation since the date of bankruptcy. You should state why you did not seek the discharge earlier or why you were not able to comply with the bankrupt's duties or conditional requirements.
 - Important changes in your financial situation during the period of bankruptcy, such as your employment, your income, etc.
 - The reasons why you are seeking a discharge now.
 - The reason why you are not represented by a trustee or a lawyer.
 - Your current debts and liabilities.
 - What debts and liabilities you have incurred since the date of bankruptcy.
 - What assets you have acquired, distributed, transferred or sold since the date of bankruptcy.
 - Respond to any statements, findings, recommendations or objections set out in the trustee's report and any other reports that are filed in response to your application.
5. Your affidavit must be sworn or affirmed before a lawyer, a notary public, or a designated court official at the court registry.
-

NOTES

(FORM A)

Action No.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

APPELLANT

1

AND:

RESPONDENT

APPELLANT'S STATEMENT OF ARGUMENT

STATEMENT OF FACTS: The facts of this case are as follows:

2

(This section must consist of a clear statement, in numbered paragraphs, of the relevant facts of the case making reference for each fact to the reasons for judgment or to the page and line numbers of the transcript.)

ISSUES ON APPEAL: The appellant agrees with the order appealed from except as follows:

3

(This section must consist of a clear statement, in numbered paragraphs, that sets out in what respect the order appealed from is in error.)

ARGUMENT: The order appealed from is in error because:

4

(This section must set out, in numbered paragraphs, the argument why the order is alleged to be in error including the points of law or fact with a reference to the exhibit or page and line numbers of the transcript and the authorities in support of each point.)

NATURE OF ORDER SOUGHT:

5

*(This section must set out the order the appellant wishes the court to make including any special order as to costs and payment out of monies paid into court pursuant to section 8 of the *Small Claims Act*).*

Dated: _____

Appellant (or Appellant's Solicitor)

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the respondent.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. The court registry will insert the registry number, which you must use on all your documents. Insert the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 2. Set out the facts of your case, and refer to where the facts are set out in the court's trial transcript. For example:
 1. The claimant was involved in a motor vehicle accident on June 6, 2002 at the intersection of Granville Street and 41st Avenue in the City of Vancouver, BC. [Transcript page 3]
 2. The claimant suffered a broken shoulder in the accident and was treated at the emergency ward of Vancouver General Hospital and was admitted to the hospital for a period of 3 days [Transcript page 4]
 3. The claimant missed a total of 55 days of work between June 6, 2002 and October 15, 2002 because of his injuries [Transcript page 11]
 4. The claimant is paid by ABC Co at a daily rate of \$150 [Transcript page 13]
 5. Under the claimant's contract with ABC Co., he is not entitled to payment for days of missed work [Transcript 14]
 6. Etc.
 3. Set out the reasons why you believe the order you are appealing is not correct. For example:
 1. The trial judge did not award separate damages for the claimant's income loss, even though the claimant was not able to work due to the injuries he suffered in the accident and suffered a loss of \$8250.00.
 2. Etc.
 4. Set out the reasons why you believe the order is in error. For example:
 1. The claimant is entitled to an award of damages for loss of income as a result of the motor vehicle accident, including loss of wages.
 2. The trial judge awarded damages of \$10,000 for non-pecuniary damages [Transcript page 30]
 3. The trial judge awarded only \$1,000 for loss of wages [Transcript page 31]
 4. The trial judge concluded that the claimant's missed days of work were not entirely due to his shoulder injury [Transcript page 31]
 5. The trial judge disregarded the evidence of the claimant's physician that the claimant missed work because of his shoulder injury [Transcript page 29]
 6. Etc.
 5. Set out the order you wish the court to make. For example:
 1. The claimant seeks an order that he is entitled to an award of damages for loss of income for the amount of \$8250.00.
-

NOTES

(FORM B)

Action No.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

APPELLANT

1 AND:

RESPONDENT

RESPONDENT'S STATEMENT OF ARGUMENT

STATEMENT OF FACTS: The respondent's position with respect to the appellant's statement of facts is as follows:

2 *(This section must consist of a clear statement, in numbered paragraphs, of the respondent's position with respect to the appellant's statement of facts together with a clear statement of any other facts that the respondent considers relevant making reference for each fact to the reasons for judgment or to the page and line numbers of the transcript.)*

3 ISSUES ON APPEAL: The respondent's position with respect to the appellant's statement of the issues on the appeal is as follows:

(This section must consist of a statement, in numbered paragraphs, of the respondent's position with respect to the issues as stated by the appellant.)

4 ARGUMENT: The respondent disagrees with the appellant's argument because:

(This section must set out, in numbered paragraphs, the respondent's argument as to why the order sought by the appellant should not be made including the points of law or fact with a reference to the exhibit or page and lines of the transcript and the authorities in support of each point.)

5 NATURE OF ORDER SOUGHT:

(This section must set out the order the respondent wishes the court to make including any special order as to costs and payment out of monies paid into court pursuant to section 8 of the Small Claims Act.)

Dated: _____

Respondent (or Respondent's Solicitor)

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

You can print out this form at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_04

File this form in the court registry and personally serve it on the appellant.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. The court registry will insert the registry number, which you must use on all your documents. Insert the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the appellant and respondent in capital letters (not addresses) in the style of proceeding.
 2. Set out the facts of your case, and refer to where the facts are set out in the court's trial transcript. For example:
 1. The appellant's 55 days of missed work were not a result of the injuries he suffered in the accident [Transcript page 12]
 2. The expert evidence of Dr. Blue was that the appellant had fully recovered from his injuries by August 1, 2002 and his absence from work after that could not be attributed to his shoulder injury [Transcript page 14]
 3. Etc.
 3. Set out the reasons why you disagree with the issues the appellant is raising on the appeal. For example:
 1. The trial judge reached the correct decision in finding that the appellant's injuries did not cause him to miss work after August 1, 2002.
 2. Etc.
 4. Set out the reasons why you disagree with the appellant's argument. For example:
 1. The evidence of the expert witness, Dr. Blue, provided the court with an accurate assessment of the appellant's injury and recovery, etc.
 5. Set out the order you wish the court to make. For example:
 1. This respondent respectfully submits that the appellant's appeal be dismissed.
-