

APPEAL FROM SMALL CLAIMS

This information sheet provides an overview of the procedures for appealing an order by a Provincial Court allowing or dismissing a claim if that order was made after a trial.

Note that no appeal lies from any order of the Provincial Court made in a proceeding under the Act other than an order made after a trial.

An appeal is not a new or re-trial but a review of the original trial using transcripts of the original trial and your Statement of Argument. No new evidence may be presented without leave of the court.

Appeals from an order of the Small Claims Court are governed by sections 5 to 15 of the *Small Claims Act*, Supreme Court Civil Rules, Rule 18-3 and the standard set of directions for Small Claims appeals issued by the Chief Justice.

FILING AN APPEAL

Complete the Notice of Appeal form (Form 74) of the Supreme Court Civil Rules and file it in the Supreme Court registry **nearest** to the Provincial Court where the decision being appealed was made **within 40 days from the date the decision was given in Small Claims Court.**

When filing the Notice of Appeal, **you must pay into court the required fees and deposits.** These include:

- a) **\$200.00** to initiate a Supreme Court proceeding, plus
- b) **\$200.00** deposit as security for costs that the court may order you to pay if you lose or discontinue the appeal. Please note that there may be additional costs awarded against you if you lose or discontinue the appeal. Refer to Rule 14-1 and Appendix B of the Supreme Court Civil Rules
- c) **the amount of the judgment ordered by the Small Claims Court** if the order being appealed required you to pay a sum of money. **If you are unable to deposit the security for costs** or the amount of judgment as stated in items "b & c" above, you may apply to the Supreme Court for an order to reduce these amounts. **If you are unable to pay the filing fee** as stated in item "a" above or any fees payable to the crown pertaining to the appeal you may apply to the court for an indigent status order. Please request the appropriate form from the Supreme Court Registry. Note that indigent status does not cover the cost of transcripts as these fees are payable to private contractors. **On the day you file your Notice of Appeal you must file a copy of that document in the Small Claims Court registry.**

SERVING NOTICES

The Notice of Appeal, the Small Claims Appeal Standard Directions and if applicable any order reducing the amount of security for costs or the amount of judgment as stated in items "b & c" above must be served personally on each party to the proceedings who is affected by the appeal. Service must be made within seven days after filing the Notice of Appeal. **Note:** refer to the Supreme Court Civil Rules, Rule 4-3 for the process for serving a document. You may serve these documents yourself or have someone else do so for you (for a list of process servers refer to the Yellow Pages under "Process Servers") After serving the documents, an affidavit of service providing proof of service of the above stated documents must be filed within 14 days of the appeal being filed.

ORDER TRANSCRIPTS

Pursuant to the Standard Directions you must order and pay for the entire transcript of the evidence and the reasons for judgment given at your Small Claims trial. Registry staff in the Small Claims Court can provide information about ordering the transcript and the transcription contractor will advise about the

cost. **You must furnish proof of ordering the transcript within 14 days of filing your appeal.**

SETTING A HEARING DATE

At the same time that you file proof of service of the Notice of Appeal and proof of ordering the transcript, you must file a Notice of Hearing of Appeal in Form 75 of the Supreme Court Civil Rules. If your time estimate for the appeal is less than 2 hours, the Notice of Hearing of Appeal may be scheduled on the Chambers list. (filing fee \$80.00). If your time estimate is more than 2 hours you must arrange for a date through Supreme Court Scheduling and file the Notice of Hearing of Appeal (filing fee \$80.00). (Registry practice may differ – check with your local registry) Then you must deliver a copy of the Notice of Hearing of Appeal to all respondents who have entered a Notice of Interest.

STATEMENT OF ARGUMENT

Within 45 days after filing the Notice of Appeal you must file your Statement of Argument (Schedule A attached to the Standard Directions) and serve one copy on each person that has filed a Notice of Interest.

FILING TRANSCRIPTS

Within 45 days after filing the Notice of Appeal you must file the original transcript and serve one copy on each respondent that has filed a Notice of Interest.

THE HEARING

The hearing is a review of the original trial and you must be prepared to explain why you feel the Provincial Court Judge erred in interpreting the facts entered as evidence or applying the law to your case. This is done using the transcript and your Statement of Argument. If you are successful in your appeal, the Supreme Court Judge may allow you to recover your costs as part of the judgment. If these costs exceed the \$200.00 previously paid you will be required to set an appointment before the Registrar to have these costs assessed if the amount of costs are not agreed to by the opposing party.

If the respondent does not pay the judgment, you must prepare the Supreme Court order and file it with the registry for entry. After the order is entered, you may file a copy in your Small Claims Court file at the Provincial Court for enforcement. If your appeal is unsuccessful, there is no appeal from an order made by the Supreme Court.

SUSPENSION OF PROCEEDINGS

When you file proof with the Small Claims Court that the security for costs and the amount of judgment has been paid into the Supreme Court and/or proof that you have obtained an order to reduce the amount of costs and/or judgment into court any proceedings to enforce the order in Small Claims Court are suspended until the Appeal is dealt with.

Note: The Registry staff cannot provide legal advice. It is strongly recommended that you seek legal advice if you are contemplating an appeal. Supreme Court is formal and more complex and litigants are expected to be aware of the law and of legal procedures. Litigation in Supreme Court is costly. Further costs may be awarded against the unsuccessful party pursuant to Appendix B of the Supreme Court Civil Rules. These costs may be considerable.

1Jan11

This is an Information Sheet. In the event of any conflict between this information and any Acts, Rules or law, the provision of the Acts, Rules or law apply.

Form 74

No.

..... Registry

In the Supreme Court of British Columbia

Between

Appellant

and

[person or body appealed from]

Respondent

NOTICE OF APPEAL – STANDARD DIRECTIONS

To:
[name of person or body appealed from]

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

WHEREAS on
[dd/mmm/yyyy] *[name(s) of person or body from whose*

.....
decision/direction/order appeal is brought]

made the following decision direction order
[add, if applicable, in[Action

.....
Number/File Number] [state concisely the decision, direction, or order]

.....
.....
..... ;

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

..... ;
[name and section of enactment allowing appeal]

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

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

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.]

Fax number address for service (if any):

E-mail address for service (if any):

Date:

Signature of
 appellant lawyer for appellant(s)

.....
[type or print name]

Form 75

No.
..... Registry

In the Supreme Court of British Columbia

Between

Appellant

and

Respondent

NOTICE OF HEARING OF APPEAL

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]

Form 76

No.
..... Registry

In the Supreme Court of British Columbia

Between

Appellant

and

Respondent

NOTICE OF ABANDONMENT OF APPEAL

TAKE NOTICE that the appellant,,
[name]

abandons this appeal.

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

- This appeal has not yet been set for hearing.
- The date scheduled for the hearing of this appeal is

Date:

.....
Signature of
 appellant lawyer for appellant(s)

.....
[type or print name]



Effective Date: 2010/07/01

Number: PD - 21

Title:

Practice Direction

Standard Directions for Appeals from Provincial Court - *Small Claims Act*

Summary:

Section 5 of the *Small Claims Act* provides for an appeal to the Supreme Court from an order of the Provincial Court. Supreme Court Civil Rule 18-3 provides that a notice of appeal must include the standard set of directions in the form directed by the Chief Justice governing the conduct of the appeal. These are the standard directions governing the conduct of an appeal from the Provincial Court under section 5 of the *Small Claims Act*.

Direction:

Deposit

1. The appellant must deposit \$200 as security for costs as required under section 8(1) of the *Small Claims Act* before or at the time the Notice of Appeal is filed with the court, along with any amounts required under section 8(2), unless the court otherwise orders.

Documents to be filed and served

2. A Notice of Appeal in Form 74 must be filed with a copy of these directions attached.
3. After filing the Notice of Appeal, the appellant must:
 - a. serve the Notice of Appeal on the respondent(s) by personal service
 - b. order and pay for a copy of the transcript of:
 - i. the oral evidence given at the hearing in the Provincial Court
 - ii. the reasons for judgment of the Provincial Court.
4. It is not necessary for the appellant to serve the Notice of Appeal on the Provincial Court.

5. If the respondent wishes to oppose the appeal and to receive notice of the hearing date, he or she must:
 - a. file a Notice of Interest in Form 70 within 7 days after service of the Notice of Appeal
 - b. promptly serve a copy of the filed Notice of Interest on the appellant by ordinary service.
6. Within 14 days after filing the Notice of Appeal, the appellant must:
 - a. file proof, satisfactory to the registrar, that
 - i. the Notice of Appeal has been served on the respondent(s)
 - ii. the required transcript has been ordered
 - b. request a date for the hearing of the appeal from the Registrar
 - c. file a Notice of Hearing in Form 75
 - d. serve, by ordinary service, a Notice of Hearing on any person who has filed a Notice of Interest.
7. Within 45 days after filing the Notice of Appeal, the appellant must:
 - a. file the original transcript with the court
 - b. serve, by ordinary service, a copy of the original transcript on any person who has filed a Notice of Interest
 - c. file a statement of argument in Schedule A , and
 - d. serve, by ordinary service, a copy of the statement of argument on any person who has filed a Notice of Interest.
8. Within 14 days before the hearing of the appeal, a person(s) who has filed a Notice of Interest must:
 - a. file a statement of argument in Schedule B , and
 - b. serve, by ordinary service, a copy on the appellant.

Appeal disposed of summarily

9. If the appellant fails to file the deposit or any proof or documents required under this direction, within the time limits prescribed by this direction, the respondent may apply for an order:
 - a. to dispose of the appeal summarily pursuant to Supreme Court Civil Rule 18-3(7), or
 - b. that the order under appeal is no longer suspended pursuant to section 9(2) of the *Small Claims Act*.

New evidence

10. No new evidence may be adduced at the appeal without leave of the court.

A handwritten signature in black ink, appearing to read "Bauman", with a stylized flourish at the beginning.

Robert J. Bauman
Chief Justice

Schedule A

No. _____
Registry _____

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

APPELLANT

AND:

RESPONDENT

APPELLANT'S STATEMENT OF ARGUMENT

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

(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:

(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:

(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:

*(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**).*

Date: [dd/mmm/yyyy]

.....
Signature of filing part(ies) or counsel

..... [type or print name]

Schedule B

No. _____
Registry _____

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

APPELLANT

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:

(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.)

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.)

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.)

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**.)*

Date: [dd/mmm/yyyy]

.....
Signature of filing part(ies) or counsel

.....[type or print name].....