

# Guide to Appealing a Small Claims Decision

## Can I appeal a decision of a Small Claims Court Officer?

An appeal of a Small Claims Court Officer's decision is only available in limited situations. In order to appeal, you must get "leave" (permission) from a judge of the Court of Queen's Bench by satisfying them that the Court Officer made an "**error of law**" or an "**error of jurisdiction**", not an "**error of fact**" or a "**mixed error of law and fact**".

Most people want to appeal because they think the Court Officer should have decided things differently. But you **cannot** appeal for that reason. In other words, you **will not** get "*leave to appeal*" (i.e. permission from the judge) just because:

- you do not agree with the Court Officer's decision
- you did not bring all the documents the Court Officer needed to decide the case properly
- you did not bring witnesses that would have helped the Court Officer make a decision
- the Court Officer thought the evidence of the other side was more believable than yours

An "*error of law*" or "*error of jurisdiction*" is a very hard thing to prove. It requires you to know what the correct law is to apply to your case. It is a good idea to be represented by a lawyer or to ask a lawyer whether such a mistake was made before you file an appeal.

**Be aware:** If the judge rejects your request for "*leave to appeal*", or dismisses your actual appeal, you might be ordered to pay costs (money) to the other parties.

## What is an "error of law"?

An "*error of law*" is when the Court Officer makes a mistake when interpreting the law, uses the wrong legal test or fails to consider a relevant issue when applying the correct legal test.

- **Example:** You were 16 years old when you suffered an injury in an accident. You did not file your claim until you were 19 years old. The Court Officer dismisses your claim because it was not filed within 2 years after your injury as required by *The Limitation of Actions Act*. You have grounds to appeal because the Court Officer applied the law incorrectly – they did not consider the exception in the *Act*, which excludes the time period you were under 18 years old when calculating the time to file a claim.

## What is an "error of jurisdiction"?

An "*error of jurisdiction*" is when the Court Officer makes a mistake about their legal authority or power to make the decision. *The Court of Queen's Bench Small Claims Practices Act* (Manitoba) states what is, and what is not, within the jurisdiction of the Small Claims Court to decide.

- **Example:** You sue the contractor for unfinished renovations on your home that you paid for in full. The Court Officer decides that you win and awards you \$20,000 for your claim, plus interest and costs. The contractor has grounds to appeal this decision because the Court Officer ordered an amount of money which was not within their power to order as *The Court of Queen's Bench Small Claims Practices Act* limits claims to \$15,000, plus interest and costs.

## What is an "error of fact"?

An "*error of fact*" is different and occurs when the Court Officer has the wrong facts or interprets them incorrectly, but applies the correct law to those facts. **You cannot appeal for an "error of fact"**.

- **Example 1:** You sue your mechanic because they didn't do the repairs on your vehicle properly. After listening to both sides, the Court Officer rules for the mechanic, deciding that the evidence shows that repairs were completed and done properly and something else was wrong with your car. You disagree because you feel the mechanic really did mess up the job. You will not be granted leave to appeal because this is a factual disagreement.
- **Example 2:** You file a claim for money owed to you under a verbal agreement. There was a witness, but on the day of the hearing, the person who heard you make the deal did not show up. You also told the Court Officer there were calls and texts afterwards that proved the agreement but you did not bring copies. The Court Officer decided you did not have enough evidence to prove there was an agreement, and dismissed your claim. You will not be granted leave to appeal because the Court Officer applied the law correctly and decided the facts you presented to the Court did not prove your claim.

## What is a “mixed error of fact and law”?

A “mixed error of fact and law” occurs when the facts are admitted or proven and the rule of law is undisputed but the Court Officer applies the legal test incorrectly to your set of facts. **You cannot appeal for a “mixed error of fact and law”.**

- **Example:** You sue your local grocery store for slipping and falling in the aisle. At the hearing, it is admitted by the store owner that you fell on the wet floor that day and that a “Wet Floor” sign had not been put out. Although the legal test of *negligence* was correctly chosen by the Court Officer, they decide that the store is not responsible because the mop had been left out in the aisle so people could see that it had just been cleaned. You will not be granted leave to appeal the decision even though you feel the store did not do enough to warn its customers and did not satisfy the appropriate *standard of care*.

## How to Appeal?

If you think you can prove an “error in law” or “error of jurisdiction”:

- Fill out an “*Application for Leave to Appeal and Notice of Appeal*” (**Form 76K**) and file it at the Court of Queen’s Bench court office within 30 days from the filing date on your *Certificate of Decision*. You must also file the transcript of the proceedings before the court officer or proof that the transcript has been ordered.
- Pay the filing fee.
- When you file your application and the transcript or proof that the transcript has been ordered, the court will schedule an appointment (including the date, time and place) for the hearing of your *leave application*.
- Serve a copy of your application (with the date, time and place indicated) and a copy of the transcript, on all the other parties involved within 20 days of filing the application. If the transcript is not available when the application is served, the transcript must be later served on the other parties as soon as possible. Additional time to file and/or serve the application can be requested by filing a motion to a judge.
- Once you have served all parties, file a “*Declaration of Service*” (**Form 76B**) with the court for each party that was served so that the Court knows they have been notified of the application.
- After filing your application, all steps taken to enforce the decision of the Court Officer are “stayed” (stopped) and the “stay” continues until your application for *leave to appeal* is dismissed or, if your *leave to appeal* is granted, until the Court makes a decision on your appeal. In other words, nobody has to pay any amount owing until a final decision is made.

## What happens next?

- Show up at Court at the time, date and location you were told. Your hearing will be on a list where the judge is dealing with a number of *applications for leave to appeal*, including yours.
- At the hearing of your *application for leave to appeal*, you will be required to set out before the judge how, in your view, the Court Officer made an “error of law” or an “error of jurisdiction”.
- If your *leave to appeal* is granted, the judge will set another date and time for the actual hearing of your appeal and may also give directions as to how the appeal will be conducted.
  - You must go to the hearing of your appeal. The appeal judge may agree with the decision of the Court Officer, or make any decision the Court Officer could have made.
  - A Certificate of Decision will be mailed to all of the parties that shows the Judge’s decision- it is a judgment of the Court and may be enforced.
  - The appeal decision is final and cannot be appealed further.

For more information on the Small Claims Appeal Process, please see: <https://www.manitobacourts.mb.ca/court-of-queens-bench/frequently-asked-questions/small-claims/>.

## Appealing a Decision of a Judge of the Court of Queen’s Bench

- If your Small Claims hearing was with a judge of the Court of Queen’s Bench (not a Court Officer) and you want to appeal, you must get permission from a judge of the Manitoba Court of Appeal. But again, you may only do so on an “error of law” or an “error of jurisdiction” as set out above.
- For further information on the Court of Appeal process, see: <http://www.manitobacourts.mb.ca/court-of-appeal> or call the Court of Appeal at 204-945-2647.

## Need more help?

If you need more information regarding appealing a Small Claims decision, you can contact the **Legal Help Centre** for assistance. The Centre provides free information to people who meet their eligibility requirements. Call 204-258-3096 or visit <http://legalhelpcentre.ca/> to see if you are eligible or to obtain more information.