

How to File a Notice of Appeal

from a Small Claims Court Decision (Form 9)

This guide gives general information only. It does not explain the law. Court staff can give general information about how the court works, and about court rules and procedures. Court staff cannot give legal advice. Speak to a lawyer for legal advice about your decision to appeal.

Words to know

If you are appealing a Small Claims Court decision you are the “Appellant.” The party against whom the appeal is brought is the “Respondent.”

You must “file” your Notice of Appeal at the Supreme Court. “Filing” means delivering your documents to the court administration office and paying the fees.

A “stay” is a temporary suspension of an action or process.

A “brief” is a written submission to a court that sets out the facts of a case and the laws applicable to it.

Time limit to file your Notice of Appeal

You have 30 days from the date the adjudicator’s written decision or order is filed to file the Notice of Appeal at the court administration office of the Supreme Court.

Do I have grounds for appeal?

Just because you don’t like the decision of the court doesn’t mean that you have grounds for appeal. There are only three grounds for appeal of an adjudicator’s decision. No other grounds are allowed.

a *Jurisdictional error*

A Small Claims Court adjudicator can only do what the Small Claims Court Act says they can do. If the Small Claims Court adjudicator goes beyond this, they are said to be “without jurisdiction.” For example, the act authorizes the adjudicator to make orders for payment of up to \$25,000 plus interest and costs. If the adjudicator makes an order requiring someone to pay more than that, this is grounds for appeal for a jurisdictional error.

b Error of law

Adjudicators hold hearings, determine what the facts are, apply legal principles to those facts, and make decisions. The Supreme Court will not change an adjudicator's determination of the facts. However, if an adjudicator applies the wrong legal principles to those facts, then this is grounds for an appeal based on an error of law.

c Failure to follow the requirements of natural justice

Both the Small Claims Court process and the adjudicator at the hearing must be fair. The law says a process is unfair if, for example, the defendant did not get proper notice of the hearing. The law says the adjudicator is unfair if, for example, he or she does not allow a party to speak at the hearing or talks privately about the matter to one of the parties. If the process or the adjudicator is unfair, then you can appeal on the grounds of a failure of natural justice.

What happens to the judgment against me while I appeal?

If an Execution Order and Judgment have been issued by the Court, the other party has the right to enforce it. However, if you are appealing the decision, you can apply to the Supreme Court to "stay" the Small Claims Court proceedings until your appeal is heard. This does not happen automatically when you file your Notice of Appeal. Ask the court administration office how to proceed with a suspension (stay) of the enforcement of the Small Claims Court decision or Execution Order or Judgment while you are going through the appeal process.

How to prepare and file an appeal

Step 1

Get a copy of the Notice of Appeal (Form 9). One is attached. You can also find it at www.gov.ns.ca/just/regulations/regs/sccfrmpr.htm. Read the form carefully to figure out what information you need to complete it.

Step 2

Fill in the Notice of Appeal form with the required information. Include the grounds of appeal and a description of the error or failure of the adjudicator. Make it readable and clear.

Step 3

Make 3 copies of the completed Notice of Appeal form. Be prepared to show a copy of the adjudicator's decision or order to court staff when you file the Notice of Appeal.

Step 4

File the original and 3 copies of the Notice of Appeal at the court administration office of the Supreme Court in your area. Remember the 30-day time limit. Court staff will assign the documents a Supreme Court case number and will insert the number on all copies of the Notice of Appeal. Court staff will stamp the copies, keep the original and one copy in the court file, and return the remaining copies to you.

Pay the filing fee. You may pay by cheque, cash, or money order. Some offices also accept credit and debit cards. Make cheques payable to the "Court Administration Office." For current fee information, contact court staff or visit the Courts of Nova Scotia website at <http://www.courts.ns.ca/General/fees.htm>.

Step 5

Serve (deliver) the Notice of Appeal on the respondent within 30 days of the date that the adjudicator's order or decision is filed with the Small Claims Court. You may serve the respondent either personally or by registered mail. To personally serve the Notice of Appeal you, or a person you choose, must do one of the following:

- hand a copy to the person
- hand a copy to the person's lawyer if the lawyer has agreed to accept service on behalf of their client
- if it is an incorporated company, hand a copy to a chief officer of the company or to the registered agent of the company

If there is more than one respondent, then you must serve each of them.

If you want to hire someone to serve the respondent, look in the yellow pages of the telephone book under "bailiffs" and "process servers."

Step 6

Prove that the Notice of Appeal was served. You do this by completing and filing a written acknowledgment that you have delivered the Notice of Appeal to each respondent. It may consist of a letter that certifies that the respondent was served, a Canada Post registration receipt, or an Affidavit of Service. The written acknowledgment must be filed within 7 days of the last day in which you were permitted to file your appeal. In other words, within 37 days of the adjudicator's written order or decision being filed.

If your telephone number or address changes after you file your Notice of Appeal you must provide the updated information to the court .

What happens next?

The court administration office will forward a copy of your Notice of Appeal to the adjudicator. The adjudicator must file a summary report with the court administration office within 30 days of receiving the Notice of Appeal. The summary report must include the findings of law and fact made in the case on appeal, the basis of any findings raised in the Notice of Appeal, any interpretation of documents made by the adjudicator, and a copy of any written reasons for the decision.

The court administration office will forward a copy of the adjudicator's summary report, as well as a Notice to Appear in Supreme Court, to the appellant and respondent. This Notice will tell you the appeal hearing date.

Both the appellant and the respondent are permitted to send a written submission to the court, called a brief. The brief should set out the facts of your case and the laws applicable to it.

The court administration office must receive the appellant's brief at least 4 days before the hearing. Do not include weekends or holidays, the day of the hearing, or the day of filing the brief when counting the 4 days. This is called 4 clear days. The respondent's brief is required at least 2 clear days before the hearing date. Whenever you submit a brief, a copy must be delivered to the other party.

What happens at the appeal hearing?

An appeal is not a new hearing of the evidence that you presented to the adjudicator. The Supreme Court will hear no evidence at the appeal hearing. Its decision is based on the adjudicator's summary report and decision, the Small Claim Court file, and the submissions by the parties.

Continued on back panel.

Form 9

20 _____

S_____ No. _____

**NOTICE OF APPEAL
IN THE SUPREME COURT OF NOVA SCOTIA
SMALL CLAIMS COURT**

NAME
ADDRESS

APPELLANT

- and -

NAME
ADDRESS

RESPONDENT

TO: The Prothonotary

The Appellant appeals from an order or determination made by an adjudicator of the Small Claims Court on _____, 20 _____, in the Small Claims Court of Nova Scotia at _____, in the County of _____ on the grounds of

- (a) jurisdictional error;
- (b) error of law;
- (c) failure to follow the requirements of natural justice,

and the particulars of the error or failure which form the grounds of appeal are:

And the Appellant requests that the adjudicator within 30 days, transmit to the court a summary report of the findings of law and fact, including the basis of any findings raised in this Notice of Appeal and any interpretation of documents made by the adjudicator with a copy of any written reasons for the decision to the Court.

DATED at _____, on _____, 20_____.

Appellant

Upon hearing the appeal, the Supreme Court may

- dismiss the appeal
- allow the appeal in whole or in part
- require additional materials to be filed
- request a restatement of the case from the adjudicator
- refer the matter back to Small Claims Court for rehearing
- award costs

The decision of the Supreme Court is final and cannot be appealed to any other court.

Where to go for more information

The Civil Procedure Rules are available on the Courts of Nova Scotia website at <www.courts.ns.ca> and in law libraries.

The Small Claims Court regulations are available at <www.gov.ns.ca/just/regulations/regs/sccfrmpr.htm>.

For information about representing yourself in court, see <www.gov.ns.ca/just/repselfmain.htm>. For information about the courts of Nova Scotia, see <www.courts.ns.ca>.

