

Introduction

Graeme Blank and Hugh Selby

In our legal system a person is entitled to their day in court. An appeal only arises after that day in court when a party is dissatisfied with the result. An appeal is not, however, part of the common law system but is created by statute to provide losing litigants with an opportunity to challenge the result.

To make such a challenge, it is critical that the legislative framework which governs the appeal is considered throughout its preparation and disposition. There are different types of appeal with distinctive requirements and outcomes. For example, in most, but not all, appeals an error by the original decision maker must be identified. The relevant law to be applied depends on whether there is a strict appeal or a rehearing. The circumstances and limits of such appeals are discussed in Chapter 1.

Where a person wishes to appeal a decision, a range of other issues commonly arise. For example, who should be heard on the appeal? Is it just the parties to the original decision or are there others with an interest in the outcome who should be given a chance to be heard? This is covered in Chapter 6 on interveners and in Chapter 2.

Chapter 2 also considers other common issues. In some instances, the appellant wishes to stay the original judgment or wants expedition of the appeal. The appellant may seek to appeal after the time for filing the notice of appeal has passed. The respondent, having succeeded once, may want certainty that their legal costs on the appeal are protected. Costs are more generally discussed in Chapter 11.

The appellant may also wish to raise a matter that was not raised in the original hearing or want reconsideration of a witness's evidence or the exercise of discretion. When and how may this be done? This is covered in Chapter 2 as well. Chapter 7 discusses the circumstances in which an appeal court will admit evidence that was not presented at the original hearing.

The grounds of appeal must identify the errors made in the court below. In determining what errors were made, appellants often wrongly scour the reasons for decision, highlighting every phrase with which they

This is a preview. Not all pages are shown.