



MEMORANDUM FOR UNREPRESENTED PARTIES IN CIVIL APPEALS

Legal representation

This memorandum sets out some material which may help unrepresented litigants in civil appeals. However, parties who participate in appeals should if possible have legal representation. This is because a knowledge of the law, of court practice, and an ability to analyse facts from a legal perspective, are matters within the expertise of specialised court lawyers. You may be very disadvantaged if you are not able to call on that level of expertise. You should speak to a lawyer before you proceed further.

Starting an appeal

An appeal is started by the filing of a notice of appeal. The notice of appeal to be effective must be served on all other parties and the Court or Tribunal appealed from. You need to pay particular attention to time limits for commencing the appeal and other technical requirements of the law or Court rules. Failure to do so may result in the right to appeal being lost.

The first conference

A first conference date before a Judge will be set for the appeal. All parties must attend that conference. The purpose of the conference is to set a timetable for events leading up to the appeal, and deal with any preliminary matters. A hearing date for the appeal will be allocated. Directions will be made for the filing of typed submissions and the filing of a bundle of relevant documents within a stated timeframe.

Security for costs

An appellant must pay a designated amount of security for costs unless, on application, the Court dispenses with this. A failure to pay such costs within the time allowed can mean that the appeal is deemed to be at an end.

Evidence

As a general rule new evidence is not allowed in an appeal, and the appeal proceeds on the basis of the evidence given at the Court or Tribunal appealed from. If a party wishes to call further evidence, an application should be made before the first conference seeking permission to do so and attaching written copies of the proposed evidence. The Judge may require that evidence to be in the form of an affidavit. There may have to be a hearing before the appeal to decide whether the new evidence will be allowed.

Representing companies

As a general rule companies can only be represented by lawyers. Non-lawyers, even if they are directors or shareholders of the company, can only represent the company with leave of the Court.

The hearing

The appellant gives submissions first and the respondent second. Then the appellant has a right of reply.

Conduct in Court

When appearing before a judge in court, litigants must always treat the court, and all persons involved in the court process, including opponents, with courtesy. This is because the court process can only work if the ordinary requirements of civility are maintained as a framework for the issues to fully be aired and argued. In particular:

- You should wear formal and conservative clothing: for men preferably a jacket, tie and trousers, and for women attire of a similar standard. Shorts, sandals, bare shoulders, or provocative clothing are not appropriate.
- You must be punctual.
- You will be shown where to sit when the case is called. You should stand when the judge enters the courtroom and leaves the courtroom. You should stand when you are being addressed by the judge, or you are addressing the judge. You should be seated when not speaking or being spoken to.
- Do not interrupt when other persons are speaking to the judge. When they conclude you will be given a chance to speak, or you may ask for an opportunity to speak.
- Address the judge as “Your Honour” or “Sir” or “Ma’am”.
- Do not interrupt the judge, and do not express feelings when a decision is being delivered.
- There are water and glasses available in court. Do not bring in or consume beverages or food.
- Show respect for the court process at all times, and do not communicate to others, have cell phones on, or use computers while the court is in process except for the purposes of the case.

The role of the judge

The judge has the tasks of controlling the procedures of the court, making any rulings that are necessary, and ultimately that of deciding the case. The judgment may be given at the conclusion of the case or reserved and given in writing at a later point.