

# *The Court of Appeal Act, 2000*

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Chapter C-42.1\* of *The Statutes of Saskatchewan, 2000* (effective November 1, 2000) as amended by the *Statutes of Saskatchewan, 2004, c.66*; and *2007, c.22*.

**\*NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

## **NOTE:**

**This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER C-42.1

### An Act respecting a Court of Appeal for Saskatchewan and making consequential amendments to other Acts

#### Short title

1 This Act may be cited as *The Court of Appeal Act, 2000*.

#### Interpretation

2 In this Act and the rules of court made pursuant to this Act, except where otherwise provided:

“**chief justice**” means the Chief Justice of Saskatchewan; (*«juge en chef»*)

“**court**” means the Court of Appeal for Saskatchewan; (*«Cour»*)

“**decision**” includes any judgment, order, decree, verdict or finding; (*«décision»*)

“**judge**” means a judge of the court, and includes a supernumerary judge mentioned in subsection 3(5) and a judge of the Court of Queen’s Bench sitting pursuant to section 17; (*«juge»*)

“**matter**” means every proceeding in the court that is not an appeal; (*«affaire»*)

“**northern centre**” means any of the judicial centres of Battleford, Humboldt, Melfort, Prince Albert or Saskatoon or a place in Saskatchewan that is nearer to any of those judicial centres than to any other judicial centre; (*«centre judiciaire du nord»*)

“**registrar**” means the registrar of the Court of Appeal appointed pursuant to section 3 of *The Court Officials Act, 1984*, and includes a deputy registrar of the Court of Appeal appointed pursuant to that section; (*«registraire»*)

“**rules of court**” means the rules of court made pursuant to section 22. (*«règles de procédure»*)

2000, c.C-42.1, s.2.

#### Court continued

3(1) The Court of Appeal is continued as the Court of Appeal for Saskatchewan, and is a superior court of record having appellate jurisdiction.

(2) The court consists of a chief justice called the Chief Justice of Saskatchewan and six other judges.

(3) The court shall sit at Regina and Saskatoon, and may sit at any other place that the chief justice considers appropriate.

(4) The Lieutenant Governor may, by proclamation, increase the number of judges.

(5) For each office of judge provided for by subsection (2), there is the additional office of supernumerary judge.

(6) A supernumerary judge shall hold himself or herself available to perform any judicial duties that may be assigned to the judge from time to time by the chief justice.

(7) The seal of the court is the seal approved by the Lieutenant Governor in Council.

2000, c.C-42.1, s.3; 2007, c.22, s.2.

#### **Oath of office**

4 Before entering on the duties of office, a judge shall take the following oath, administered by the Lieutenant Governor, the chief justice or another judge:

I, \_\_\_\_\_, do swear (*or solemnly affirm*) that I will well and truly serve our Sovereign Lady the Queen in the office of Chief Justice (*or a Judge*) of the Court of Appeal for Saskatchewan, and that I will duly and faithfully, and according to the best of my skill and knowledge, exercise the powers and trust reposed in me as Chief Justice (*or a Judge*) of that court. (So help me God.)

2000, c.C-42.1, s.4.

#### **Duties and powers of judges**

5(1) The chief justice and the other judges are also, by virtue of their office, judges of the Court of Queen's Bench and:

(a) for all purposes, have all the powers, rights, privileges and immunities of judges of the Court of Queen's Bench; and

(b) are eligible to preside over trials of criminal and civil cases in the Court of Queen's Bench, to sit in chambers as judges of that court and to hear and determine all applications that may properly be made to a judge of that court sitting in chambers.

(2) Each judge has all the jurisdiction, both civil and criminal, possessed by the judges of any court in Saskatchewan pursuant to any Act or any Act of the Parliament of Canada.

(3) Nothing in this Act requires judges to preside over trials of criminal and civil cases, but they may, with the consent of the chief justice, preside over criminal and civil trials when requested to do so by the Chief Justice of the Queen's Bench.

2000, c.C-42.1, s.5.

#### **Duties and powers of chief justice**

6 The chief justice:

(a) is the presiding judge and administrative head of the court; and

(b) has general supervision and direction over the sittings of the court, assignment of the judicial duties of the court, court lists and administrative staff carrying out functions related to the court.

2000, c.C-42.1, s.6.

**Right of appeal**

7(1) In this section and section 9, “**enactment**” means:

- (a) an Act;
- (b) an Act of the Parliament of Canada; or
- (c) a regulation made pursuant to an Act or an Act of the Parliament of Canada;

but does not include this Act.

(2) Subject to subsection (3) and section 8, an appeal lies to the court from a decision:

- (a) of the Court of Queen’s Bench or a judge of that court; and
- (b) of any other court or tribunal where a right of appeal to the court is conferred by an enactment.

(3) If an enactment provides that there is no appeal from a decision mentioned in subsection (2) or confers only a limited right of appeal, that enactment prevails.

2000, c.C-42.1, s.7.

**Interlocutory appeals**

8(1) Subject to subsection (2), no appeal lies to the court from an interlocutory decision of the Court of Queen’s Bench unless leave to appeal is granted by a judge or the court.

(2) Leave to appeal an interlocutory decision is not required in the following cases:

- (a) cases involving:
  - (i) the liberty of an individual;
  - (ii) the custody of a minor;
  - (iii) the granting or refusal of an injunction; or
  - (iv) the appointment of a receiver;
- (b) other cases, prescribed in the rules of court, that are in the nature of final decisions.

2000, c.C-42.1, s.8.

**Appeal periods**

9(1) In this section, “**date**” means, with respect to a decision:

- (a) the date of filing of the written reasons for the decision with the registrar, local registrar or chambers clerk of the Court of Queen’s Bench, as the case may be; or
- (b) where the decision has been pronounced in court or chambers with no provisions for written reasons to follow, the date of the oral pronouncement.

(2) Subject to this section, a notice of appeal must be served within 30 days after the date of the decision being appealed from.

(3) Where leave to appeal is necessary, an application for leave must be made within 15 days after the date of the decision for which leave to appeal is being sought or within any time ordered by the court or a judge.

(4) Where a decision is made during or after a trial and the decision is only incidental to the trial, a notice of appeal from the incidental decision must be served not later than 30 days after the date of the judgment at trial, and a party appealing from the trial judgment may include in the notice of appeal of the trial judgment an appeal from the incidental decision.

(5) Where a decision is made during or after the hearing of an application in chambers and the decision is only incidental to the application and does not dispose of the matter in issue, a notice of appeal from the incidental decision must be served not later than 15 days after the date of the judgment on the matter in issue in the application, and a party appealing from the judgment may include in the notice of appeal of the judgment an appeal from the incidental decision.

(6) On the application of any party, a judge or the court may extend an appeal period mentioned in this section where, in the opinion of the judge or court, it is just and equitable to do so.

(7) Where a provision of this section conflicts with a provision of an enactment governing an appeal, the provision of the enactment prevails.

2000, c.C-42.1, s.9.

#### **Appellate jurisdiction**

**10** The court has appellate jurisdiction in civil and criminal matters where an appeal lies to the court, with any original jurisdiction that is necessary or incidental to the hearing and determination of an appeal.

2000, c.C-42.1, s.10.

#### **Original jurisdiction**

**11** The court may, in its discretion, exercise original jurisdiction to grant relief in the nature of a prerogative writ.

2000, c.C-42.1, s.11.

#### **Powers of the court**

**12(1)** On an appeal, the court may:

- (a) allow the appeal in whole or in part;
- (b) dismiss the appeal;
- (c) order a new trial;
- (d) make any decision that could have been made by the court or tribunal appealed from;
- (e) impose reasonable terms and conditions in a decision; and
- (f) make any additional decision that it considers just.

(2) Where the court sets aside damages assessed by a jury, the court may assess any damages that the jury could have assessed.

2000, c.C-42.1, s.12.

**Motions against decision of judge**

**13** Where issues of fact have been tried, or damages have been assessed, by a trial judge without a jury, any party is entitled to move against the decision of the trial judge, by motion for a new trial or otherwise:

- (a) within the same time that is allowed in cases of trial or assessment of damages by a jury; and
- (b) on the same grounds, including objections against the sufficiency of the evidence, or the view of the evidence taken by the trial judge, that are allowed in cases of trial or assessment of damages by a jury.

2000, c.C-42.1, s.13.

**Powers of court re evidence**

**14** On an appeal from, or on a motion against, the decision of a trial judge or on any rehearing, the court is not obliged to grant a new trial or to adopt the view of the evidence taken by the trial judge, but the court shall act on its own view of what, in its judgment, the evidence proves, and the court may draw inferences of fact and pronounce the decision that, in its judgment, the trial judge ought to have pronounced.

2000, c.C-42.1, s.14.

**Quorum**

- 15(1)** Any three judges constitute a quorum of the court at a sitting of the court.
- (2) A decision of the three judges constituting a quorum, or of a majority of them, is deemed to be the decision of the court.
  - (3) Notwithstanding subsection (1), if an appeal or matter has been heard and is standing for judgment, and one or more of the judges who heard the appeal or matter resigns his or her office, dies or is absent through illness or other reason, the remaining judges may give the decision, and the decision is deemed to be the decision of the court.

2000, c.C-42.1, s.15.

**Re-hearings**

**16(1)** The court shall re-hear an appeal or matter that has been heard and is standing for judgment if, due to the death, resignation or absence of two or more of the judges who heard the appeal or matter, only one of the judges who heard the appeal or matter remains.

- (2) An uneven number of judges shall re-hear an appeal or matter that has been heard and is standing for judgment if:
  - (a) the number of judges who heard the appeal or matter is later reduced to an even number of judges;
  - (b) the remaining judges are equally divided on the appeal or matter; and
  - (c) a party to the appeal or matter applies for a re-hearing.

2000, c.C-42.1, s.16.

**Queen's Bench judges assisting in court**

17(1) At the request of the chief justice but subject to the consent of the Chief Justice of the Queen's Bench, one or more judges of the Court of Queen's Bench may sit as judges where there are vacancies or where one or more of the judges are absent due to illness or any other reason.

(2) In the absence of the chief justice or where the office of chief justice is vacant, any two judges may make a request pursuant to subsection (1).

(3) In the absence of the Chief Justice of the Queen's Bench or where the office of the Chief Justice of the Queen's Bench is vacant, the non-supernumerary judge of that court who is senior in appointment to office may grant the consent required by subsection (1).

2000, c.C-42.1, s.17.

**Judge of first instance not to review own decision**

18 On any appeal or matter before the court, a judge shall not sit as one of the judges composing the court if the decision being appealed against or reviewed:

- (a) is the decision of the judge; or
- (b) was rendered before the judge.

2000, c.C-42.1, s.18.

**Sittings**

19(1) Subject to subsection 3(3), sittings of the court shall be held at the judicial centres of Regina and Saskatoon at any times that are fixed from time to time by the court.

(2) Subject to subsections (3) to (8) and subsection 3(3), all applications and appeals to the court, and all motions to be heard by the court, are to be entered for hearing and heard at a sitting of the court at the judicial centre of Regina.

(3) The court may hear at the judicial centre of Saskatoon any application or motion that is incidental to:

- (a) an appeal with respect to an action tried at a northern centre;
- (b) an appeal with respect to a matter heard at a northern centre; or
- (c) an appeal entered for hearing at a sitting of the court at the judicial centre of Saskatoon pursuant to this section.

(4) Where a person appeals to the court with respect to an action tried or a matter heard at a northern centre:

- (a) the person may include in the notice of appeal a request that the appeal be heard at the judicial centre of Saskatoon; and
- (b) if the person does not make a request pursuant to clause (a), any other party to the appeal may, within 10 days after being served with the notice of appeal, file with the registrar a request that the appeal be heard at the judicial centre of Saskatoon.

- (5) On the filing of a notice of appeal containing a request pursuant to clause (4)(a) or on the filing of a request pursuant to clause (4)(b):
- (a) the registrar shall:
    - (i) enter the appeal for hearing at a sitting of the court at the judicial centre of Saskatoon; and
    - (ii) in the case of a request pursuant to clause (4)(b), mail a notice of the entry to each of the other parties to the appeal; and
  - (b) every appeal entered pursuant to clause (a) shall, subject to subsections (6) and (7), be heard at the judicial centre of Saskatoon.
- (6) Where an appeal has been entered for hearing at a sitting of the court at the judicial centre of either Regina or Saskatoon, any of the parties to the appeal may file with the registrar a request signed by all of the parties to have the appeal heard at the other judicial centre.
- (7) On the filing of a request pursuant to subsection (6):
- (a) the entry is deemed to be cancelled;
  - (b) the registrar shall enter the appeal for hearing at a sitting of the court at the judicial centre of:
    - (i) Saskatoon, in the case of an appeal originally entered for hearing at Regina; and
    - (ii) Regina, in the case of an appeal originally entered for hearing at Saskatoon; and
  - (c) the appeal shall be heard at a sitting of the court at the judicial centre specified in clause (b).
- (8) Subsections (3) to (7) do not apply with respect to appeals related to prosecutions pursuant to the *Criminal Code* and the *Controlled Drugs and Substances Act* (Canada) and appeals pursuant to the *Youth Criminal Justice Act* (Canada).

2000, c.C-42.1, s.19; 2004, c.66, s.4.

**Judge in chambers**

- 20(1)** A single judge sitting in chambers may hear and dispose of an application or motion that is incidental to an appeal or matter pending in the court and that does not involve the decision of the appeal on the merits.
- (2) A single judge sitting in chambers may hear and dispose of an application for leave to appeal.
- (3) An order made by a judge in chambers, other than an order granting or denying leave to appeal, may be discharged or varied by the court.

2000, c.C-42.1, s.20.

**Registrar**

**21(1)** The registrar may exercise any power or jurisdiction of a judge sitting in chambers that may be conferred on the registrar by the rules of court.

(2) For the purposes of subsection (1), “**registrar**” does not include a deputy registrar.

(3) The Lieutenant Governor in Council may make regulations prescribing the fees and charges payable to the registrar.

2000, c.C-42.1, s.21.

**Rules of court**

**22** The judges, or a majority of them present at any meeting held for that purpose, may make rules of court:

(a) regulating the practice and procedure relating to all appeals or matters coming before the court, the duties of the officers of the court and, subject to subsection 21(3), the costs of proceedings in the court;

(b) for the purposes of clause 8(2)(b), prescribing cases that are in the nature of final decisions;

(c) authorizing the registrar to do any specified thing or transact any specified business;

(d) subject to subsection 21(2), authorizing the registrar to exercise any power or jurisdiction that may be exercised by a judge sitting in chambers pursuant to any Act, Act of the Parliament of Canada or the custom or practice of the courts;

(e) fixing a tariff of fees and costs to be allowed to solicitors and counsel on proceedings in the court;

(f) providing for any other thing that the judges consider expedient for better attaining the ends of justice, advancing the remedies of parties, carrying into effect the provisions of this Act or providing for any subject that is not sufficiently provided for in this Act.

2000, c.C-42.1, s.22.

**Publication of rules**

**23(1)** All rules of court made pursuant to this Act must be published in *The Saskatchewan Gazette* with as little delay as possible.

(2) Subject to subsections (3) and (4), subsection (1) does not apply to a general consolidation and revision of the rules of court.

(3) A notice of the promulgation of a consolidation and revision of the rules of court must be published in the Gazette and must state the date on which the consolidation and revision of the rules of court comes into force.

(4) The date on which a consolidation and revision of the rules of court comes into force must be later than the date of publication of the notice.

2000, c.C-42.1, s.23.

**R.S.S. 1978, c.C-42 repealed**

**24** *The Court of Appeal Act* is repealed.

2000, c.C-42.1, s.24.

**25 to 27** **Dispensed.** These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.

**Coming into force**

**28** This Act comes into force on proclamation.

2000, c.C-42.1, s.28.

