

POA APPEALS PROCESS – ADDITIONAL INFORMATION

YORK REGION – September, 2017 – Part III

This information sheet is designed to assist you in completing the necessary paperwork in bringing your *Provincial Offences Act* (“POA”) appeal and any related Applications. **You should also read the Ontario Court of Justice Guide to Appeals in Provincial Offences Cases.** The guide is available on the Ontario Courts website at www.ontariocourts.ca/ocj/self-represented-parties/guide-to-appeals-in-provincial-offences-cases/guide/. The guide has more information about the appeal process.

Please keep in mind that **court administration and prosecution staff are not able to provide you with legal advice, assist in filling out forms or making copies of your forms and should not be asked to do so.** **You will need the original and two copies of all documents – a copy to serve on the prosecution office, a copy for yourself, and the original for the court.**

Please contact a lawyer or a licensed paralegal for advice and assistance on your appeal and related Applications, and filling out the paperwork.

Appealing a Conviction and/or sentence

If you received a yellow Summons to appear in court, and you want to appeal your conviction and/or the sentence, you must serve and file a Notice of Appeal at the Ontario Court of Justice at 50 Eagle St. West, Newmarket, within 30 days of the date you were convicted and sentenced by the court. You must also attend at the court location where you had your trial and order 3 copies of the transcript of the trial. You must request a “Certificate of the Clerk” as proof of your transcript order and file the Certificate of the Clerk along with your Notice of Appeal with proof of service.

Before you can file your appeal, you must pay the fine into the court office where you were convicted or any Provincial Offences Court in Ontario and file the receipt of payment along with your Notice of Appeal.

Notice of Appeal

Your Notice of Appeal must be filled out completely. The form has several lines that set out the types of information you need to fill in, as well as an additional sheet that requires further information to be filled in.

Keep in mind that the appeal court is not the place to have a new trial. The officer and witnesses do not attend your appeal. The judge will hear your explanation, review what happened, review all transcripts and consider whether the trial justice of the peace erred in some way that would make the decision unjust. The prosecutor will also explain their position on your appeal.

Service of Notice of Appeal and Applications

If you received a pink Summons from the police or a by-law officer, or if you received a yellow summons as a result of a charge under a *Municipal By-Law*, the *Building Code*, *Fire Code*, *Smoke Free Ontario Act*, or *Health Protection and Promotion Act*, you must serve the Region of York's prosecution office located at 465 Davis Drive, Suite 225, Newmarket. **Note: you must attend the office between 8:30 am and 4:00 pm to serve your materials. Service may not be accepted after 4:00 pm if the materials are incomplete.**

If you received a yellow Summons to appear in court as a result of driving a vehicle (for example, stunt driving, no insurance, driving under suspension), you will have to serve your Notice of Appeal on the crown attorney's office at 50 Eagle St. West, Newmarket.

If you received a summons from any other Ministry (such as Ministry of Transportation, Ministry of Labour, Ministry of Natural Resources, Ministry of the Environment) please speak to the clerk at 50 Eagle Street West, Newmarket to obtain more information on who to serve.

The clerk will send you a Notice of Time and Place of Hearing for your appeal. This date will be a status hearing to determine whether the appeal can be resolved, and if not, what information and documents need to be provided before setting a date for the hearing of the appeal.

What to do if your conviction was more than 30 days ago or you cannot afford to pay the fine into court

Application for Extension of Time to File the Appeal

If you are outside the 30 days to file your appeal, you must first make an Application to Extend Time to File the Appeal and provide reasons why you should be given an extension of time to do so. A transcript of the trial or guilty plea may not be required to be ordered at this stage unless ordered by the judge. You will have to order the transcript if the Application is granted that allows you to file the appeal.

At this time you should also file your completed Notice of Appeal.

The Application for an Extension of Time to File the Appeal must be served to the appropriate office as indicated in the Service of Notice of Appeal and Applications above.

The Application includes a sheet where you must fill in additional information to assist the prosecutor/crown and the judge to understand the basis for your Application.

The prosecutor's office will accept service of the Application and the Notice of Appeal. If the documents are not filled out completely, the prosecutor may tell you to fill out the missing information before they admit service on the documents.

Once the prosecutor has admitted service on the documents, you must go to the court house at 50 Eagle St. West, Newmarket to file the Application and the Notice of Appeal with the court office located on the 1st floor. A date for the hearing of the Application will not be set at this time. A date will only be set once a written response has been received from the prosecutor as to whether they will consent to, or oppose, your Application.

For Applications that are served on the Region of York prosecutors, the prosecutor may contact you by phone, email or fax within 21 days of service of your Application to see if your Application and the appeal can be resolved. The appeal clerk will send you a notice of the date, time and place for the hearing of your Application.

If the prosecutor opposes your Application, the judge will only deal with the Application. IT IS NOT the hearing of your appeal. If your Application to Extend Time to File the Appeal is allowed, and you have not reached an agreement with the prosecutor on a resolution of your appeal, your appeal will be heard on a later date. A new date will be set for the hearing of your appeal. This will be a status hearing to determine if all documents needed for the appeal have been served and filed, and the setting of an appeal date once the case is ready to be heard.

If your Application is dismissed, you cannot appeal your conviction or sentence.

Application to File an Appeal without paying the fine into court

Section 111 of the *POA* states that the fine must be paid in full into court before you can file a Notice of Appeal. Payment of the fine into court is not an admission by you that you are guilty. If you cannot afford to pay your fine into court, you can apply to a judge for an order giving you permission to file the appeal without having to pay the fine into court. You will also have to bring an Application to Extend Time to File the appeal since the Application to File an Appeal without paying the fine into court will be heard more than 30 days from the date of your conviction and sentence.

The same process will apply to this Application as set out above for the Application for Extension of Time to File the Appeal process.

If everything is filled out, the prosecutor will admit service on the Application. You will then have to file your Application with proof of service at the court office at 50 Eagle St. West, Newmarket.

If the court allows your Application, you will have to sign a document called a Recognizance. It can only be signed by you, and not by another person such as a legal representative or family member or friend. You must appear in court and sign it before the judge. You cannot file your appeal until the Recognizance is signed by you.

If the court denies your Application to file the appeal without paying the fine into court, but grants the application to extend time to file the appeal, you will have to pay the fine into court at the Provincial Offences court within the time extension granted by the court before your appeal is treated as filed and before it is set for hearing. This will result in further delays and court appearances.

Application to stay the conviction pending appeal

Section 112 of the *POA* allows you to apply to the appeal court to stay your conviction pending appeal. The Application to Stay cannot be heard until the Notice of Appeal is filed.

If you filed your Notice of Appeal and paid the fine into court, you must serve a copy of the Application for a Stay on the prosecutor's office.

If you served an Application to Extend Time to File the Appeal (and an Application to File the Appeal without paying the fine into court if needed), you can also serve an Application for a Stay at the same time. The Application to Stay the conviction will not be heard until the Extension (and Filing without Paying the Fine into Court if needed) are granted.

You must file the original Application with proof of service at the court office at 50 Eagle St. West, Newmarket and keep a copy for your records.

Motion to Restore an Appeal or Application that was dismissed for failure to appear

If you missed your court date for the hearing of your Appeal or Application, and the Appeal or Application was dismissed, you can bring a motion to request that the court restore your Appeal or Application to be heard. You must fill out a Motion to Restore form explaining why you missed the court date for your Appeal or Application to be heard and serve the motion on the prosecutor's office.