

Overview of Applications Before a Court of Appeal Panel

General

1. A Court of Appeal panel may hear any application (including those that could have been decided by a single appeal judge). The following applications must be heard by a panel:
 - an application to allow or dismiss an appeal on its merits
 - an application for new evidence (heard by the same panel that hears the appeal), unless the panel directs that the application be heard by a single appeal judge
 - an application to reargue or reopen an appeal
 - an application for directions required to give effect to any decision of the Court of Appeal, unless the panel directs that the application be heard by a single appeal judge
 - an application to reconsider a prior precedential decision of the Court.

Applications to dismiss an appeal for want of prosecution are also heard by a Court of Appeal panel.

2. The Court requires 5 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.

There is a prescribed form for the Application – in **civil** matters, form AP-3 and, in **criminal** matters, form CRA-F. 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.

3. 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.

Fees

4. The filing fee for an application before a Court of Appeal Panel in a **civil** matter is \$50. There is no filing fee for an application before a Court of Appeal Panel in a **criminal** matter.

Scheduling

5. Applications before a Court of Appeal Panel (Panel Applications) in **civil** matters are heard at 10:00 a.m. one Thursday per month with the exception of July and August.

6. Applications before a Court of Appeal Panel (Panel Applications) in **criminal** matters are heard at 10:00 a.m. one Tuesday per month (on the same day that sentence appeals are scheduled to be heard) with the exception of July and August.
7. There is no limit to the number of applications that may be scheduled to be heard in Panel Applications Court.
8. Time limits for oral argument (both civil and criminal matters) are: 30 minutes for applications for permission to appeal and 15 minutes for every other type of application. (Applications for permission to appeal heard by a panel will be rare, if ever.)
9. If all parties consent, applications may be heard in writing only with no oral argument and are arranged through the CMO.

Filing Applications - Deadlines

10. The deadline for filing an Application, a Memorandum of Argument and any Affidavit and supporting materials is at least 20 days before the application is scheduled to be heard.
11. If the deadline for filing an application is missed, a new date must be selected to provide the requisite 20 days' notice. A late application will not be permitted to be filed unless the panel scheduled to hear it grants permission for it to be filed.
12. Applications to admit new evidence must be filed prior to (or at the same time) that the Applicant files its Factum. Applications to admit new evidence are heard by the same panel that hears the appeal.
13. Applications to reconsider a prior precedential decision must be filed prior to (or at the same time) that the Applicant files its Factum.

Responding - Deadlines

14. The deadline for responding to an Application is at least 10 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.
15. If the deadline for filing a response is missed, the Respondent may not present oral argument at the hearing of the application unless the panel otherwise permits.

Format

16. 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.

17. 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 (rare to be heard by a panel)
- 5 double-spaced pages for all other types of applications.

18. In addition to the page limits, the Memorandum of 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.

Deemed Abandoned

19. 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 Case Management Officer otherwise directs. (If an application for permission to appeal, normally heard by a single appeal judge, has not been heard within 6 months from the date that it was filed, it will be deemed to have been abandoned unless a Case Management Officer otherwise directs.)

Applications to Admit New Evidence

20. Materials filed in support of or in response to an appeal cannot include facts or evidence that were not before the judge whose decision is being appealed. Any information that was not considered by that judge (including any information that was created or discovered after the date of the decision that is being appealed) is generally considered “new” evidence. New evidence may only be introduced in the appeal with the court’s permission. If you wish to rely on new evidence, you must bring an application to admit new evidence.

21. Applications to admit new evidence must be filed prior to (or at the same time) that the Applicant files its Factum. Applications to admit new evidence are heard by the same panel that hears the appeal.

22. In addition to the Application and Memorandum of Argument, the new evidence must be provided in separate and **unsealed** envelopes large enough to hold it. The envelopes must be marked with the appeal number and style of cause and be titled “New Evidence”.

23. If the appeal has not yet been scheduled for hearing, the return date in the Application can read “TBD”.

24. If you want to file an application to admit new evidence after filing your factum, you must first obtain permission to do so. You should contact the Case Management Officer for directions in this case.