

Overview of Applications Before a Single Appeal Judge

General

1. A single appeal judge may hear any application incidental to an appeal (including those that could have been decided by a CMO) and may:
 - grant permission to appeal (formerly “leave to appeal”)
 - declare an appeal to be struck, dismissed or abandoned for failure to comply with a mandatory rule, prior order or direction of the Court
 - when a Notice of Appeal or application for permission to appeal has been filed out of time, strike the appeal or application or extend the time to appeal or to seek permission to appeal
 - dismiss an appeal if it has not been significantly advanced in over 6 months and significant prejudice has resulted to a party
 - grant leave to intervene
 - order a party to provide security for costs
 - refer any application to a panel of the Court of Appeal.
2. The Court requires 3 copies of the Application, Memorandum of Argument, and any Affidavit and other supporting materials. This does not include any copies required for the filing party or for service.
3. There is a prescribed form for the Application:
 - Form AP-3 for in **civil** matters,
 - Form CRA-C for an application for permission to appeal in **criminal** matters, and
 - Form CRA-F for all other types of applications in **criminal** matters.

These forms, along with a sample Memorandum of Argument and Affidavit (in Support of an Application) (Form 49), are available on the Court’s website under Court of Appeal > Registry > Filing Information > Filing, Fees and Forms. The forms for civil matters and criminal matters are grouped separately on the website. Ensure that you use the correct one.

4. See also the Mandatory Requirements & Check/Return Form for an Application, Memorandum of Argument and Affidavit for a list of the minimum requirements that Registry staff will watch for when documents are filed. These forms are located on the Court’s website under Court of Appeal > Registry > Filing Information > Mandatory Requirements & Check/Return Forms.

Case Management Officers

5. Case management officers may assist the Court with respect to the management of matters before it, and may consult with an appeal judge while doing so. The CMO can also refer any issue to a single appeal judge or a panel of the Court of Appeal.

6. Specifically, the CMO may:
 - categorize an appeal as a fast track appeal or a standard appeal
 - enforce, stay, shorten or extend times and deadlines
 - set, approve and modify timetables
 - grant fiats to permit the filing of deficient documents, to amend documents and to vary the contents or format of documents to be filed
 - restore appeals by consent
 - call the appeal lists
 - set, adjourn and re-schedule matters.
7. A request for administrative directions from a CMO may be made informally, subject to any directions of the CMO.
8. Any person affected by a decision of a CMO can apply to a single appeal judge to have it rescinded, confirmed, amended or enforced.
9. Further information about the CMO and how to request an administrative direction can be found on the Court's website under Court of Appeal > Registry > Case Management Officer.

Fees

10. The following application fees are payable in a **civil** matter:
 - \$600 for an application for permission to appeal that is a commencement document
 - \$50 for any other type of application (except applications to restore the appeal)
11. Applications to restore an appeal in a **civil** matter are subject to the following fees:
 - \$200 for the first restoration
 - \$500 for the second restoration
 - \$1000 for third and subsequent restoration
12. There are no filing fees for applications brought in a **criminal** matter.
13. There is no filing fee to request an administrative direction from a Case Management Officer.

Scheduling

14. Applications before a single appeal judge are heard on Tuesdays, Wednesdays and Thursdays at 9:30 a.m.
15. There is no limit to the number of applications that may be scheduled to be heard in Single Judge Chambers except that:
 - Only one application for permission to appeal may be set per day (applications for permission to appeal that are related count as only one); and

- Where an application for permission to appeal is set, only one other application may be scheduled for that same day.

16. Time limits for oral argument are: 30 minutes for applications for permission to appeal and 15 minutes for every other type of application.

17. If all parties consent, applications may be heard in writing with no oral argument and are arranged through the CMO.

Filing Applications - Deadlines

18. The deadline for filing an Application, a Memorandum of Argument and any Affidavit and supporting materials is at least 10 days before the application is scheduled to be heard.

19. If the deadline for filing an application is missed, a new date must be selected to provide the requisite 10 days' notice. A late application will not be permitted to be filed unless the single appeal judge scheduled to hear it grants permission for it to be filed.

20. All of the materials should be filed simultaneously, unless the application must be filed first to preserve a time limit. If in urgent matters, the Applicant wishes to abridge the time limits, the CMO should be contacted for directions.

Responding - Deadlines

21. The deadline for responding to an Application is at least 5 days before the application is scheduled to be heard. A response is given by filing either a Memorandum of Argument and any Affidavit and supporting materials or a letter indicating that no materials will be filed.

22. If the deadline for filing a response is missed, the Respondent may not present oral argument at the hearing of the application unless the single appeal judge otherwise permits.

Format

23. The prescribed form for an Application in **civil** matters (AP-3) and **criminal** matters (CRA-F) requires that the application:

- state the nature of the application
- state briefly the grounds for filing the application
- identify the material or evidence intended to be relied on
- refer precisely to any applicable provision of an enactment or rule
- state the remedy or relief sought.

24. The prescribed form for an Application for Permission to Appeal in **criminal** matters (CRA-C) requires some additional information; refer to the form for specific details.

25. Page limits for a Memorandum of Argument apply. The Memorandum of Argument must not exceed:

- 10 double-spaced pages for applications for permission to appeal
- 5 double-spaced pages for all other types of applications.

26. In addition to the page limits, the Memorandum or Argument may also attach a chronology where that is relevant to the application. A chronology should be brief and include only relevant dates and a short description of events. A chronology should not contain any commentary or argument.

27. Where an application for permission to appeal is filed, the Memorandum of Argument (or Application) must include a copy of the reasons of decision proposed to be appealed and must state the exact questions of law on which permission to appeal is requested.

Deemed Abandoned

28. If any application (other than an application for permission to appeal) is not heard within 3 months after the date that the application is filed, it will be deemed to have been abandoned unless a CMO otherwise directs.

29. If an application for permission to appeal has not been heard within 6 months from the date that it was filed, it will be deemed to have been abandoned unless a CMO otherwise directs.

Applications for Permission to Appeal

30. Applications for permission to appeal must be filed, served and made returnable within the period specified in any enactment or the rules, and if there is no specified period, then within the time for filing a Notice of Appeal.

31. Permission to appeal a decision of a single appeal judge must be heard by the same judge who made the decision provided that there is no appeal from a decision of a single appeal judge granting or denying permission to appeal.

32. Permission to appeal is required for any appeal by a person who has been declared a vexatious litigant in the court appealed from. However, no appeal is allowed from an order denying the vexatious litigant leave to institute or continue proceedings.

Applications for Judicial Interim Release

33. An application for judicial interim release may not be brought until a notice of appeal or application for permission to appeal has been filed and the appeal record has been ordered (or counsel undertakes to order the appeal record within 10 days of the hearing of the application).

34. In addition to an Application and Memorandum of Argument, an application for judicial interim release must be based on an affidavit of the applicant deposing to any facts relevant and material to the application and must include:
- particulars of the applicant's criminal record and any pending criminal charges (including any pending criminal charges outside Canada), and
 - an undertaking to surrender into custody in accordance with the terms of any order granted.
35. Unless otherwise ordered, an order granting judicial interim release must be in form CRA-G.

Applications to Restore an Appeal

36. Applications to restore an appeal must be filed, served **and granted**:
- for a Standard appeal, within 6 months of having been struck, dismissed or deemed abandoned
 - for a Fast Track appeal, within 3 months of having been struck, dismissed or deemed abandoned
 - for a criminal appeal, within 6 months of having been struck or deemed abandoned.

If no application to restore an appeal is granted within the timelines set out above, the appeal will be deemed to have been abandoned.

37. Applications to restore a **civil** appeal (including those restored by consent) must be accompanied by the requisite restoration fee:
- \$200 – first restoration
 - \$500 – second restoration
 - \$1000 – third and subsequent restorations.

38. No fee is payable for restoring a **criminal** appeal.

39. A Case Management Officer can restore any appeal by consent. The restoration fee is still payable (except in criminal appeals).

40. Any order or consent to restore an appeal must include deadlines and directions for the filing of any outstanding materials, and if the appellant fails to comply with any of those deadlines or directions, the appeal will be struck again.