



# ACCESS TO JUSTICE

LEGAL ISSUES FOR THE INJURED AND PEOPLE WITH DISABILITIES

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## APPEALS

### THE LEVELS OF APPEAL

People who bring lawsuits to court hope they'll get a fair decision. Since judges and juries are only human, however, they sometimes make mistakes and it takes going to a higher court correct it.

In B.C., there are three levels of court:

- 1) **Provincial Court** - for (as of Sept.25/05) lawsuits claiming under \$25,000;
- 2) **B.C. Supreme Court** - for (as of Sept.25/05) claims over \$25,000 and appeals of decisions made by provincial court judges; and
- 3) **B.C. Court of Appeal** (usually a panel of 3

judges) - for appeals from decisions made by Supreme Court judges.

There is one final level of appeal in Canada, the **Supreme Court of Canada** (usually a panel of 9 judges) - for appeals of Court of Appeal decisions across Canada.

### AUTOMATIC RIGHT VS. "LEAVE" TO APPEAL

Logically, one would think that if you lost in a lower court, you could appeal, and if you lost that appeal, you could appeal to a higher court - all the way to the top. But it doesn't work that way.

There is a right to a *limited* type of appeal (called "judicial review") of a final decision from Provincial Court to a Supreme Court Judge.

There is a right to appeal a final judgment from the Supreme Court to the Court of Appeal.

There is *not* an automatic right to appeal a final

judgment in a civil matter to the Supreme Court of Canada. You first need permission from the Supreme Court of Canada (called "leave to appeal") and this permission is only granted where the issue being decided is

- ▶ of national importance, or
- ▶ needed to clarify law that's given rise to conflicting decisions in various parts of the country.

Leave to appeal is also usually required to appeal any *interlocutory* (not decisive of the action) decisions heard by a master. E.g. During a lawsuit, an issue might arise such as whether certain documents have to be produced, or whether a plaintiff has to be examined by a medical expert. If the parties disagree, they can apply to court to have the issue decided by a master. Leave is also required to appeal an order dealing with *costs* (what the losing party has to pay the winning party by way of legal costs). Whichever party loses this type of decision may feel it's important enough to the case, or to future cases as a precedent, to seek leave to appeal.

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thereby discouraging appeals.

**Errors of law** are easier to appeal. The test is simply whether the statement, interpretation, or application of the legal principle was correct. To decide this, the appellate courts consider statutory interpretations, comparisons to other decided cases, and sometimes arguments of public policy or common sense.

Of course, it's not always easy to decide whether an error is an error of fact or law, or both fact and law. For example, in a lawsuit about whether a party breached a contract, the interpretation of the contract is a question of law. What the parties actually did regarding that contract is a question of fact. And if the parties to the contract disagreed about what the terms of the contract meant, there are issues of both fact and law.

Note too that **juries** are particularly hard to appeal. They don't usually have to give reasons for their decisions, so it is often hard to figure out whether they made an error of fact or law. For that reason, most jury decisions can only be appealed if they are obviously wrong.

### CAN YOU WIN?

The victim of a bad decision might have the right to appeal, but no reasonable chance of winning that appeal. It will often depend on whether the mistakes made by the judge or jury are wrong findings of *fact* or wrong findings of *law*.

**Errors of fact** are very hard to appeal. Why? Because in an appeal, the appeal judges do not re-hear the case. Instead, the appellant orders transcripts of the evidence that was given at the trial and this is the evidence on which the appellate courts must decide the case. With no way for the appellate judges to watch a witness's demeanor and how credible they appear, appellate judges rely heavily on the trial judge's findings of fact. They'll only overrule a finding of fact where there is a "palpable and overriding error."

Also, appellate courts rarely look at new evidence. It is only allowed where the evidence was not previously available and where it could have a significant impact on the court's decision.

The courts hold this standard of review both to encourage litigants to present all of their evidence at trial, and to instill a sense that the trial judge's findings should be considered final,

### THE PROCESS

After a trial judgment has been rendered and before an appeal judgment is rendered, the trial judgment is in effect. However, if an appeal would change the judgment and the appeal appears to have some merit, the appellant can apply to the court to put part or all the judgment on hold until the appeal is heard. This is a "stay" of judgment.

Once the appeal is heard, the appellate court can:

- a) dismiss an appeal, leaving the trial decision intact;
- b) overrule the trial judge's decision, and order a new trial (only when absolutely necessary); or
- c) overrule the trial judge's decision and substitute their decision in place of what the trial judge decided.

An appeal is not meant to be a new trial and can't help a party to a lawsuit who went into the initial trial unprepared. It's a specialized proceeding with special rules, and ideally anyone considering an appeal should work with a lawyer experienced in appeals.

That said, appeals are one of the many strengths of our legal system. They help ensure that even with human judges and juries who can make mistakes, in the long run justice can prevail. 