



## ONTARIO COURT OF JUSTICE GUIDE TO APPEALS IN PROVINCIAL OFFENCES CASES

This Guide provides general information about the court process for appeals under the *Provincial Offences Act*. It does not cover every circumstance that might arise in your case.

### THINK ABOUT GETTING LEGAL ADVICE

This Guide does not provide legal advice. You are strongly urged to get advice from a lawyer or paralegal about appealing a provincial offences court decision. An appeal is not simply a rehearing of the evidence or submissions made at trial. A lawyer or paralegal will be able to advise you about the appeal process, possible appeal outcomes, and questions of law or procedure that may be relevant to your case.

You can be referred to a lawyer or paralegal through the **Law Society Referral Service**: 1-800-268-8326 toll free or 416-947-3330. The Law Society Referral Service will give you the name of a lawyer or paralegal within or near your community, who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

**Lawyer and Paralegal Directory:** You can search on-line for lawyers and paralegals by name, city or postal code at: <http://www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp>.

You can also look for a lawyer or paralegal on the Internet or in the telephone directory.

In some limited circumstances, you may be eligible for legal aid (i.e. if there is a likelihood of a jail sentence or if you have received a jail sentence). For more information, contact Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

You may be able to get free legal advice or representation at your local community legal aid clinic or from law students at a university-based student legal aid services society (SLASS). Each clinic and SLASS has its own guidelines and financial eligibility for accepting clients, so you should contact them directly. For a list of community or SLASS clinics near you, visit: <http://www.legalaid.on.ca/en/contact/default.asp> or call Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

### WHAT IS AN APPEAL?

An appeal is a request to a higher court to review a lower court trial or other decision.

**Who hears appeals:** Appeals from decisions by justices of the peace are heard by a judge of the Ontario Court of Justice. Appeals from decisions of judges of the Ontario Court of Justice generally are heard by a judge of the Superior Court of Justice.

**Decisions that can be appealed:** You may appeal against your conviction, the sentence you received (including a probation order), or against both the conviction and the sentence (including a probation order). The prosecutor also has a right to appeal. If you were acquitted at your trial, the prosecutor may appeal that decision. The prosecutor may also appeal against your sentence.

**Appellant and respondent:** The person who starts the appeal is the "appellant". The other side is the "respondent".

**Prosecutor:** The prosecutor prosecutes the charge(s) on behalf of the person who issued the certificate or laid the information. There may be more than one prosecutor in the courtroom on any day, such as the prosecutor for a municipality, the prosecutor for the federal government or the prosecutor for the provincial government.

**Provincial offences appeal provisions:** The *Provincial Offences Act* (Part VII) and Ontario Regulations 722/94 and 723/94 set out the rules regarding appeals, including the time you have to start your appeal. You can view the *Provincial Offences Act* and the regulations online at: <http://www.e-laws.gov.on.ca>.

## STARTING AN APPEAL

**Notice of Appeal:** The first step to start the appeal process is to complete and file a form called a “Notice of Appeal”. You can get the Notice of Appeal from the court office where your trial took place or from the appeal court office.

In the Notice of Appeal, you must state what you are appealing (for example, your conviction, your sentence, or both your conviction and your sentence). You must also briefly explain the mistakes you think were made at your trial (also called the “grounds of appeal”).

**Serving and filing the Notice of Appeal:** If your appeal deals with a matter heard under PART I (nonparking tickets) or PART II (parking tickets) of the *Provincial Offences Act*, you must file the completed Notice of Appeal with the appeal court office. **IMPORTANT:** You have 30 days from the date of the decision you are appealing to file your appeal.

If your appeal deals with a matter heard under PART III (summons offences) of the *Provincial Offences Act*, you must serve your Notice of Appeal on the prosecutor’s office before you file it with the appeal court office. The appeal court office will require you to show proof of service on the prosecutor’s office in order for you to file your Notice of Appeal. **IMPORTANT:** You have 30 days from the date of the decision you are appealing to serve your Notice of Appeal. You must then file your appeal within 5 days of serving the prosecutor.

### Special grounds of appeal:

- 1) **Fresh evidence:** Generally, an appeal judge only reviews the evidence and oral arguments that were presented at the lower court trial. In very limited circumstances, an appeal judge may permit new evidence (called “fresh evidence”) to be introduced for the first time on appeal. If you intend to apply to the appeal court to introduce fresh evidence, you should let both the appeal court and the prosecutor know about this well in advance of the hearing date (preferably in your Notice of Appeal). You will have to explain to the appeal judge what the new evidence is, what difference this evidence will make to the outcome of your case, whether the new evidence was available at the time of your trial, and if the evidence was available, why you did not call this evidence at trial. You should bring the new evidence with you to the appeal hearing.
- 2) **Conduct of a lawyer or paralegal:** If you intend to raise any issue about how your legal representative handled your case at trial, you must notify that person about these issues so that he or she may respond. You should also let both the appeal court office and the prosecutor know about this well in advance of the hearing date (preferably in your Notice of Appeal).

**Extension of time to appeal:** If you do not file a Notice of Appeal within 30 days, you must get judicial permission to file the Notice of Appeal. To ask for this judicial permission, complete and file a form called “Application for Extension of Time to Appeal”. In this form, you must explain why you did not file the Notice of Appeal within the 30 day period. You can get the Application for Extension of Time to Appeal form at the court office where your trial took place, or at the appeal court office. File the completed form with the appeal court office. You may attach the Notice of Appeal to your Application for Extension of Time to Appeal. As a general rule, you are only allowed to bring one application to extend time. An application to extend time should be filed promptly.

**Pay any outstanding fines:** If you were fined as part of your sentence, you will have to pay the fine before you will be allowed to file your Notice of Appeal. Keep your receipt of fine payment because the appeal court office may require proof that you have paid your fine before accepting any appeal documents for filing.

You may also apply to the appeal court for permission to file your appeal without first paying the fine. In that case, you must file a form called an “Application to File an Appeal Without Paying the Fine”, setting out the reasons why you are unable to pay the fine. This form is available at the court office where your trial took place, or at the appeal court office. If your Application to File an Appeal Without Paying the Fine is granted, a judge can order you

to enter into a recognizance to appear on the appeal. If you do not appear on your appeal, the amount of the recognizance is then owed.

**Transcripts:** Transcripts are a written record of what was said at a court hearing. Some appeal judges want a trial transcript. In some kinds of appeals (such as Part III cases), the appeal rules require you to provide a transcript of your trial to the appeal court and the prosecutor's office. Failure to do so may result in your appeal not being scheduled, or being dismissed.

The person preparing a written transcript will need time to do so. It is important that you order written transcripts promptly in order to avoid delaying the hearing of your appeal. Again, failure to provide transcripts where required by the court could result in your appeal being dismissed. If transcripts are required, the person who started the appeal is responsible for ordering and paying for three copies of all transcripts and for giving a copy to the other side and the court.

**Digital trial recordings:** Some courthouses permit digital recordings made at the trial to be filed instead of written transcripts. Check with the court staff when you file your appeal as to what the local courthouse requirement is, and how to arrange for the digital recording to be filed with your appeal documents if this is permitted.

### BEFORE THE APPEAL HEARING DATE

**Accommodation for persons with disabilities:** If you have any questions about a courthouse's accessibility features, or if you require accessible court services, contact the Accessibility Coordinator at the courthouse. You can obtain more information about courthouse accessibility on the Ministry of the Attorney General's website at: [http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court\\_Addresses](http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses)

**Interpreters:** If you require an interpreter, immediately advise the court office where your appeal is to be heard. The court office provides interpreter services for court hearings free of charge.

**French or bilingual appeal hearing:** If you speak French, you are entitled to a bilingual appeal in relation to a provincial offence, or to a French appeal in relation to an offence under federal legislation.

### APPEAL HEARING DATE

**Hearing date:** The appeal court office will mail you a written notice telling you the date, time, and location of your appeal. You must be prepared to appear in court at this date and time ready to argue your appeal, with or without legal representation.

**What should I do if I can't attend court on a scheduled appeal hearing date?** If you know ahead of the scheduled appeal date that you cannot attend court or go ahead with your appeal, immediately contact the appeal court office to ask if, and how, the date can be rescheduled. If on a scheduled court date you cannot attend or go ahead with your appeal, you or someone on your behalf will have to go to the court to ask the appeal judge if the case can be rescheduled and explain why. The appeal judge may order your appeal to be rescheduled, or may go ahead with your appeal even though you are not able to attend.

### WHAT TO EXPECT AT YOUR APPEAL HEARING

**Time:** Typically many cases are scheduled to be heard in one courtroom at the same time. You must arrive at the courtroom on time but be prepared to wait in the likely event that other cases start before yours.

#### What to bring:

- (i) A pen and paper to take notes.
- (ii) Copies of your Notice of Appeal
- (iii) The transcript, if one was ordered.

**Appeal arguments:** Witnesses do not generally give evidence at an appeal hearing and you will not be required to testify. Instead, the appeal judge will listen to your oral arguments and those of the prosecutor. If you are the appellant, you will present your arguments first. The prosecutor will then make his or her oral arguments.

**Special grounds of appeal:** See above (“Starting An Appeal – Special grounds of appeal”) regarding calling new evidence and raising concerns about the conduct of your lawyer or paralegal at your trial.

### APPEAL DECISIONS

The appeal judge has the authority to uphold, reverse, or modify the trial decision. The appeal judge may also order a new trial. However, an appeal judge is required to show deference to the trial decision, and cannot allow an appeal simply because he or she views the evidence differently than the lower court did. An appeal judge has no power over demerit points and negative insurance consequences that may result from a conviction.

**Appeals against conviction:** The appeal judge may allow an appeal against conviction only if he or she is satisfied about any of the following:

- 1) the conviction at trial was unreasonable or is not supported by the trial evidence;
- 2) the trial court made a mistake with respect to the law; or
- 3) there was a miscarriage of justice.

**Appeals against sentence:** An appeal judge may allow an appeal against sentence only if the trial court made an error in principle, failed to consider a relevant factor, overemphasized a factor, or imposed a sentence that was clearly wrong.

**Timing of appeal decision:** The appeal judge may make a decision on the day of the appeal hearing. Alternatively, the appeal judge may want more time to decide the appeal. In this case, the appeal judge will either schedule another hearing date to deliver his or her oral appeal decision, or the court will send you and the prosecutor the judge’s appeal decision in writing.

**New trial:** If the appeal judge orders a new trial, your case will be sent back to the court where your trial was first held. You will be sent a notice from the court advising you when you will be required to come back to court.

### FURTHER APPEALS

The decision of an appeal judge may be appealed to the Ontario Court of Appeal within 30 days in very limited circumstances, and only with the permission of the Ontario Court of Appeal. You must bring an application (called a “leave to appeal application”) to Ontario Court of Appeal to get this permission. You may represent yourself at the Ontario Court of Appeal, but it is recommended that you seek legal advice if possible.

The *Provincial Offences Act* (PART VII) and Ontario Regulation 721/94 set out the rules that apply in the Court of Appeal. You can view the *Provincial Offences Act* and the regulations online at: <http://www.e-laws.gov.on.ca>.

### REOPENING A PROCEEDING

(Note: A reopening application is not an appeal. It is simply a procedure to ask the court to strike out a conviction and order a trial.)

If you are convicted in respect of a ticket without a hearing, you can apply to have your conviction struck out and a new trial scheduled. You must apply for this “reopening” within fifteen days of becoming aware of the conviction. Contact the court office shown on the back of your ticket to obtain information about how to apply.

A justice of the peace can “reopen” your case and strike out your conviction if he or she is satisfied by your sworn affidavit that:

- you were unable to attend the hearing or a meeting with the prosecutor, where applicable, through no fault of your own; or
- a notice or document relating to the offence was not delivered.

There is no appeal from a refusal to reopen your case. However, if your reopening application is denied, you may still try to appeal your conviction and/or sentence.