

## The Appeal Process: Lecture Notes

Most cases take place in provincial or territorial courts. The Federal Court hears cases that involve federal law (includes immigration and intellectual property cases). It also can review the decision of federal tribunals.

An appeal is when there is an application to a higher court (Provincial/Territorial or Federal Courts of Appeal) to review the decision of a lower court. This applies to both criminal and civil cases. In criminal cases, both the Crown and the defense have the right to request an appeal of a criminal trial decision (i.e. whether the accused is guilty or innocent). In some cases the party wishing to appeal must first ask for permission, or “leave”, from the court in order to be able to appeal (e.g. a criminal sentencing decision).=

You cannot appeal a decision from the family or small claims court (in Provincial Court) directly to the Court of Appeal without filing an appeal to the Supreme Court first.

The appellant is the party making the request for an appeal, while the respondent is the party responding to (arguing against) the appeal.

Grounds or reasons for an appeal are:

- A question of law (e.g. the judge made a mistake in interpreting or applying the law)

A question of fact (e.g. the judge made a mistake in understanding the facts of the case )

It is generally difficult to appeal based on a mistake of fact because trial judges are considered to have the best vantage of reviewing the relevancy and credibility of the evidence since they see it all in person.

Showing there was a mistake is not enough. You also have to show that the mistake was so significant that it led to an incorrect decision.

In general there is NO NEW EVIDENCE in appeal cases. Most appeal cases only review the transcript from the previous hearings and the arguments from the lawyers. An appeal is not a “second kick at the can” or a new trial. However, if it is in the interest of justice, new evidence may be allowed. New evidence is admitted in an appeal only if

- It was not available at trial (if you could have entered it but for some reason failed to it may not be allowed on appeal)
- It is relevant and credible
- It would have affected the result of the trial
- Example: New DNA evidence in a murder trial

**Appeal Results:**

- Reverse or change of previous judge's decision
- Order new trial or hearing

If an appeal from a Court of Appeal is not accepted by a party, they can ask the Supreme Court of Canada to hear the case. If it does not hear the case, the decision of the court of appeal is final. Usually, the Supreme Court of Canada will only take up appeals that are of national importance, but criminal cases have a right to appeal to the Supreme Court of Canada when at least one judge in the Court of Appeal case disagreed with the other judges (dissented)

The Supreme Court of Canada is the final court of appeal and lower courts of appeal must follow the decisions made by the higher courts.

**Supreme Court Appeal Results:**

- Reverse or change of previous judge's decision
- Agree with the previous decision
- Order new trial or hearing

**References:**

Murphy, Terry, et. al. *All About Law: Exploring the Canadian Legal System*, 6th ed., Nelson Canada, 2009.

"The Judicial Structure." *Department of Justice*, "The Appeal Process in Canada." *Department of Justice*, Government of Canada, 10 Mar. 2017, [www.justice.gc.ca/eng/csj-sjc/just/appeal-appel.html](http://www.justice.gc.ca/eng/csj-sjc/just/appeal-appel.html)